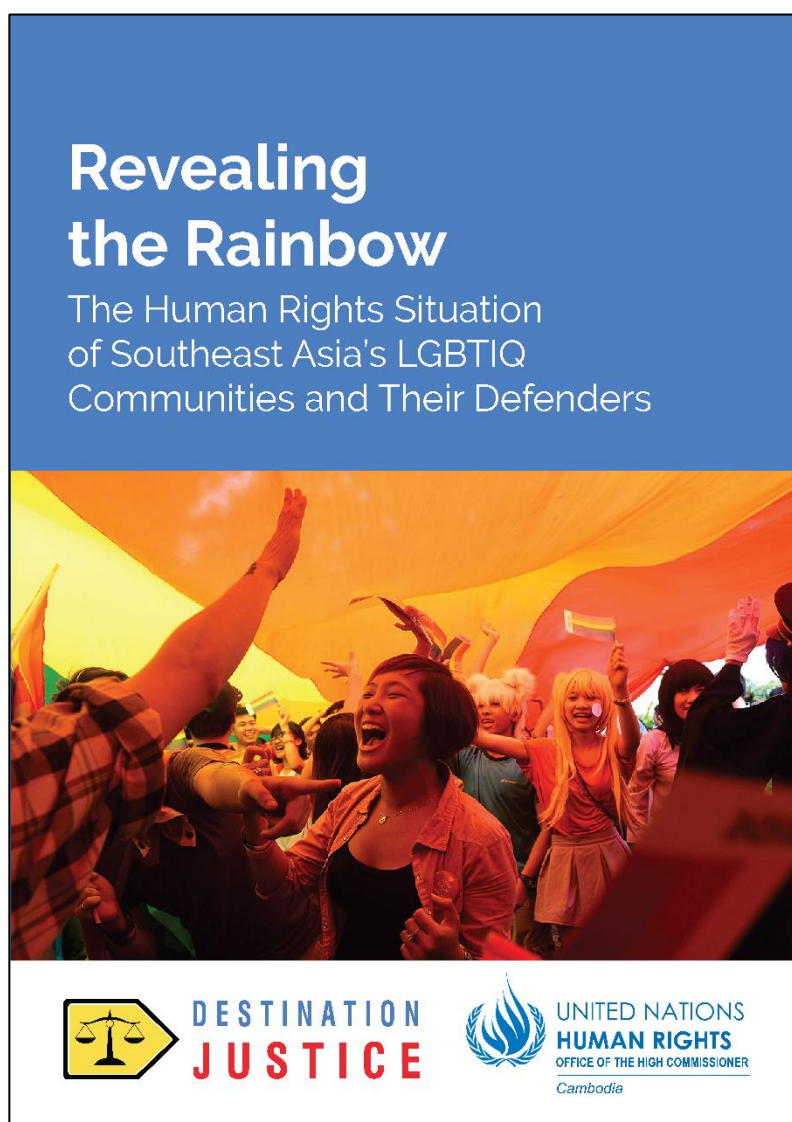


LGBTIQ Communities and Their Defenders Country Information Pack: **Singapore**

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Singapore: Country Profile

Human Rights of LGBTIQ Communities and HRDs: Situational Analysis

Introduction

UPR Cycles

First UPR Cycle: 6 May 2011

Second UPR Cycle: 27 January 2016

Third UPR Cycle: January/February 2021

Issues related to the lesbian, gay, bisexual, transgender, intersex, and queer (**LGBTIQ**) community and human rights defenders (**HRDs**) of the Republic of Singapore (**Singapore**) were raised in both Singapore's first and second Universal Periodic Review (**UPR**) cycles. As this

Country Profile details, however, UPR recommendations that aimed to further protect and promote LGBTIQ rights frequently failed to enjoy Singapore's support.

Singapore is reportedly one of the few Association of Southeast Asian Nation (**ASEAN**) States that refused to include a clause protecting LGBTIQ rights in the ASEAN Human Rights Declaration (**AHRD**).² Indeed, this Country Profile outlines how the lack of adequate laws and policies still expose Singapore's LGBTIQ community to risk, including in respect of security and discrimination. Moreover, members of the community still face online harassment and general ill-treatment. HRDs working on LGBTIQ rights and the LGBTIQ community generally are also vulnerable due to Singapore's restrictive practices with regard to freedoms of opinion, expression and assembly and the right to participate in the cultural life of the community. HRDs in particular may be vulnerable if they criticise the government and media, with LGBTIQ content often censored or blocked.

In the lead up to Myanmar's third UPR cycle in January/February 2021, civil society organisations (**CSOs**) and recommending States have an opportunity to work towards developing improved UPR recommendations that focus on the universality and benefit to Singapore of various proposed reforms.

"Building a nuanced conversation around LGBT rights in Singapore will be tough, and I think it's going to take a bit longer, but be more inclusive."

Benjamin Xue,
Chief Engagement Officer,
campaign.com, The Social
Network #ForChange

Past UPR Cycles for the Republic of Singapore

First UPR Cycle (6 May 2011)

National Report Filed:¹ Singapore's national report for the first UPR was published on 2 February 2011. It did not mention HRDs or the LGBTIQ community. The report did note that Singapore "fully subscribes to the principles enshrined in the Universal Declaration of Human Rights [(UDHR)]."² The report also discussed Singaporean legislation that permits arbitrary detention to neutralise threats to national security.³

Stakeholders Submissions Made:⁴ The summary of the 18 stakeholders' submissions was published on 21 February 2011. Stakeholders highlighted the prejudice LGBTIQ people faced seeking private sector employment or promotions, noting that there was no recourse due to a lack of legal protections.⁵

Stakeholders also noted that Singapore maintained criminal sanctions against sexual activity between consenting men and recommended that Singapore repeal laws in this regard.⁶ They also recommended that Article 12(2) of Singapore's Constitution be amended to prohibit discrimination based on gender and sexuality.⁷ Finally, stakeholders suggested that Singapore's laws allowing arbitrary detention threatened HRDs and effectively eliminated "all forms of dissent, free speech and free association and assembly."⁸

First UPR Cycle for Singapore: Recommendations Received

In its first UPR, held in May 2011, Singapore received the following recommendations which directly relate to the LGBTIQ community and LGBTIQ HRDs:

- Repeal or at least narrow the restrictions on public discourse on sensitive issues in order to ensure the full enjoyment of freedom of expression and freedom of peaceful assembly and association (Slovenia).
- Repeal legal provisions, including the Penal Code, criminalising sexual activity between consenting adults of the same sex (Slovenia, France).

¹ National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Singapore, U.N. Doc. A/HRC/WG.6/11/SGP/1, 2 February 2011, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/105/40/PDF/G1110540.pdf?OpenElement> (last visited 29 June 2017).

² First UPR cycle: *National Report*, Singapore, para. 33.

³ First UPR cycle: *National Report*, Singapore, paras. 126, 128-130.

⁴ *Summary of Stakeholders' submissions prepared by the Office of the High Commissioner for Human Rights: Singapore*, U.N. Doc. A/HRC/WG.6/11/SGP/3, 21 February 2011, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/108/87/PDF/G1110887.pdf?OpenElement> (last visited 29 June 2017).

⁵ First UPR cycle: *Stakeholders' Summary*, Singapore, para. 16.

⁶ First UPR cycle: *Stakeholders' Summary*, Singapore, para. 28.

⁷ First UPR cycle: *Stakeholders' Summary*, Singapore, para. 17.

⁸ First UPR cycle: *Stakeholders' Summary*, Singapore, para. 23.

- Put a stop to caning as a form of punishment and repeal all laws providing for this punishment (Czech Republic); put an end in practice to all forms of corporal punishment and derogate the laws allowing for this practice (France).
- Declare an immediate moratorium on executions with the aim of abolishing the death penalty (Finland, France, Switzerland, Czech Republic, Canada, United Kingdom, Slovenia).
- Review the de facto ban on peaceful public demonstrations, the use of anti-defamation laws, and the registration process for civil society and associations, to ensure that such laws, as adopted and enforced, are consistent with international human rights guarantees of the rights to freedom of expression, freedom of peaceful assembly, freedom of association (Canada).
- Abolish the penal law on defamation and ensure, through legislative reform and political change, that freedom of expression as well as freedom of association and peaceful assembly are guaranteed to all inhabitants, citizens or not, of the country (Switzerland).
- Consider developing further the legal and institutional framework with respect to the promotion and protection of human rights in the country (Malaysia, Jordan).

Source: *Report of the Working Group on the Universal Periodic Review: Singapore*, U.N. Doc. A/HRC/18/11, 11 July 2011, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/145/27/PDF/G1114527.pdf?OpenElement> (last visited 29 June 2017).

Comments Received; Response to Recommendations: During the UPR Interactive Dialogue, Singapore received a specific comment from France welcoming Singapore's decision to no longer apply the provision of the Penal Code criminalising consensual sexual activity between men. At the same time, France expressed its "regret[...] that caning was still considered a [valid] punishment."⁹

In response to these comments and related comments from various other States,¹⁰ Singapore advised that individuals were free to pursue their lives. However, it noted that its parliament had debated decriminalising sexual activity between men and had decided to maintain the current approach.¹¹ In effect, therefore, Singapore chose not to support recommendations to decriminalise sexual activity between men.¹²

Equally, recommendations to abolish the death penalty and end corporal punishment failed to secure Singapore's support.¹³ Likewise, Singapore noted that it considered that

⁹ First UPR cycle: *Report of the Working Group*, Singapore, para. 72.

¹⁰ First UPR cycle: *Report of the Working Group*, Singapore, paras. 108, 161.

¹¹ First UPR cycle: *Report of the Working Group*, Singapore, para. 82.

¹² First UPR cycle: *Report of the Working Group*, Singapore, para. 97.12.

¹³ First UPR cycle: *Report of the Working Group*, Singapore, paras. 97.1-97.7.

recommendations to improve protections of the freedoms of expression and assembly were "based on incorrect assumptions or premises"¹⁴ and accordingly did not support them either.

However, Singapore did accept the recommendation from Slovenia to repeal restrictions on public discourse to ensure the full enjoyment of freedom of expression and of peaceful assembly and association.¹⁵ In this regard, Singapore stated that:

As a multi-cultural society, ethnicity, language, race, and religion are emotive issues and have the potential to cause friction and divide Singaporeans. Boundaries therefore have to be set, within the limits authorised by the Singapore Constitution, to ensure that those who engage in public discourse on such issues act responsibly and to minimise the risk of these issues sparking off wider social hostilities, including violence.¹⁶

Singapore also accepted recommendations from Malaysia and Jordan to further develop the State's legal and institutional framework with respect to human rights.¹⁷

Second UPR Cycle (27 January 2016)

National Report Filed:¹⁸ Singapore's national report for the second UPR was published on 28 October 2015. While it did not explicitly mention HRDs, the report did include a specific section on the LGBTIQ community. The report advised that Section 377A of the Penal Code, which criminalises sexual activity between men, was retained due to parliamentary debate and petitions by civil society.¹⁹ Despite retaining the section, however, the report explained that the government did not proactively enforce it, and that in practice, all of Singapore's citizens were "free to lead their lives and pursue their activities in their private space without fear of violence or personal insecurity."²⁰

As to discrimination, Singapore's report claimed that "Members of the LGBT community are also not discriminated against in schools or the workplace. The Government does not discriminate against persons seeking a job in the civil service on the basis of their sexual orientation."²¹ Finally, Singapore emphasised that on LGBTIQ issues, "each country should be allowed to deal with such sensitive issues in its own way, taking into account its evolving social

¹⁴ First UPR cycle: *Report of the Working Group*, Singapore, para. 99.

¹⁵ First UPR cycle: *Report of the Working Group*, Singapore, para. 96.35.

¹⁶ *Report of the Working Group on the Universal Periodic Review: Singapore, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, U.N. Doc. A/HRC/18/11/Add.1, 11 July 2011, para. 11, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/144/50/PDF/G1114450.pdf?OpenElement> (last visited 29 June 2017).

¹⁷ First UPR cycle: *Report of the Working Group*, Singapore, para. 94.25.

¹⁸ *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Singapore*, U.N. Doc. A/HRC/WG.6/24/SGP/1, 28 October 2015, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/245/91/PDF/G1524591.pdf?OpenElement> (last visited 29 June 2017).

¹⁹ Second UPR cycle: *National Report*, Singapore, para. 111.

²⁰ Second UPR cycle: *National Report*, Singapore, para. 112.

²¹ Second UPR cycle: *National Report*, Singapore, para. 112.

and cultural context."²² It explained that its approach sought to accommodate the sensitivities of its diverse communities so that they could co-exist harmoniously.²³

Stakeholders Submissions Made:²⁴ The summary of the 22 stakeholders' submissions was published on 6 November 2015. Stakeholders explicitly discussed the LGBTIQ community, LGBTIQ HRDs and HRDs generally. They noted Singapore's failure to introduce laws prohibiting discrimination based on sexual orientation,²⁵ and reported that LGBTIQ people faced obstacles seeking employment in the civil service or discrimination while working in State departments.²⁶ More generally, stakeholders "noted reports of workplace bullying, prejudice, harassment, blackmail and intimidation."²⁷ Stakeholders recommended that Singapore eliminate all policies actively discriminating against LGBTIQ people, in particular those requiring people to declare their sexual orientation in public and private fields.²⁸

Echoing stakeholder submissions for the first UPR, stakeholders in the second UPR continued to recommend that laws criminalising consensual sexual activity between men be repealed.²⁹ Stakeholders also highlighted media censorship laws that they alleged "created a skewed portrayal of LGBTI individuals in local and mainstream media", together with a 24-hour takedown requirement introduced for "material that advocates homosexuality or lesbianism" on popular websites.³⁰ Finally, stakeholders recommended that Singapore "take all necessary measures to allow broadcasting of LGBTI content without any kind of restrictions in all media, including print media, television, film and web broadcasting."³¹

Second UPR Cycle for Singapore: Recommendations Received

In its second UPR, held in January 2016, Singapore received the following recommendations directly relevant to LGBTIQ people and the freedoms of expression, association and assembly:

- Repeal laws criminalising homosexuality, especially Section 377A of the Penal Code (Norway, Slovenia, Spain, Sweden, United Kingdom, United States, Austria, Czech Republic, France, Greece) and laws which discriminate against LGBTI persons (Brazil, Czech Republic).

²² Second UPR cycle: *National Report*, Singapore, para. 113.

²³ Second UPR cycle: *National Report*, Singapore, para. 113.

²⁴ *Summary of Stakeholders' submissions prepared by the Office of the United Nations High Commissioner for Human Rights: Singapore*, U.N. Doc. A/HRC/WG.6/24/SGP/3, 6 November 2015, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/252/06/PDF/G1525206.pdf?OpenElement> (last visited 29 June 2017).

²⁵ Second UPR cycle: *Stakeholders' Summary*, Singapore, para. 4.

²⁶ Second UPR cycle: *Stakeholders' Summary*, Singapore, para. 5.

²⁷ Second UPR cycle: *Stakeholders' Summary*, Singapore, para. 58.

²⁸ Second UPR cycle: *Stakeholders' Summary*, Singapore, para. 5.

²⁹ Second UPR cycle: *Stakeholders' Summary*, Singapore, para. 33.

³⁰ Second UPR cycle: *Stakeholders' Summary*, Singapore, para. 48.

³¹ Second UPR cycle: *Stakeholders' Summary*, Singapore, para. 48.

- Abolish corporal punishment as a legal penalty (Sweden, Switzerland, France, New Zealand).
- Establish a moratorium on the death penalty (Spain, Netherlands, Sierra Leone, Slovenia, Finland, Holy See, Honduras, South Africa, Norway, Portugal, Switzerland, Italy).
- Enact comprehensive legislation prohibiting discrimination in employment on the basis of sex, race, ethnicity, religion, age, sexual orientation, gender identity and expression, marital status or disability (Canada).
- Ensure freedom of assembly and association, freedom of opinion and expression, including on the Internet, and protect freedom of the press (France, Mexico, Costa Rica, New Zealand).
- Decriminalise defamation and make it a civil offence in accordance with international standards, and review the registration process for civil society and associations to ensure the fulfilment of their human rights (Belgium, Canada).
- Review existing legislation to enhance the exercise of the right to freedom of expression, association and peaceful assembly (Italy, Czech Republic, Latvia, Japan, Ireland).
- Remove discriminatory media guidelines to provide a more balanced representation of LGBTI persons (Canada).
- Establish a national human rights institution in accordance with the Paris Principles (Costa Rica, Nepal, Republic of Korea, Timor-Leste, Malaysia).

Source: *Report of the Working Group on the Universal Periodic Review: Singapore*, U.N. Doc. A/HRC/32/17, 15 April 2016, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/078/42/PDF/G1607842.pdf?OpenElement> (last visited 29 June 2017).

Comments Received; Response to Recommendations: Singapore received specific comments from delegations during the UPR Interactive Dialogue concerning, among other things, human rights of the LGBTIQ community³² and the decriminalisation of sexual activity between men.³³ Singapore acknowledged recommendations directly mentioning the LGBTIQ community; reiterated that LGBTIQ people were part of society and free to live their lives; and indicated that the topic was sensitive given the conservative nature of Singaporean society.³⁴ Singapore also reiterated that laws criminalising homosexuality were not actively enforced.³⁵

Singapore noted recommendations regarding the death penalty, explaining that “no civilized society glorified in the taking of lives. Singapore applied capital punishment to deter the most

³² Second UPR cycle: *Report of the Working Group*, Singapore, paras. 18, 50.

³³ Second UPR cycle: *Report of the Working Group*, Singapore, paras. 37, 108, 161.

³⁴ Second UPR cycle: *Report of the Working Group*, Singapore, paras. 76–77.

³⁵ Second UPR cycle: *Report of the Working Group*, Singapore, para. 77.

serious crimes such as murder and drug trafficking."³⁶ It offered similar reasoning for its prohibition of corporal punishment, explaining that "the application of corporal punishment was guided by necessity and proportionality. There were absolute limits on the number of strokes, and it was administered under highly regulated conditions."³⁷

During the UPR Interactive Dialogue, Singapore also received comments on its laws prohibiting freedoms of speech, media, expression and assembly.³⁸ Singapore expressed its support for the freedoms of assembly, speech and expression; indeed, Singapore accepted the recommendation promoting the freedom of expression. At the same time, Singapore stressed that there must be safeguards in place against abuse of such rights.³⁹

On defamation, Singapore noted without supporting the recommendation⁴⁰ about defamation. Singapore indicated in response that "Singapore's Societies Act and laws on defamation are already consistent with the rights to freedom of expression, association and peaceful assembly, as enshrined in the Singapore Constitution."⁴¹

Finally, Singapore did not support the recommendation which proposed that it create a national human rights institution in accordance with the Paris Principles. Singapore explained that it had already "put in place interlocking legislation, institutions and mechanisms that allow [us] to promote and protect the human rights of all Singaporeans."⁴²

Situation of the LGBTIQ Community and its HRDs in Singapore

Freedom of Opinion and Expression

Censorship in the Media: Singapore's media censorship laws are currently applied in a way that limits its citizens' freedom of opinion and expression on LGBTIQ-related issues. For example, in 2011, Singapore's Media Development Authority imposed an R21 rating on a documentary produced by the International Gay and Lesbian Human Rights Commission.⁴³ The documentary focused on issues LGBTIQ people in Asia face and explained how the Yogyakarta Principles were a tool LGBTIQ HRDs could use in advocating for their rights,⁴⁴ and

³⁶ Second UPR cycle: *Report of the Working Group*, Singapore, paras. 61-63, 166.56-166.58.

³⁷ Second UPR cycle: *Report of the Working Group*, Singapore, paras. 64, 166.68-166.78.

³⁸ Second UPR cycle: *Report of the Working Group*, Singapore, paras. 49, 98.

³⁹ Second UPR cycle: *Report of the Working Group*, Singapore, paras. 67, 72; *Report of the Working Group on the Universal Periodic Review: Singapore, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, U.N. Doc. A/HRC/32/17/Add.1, 13 June 2016, paras. 4-50, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/117/87/PDF/G1611787.pdf?OpenElement> (last visited 4 July 2017).

⁴⁰ This is standard diplomatic language commonly used by States under review to declare that they do not accept a given recommendation.

⁴¹ Second UPR cycle: *Report of the Working Group*, Singapore, paras. 48, 166.86, 166.92.

⁴² Second UPR cycle: *Report of the Working Group*, Singapore, para. 34.

⁴³ "Human Rights Reports for 2011: Singapore", U.S. Department of State: Bureau of Democracy, Human Rights and Labor, 2012, p. 25, available at <https://www.state.gov/documents/organization/186516.pdf> (last visited 3 July 2017).

⁴⁴ "Human Rights Reports for 2011: Singapore", U.S. Department of State, 2012, p. 25.

an R21 rating limited the documentary's screening locations, audience, release on home video formats and advertising on television.⁴⁵

In May 2015, the Media Development Authority ordered TV and radio broadcasters not to air singer Jolin Tsai's song "We're All Different, Yet The Same" as it contained lyrics on homosexuality.⁴⁶ Similarly, the Media Development Authority continues to censor LGBTIQ themes in films and television shows, stating that LGBTIQ themes are only allowed on television "as long as the presentation does not justify, promote, or glamorize such a lifestyle."⁴⁷

The approach of Singapore's Media Development Authority to LGBTIQ issues highlights the relevance of reforms recommended during both the first and second UPRs for Singapore. In particular, its actions contrast with Slovenia's first UPR recommendation to narrow the restrictions on public discourse on sensitive issues and ensure the full enjoyment of freedom of expression, which Singapore accepted. These actions also contrast with Canada's second UPR recommendation for Singapore to remove discriminatory media guidelines to provide a more balanced representation of LGBTIQ persons which Singapore merely noted, on the basis that "LGBTI content is permitted so long as it meets the current media guidelines, which are revised periodically in accordance with societal values."⁴⁸

In this regard, it is noteworthy that Singapore supported Slovenia's recommendation in the first UPR but did not support Canada's similar recommendation in the second UPR. This would

⁴⁵ "Human Rights Reports for 2011: Singapore", U.S. Department of State, 2012, p. 25. *For more information, see* "Film Classification Guidelines", IMDA, Singapore Government, 27 February 2017, available at <https://www.imda.gov.sg/~media/imda/files/regulation%20licensing%20and%20consultations/codes%20of%20practice%20and%20guidelines/acts%20codes/10%20classificationguidelines15072011.pdf?la=en> (last visited 29 June 2017).

The R21 rating is from the Singapore Movies Classification and corresponds to the restriction "to persons 21 years and above." This classification justifies a R21 restriction as follows: "depiction of intense horror, and sustained threat or menace may be permitted if contextually justified. Portrayals of extreme abhorrent activity that may offend and cause great discomfort may be disallowed."

⁴⁶ "World Report 2016: Events of 2015", Human Rights Watch, 2016, p. 504, available at https://www.hrw.org/sites/default/files/world_report_download/wr2016_web.pdf (last visited 3 July 2017).

⁴⁷ "Human Rights Reports for 2012: Singapore", U.S. Department of State: Bureau of Democracy, Human Rights and Labor, 2013, p. 26, available at <https://www.state.gov/documents/organization/204446.pdf> (last visited 3 July 2017); "Human Rights Reports for 2013: Singapore", U.S. Department of State: Bureau of Democracy, Human Rights and Labor, 2014, p. 28, available at <https://www.state.gov/documents/organization/220439.pdf> (last visited 3 July 2017); "Human Rights Reports for 2014: Singapore", U.S. Department of State: Bureau of Democracy, Human Rights and Labor, 2015, p. 27, available at <https://www.state.gov/documents/organization/236686.pdf> (last visited 3 July 2017); "Human Rights Reports for 2015: Singapore", U.S. Department of State: Bureau of Democracy, Human Rights and Labor, 2016, p. 26, available at <https://www.state.gov/documents/organization/253009.pdf> (last visited 3 July 2017); "Human Rights Reports for 2016: Singapore", U.S. Department of State: Bureau of Democracy, Human Rights and Labor, 2017, p. 26, available at <https://www.state.gov/documents/organization/265582.pdf> (last visited 3 July 2017).

⁴⁸ *Report of the Working Group on the Universal Periodic Review: Singapore, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, U.N. Doc. A/HRC/32/17/Add.1, 13 June 2016, para. 46, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/117/87/PDF/G1611787.pdf?OpenElement> (last visited 4 July 2017).

appear to indicate that Singapore's position on freedom of opinion and expression has become increasingly restrictive over the course of the UPR process.

Criminal Sanctions: In the criminal law sphere, in 2013, Singapore charged the blogger and HRD Alex Au Wai Pang in relation to a commentary he posted online. Pang was alleged to have "scandalised" the judiciary in his online commentary by implying that the Supreme Court delayed hearing dates on a constitutional challenge to section 377A of Singapore's Penal Code that criminalises homosexual sexual conduct for improper reasons.⁴⁹ He was ultimately convicted on 22 January 2015 and sentenced with an \$8,000 fine.⁵⁰

Both the Office of the United Nations (UN) High Commissioner for Human Rights⁵¹ (OHCHR) and the UN Special Rapporteur on the situation of human rights defenders expressed concern about the charges brought against Alex Au Wai Pang. In March 2015, the Special Rapporteur, Michel Forst, suggested that the charges:

could have a negative impact on the possibility of public discussions on critical human rights issues as well as on the operational space of the human rights defenders to exercise their legitimate right to freedom of opinion and expression without fear, intimidation and interference.⁵²

Despite the attention paid to Pang's case, in November 2015, the Singapore Court of Appeals heard Pang's appeal for his conviction and dismissed his claim. The superior Court agreed with the lower Court and dismissed the appeal with costs.⁵³

During its first UPR, Singapore did not support a recommendation from Switzerland which called for legislative reform and political change to ensure the freedom of expression of Singapore's citizens. However, during its second UPR, Singapore did accept a recommendation from France to ensure freedom of assembly and association, freedom of opinion and expression, including on the Internet, and protect freedom of the press⁵⁴ while stressing the need to safeguard against abuse of such rights.⁵⁵ It is plausible that Pang's high-profile case, which took place between the first and second UPRs, may have contributed to

⁴⁹ "Singapore: court convicts activist blogger for contempt", Asian Human Rights Defenders, 23 January 2015, available at <https://asianhrds.forum-asia.org/?events-singapore-court-convicts-activist-blogger-for-contempt#> (last visited 3 July 2017).

⁵⁰ "Singapore: court convicts activist blogger for contempt", Asian Human Rights Defenders, 23 January 2015.

⁵¹ "OHCHR Internal Communication - Reference: UA G/SO 214 (67-17) G/SO 214 (107-9)", OHCHR, 12 December 2013, available at [https://spdb.ohchr.org/hrdb/24th/public_-_UA_Singapore_12.12.13_\(4.2013\).pdf](https://spdb.ohchr.org/hrdb/24th/public_-_UA_Singapore_12.12.13_(4.2013).pdf) (last visited 3 July 2017).

⁵² Michel Forst, *Report of the Special Rapporteur on the situation of human rights defenders, Addendum*, U.N. Doc. A/HRC/28/63/Add.1, 4 March 2015, para. 323, available at <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Pages/ListReports.aspx> (last visited 3 July 2017).

⁵³ *Au Wai Pang v Attorney-General*, 2015, SGCA 61. Also available at <http://www.singaporelaw.sg/sqslaw/laws-of-singapore/case-law/free-law/court-of-appeal-judgments/18277-au-wai-pang-v-attorney-general> (last visited 5 July 2017).

⁵⁴ Second UPR cycle: *Report of the Working Group*, Singapore, para. 166.201.

⁵⁵ Second UPR cycle: *Report of the Working Group, Addendum*, Singapore, para. 47.

Singapore's decision to accept the second UPR recommendation on freedom of expression, yet at the same time highlighting possible abuses of the freedom.

Threats to the LGBTIQ Community: On 4 June 2016, a Singaporean man, Bryan Lim, posted a comment on the Facebook Group "We are against Pinkdot in Singapore" which resurfaced after the mass shooting in Orlando.⁵⁶ The comment stated "I am a Singaporean citizen. I am an NSman. I am a father. And I swore to protect my nation. Give me the permission to open fire. I would like to see these £@€\$^*s die for their causes."⁵⁷ Facebook users lodged police reports against the man.⁵⁸ Lim apologised "for the misunderstanding", claiming that he "did not mean anyone" and instead meant to direct his comment at "foreign intervention in local matters."⁵⁹

On 30 June 2016, Bryan Lim was charged by the Singaporean police for making an electronic record containing an incitement to violence.⁶⁰ He was ultimately fined \$3,500 on 4 November 2016 after pleading guilty to a reduced charge of making a threatening, abusive or insulting communication under the Protection from Harassment Act.⁶¹

Freedom of Assembly and the Right to Freely Participate in the Cultural Life of the Community

Pride Celebrations: In 2009, Singapore's first public celebration of its LGBTIQ community was organised by Pink Dot SG.⁶² The celebration is now hosted every year in Hong Lim Park, Singapore's only public space created solely for public protest and/or free speech. Pink Dot was created to promote openness, understanding, and tolerance of the LGBTIQ community in Singapore.⁶³ Pink Dot has continued to expand since its formation in 2009. In 2009, Pink Dot hosted 1,000-2,500 attendees,⁶⁴ expanding to over 28,000 in 2015.⁶⁵ Most recently, approximately 20,000 people attended Pink Dot in 2017 despite the Singaporean government

⁵⁶ "Police investigating online threat by Facebook user who wanted to 'open fire'", Channel NewsAsia, 14 June 2016, available at <http://www.channelnewsasia.com/news/singapore/police-investigating/2870236.html> (last visited 3 July 2017).

⁵⁷ Kok Xing Hui & Seow Bei Yi, "Singapore netizen Bryan Lim apologises over LGBT 'open fire' comment", The Straits Times, 15 June 2016, available at <http://www.straitstimes.com/singapore/spore-netizen-apologises-over-open-fire-comment> (last visited 3 July 2017).

⁵⁸ Kok Xing Hui & Seow Bei Yi, "Singapore netizen Bryan Lim apologises over LGBT 'open fire' comment", The Straits Times, 15 June 2016.

⁵⁹ Kok Xing Hui & Seow Bei Yi, "Singapore netizen Bryan Lim apologises over LGBT 'open fire' comment", The Straits Times, 15 June 2016.

⁶⁰ Elena Chong, "Singapore netizen Bryan Lim charged over LGBT 'open fire' Facebook comment", The Straits Times, 30 June 2016, available at <http://www.straitstimes.com/singapore/courts-crime/singapore-netizen-bryan-lim-charged-over-lgbt-open-fire-facebook-comment> (last visited 3 July 2017).

⁶¹ Kok Xing Hui, "Man fined \$3,500 over 'open fire' comment online", The Straits Times, 4 November 2016, available at <http://www.straitstimes.com/singapore/courts-crime/man-fined-3500-over-open-fire-comment-online> (last visited 3 July 2017).

⁶² Sharanjit Leyl, "Singapore gays in first public rally", BBC News, 17 May 2009, available at <http://news.bbc.co.uk/2/hi/asia-pacific/8054402.stm> (last visited 3 July 2017).

⁶³ "About Pink Dot SG", Pink Dot SG, 2016, available at <http://pinkdot.sg/about-pink-dot/> (last visited 3 July 2017).

⁶⁴ Sharanjit Leyl, "Singapore gays in first public rally", 17 May 2009.

⁶⁵ Regina Marie Lee, "'Traditional values' wear white campaign returning on Pink Dot weekend", Today Online, 23 May 2016, available at <http://www.todayonline.com/singapore/network-churches-revives-campaign-wear-white-pink-dot-weekend> (last visited 3 July 2017).

imposing new restrictions permitting only Singaporean citizens or permanent residents to join the celebration.⁶⁶

In 2014, Islamic religious teacher Noor Deros launched a "Wear White" campaign protesting against homosexuality and encouraging Muslims to wear white on the day of the Pink Dot event.⁶⁷ The senior pastor of Singapore's Faith Community Baptist Church, Lawrence Khong, publicly supported the campaign.⁶⁸ The "Wear White" campaign continued in 2015.⁶⁹ In 2016, Lawrence Khong led the campaign, encouraging his parishioners to wear white to coincide with the Pink Dot event,⁷⁰ whereas Noor Deros announced that it "has since moved on to focus on educational programmes, and has no plans to carry out the campaign."⁷¹

In August 2014, the police rejected an application for a LGBTIQ pride celebration,⁷² Pink Run, to be held along Singapore's Marina Promenade Park. The police held that the "purpose of the event as stated by the applicant is related to LGBT advocacy, which remains a socially divisive issue. The application has been rejected 'in the interest of public order'."⁷³ Amnesty International reported that in 2014, HRDs in Singapore expressed concern "about the shrinking space for public discussion of issues such as freedom of expression" and LGBTIQ rights.⁷⁴

In 2015, the Media Development Authority banned a Pink Dot advertisement from being shown in movie theatres, holding that it was "not in the public interest to allow cinema halls to carry advertising on LGBT issues."⁷⁵

In 2016, Pink Dot received sponsorship from 18 corporations.⁷⁶ This doubled the number of the event's sponsors from 2015.⁷⁷ Sponsors included Facebook, Apple, Google, Barclays, J.P.

⁶⁶ Sophie Jeong & Spencer Feingold, "Singaporeans rally for gay pride amid ban on foreigners", CNN, 1 July 2017, available at <http://edition.cnn.com/2017/07/01/asia/singapore-gay-pride-rally/index.html> (last visited 3 July 2017).

⁶⁷ Kok Xing Hui, "Pink Dot organisers to deploy security personnel", Today Online, 26 June 2014, available at <http://www.todayonline.com/singapore/pink-dot-organisers-deploy-security-personnel> (last visited 3 July 2017).

⁶⁸ Kok Xing Hui, "Pink Dot organisers to deploy security personnel", Today Online, 26 June 2014.

⁶⁹ "Freedom on the Net: Singapore", Freedom House, 2015, p. 9, available at https://freedomhouse.org/sites/default/files/resources/FOTN%202015_Singapore.pdf (last visited 3 July 2017).

⁷⁰ Ng Yi Shu, "Pastor Lawrence Khong: 'We will wear white until the pink is gone'", Mothership, 14 June 2015, available at <http://mothership.sg/2015/06/pastor-lawrence-khong-we-will-wear-white-until-the-pink-is-gone/> (last visited 3 July 2017).

⁷¹ Regina Marie Lee, "'Traditional values' wear white campaign", Today Online, 23 May 2016.

⁷² "World Report 2015: Events of 2014", Human Rights Watch, 2015, p. 480, available at https://www.hrw.org/sites/default/files/world_report_download/wr2015_web.pdf (last visited 3 July 2017).

⁷³ Channel News Asia, "Pink Run permit rejected in interest of public order: Police", Today Online, 14 August 2014, available at <http://www.todayonline.com/singapore/pink-run-permit-rejected-interest-public-order-police> (last visited 3 July 2017).

⁷⁴ "Amnesty International Report 2014/15: The State of the World's Human Rights", Amnesty International, 2015, p. 325, available at https://www.amnestyusa.org/pdfs/AIR15_English.PDF (last visited 3 July 2017).

⁷⁵ "World Report 2016: Events of 2015", Human Rights Watch, p. 505.

⁷⁶ Victoria Ho, "Tens of thousands of Singaporeans blanket a field in pink for pride", Mashable Australia, 6 June 2016.

⁷⁷ Victoria Ho, "Tens of thousands of Singaporeans blanket a field in pink for pride", Mashable Australia, 6 June 2016.

Morgan, and Goldman Sachs, among others.⁷⁸ Singapore's Ministry of Home Affairs warned multinational corporations that they should not sponsor annual gay rights events, and that it would "take steps to make it clear that foreign entities should not fund, support or influence such events."⁷⁹ The Ministry explained that "[t]hese are political, social or moral choices for Singaporeans to decide for ourselves" and that it would "take steps to make it clear that foreign entities should not fund, support or influence such events."⁸⁰ Indeed, in 2017, the Singaporean government banned all international corporations from funding the event. However, Pink Dot instead secured funding from over 120 local companies.⁸¹

Orlando Solidarity: On 14 June 2016, a vigil was held in Hong Lim Park to express solidarity with the victims of the mass shooting at a gay club in Orlando in the United States of America (USA).⁸² Approximately 400 people attended the vigil.⁸³ Singapore's Home Affairs and Law Minister, Kasisviswanathan Shanmugam, publicly denounced the shooting, stating that:

Here, the government will act decisively if there is threat of violence against anyone or any group [...] The Government's duty [...] is to protect everyone. Their race, their religion, their sexual orientation, they are not relevant in terms of the Government's duty to protect.⁸⁴

Singapore's LGBTIQ community groups applauded Shanmugam's comments in a joint statement. However, they stressed that "the LGBT community here remains vulnerable from the lack of actual laws protecting us against discrimination and hate. Beyond physical violence, the LGBT community continues to have to deal with psychological and social violence."⁸⁵

Right to Equality and Non-Discrimination

LGBTIQ people in Singapore continue to be exposed to discrimination and ill-treatment. The State continues to lack any anti-discrimination laws in any field. Thus, the LGBTIQ community

⁷⁸ Simon Lewis, "Singapore Has Told Foreign Companies to Stop Sponsoring an Annual LGBT Event", Time, 8 June 2016, available at <http://time.com/4360973/pink-dot-singapore-facebook-google-apple/> (last visited 3 July 2017).

⁷⁹ Simon Lewis, "Singapore Has Told Foreign Companies to Stop Sponsoring an Annual LGBT Event", Time, 8 June 2016.

⁸⁰ Simon Lewis, "Singapore Has Told Foreign Companies to Stop Sponsoring an Annual LGBT Event", Time, 8 June 2016.

⁸¹ Sophie Jeong & Spencer Feingold, "Singaporeans rally for gay pride amid ban on foreigners", CNN, 1 July 2017, available at <http://edition.cnn.com/2017/07/01/asia/singapore-gay-pride-rally/index.html> (last visited 3 July 2017).

⁸² "Singapore's Oppressed LGBTQ Community Galvanized After Orlando", NBC News, 14 June 2016, available at <http://www.nbcnews.com/feature/nbc-out/orlando-shooting-gives-lgbt-singaporeans-slight-opening-n592176> (last visited 3 July 2017).

⁸³ "400 people hold candlelight vigil for Orlando shooting victims at Hong Lim Park", AsiaOne, 14 June 2016, available at <http://news.asiaone.com/news/singapore/400-people-hold-candlelight-vigil-orlando-shooting-victims-hong-lim-park#sthash.TGbUHoNs.dpuf> (last visited 3 July 2017).

⁸⁴ Siau Ming En, "Govt 'will protect all, regardless of race, religion, sexual orientation'", Today, 14 June 2016, available at <http://www.todayonline.com/singapore/govts-duty-protect-all-sporeans-threat-violence-regardless-race-religion-or-sexual> (last visited 3 July 2017).

⁸⁵ "Joint Statement: Hate Cannot Be Allowed to Take Root in Singapore", Pink Dot SG, 14 June 2016, available at <http://pinkdot.sg/joint-statement-hate-cannot-be-allowed-to-take-root-in-singapore/> (last visited 3 July 2017).

may face discrimination in relation to housing, employment and healthcare.⁸⁶ Moreover, with no legal marriage available to LGBTIQ couples, they cannot benefit from tax breaks and other laws from which heterosexual couples benefit. In general, Singaporean LGBTIQ persons face legal ambiguity in relation to issues ranging from discrimination to legally changing one's gender.⁸⁷

Conclusion

During its first and second UPR cycles, Singapore failed to support recommendations that would strengthen the protection and promotion of LGBTIQ rights in the State. These recommendations were to create anti-discrimination laws; repeal the death penalty or corporal punishment; and remove restrictions to freedoms of opinion and expression and restrictions on public discourse and the freedom of peaceful assembly. While Singapore accepted certain relevant recommendations, it has continually stressed both the need to balance such rights against their possible abuse and to take account of context, notably the conservatism of Singaporean society.

The situation facing Singapore's LGBTIQ community and HRDs working on LGBTIQ issues reflects the Singaporean government's current position. Although Singapore has permitted the staging of the high-profile LGBTIQ event Pink Dot, it has imposed increasing restrictions on the event. Likewise, Singapore has imposed stringent media restrictions on the dissemination of LGBTIQ-related ideas in the media and has not taken action to intervene and prevent the discrimination and harassment faced by LGBTIQ HRDs and the LGBTIQ community generally. As a result, LGBTIQ persons and HRDs remain vulnerable to censorship and discrimination in Singapore.

Recommendations

In the lead-up to the third UPR review of Singapore in January/February 2021:

- CSOs should actively engage in monitoring the implementation of those recommendations Singapore accepted and/or noted during the first two UPR cycles so as to gather relevant data on the improvement of the human rights situation in the country and to report at the third UPR cycle.
- CSOs should continue documenting violations and abuses endured by LGBTIQ people and their defenders so as to provide recommending states and the relevant UN mechanisms with solid evidence-based information.

⁸⁶ Urooba Jamal, "LGBT Rights Falter in Singapore, Flourish in Socialist Vietnam", TeleSur, 25 June 2017, available at <http://www.telesurty.net/english/news/LGBT-Rights-Falter-in-Singapore-Flourish-in-Socialist-Vietnam-20170625-0018.html> (last visited 4 July 2017).

⁸⁷ Urooba Jamal, "LGBT Rights Falter in Singapore, Flourish in Socialist Vietnam", TeleSur, 25 June 2017.

- CSOs and recommending States should emphasise the universality and benefit to Singapore of reforms such as the abolition of capital and corporal punishment, the decriminalisation of consensual sexual activity between men, the strengthening of protections for freedom of opinion and expression, assembly, and non-discrimination, and the establishment of a national human rights institution in accordance with the Paris Principles.
- CSOs and recommending States should work collaboratively to develop UPR recommendations for the third cycle that emphasise the universality and benefit to Singapore of such reforms.

Singapore: LGBTIQ HRD Interview

Human Rights of LGBTIQ Communities and HRDs: Frontline Voices



**Benjamin Xue,
Chief Engagement Officer,
campaign.com, The Social
Network #ForChange**

How did you become involved in lesbian, gay, bisexual, transgender, intersex, queer (LGBTIQ) rights work?

11 years ago, I started doing volunteer work with Action for AIDS [Acquired Immune Deficiency Syndrome] in Singapore. I was given a lot of counselling tasks for the younger ones, because I was still quite young 11 years ago. I saw a lot of young boys coming in for HIV [Human

Immunodeficiency Virus] testing and a lot of them did not have a good grasp of HIV knowledge, or whether it be about themselves or sexuality in general. This is pre-Tumblr age, pre-Facebook age, things were still pretty much Blogspot. Information was not readily available.

Young gay males only dealt with coming out when they came for HIV testing, and that was the only point of contact where they could get some form of sexuality education. I felt that was already one step too late — they were coming in for emergency cases. That led to me searching for a safe space for LGBT youth to congregate and discuss their sexuality. In 2005/2006, two other friends and I set up an LGBT youth support group, called "Young Out Here."⁶⁹⁶

Do you consider yourself a human rights defender (HRD)?

I did what I did because there was no one taking any action.

What have been the biggest challenges you have faced in advocating for LGBTIQ rights?

During the fifth or sixth run of the Young Out Here support group, the Ministry of Health asked us if we wanted funding and we said no, because we want the program to be

⁶⁹⁶ Young OUT Here (YOH), Website, available at <http://young-out-here.com/> (last visited 17 August 2017).

independent and we didn't want to answer to anyone else. For example, they were only interested in the young gay males, but did not include young female lesbians and trans people in the group, and our group is a mix of LGBT youths, so it wasn't just catered to young gay youths.

We decided very early that it was a mixed group and would not be separated into their identities. That made funding difficult. In terms of challenges, there were problems within the community too, as the community felt they were not really prepared. At that time, advocacy for LGBT communities was done only in relation to health issues (HIV/AIDS perspective) and the use of Internet to discuss about LGBT related issues was just beginning. Some people didn't like how structured it is, because we screened people before allowing them in the group, as we were trying to create a safe space.

What have been the most successful strategies or techniques you have used to create positive change for Singaporean youth?

For LGBT youth groups, especially, I think our strategy is a mixture of the group being safe. Safety comes from facilitators, the programmes, the participants, and that's something we kept hammering down because if the group is not safe, no one will come and no one will share, because a lot of them already feel ostracised at school and in

their families and that's something we didn't want to recreate.

Social media was also just coming up; a Facebook page was important to Young Out Here, so suddenly I had full groups for every run of Young Out Here. They ended up being a good source of support. Then Pink Dot⁶⁹⁷ — an annual LGBT rally in Singapore — came up, so that added another perspective of pushing for safe spaces for LGBT people in all of Singapore. A lot of these factors helped push for acceptance of LGBT people and LGBT youth in particular.

Is there anything in particular that has happened that has been difficult for you as an HRD?

When I was in Young Out Here and Pink Dot, I was in the spotlight; not that I wanted it, but there were articles about me doing things, and because I was handling Pink Dot's social media for two years, there was a lot of online hate. And that has only come up more dramatically in the past three to four years, that kind of intense, organised online hate. Now the fact that LGBT are more out and visible, the pushback has been much more in the forefront. They are more organised now than ever, and it is foul.

It is mainly religiously driven. There is a campaign that was set up, the Wear White Campaign. But this campaign was originally set up as a peaceful demonstration against Pink Dot, which I am all for, because you need to have that opposition to have a greater depth of conversation. But a lot of

⁶⁹⁷ "Supporting the freedom to love", Pink Dot SG, Website, available at <https://pinkdot.sg/> (last visited 17 August 2017).

people took it one step further, as hate messages were sent to members of Pink Dot.

Do you feel that LGBTIQ people are safer now in Singapore?

As far as I know, gender identity/sexuality-based harassment is not frequent in Singapore. There are episodes of bullying towards LGBTIQ youth at school, but the Ministry of Education rarely documents them. Transgender persons, in general, are the ones who endure more difficulties.

Does your government do enough to protect LGBTIQ rights? Does civil society?

No. I think the government is not capable enough to handle nuanced issues like this. They are not willing to put their foot forward and say they're going to lead on this issue. LGBT as a term has only been used very recently, it only came up in the past four to five years, so in public consciousness, our government thinks we are not ready to legalise same-sex marriage or take away Section 377A of the Penal Code. They are making this decision based on what they think is good for us. That has always been the sore point.

Official language has started to change though, (for example the government has stopped using the word "homosexual"), but a lot still needs to be done. Particularly, the government should do more research concerning LGBTIQ issues and, based on that, implement more policies to protect our rights.

Civil society has always been supportive of LGBT rights, more or less. I think it's a matter

of, us in the LGBT community, being more inclusive of other causes because it's often been LGBT rights and 'other'.

Does civil society know how to use the Universal Periodic Review (UPR) recommendations and comments for advocacy in Singapore? Do you think the UPRs are an effective tool for human rights advocacy?

Right now, no. Having well trained people on the UPR process takes time. The same way the UN [United Nations] is trying to force the Sustainable Development Goals on the developing world, the same thing is with the UPR. The fact that human rights as a concept is so foreign to Singaporeans, using the UPRs' terminology does not sit right with Singaporeans. They ask, 'why are we conforming?'.

It's tough — whenever we handle a report for UN Women [United Nations Entity for Gender Equality and the Empowerment of Women], or CEDAW [the Committee on the Elimination of Discrimination against Women], or the UPR, it's really difficult as there isn't a systematic tracking of all these reports that come in. So in terms of how the UPR actually helps civil society in Singapore, I would say very little.

What gives you hope when looking to the future of LGBTIQ rights in Singapore?

In the short term, Pink Dot is still serving a good purpose. I think there needs to be a lot more local collaboration, between civil society groups, as that is the only way we can talk about real bread and butter issues when it comes to LGBT lives. The younger

ones are definitely coming out a lot more. There are a lot more LGBT university groups. I'm hopeful the younger ones are the ones pushing for change.

What are the next steps for LGBTIQ rights and HRDs in Singapore?

Over the past ten years, LGBT rights have really received great amplification, whether it's due to social media, people coming out, companies supporting LGBT rights, having events like Pink Dot — this visible stuff is a lot more prevalent and has helped to push the conversation forward.

Now, I think it's about how we layer that conversation and make sure that people who don't fall within our own 'boxes' of the

LGBTQ circle still feel included. Because there are asexuals and bisexuals coming out a lot more now, so it cannot be a generalisation of the community. Building a nuanced conversation around LGBT rights in Singapore will be tough, and I think it's going to take a bit longer, but be more inclusive.

Would you suggest any way forward to the government?

I really believe the government should adopt a more inclusive approach when it comes to LGBTIQ rights. It should start thinking about a road map, a plan to build an inclusive approach to LGBTIQ communities, starting by repealing Section 377A of the Penal Code that still criminalises same-sex relationships.

Introduction

Context

Just over a decade ago, the United Nations (**UN**) introduced a new process for periodically evaluating the human rights performances of each its Member States. That process, known as the Universal Periodic Review (**UPR**), has now completed two full cycles of review and commenced its third cycle in May 2017. During the first two cycles, all Member States received two rounds of recommendations from their fellow Member States regarding how they could bolster their domestic human rights protections.

Likewise just over a decade ago, Southeast Asia played host to a significant summit in Yogyakarta, Indonesia. At this summit, international human rights experts agreed on a set of principles setting out the applicable international human rights laws in the context of sexual orientation, gender identity, gender expression, and sexual characteristics (**SOGIESC**). These principles are known as the Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity (**Yogyakarta Principles**). They are the first attempt to comprehensively map the human rights landscape for lesbian, gay, bisexual, transgender, intersex, and queer (**LGBTIQ**) communities worldwide. On 10 November 2017, the Yogyakarta Principles plus 10 (**YP+10**) were adopted, supplementing the initial Yogyakarta Principles with emerging developments in international human rights law.

Purpose and Methodology

Coinciding with the release of the YP+10, this report, **Revealing the Rainbow** (the **Report**), comprehensively analyses the human rights situation of Southeast Asia's LGBTIQ Communities and their defenders in Southeast Asia in the decade since the UPR and the Yogyakarta Principles were introduced. It documents both the legal framework and the factual reality in each of the 11 Southeast Asian States.

This Report aims to foster dialogue to improve the human rights situation of Southeast Asia's LGBTIQ communities and their defenders. In particular, it hopes to empower civil society organisations (**CSOs**) and UN Member States to fully capitalise on the UPR process as a means through which such improvements may be achieved. To that end, the Report offers State-specific as well as general recommendations for CSOs and recommending States to consider when engaging in the third UPR cycle for each Southeast Asian State.

This Report's baseline measure is the UPR recommendations accepted by each Southeast Asian State, namely the Nation of Brunei (**Brunei**), the Kingdom of Cambodia (**Cambodia**), the Republic of Indonesia (**Indonesia**), the Lao People's Democratic Republic (**Laos**), Malaysia, the

Republic of the Union of Myanmar (**Myanmar**), the Republic of the Philippines (**Philippines**), the Republic of Singapore (**Singapore**), the Kingdom of Thailand (**Thailand**), the Democratic Republic of Timor-Leste (**Timor-Leste**), and the Socialist Republic of Viet Nam (**Viet Nam**).¹

This Report focuses on identifying State practice consistent with, or which fails to fulfil, recommendations that the State accepted during their first and second UPR cycles and that impact on their LGBTIQ community and its defenders.

For both Indonesia and the Philippines, this Report additionally considers UPR recommendations accepted during each State's third UPR reviews, since these took place earlier this year.

A detailed Country Profile is included for each of the 11 Southeast Asian States. Each Country Profile includes:

1. **An overview of all UPR cycles the State has undergone.** This overview summarises the national reports prepared by the State under review; submissions from CSOs; the recommendations received by the State at the conclusion of each review; and the State's position in respect of those recommendations.

About the UPR Process

The UPR process, created in 2006, is the only peer-to-peer review system allowing an assessment of the human rights situation in all 193 Member States of the UN by their fellow Member States. States are reviewed every 4-5 years based on three reports:

- a national report prepared by the State under review;
- a compilation of all CSOs' submissions; and
- a compilation of all UN documents relevant to the human rights situation of the State under review.

Each UPR cycle is presided over by three States, known as a "troika." It begins with a presentation by the State under review of its national report, followed by an Interactive Dialogue between that State and representatives of any other State willing to speak. At any time, the State under review may respond to questions and recommendations from other States.

The UPR review results in the preparation and publication by the UN of a report summarising the Interactive Dialogue; responses from the State under review; and the recommendations made to the State under review.

Source and Further Information: UN Office of the High Commissioner for Human Rights, "Basic facts about the UPR", Website, available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx> (last visited 16 November 2017).

¹ The situation of LGBTIQ HRDs in each country profile is based on research, with a focus on UN official documentation, national legislation, CSO reports, press reports, and social media.

2. **A detailed analysis of the evolution of the human rights situation of the State's LGBTIQ community and its HRDs.** This analysis is conducted in light of the recommendations made during the UPR process, and organised thematically in accordance with key applicable human rights.
3. **Recommendations to CSOs and UN Member States for ways to engage with the State in its upcoming UPR cycle.** These recommendations are offered in light of the human rights situation in each State, and the State's demonstrated receptiveness to the UPR process thus far.

Importantly, this Report looks not only at the situation of LGBTIQ communities in Southeast Asia but also particularly at that of those communities' defenders — referred to in this Report as human rights defenders (**HRDs**).

In light of the focus on HRDs, each Country Profile also features text of an interview between Destination Justice and an LGBTIQ HRD working in the State under analysis. Each interview provides invaluable first-hand insights into the reality of HRDs' work; the impact of their voice in the society; and the impact of the UPR process within their State.

All interviewees were asked similar, open-ended questions that were provided to them in advance and adapted to their personal situation and that of their State. The interviewees consented to being interviewed and to the publication of their interview in the relevant sections of this Report. They were also given the opportunity to amend their interview transcripts for accuracy or security purposes, and to suppress their identifying details.

Terminology

HRD: Destination Justice relies on the definition of HRD given by the UN in the Declaration on the Right and Responsibility of Individuals Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (**DHRD**),² and by the European Union in the EU Guidelines on Human Rights Defenders.³ Accordingly, the concept of HRD relied on in this Report incorporates the following concepts:

- HRDs are individuals, groups or associations that voluntarily or through paid work promote and/or protect universally-recognised human rights and fundamental freedoms, by employing peaceful means.

² UN General Assembly, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, 9 December 1998, A/RES/53/144, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RightAndResponsibility.aspx> (last visited 16 November 2017). See further United Nations Human Rights Office of the High Commissioner, "Declaration on Human Rights Defenders", available at <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Declaration.aspx> (last visited 16 November 2017).

³ European Union, *Ensuring Protection - European Union Guidelines on Human Rights Defenders*, 14 June 2004, 10056/1/04, available at https://eeas.europa.eu/sites/eeas/files/eu_guidelines_hrd_en.pdf (last visited 16 November 2017).

- HRDs can be identified by what they do, the environments in which they operate, and the principles they uphold.
- HRDs support fundamental rights and freedoms as diverse as the right to life and the right to an adequate standard of living. They work at the local, national, or international level, and their activities might differ greatly. Some investigate and report human rights violations in order to prevent further abuses. Some focus on supporting and encouraging States to fulfil their human rights obligations. Others offer capacity-building support to communities or favour access to information in order to increase public participation in local decision-making processes.

Ultimately, this Report considers an HRD as anyone striving achieve positive change in terms of the protection or promotion of human rights. Students, civil society activists, religious leaders, journalists, lawyers, doctors and medical professionals, and trade unionists are often identified as HRDs. However, this list is not exhaustive.

LGBTIQ: Acronyms used to identify the queer community vary throughout Southeast Asian States and between different CSOs and individuals. For consistency, this Report utilises the broad acronym "LGBTIQ" to encompass the various identities of the Southeast Asian queer community, except where a cited source uses a different acronym.

SOGIESC: Traditionally, 'SOGIE' has been used to denote sexual orientation (SO), gender identity (GI) and gender expression (E). However, with a slowly-evolving understanding of diverse identities within the LGBTIQ community in Southeast Asia, this Report instead uses the expanded acronym SOGIESC, since this also includes the notion of sexual characteristics (SC).

Key Findings

It has been said that the UPR process is an "unprecedented opportunity for SOGIESC HRDs to raise human rights violations against LGBTIQ people and proactively engage with governments."⁴ However, despite evidence of the growing visibility of LGBTIQ rights and HRDs within the UPR process, this Report identifies significant room for improvement within Southeast Asia in terms of the protection of LGBTIQ communities and their defenders.

As outlined in this Report, regional progress in this regard has been notably inconsistent. Some Southeast Asian States have indeed acted on accepted UPR recommendations. This Report describes multiple instances of States taking significant steps towards reforming their legal framework to include express protections of their LGBTIQ community and LGBTIQ HRDs, and implementing policies aimed at eliminating discriminatory practices.

⁴ "Sexual Orientation, Gender Identity and Expression, and Sex Characteristics at the Universal Periodic Review", ARC International, IBAHRI & ILGA, November 2016, p. 100, available at http://ilga.org/downloads/SOGIESC_at_UPR_report.pdf (last visited 16 November 2017).

At the same time, the Report also details numerous situations where States in Southeast Asia have actively limited the rights of the LGBTIQ community and LGBTIQ HRDs. Harsh laws and criminal sentences have been imposed for consensual same-sex sexual relations. Discrimination and serious abuses continue to occur. Institutions and officials have adopted positions unsupportive of LGBTIQ rights. Multiple States have also restricted the fundamental freedoms of LGBTIQ HRDs, including freedoms of assembly, expression, and association. On a regional level, therefore, LGBTIQ communities and their HRDs remain at risk overall — and with them, the future of LGBTIQ rights in Southeast Asia.

Nevertheless, causes for optimism remain. Notably, this Report shows Southeast Asia's LGBTIQ communities becoming increasingly visible, particularly in terms of participation in the cultural life of the community, and its HRDs becoming ever more active. In addition, and as illustrated in **Figure 1**, in all but two instances, the number of CSO submissions increased in successive UPR rounds for each Southeast Asian State. This amounts to a region-wide trend of increased — and increasingly visible — engagement on LGBTIQ rights, and by HRDs.

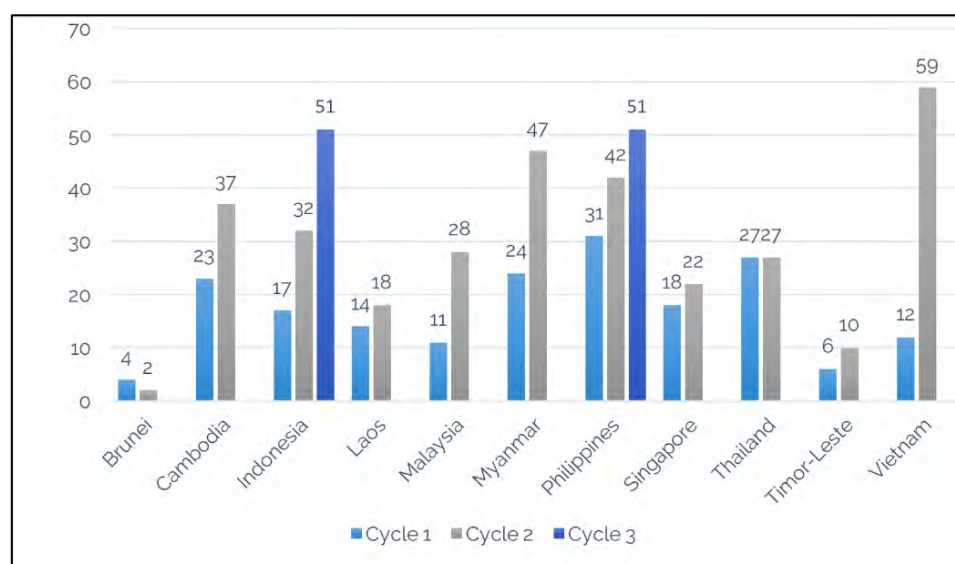


Figure 1: Southeast Asian Stakeholder UPR Submissions in Each Cycle

States also continue to engage in the UPR, and to do so in a seemingly genuine manner. This demonstrates the ongoing viability of the UPR process as an avenue for human rights advocacy and reform, at least at this stage. Accordingly, Destination Justice urges LGBTIQ communities and their HRDs, and CSOs and recommending UN Member States, to build the momentum for the UPR process as an advocacy platform, and to engage with the process more innovatively and tenaciously than ever during the third UPR cycle and beyond.

Legal Background

This Report analyses the situation of LGBTIQs and their defenders in Southeast Asia through specific human rights. These rights vary for each State depending on the particularities of that State's situation. This Legal Background section prefaces the State-by-State situational analysis by explaining how these rights are commonly interpreted under international law, with reference to the relevant international human rights instruments that protects these rights.

Chief among relevant human rights instruments are the long-standing Universal Declaration of Human Rights (**UDHR**),¹ the International Covenant on Civil and Political Rights (**ICCPR**),² and the International Covenant on Economic, Social and Cultural Rights (**ICESCR**).³ These are the foundational modern human rights instruments commonly known as the "Human Rights Charter;" are binding on states that are party to them; and enshrine several rights today considered to have the status of customary international law.

Relevant rights are also found in the likewise-binding Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment (**CAT**) and the Convention on the Elimination of All Forms of Discrimination against Women (**CEDAW**).⁴

In addition to these instruments, guidance is also offered by several recent, non-binding but instructive instruments. These include the Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity (**Yogyakarta Principles**);⁵ the ASEAN Human Rights Declaration (**AHRD**), applicable to all ASEAN member states;⁶ and the Declaration on the Right and Responsibility of Individuals,

¹ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf (last visited 16 November 2017).

² UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at <http://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf> (last visited 16 November 2017).

³ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at <http://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf> (last visited 16 November 2017).

⁴ UN General Assembly, *Convention on the Elimination of All Forms of Discrimination against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13, available at <http://www.ohchr.org/Documents/ProfessionalInterest/cedaw.pdf> (last visited 16 November 2017).

⁵ International Commission of Jurists (**ICJ**), *Yogyakarta Principles - Principles on the application of international human rights law in relation to sexual orientation and gender identity*, March 2007, available at http://www.yogyakartaprinciples.org/wp/wp-content/uploads/2016/08/principles_en.pdf (last visited 16 November 2017).

⁶ Association of Southeast Asian Nations (**ASEAN**), *ASEAN Human Rights Declaration and Phnom Penh Statement on the Adoption of the ASEAN Human Rights Declaration*, February 2013, available at http://www.asean.org/storage/images/ASEAN_RTK_2014/6_AHRD_Booklet.pdf (last visited 16 November 2017).

Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (**DHRD**).⁷

Southeast Asian States generally have a low rate of ratification of international human rights instruments, as highlighted in **Annex 1**. In addition, the ambivalent regional approach to LGBTIQ rights can be seen in the region's varied voting record regarding the establishment of a UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, set out in **Annex 2**. Nevertheless, this presents civil society organisations (**CSOs**) and recommending States with a significant opportunity during the upcoming UPR cycle to urge each Southeast Asian State to take the important step towards strengthening human rights protection for their LGBTIQ communities and LGBTIQ HRDs, including by ratifying the relevant instruments and showing their support for the office of the newly-established Independent Expert.

The following human rights and fundamental freedoms are discussed in the Country Profiles in this Report, and accordingly briefly analysed and explained immediately below:

- Right to equality and freedom from discrimination;
- Right to liberty and security of the person;
- Prohibition of torture;
- Right to life;
- Right to privacy;
- Right to work;
- Freedom of opinion and expression;
- Freedom of peaceful assembly and association;
- Right to participate in public life; and
- Right to participate in the cultural life of the community.

⁷ United Nations, General Assembly, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, 9 December 1998, A/RES/53/144, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RightAndResponsibility.aspx> (last visited 16 November 2017).

Right to Equality and Freedom from Discrimination

Legal Foundation

UDHR: Articles 1 and 2

ICCPR: Article 2(1) and 26

ICESCR: Article 2(2)

CEDAW: Article 1

Yogyakarta Principles: Principle 2

AHRD: Principles 1 and 2

Article 1 of the UDHR confirms that everyone is "born free and equal," while Article 2 serves as the core source of protection for the right to equality and to non-discrimination.

The United Nations Human Rights Committee (**CCPR**), which interprets and monitors implementation of the ICCPR, has considered cases where individuals have successfully relied on the right to equality and non-discrimination to

challenge the legality of alleged discrimination by a State. As a result of these cases, the CCPR has held in effect that "sexual orientation" is a recognised ground of prohibited discrimination.⁸ Furthermore, the CCPR has also expressed concerns about the criminalisation of consensual sexual acts between adults of the same sex,⁹ and called for the decriminalisation of these acts.¹⁰

Similarly, the UN Committee on Economic, Social, and Cultural Rights (**CESCR**), which interprets and monitors implementation of the ICESCR, has held that Article 2(2) of the ICESCR prohibits discrimination on the basis of sexual orientation and that "State parties should ensure that a person's sexual orientation is not a barrier to realizing Covenant rights, for example, in accessing survivor's pension rights."¹¹

The UN Committee on the Elimination of Discrimination against Women (**CEDAWC**) has referred to sexual orientation as part of the term "sex,"¹² declaring that:

⁸ UN Human Rights Committee, *Toonen v. Australia*, Communication No. 488/1992, 31 March 1994, U.N. Doc. CCPR/C/50/D/488/1992, para. 8.7, available at <http://hrlibrary.umn.edu/undocs/html/vws488.htm> (last visited 17 November 2017). See also UN Human Rights Committee, *Mr Edward Young v. Australia*, Communication No. 941/2000, 6 August 2003, U.N. Doc. CCPR/C/78/D/941/2000, available at <http://www.equalrightstrust.org/content/ert-case-summary-mr-edward-young-v-australia-communication-no-9412000> (last visited 17 November 2017); UN Human Rights Committee, *X v. Colombia*, Communication No. 1361/2005, 30 March 2007, U.N. Doc. A/62/40, Vol. II, at 293, available at http://www.worldcourts.com/hrc/eng/decisions/2007.03.30_X_v_Colombia.htm (last visited 17 November 2017).

⁹ UN Human Rights Committee, *Concluding observations of the Human Rights Committee: Barbados*, 11 May 2007, U.N. Doc. CCPR/C/BRB/CO/3, para. 13, available at <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsncLNPIYsTOQN5Sbrs%2f8hyEn2VHMCAZQ%2fCyDY96cYPxM8cQ8bbavViNnuV6YU3gyHlmioCM17RLf4esahJ5a1%2bxQTspR9eqkzThSr5nhgfhp> (last visited 17 November 2017).

¹⁰ UN Human Rights Committee, *Concluding observations of the Human Rights Committee: United States of America*, 18 December 2006, U.N. Doc. CCPR/C/USA/CO/3/Rev.1, para. 9, available at <https://www.state.gov/documents/organization/133837.pdf> (last visited 17 November 2017).

¹¹ UN Committee on Economic, Social and Cultural Rights, *General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights*, 2 July 2009, vol. U.N. Doc. E/C.12/GC/20, para. 32, available at <http://undocs.org/E/C.12/GC/20> (last visited 17 November 2017).

¹² UN Committee on the Elimination of Discrimination against Women, *General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, 19 October 2010, U.N. Doc. CEDAW/C/2010/47/GC.2, para. 18, available at

Intersectionality is a basic concept for understanding the scope of the general obligations of State parties contained in Article 2. The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as [...] sexual orientation and gender identity.¹³

The AHRD prohibits discrimination. However, it uses the term "gender," not "sex." Though the efforts of LGBTIQ HRDs to include "sexual orientation" in the AHRD were unsuccessful, "gender" can arguably be interpreted broadly so as to include transgender persons and other groups within the LGBTIQ conceptual framework.¹⁴

Principle 2 of the Yogyakarta Principles prohibits discrimination on the basis of sexual orientation or gender identity. It describes in detail what such discrimination could entail:

Discrimination on the basis of sexual orientation or gender identity includes any distinction, exclusion, restriction or preference based on sexual orientation or gender identity which has the purpose or effect of nullifying or impairing equality before the law or the equal protection of the law, or the recognition, enjoyment or exercise, on an equal basis, of all human rights and fundamental freedoms. Discrimination based on sexual orientation or gender identity may be, and commonly is, compounded by discrimination on other grounds including gender, race, age, religion, disability, health and economic status.

Right to Liberty and Security of Person

Legal Foundation

UDHR: Article 3

ICCPR: Article 9

CEDAW: Article 11(f)

Yogyakarta Principles: Principle 5

AHRD: Article 12

DHRD: Article 12(2)

Article 3 of the UDHR guarantees everyone the fundamental right to "liberty and security," a right echoed in several other international instruments. The CCPR has clarified that this protection specifically extends to cover LGBTIQ people, and that:

[T]he right to personal security also obliges States parties to take appropriate measures [...] to protect individuals from foreseeable

threats to life or bodily integrity proceeding from any governmental or private actors
[...] **States parties must respond appropriately to patterns of violence against**

<http://www2.ohchr.org/english/bodies/cedaw/docs/CEDAW-C-2010-47-GC2.pdf> (last visited 17 November 2017).

¹³ UN Committee on the Elimination of Discrimination against Women, *General Recommendation No. 28*, 19 October 2010, U.N. Doc. CEDAW/C/2010/47/GC.2, para. 18.

¹⁴ "The ASEAN Human Rights Declaration: A Legal Analysis", American Bar Association (ABA) Rule of Law Initiative, 2014, p. 11, available at <http://www.americanbar.org/content/dam/aba/directories/roli/asean/asean-human-rights-declaration-legal-analysis-2014.authcheckdam.pdf> (last visited 17 November 2017).

categories of victims such as [...] violence against persons on the basis of their sexual orientation or gender identity.¹⁵

The CCPR has also stipulated that "[a]rrest or detention on discriminatory grounds [...] is also in principle arbitrary."¹⁶

Article 12 of the AHRD¹⁷ refers to the "right to **personal** liberty and security"¹⁸ instead of the more common "right to liberty and security of person."¹⁹ Nevertheless, this difference may have minimal practical impact, given that the Inter-American Human Rights system, which also refers to "personal liberty and security", has interpreted this phrase consistently with the UDHR and the ICCPR, and has relied on the American Convention's prohibitions against torture and inhumane treatment to define the right to security of person.²⁰

Principle 12 of the Yogyakarta Principles clarifies that not only does the right to liberty and security of the person apply regardless of sexual orientation and gender identity, but that States have an obligation to prevent and punish acts of violence and harassment based on sexual orientation and gender identity and to combat the prejudices that underlie such violence.

In the context of HRDs specifically, Article 12(2) of the DHRD provides that States:

shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights [of HRDs].

¹⁵ UN Human Rights Committee, *General Comment No. 35, Article 9 (Liberty and security of person)*, 16 December 2014, U.N. Doc. CCPR/C/GC/35, para. 9, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f35&Lang=en (last visited 17 November 2017) (emphasis added). See also UN Human Rights Committee, *Concluding observations: El Salvador*, 22 July 2003, U.N. Doc. CCPR/CO/78/SLV, para. 16, available at https://www.reproductiverights.org/sites/default/files/documents/XSL_CO.ElSalvador2003.pdf (last visited 17 November 2017).

¹⁶ UN Human Rights Committee, *O'Neill and Quinn v. Ireland, Views, Communication No. 1314/2004*, U.N. Doc. CCPR/C/87/D/1314/2004, para. 8.5 (finding no violation), available at <http://hrlibrary.umn.edu/undocs/1314-2004.html> (last visited 17 November 2017). See also UN Human Rights Committee, *Consideration of Reports Submitted by Parties Under Article 40 of the Covenant, Concluding Observations, Honduras*, 14 September 2006, U.N. Doc. CCPR/C/HND/CO/1, para. 13 (detention on the basis of sexual orientation), available at http://www.bayefsky.com/pdf/ireland_t5_iccpr_1314_2004.pdf (last visited 17 November 2017); UN Human Rights Committee, *Consideration of Reports Submitted by Parties Under Article 40 of the Covenant, Concluding Observations, Cameroon*, 4 August 2010, U.N. Doc. CCPR/C/CMR/CO/4, para. 12 (imprisonment for consensual same-sex activities of adults), available at <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRICAqhKb7yhsoEohhB%2fObfneRA6ucrf7cJW7%2bXtug1Hgeug0eK7ZvX2rAdy89HyiCyHPP41ofPuv76q%2bomwP4FHeGtD2fr6HhReFNC3aUgl6Zgcnx9KpuRN> (last visited 17 November 2017).

¹⁷ ASEAN Human Rights Declaration, 18 November 2012, Principle 12, available at http://aichr.org/?dl_name=ASEAN-Human-Rights-Declaration.pdf (last visited 17 November 2017).

¹⁸ ASEAN Human Rights Declaration, 18 November 2012, Principle 12 (emphasis added).

¹⁹ "The ASEAN Human Rights Declaration: A Legal Analysis", ABA Rule of Law Analysis, 2014, p. 29.

²⁰ "The ASEAN Human Rights Declaration: A Legal Analysis", ABA Rule of Law Analysis, 2014, p. 29.

Right to Life

Legal Foundation

UDHR: Article 3

ICCPR: Article 6

ICCPR OP2: Generally

Yogyakarta Principles: Principle 4

AHRD: Article 11

DHRD: Article 12(2)

The right to life is a foundational human right. The UDHR, ICCPR, Yogyakarta Principles and AHRD prohibit arbitrary deprivation of life. In General Comment 6, the CCPR has stressed that accordingly, "no derogation [from this] is permitted even in time of public emergency which threatens the life of the nation."²¹ Moreover, States Parties are not to interpret the right to life narrowly but must act proactively to protect the right of life.²²

While international law does not obligate states to abolish the death penalty altogether, this is desirable. Indeed, the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (**ICCPR OP2**) is specifically dedicated to the abolition of the death penalty. Under its Article 1, its States Parties undertake not to execute anyone within their jurisdiction and to take all necessary measures to abolish the death penalty. Of the Southeast Asian States profiled in this Report, those which retain the death penalty are Brunei, Indonesia, Laos, Malaysia, Myanmar, Singapore, Thailand, and Viet Nam, among which Brunei, Laos and Thailand have had *de facto* moratoria in place on in fact applying the death penalty since 1957, 1989 and 2009, respectively.²³

Under Article 6 of the ICCPR, states that do impose the death penalty must limit its application to only the most serious of offences and cannot impose it on persons under 18 years of age or on pregnant women. As the CCPR stressed in General Comment 6, the death penalty must be a truly exceptional measure of punishment.²⁴ Considering the UN's stance that same-sex sexual relations should not be criminalised whatsoever,²⁵ such acts would not, therefore, be considered a "most serious crime."

²¹ UN Human Rights Committee, *General Comment No. 6, Article 6, Right to Life*, 30 April 1982, U.N. Doc. HRI/GEN/1/Rev.1 at 6, para. 1, available at <http://hrlibrary.umn.edu/peace/docs/hrcom6.htm> (last visited 17 November 2017).

²² UN Human Rights Committee, *General Comment No. 6*, 30 April 1982, HRI/GEN/1/Rev.1 at 6, para. 1.

²³ "Death Penalty", Amnesty International, available at <https://www.amnesty.org/en/what-we-do/death-penalty/> (last visited 22 November 2017); "UN concerned at broad application of death penalty in Brunei's revised penal code" UN News Center, 11 April 2014, available at <http://www.un.org/apps/news/story.asp?NewsID=47552#.Wht4XUqWZPZ> (last visited 27 November 2017); ICJ, "Serious setback: Singapore breaks moratorium on death penalty", 18 July 2014, available at <https://www.icj.org/serious-setback-singapore-breaks-moratorium-on-death-penalty/> (last visited 27 November 2017).

²⁴ UN Human Rights Committee, *General Comment No. 6*, 30 April 1982, HRI/GEN/1/Rev.1 at 6, para. 7.

²⁵ See UN High Commissioner for Refugees, *UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity*, 21 November 2008, para. II.B.i.19, available at <http://www.refworld.org/pdfid/48abd5660.pdf> (last visited 17 November 2017).

Article 12(2) of the DHRD requires states to take all necessary measures to protect HRDs against acts which would include arbitrary deprivation of life.

Prohibition of Torture

Legal Foundation

UDHR: Article 5

ICCPR: Article 7 and 2(3)

CAT: Article 2 and generally

Yogyakarta Principles: Principle 10

AHRD: Article 14

DHRD: Article 12(2)

Torture is prohibited under a wide range of international instruments, including a specific convention: the CAT. Article 1 of the CAT defines torture as:

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has

committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

In General Comment 20, the CCPR has detailed the types of treatment included within the ICCPR's definition of torture under Article 7. Torture includes mental and physical suffering, as well as corporal punishment and extended solitary confinement.²⁶ Moreover, the use of medical experimentation without consent is within the scope of the definition of torture.²⁷ Finally, any information gained through torturous acts is impermissible.²⁸

In terms of discriminatory grounds, Principle 10 of the Yogyakarta Principles specifically obligates States to prevent and punish torture or inhuman and degrading treatment or punishment undertaken on the basis of the victim's sexual orientation or gender identity.

Article 2 of the CAT unequivocally provides that "[n]o exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture." In addition, Article 3 of the CAT prohibits States from "expell[ing] or return[ing] ('refouler') an individual to another State where

²⁶ UN Human Rights Committee, *General Comment No. 20: Article 7, Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 March 1992, U.N. Doc. HRI/GEN/1/Rev.1 at 30. para. 5. available at <http://hrlibrary.umn.edu/gencomm/hrcom20.htm> (last visited 17 November 2017).

²⁷ UN Human Rights Committee, *General Comment No. 20: Article 7*, 10 March 1992, U.N. Doc. HRI/GEN/1/Rev.1 at 30. para. 6.

²⁸ UN Human Rights Committee, *General Comment No. 20: Article 7*, 10 March 1992, U.N. Doc. HRI/GEN/1/Rev.1 at 30. para. 12.

there are substantial grounds for believing that he or she would be in danger of being subjected to torture."²⁹

Article 12(2) of the DHRD requires States to take all necessary measures to protect HRDs against acts which would include torture.

Right to Privacy

Legal Foundation

UDHR: Article 12

ICCPR: Article 17

Yogyakarta Principles: Principle 6

AHRD: Article 12

DHRD: Article 12(2)

Article 12 of the UDHR describes the right to privacy as a prohibition on "arbitrary interference with [one's] privacy, family, home or correspondence" and on "attacks upon his honour and reputation."

The CCPR has held that a law criminalising sodomy "violates the right to privacy in the International Covenant on Civil and Political

Rights",³⁰ showing that same-sex sexual relations fall within the scope of the right to privacy.

Principle 6 of the Yogyakarta Principles adds that for LGBTIQ persons specifically:

[t]he right to privacy [in addition] ordinarily includes the choice to disclose or not to disclose information relating to one's sexual orientation or gender identity, as well as decisions and choices regarding both one's own body and consensual sexual and other relations with others.

In July 2015, Joseph Cannataci was appointed the first Special Rapporteur on the right to privacy for an initial three-year term.³¹ His mandate includes the requirement "[t]o integrate a gender perspective throughout [his] work."³²

Article 12(2) of the DHRD requires states to take all necessary measures to protect HRDs against acts which would include violations of HRDs' right to privacy.

²⁹ *V.L. v. Switzerland*, Communication No. 262/2005, U.N. Doc. CAT/C/37/D/262/2005 (2007), para. 8.2, available at <http://hrlibrary.umn.edu/cat/decisions/262-2005.html> (last visited 17 November 2017).

³⁰ Arvind Narrain, "Sexual Orientation and Gender Identity: A Necessary Conceptual Framework for Advancing Rights?", Arc International, 2016, p. 1, available at <http://arc-international.net/global-advocacy/human-rights-council/sexual-orientation-and-gender-identity-a-necessary-conceptual-framework-for-advancing-rights/> (last visited 17 November 2017).

³¹ "Special Rapporteur on the right to privacy", OHCHR, 2015, available at <http://www.ohchr.org/EN/Issues/Privacy/SR/Pages/SRPrivacyIndex.aspx> (last visited 17 November 2017).

³² UN Human Rights Council, *Resolution 28/16, The right to privacy in the digital age*, 1 April 2015, U.N. Doc. A/HRC/RES/28/16, para. 4(f), available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/068/78/PDF/G1506878.pdf?OpenElement> (last visited 17 November 2017).

Right to Work

Legal Foundation

UDHR: Article 23

ICESCR: Article 6

CEDAW: Article 11

Yogyakarta Principles: Principle 12

AHRD: Article 27

DHRD: Articles 5, 9 and 11

General Comment 18 sets out the CESCR's interpretation of the right to work under the ICESCR. It emphasises that the ICESCR prohibits "any discrimination in access to and maintenance of employment on the grounds of [...] sex, [...] or] sexual orientation, [...] which has the intention or effect of impairing or nullifying exercise of the right to work on a basis of equality."³³

Likewise, the CCPR has highlighted that when LGBTIQ people face discrimination based on their sexual orientation that impacts their access to employment, this violates Articles 2 and 26 of the ICCPR.³⁴

Article 11 of CEDAW obligates States Parties to eliminate discrimination against women and ensure equality between men and women in respect of the right to work. Under Article 11, this includes, among other things, equal opportunity and access to different professions, and equal pay. Concerning LGBTIQ people, Principle 12 of the Yogyakarta Principles provides that:

Everyone has the right to decent and productive work, to just and favourable conditions of work and to protection against unemployment, without discrimination on the basis of sexual orientation or gender identity.

The right of HRDs to work is set out under Article 11 of the DHRD, which explains that "Everyone has the right, individually and in association with others, to the lawful exercise of his or her occupation or profession." Likewise, Article 9 specifically protects HRDs' right to provide "professionally qualified legal assistance or other forms of assistance and advice in defending human rights and fundamental freedoms." In addition, Article 5 makes it clear that HRDs are able to work within NGOs, associations and groups, and to communicate with NGOs and intergovernmental groups.

³³ UN Committee on Economic, Social and Cultural Rights, *General Comment No. 18, Article 6, The Right to Work*, 6 February 2006, U.N. Doc. E/C.12/GC/18, para. 12(b), available at <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuW1a0Szab0oXTdlmnsJZZVQfUKxXVisd7Dae%2FCu%2B13J25Nha7lgNlwYZ%2FTmk57O%2FSr7TB2hbCAidyVu5x7XcqjNXn44LZ52C%2BikX8AGQrVylc> (last visited 17 November 2017).

³⁴ UN Human Rights Committee, *Consideration of reports submitted by States parties under article 40 of the Covenant: Concluding observations of the Human Rights Committee - Islamic Republic of Iran*, 29 November 2011, U.N. Doc. CCPR/C/IRN/CO/3, para. 10, available at <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsieXFSudRZs%2fX1ZaMqUUOS%2fToSmm6S6YKot4yT9B73L17SA%2feiYbnx2ciO3WOOtYqEMTBg8uMHZzpeXwyMOLwCLLxzMK2fpd8zvxoHOVZsw> (last visited 17 November 2017).

Freedom of Opinion and Expression

Legal Foundation

UDHR: Article 19

ICCPR: Article 19

Yogyakarta Principles: Principle 20

AHRD: Article 24

DHRD: Articles 6 and 7

The right to freedom of opinion and expression is at the heart of an active civil society and essential to the work of HRDs,³⁵ including LGBTIQ HRDs.

In General Comment 34, the CCPR has explained that the freedom includes, among other things:

the right to seek, receive and impart information and ideas, [...] the expression and receipt of communications of every form of idea and opinion capable of transmission to others, [...] political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse, [...] and commercial advertising.³⁶

However, Article 19(3) of the ICCPR permits narrow restrictions to the freedom of opinion and expression. Such exceptions must be "provided by law" and be "necessary for respect of the rights or reputations of others or for the protection of national security or of public order, or of public health or morals." Any limitations must conform to the strict tests of necessity and proportionality, and the State should provide details of the restrictions.³⁷

In 1982, the CCPR permitted restrictions on a television and radio program discussing homosexuality³⁸ on the basis that the State was owed a "certain margin of discretion" in matters of public morals. Nevertheless, the CCPR equally pointed out that the conception and contents of "public morals" are relative and changing,³⁹ and State-imposed restrictions on freedom of expression must allow for this and should not be applied so as to perpetuate prejudice or promote intolerance.⁴⁰

Principle 19 of the Yogyakarta Principles explains how in the context of LGBTIQ people, freedom of opinion and expression includes:

³⁵ "Born Free and Equal: Sexual Orientation and Gender Identity in International Law", OHCHR, 2012, p. 55, available at <http://www.ohchr.org/Documents/Publications/BornFreeAndEqualLowRes.pdf> (last visited 17 November 2017).

³⁶ UN Human Rights Committee, *General Comment No. 34, Article 19, Freedoms of opinion and expression*, 12 September 2011, U.N. Doc. CCPR/C/GC/34, para. 11, available at <http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf> (last visited 17 November 2017).

³⁷ UN Human Rights Committee, *General Comment No. 34, Article 19*, 12 September 2011, CCPR/C/GC/34, para. 27.

³⁸ "Chapter four: Freedom of Assembly, Association and Expression", International Commission of Jurists (ICJ), 2012, available at <http://www.icj.org/sogi-casebook-introduction/chapter-four-freedom-of-assembly-association-and-expression/> (last visited 17 November 2017).

³⁹ "Chapter four: Freedom of Assembly, Association and Expression", ICJ, 2012.

⁴⁰ "HRC: Hertzberg and Others v. Finland", Article 19, 6 February 2008, available at <https://www.article19.org/resources.php/resource/3236/en/hrc-hertzberg-and-others-v-finland> (last visited 17 November 2017).

the expression of identity or personhood through speech, deportment, dress, bodily characteristics, choice of name, or any other means, as well as the freedom to seek, receive and impart information and ideas of all kinds, including with regard to human rights, sexual orientation and gender identity, through any medium and regardless of frontiers.

Article 6 of the DHRD emphasises that HRDs not only enjoy the same freedom of opinion and expression as everyone else, but in addition, that this freedom extends specifically to matters concerning human rights and fundamental freedoms, and that HRDs have the right to "draw public attention to those matters." Article 7 notes that HRDs additionally have the right "to develop and discuss new human rights ideas and principles and to advocate their acceptance."

Freedom of Association and Assembly

Legal Foundation

UDHR: Article 20

ICCPR: Articles 21 and 22

ICESCR: Article 8

Yogyakarta Principles: Principle 20

AHRD: Articles 24 and 27(2)

DHRD: Articles 5 and 12

The freedom of association and assembly and the freedom of opinion and expression are fundamentally intertwined.⁴¹

The ICCPR explains that a person's freedom to associate with others includes the right to join and form trade unions (Article 21), and that freedom of assembly refers to the freedom to peacefully assemble (Article 22). Article 8 of the ICESCR elaborates on the freedom of

association, specifically in terms of the freedom to join and form trade unions.

As with the freedom of opinion and association, under the ICCPR and ICESCR, it is possible for states to impose narrow restrictions on the freedom of association and assembly provided that these are "provided by law;" "necessary for respect of the rights or reputations of others or for the protection of national security or of public order, or of public health or morals;" and deemed to be necessary and proportionate.

In the context of LGBTIQ persons, Principle 20 of the Yogyakarta Principles clarifies that the freedom of association and assembly extends to "associations based on sexual orientation or gender identity" and work on "the rights of persons of diverse sexual orientations and gender identities." It further explains that where States impose limitations on the freedom of association and assembly:

[s]tates shall [...] ensure in particular that notions of public order, public morality, public health and public security are not employed to restrict any exercise of the rights to

⁴¹ UN Human Rights Committee, *General Comment No. 34, Article 19*, 12 September 2011, CCPR/C/GC/34, para. 4.

peaceful assembly and association solely on the basis that it affirms diverse sexual orientations or gender identities.

Article 24 of the AHRD guarantees freedom of peaceful assembly. While there is no general protection of the freedom of association, Article 27(2) protects the specific right to join and form trade unions and "limits the obligation to the extent permitted by national law and practice."⁴² There are no official annotations of the AHRD or *travaux préparatoires* explaining what the former inaugural UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Vitit Muntarbhorn, described as the AHRD's reinforcement of "ASEAN values" by omitting "various internationally guaranteed rights, particularly the right to freedom of association."⁴³ Such lack of transparency was a key critique of the AHRD, and prevents the development of a clear understanding of ASEAN's rationale for omitting a general freedom to associate.⁴⁴

Article 5 of the DHRD clarifies that HRDs' freedom of association and assembly specifically includes the right to form, join, and participate in NGOs, associations, and groups, and to communicate with NGOs and intergovernmental organisations. In addition, Article 12 clarifies that not only do HRDs have the freedom to undertake peaceful activities against violations of human rights and fundamental freedoms, but to be protected against acts by the State or others that violate or affect the enjoyment of human rights and fundamental freedoms.

Right to Participate in Public Life

Legal Foundation

UDHR: Article 21

ICCPR: Article 25

CEDAW: Article 7

Yogyakarta Principles: Principle 25

AHRD: Article 25

DHRD: Article 8

As the UDHR and ICCPR set out, the right to participate in public affairs includes the right to take part in the government of the State — directly as an elected representative, as well as through elected representatives. Governments must be driven by the will of the people as expressed through periodic and genuine elections with secret ballots and universal and

⁴² Sharan Burrow & Noriyuki Suzuki, "Asia Pacific Statement On ASEAN Human Rights Declaration", International Trade Union Confederation, 28 November 2012, available at https://www.ituc-csi.org/IMG/pdf/ituc_statement_on_asean_human_rights_declaration_final_2_.pdf (last visited 22 November 2017).

⁴³ Vitit Muntarbhorn, "'Asean human rights law' taking shape", Bangkok Post, 11 May 2017, available at <https://www.pressreader.com/thailand/bangkok-post/20170511/281719794500835> (last visited 21 November 2017).

⁴⁴ Sriprapha Petcharamesree, "The ASEAN Human Rights Architecture: Its Development and Challenges", The Equal Rights Review, Vol. Eleven, 2013, para. 4, available at <http://www.equalrightstrust.org/ertdocumentbank/Sriprapha%20Petcharamesree%20ERR11.pdf> (last visited 22 November 2017); Human Rights Watch, "Civil Society Denounces Adoption of Flawed ASEAN Human Rights Declaration", November 2012, available at <https://www.hrw.org/news/2012/11/19/civil-society-denounces-adoption-flawed-asean-human-rights-declaration> (last visited 22 November 2017); "Statement: Less than Adequate: AICHR consultation on ASEAN Human Rights Declaration", Article 19, 21 June 2012, available at <https://www.article19.org/resources.php/resource/3338/en/less-than-adequate-aichr-consultation-on-asean-human-rights-declaration> (last visited 22 November 2017).

equal suffrage. All people must also have equal access to public service.

The CCPR in General Comment 25 explained the right to participate in public life protects the rights of “every citizen” and that “no distinctions are permitted between citizens in the enjoyment of these rights on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”⁴⁵ General Comment 25 also notes that the right to participate in public life includes “exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves [which] is supported by ensuring freedom of expression, assembly and association.”

Article 7 of CEDAW emphasises that in the context of the right to participate in public life, States have an obligation to ensure the equality of women with men. Similarly, Principle 25 of the Yogyakarta Principles provides that the right to participate in public life should not discriminate on the basis of sexual orientation or gender identity.

Article 8 of the DHRD explains that as for HRDs, the right to participate in public life also specifically includes the right:

to submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.

Right to Participate in the Cultural Life of the Community

Legal Foundation

UDHR: Article 27

ICCPR: Article 27

ICESCR: Article 15

CEDAW: Article 13(c)

Yogyakarta Principles: Principle 26

AHRD: Article 32

The right to participate in the cultural life of the community is set out primarily in Article 27 of the UDHR and Article 15 of the ICESCR. The CESCR, in General Comment 21, has explained that this right is a freedom which requires States not to interfere with the exercise of cultural practices and access to cultural goods, and simultaneously requires States to protect peoples’ ability to exercise this right.⁴⁶ Furthermore, the ICESCR “prohibit[s] any

⁴⁵ UN Human Rights Committee, *General Comment No. 25, Article 25, The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service*, 12 July 1996, U.N. Doc. CCPR/C/21/Rev.1/Add.7, para. 3, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2F21%2FRev.1%2FAdd.7&Lang=en (last visited 17 November 2017).

⁴⁶ UN Committee on Economic, Social and Cultural Rights, *General Comment No. 21, Right of everyone to take part in cultural life (art. 15, para. 1a of the Covenant on Economic, Social and Cultural Rights)*, 21 December 2009, U.N. Doc. E/C.12/GC/21, para. 6, available at <http://www.refworld.org/docid/4ed35bae2.html> (last visited 17 November 2017).

discrimination in the exercise of the right of everyone to take part in cultural life on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."⁴⁷

Article 13(c) of CEDAW ensures the right of women to equality with men in terms of participation in cultural life, which it describes as including recreational activities, sports, and all other aspects. Principle 26 of the Yogyakarta Principles similarly emphasises that the right to equal participation in public life is a right enjoyed by everyone regardless of sexual orientation and gender identity. Moreover, the Principle explains that the right includes the right to express diverse sexual orientation and gender identity, and obliges states to foster opportunities for all people to participate in public life and to:

[f]oster dialogue between, and mutual respect among, proponents of the various cultural groups present within the State, including among groups that hold different views on matters of sexual orientation and gender identity, consistently with respect for [...] human rights [...].

⁴⁷ UN Committee on Economic, Social and Cultural Rights, *General Comment No. 21, Right of everyone to take part in cultural life*, 21 December 2009, U.N. Doc. E/C.12/GC/21, paras. 21-22.

Concluding Recommendations

Destination Justice's concluding recommendations stem from two basic considerations:

- A better and more informed use of the UPR process could have a real positive impact on the situation of the LGBTIQ communities and their HRDs in Southeast Asia.
- Though Southeast Asian countries and the LGBTIQ communities living and operating within these countries are extremely diverse, Destination Justice is convinced that to achieve recognition, equality and non-discrimination, both the Southeast Asian governments and the LGBTIQ communities should work together and in complementarity at the local, national, regional and international levels.

The following recommendations specifically address Southeast Asian governments, recommending States during the next — third/fourth — UPR cycle and the LGBTIQ communities and their HRDs.

Recommendations to Southeast Asian Governments

- Adopt a holistic approach to ending discrimination towards the LGBTIQ community, starting with ending the criminalisation of human rights defenders.
- Accept and implement at the best of their capacities, and before the next UPR review, all recommendations made on SOGIESC issues.
- Ensure an effective follow-up of the recommendations accepted during the UPR review, starting with submitting their follow-up report.
- Encourage fellow Southeast Asian States to strengthen human rights protection for their LGBTIQ communities and HRDs, and foster greater State-to-State and regional cooperation and collaboration in this regard.

Recommendations to Recommending States (During the UPR process)

- Work together with local LGBTIQ communities and HRDs to better understand their needs, the challenges they face, and the violations they endure and how it should be addressed during the UPR process.
- Foster and advocate for the inclusion of specific, measurable, achievable, realistic, timely (**SMART**) recommendations on SOGIESC into the working group final outcome report of every Southeast Asian State.

- Keep the States to which they made recommendations accountable, and more specifically follow-up regularly on the recommendations and seek cooperation from other States.

Recommendations to Civil Society & HRDs

- Work together between local, national, and international CSOs as well as the government to submit the most accurate possible information and SMART recommendations.
- Foster advocacy based on the recommendations made during the UPR, and use the UPR as an accountability tool regarding governments.
- Strengthen networking among CSOs and HRDs locally, nationally, and regionally to foster knowledge sharing and best practices in working with governments to address SOGIESC-based discriminations and to encourage policy change.
- For LGBTIQ communities at the local and national levels, collaborate with the competent authorities to foster legal and policy change, and to expand support for LGBTIQ, education and reporting stories.
- Work at all levels, including internationally and regionally, by using the UN and ASEAN mechanisms.

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About Destination Justice

Established since 2011, Destination Justice is a social change organisation. We are changemakers who believe that justice is key to a peaceful society — particularly a society where people can resolve their issues by resorting to independent, fair and transparent justice; a society where laws are made by the people, for them, and freely accessible to them; and furthermore, a society where everybody is equal no matter who they are, what they think, or who they love.

To achieve this, we work according to the idea that from little things big things can grow: one mind changed; one piece of information put out there; one practice improved. We set ideas in motion, we provide tools, and we take action when necessary.

Through our Rainbow Justice Project, Destination Justice aims to foster dialogue in Southeast Asia on sexual orientation, gender identity and gender expression, and sexual characteristics (**SOGIESC**), and to provide advocacy tools to changemakers for the promotion and protection of the lesbian, gay, bisexual, transgender, intersex and queer (**LGBTIQ**) community's rights.

Cover Photo Credit: "Dancers under a large rainbow flag during the third gay pride in Vietnam", AFP in the South China Morning Post, 'Vietnam hosts third gay pride parade as attitudes soften', 3 August 2014, available at <http://www.scmp.com/news/asia/article/1565550/vietnam-hosts-third-gay-pride-parade-attitudes-soften> (last visited 27 November 2017).

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