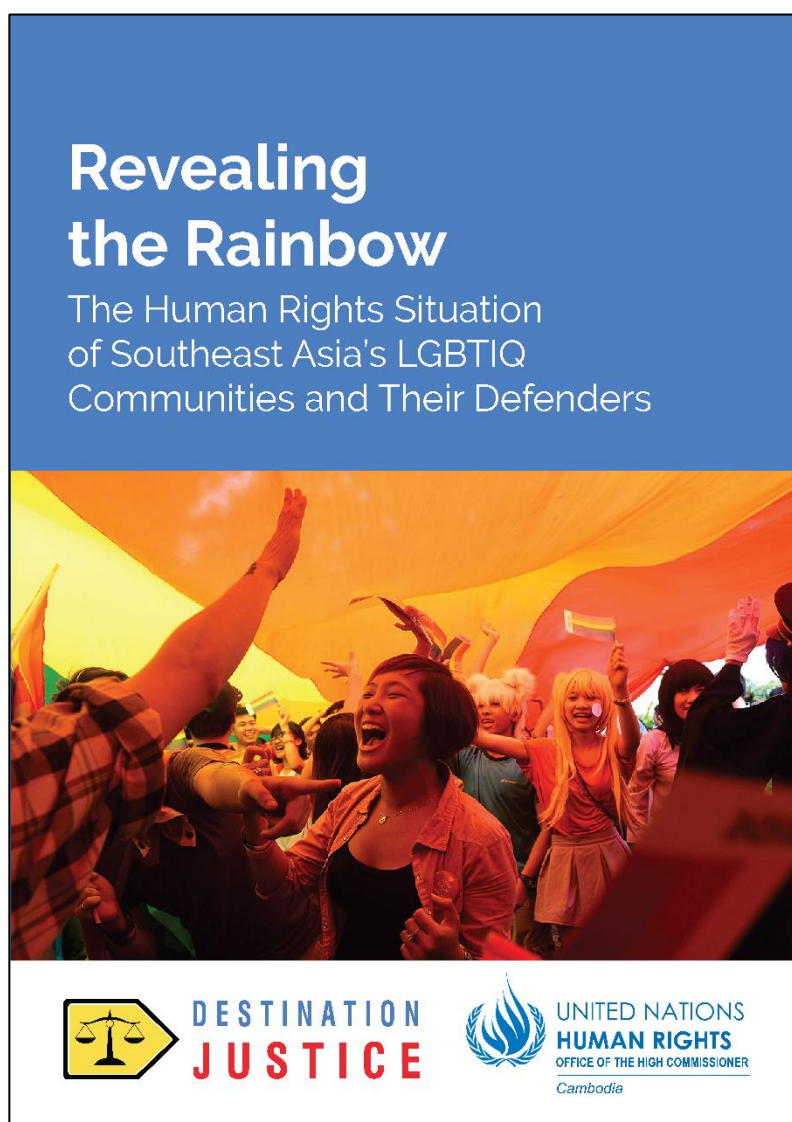


LGBTIQ Communities and Their Defenders Country Information Pack: **Thailand**

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Thailand: Country Profile

Human Rights of LGBTIQ Communities and HRDs: Situational Analysis

Introduction

UPR Cycles

First UPR Cycle: 5 October 2011

Second UPR Cycle: 11 May 2016

Third UPR Cycle: April/May 2021

Issues related to the lesbian, gay, bisexual, transgender, intersex, and queer (**LGBTIQ**) community and human rights defenders (**HRDs**) were raised during both the Kingdom of Thailand's (**Thailand**) first and second Universal Periodic Review (**UPR**) cycles. Thailand accepted many UPR recommendations relating to LGBTIQ issues and

HRDs, combating discrimination and supporting human rights. At the same time, it has often refrained from fully accepting recommendations related to freedoms of expression and opinion or freedom of assembly.

As this Country Profile presents, Thailand offers its LGBTIQ community and HRDs working on LGBTIQ issues considerable space to exercise freedoms of opinion, expression, association and assembly. The International Lesbian and Gay Association (**ILGA**) has hosted high-profile events in Thailand with the participation of the Thai authorities, and numerous LGBTIQ celebrations have been staged without incident. Moreover, since the 2014 military-led *coup d'état* seizing control of Thailand's government, the ruling military junta has introduced the Gender Equality Act. The Act is a national non-discrimination law designed to protect individuals against discrimination on the grounds of gender expression, and while it has been criticised by civil society for its possible loopholes, the Act has also been heralded as being the first of its kind in Southeast Asia.

There have also been a number of concerning developments. For example, the military junta did not take action over a column published in a newspaper threatening to gang-rape an LGBTIQ HRD. Thammasat University denied the application of a renowned LGBTIQ activist to become a permanent lecturer, apparently on the sole

"The [UPR] recommendations didn't talk much about gender identity and sexual orientation. But I think it is very good when we activists or those affected by the issues get together and draft issues affecting them, and discuss what is happening on the ground. It is really useful to have workshops to do this and to make the people understand where there are problems in society."

Kath Khangpiboon,
Founder, Thai Transgender Alliance

basis of a social media post. In addition, although there had been talk of the new junta-introduced Constitution recognising and protecting a third gender and prohibiting discrimination on the basis of sexual orientation, neither provision was ultimately included.

In the lead up to Thailand's third UPR cycle in April/May 2021, recommending States and civil society organisations (**CSOs**) have an opportunity to develop improved UPR recommendations that build on progress made and aim to increase protection for the LGBTIQ community and their defenders in Thailand.

Past UPR Cycles for Thailand

First UPR Cycle (5 October 2011)

National Report Filed:¹ Thailand's national report for the first UPR was published on 19 July 2011. It explicitly mentioned HRDs, sexual identity, and gender diversity. The report explained that Thailand was in the process of drafting a gender equality promotion bill aimed at preventing discrimination on the basis of sexual orientation.² The report also acknowledged the problems "people with gender identity issues still have"³ in accessing some basic rights due to discrimination, and noted the need to address such a situation.⁴ The report further recognised the need to protect the work of HRDs in safeguarding the rights of the people.⁵

Stakeholders Submissions Made:⁶ The summary of the 27 stakeholders' submissions was published on 25 July 2011. Stakeholders expressed concern for HRDs and issues affecting the LGBTIQ community, including the lack of laws recognising gender reassignment surgeries and same-sex marriages, which resulted in various forms of discrimination against the LGBTIQ community.⁷ Stakeholders also raised concerns about the struggle for transgender people to access employment, noting that they had been discharged from conscription to the army on the basis of alleged "mental illness."⁸ Finally, stakeholders reported that Thai authorities posed a threat to HRDs⁹ and recommended that the government set up an action plan to enable HRDs to act independently, free from fear and intimidation.¹⁰

¹ *National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Thailand*, U.N. Doc. A/HRC/WG.6/12/THA/1, 19 July 2011, available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/THindex.aspx> (last visited 29 June 2017).

² First UPR cycle: *National Report*, Thailand, para. 77.

³ First UPR cycle: *National Report*, Thailand, para. 77.

⁴ First UPR cycle: *National Report*, Thailand, para. 77.

⁵ First UPR cycle: *National Report*, Thailand, para. 124.

⁶ *Summary of Stakeholders' submissions prepared by the Office of the High Commissioner for Human Rights: Thailand*, U.N. Doc. A/HRC/WG.6/12/THA/3, 25 July 2011, available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/THindex.aspx> (last visited 29 June 2017).

⁷ First UPR cycle: *Stakeholders' Summary*, Thailand, para. 40.

⁸ First UPR cycle: *Stakeholders' Summary*, Thailand, para. 40.

⁹ First UPR cycle: *Stakeholders' Summary*, Thailand, para. 46.

¹⁰ First UPR cycle: *Stakeholders' Summary*, Thailand, paras. 15, 46.

First UPR Cycle for Thailand: Recommendations Received

In its first UPR, held in October 2011, Thailand received recommendations relevant to members of vulnerable and minority groups, and to ensuring the freedom of expression and opinion:

- Continue efforts in promoting and protecting the human rights of its people, in particular those of vulnerable groups (Brunei Darussalam).
- Combat discriminatory practices against children and adolescents belonging to minorities or in a situation of special vulnerability (Uruguay) and give them more consideration (Republic of Korea).
- Ensure its legislation is consistent with international human rights law pertaining to freedom of expression (New Zealand) and of opinion (Norway, Slovenia) not least by evaluating the current legislation and its consequences in the form of high rates of convictions (Sweden).
- Engage in a review of special security laws, with a view to amending legislation and regulations which restrict or deny freedoms of expression, association and peaceful assembly that are inconsistent with obligations under international law (Canada, Switzerland).

Source: *Report of the Working Group on the Universal Periodic Review: Thailand*, U.N. Doc. A/HRC/19/8, 8 December 2011, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/172/64/PDF/G1117264.pdf?OpenElement> (last visited 29 June 2017).

Comments Received; Response to Recommendations: Thailand did not support recommendations on reforms that would enable the full enjoyment of freedoms of expression and assembly,¹¹ except for the recommendation concerning the consistency of the freedom of expression in Thailand with international human rights law. Indeed, Thailand explained that its "domestic legislation must necessarily be consistent with both the Thai Constitution and the country's international obligations, including the ICCPR [International Covenant on Civil and Political Rights]."¹² Moreover, Thailand suggested that domestic legislation must also be consistent with "the right to peaceful assembly, guaranteed by the Constitution. There is no law that restricts this right in accordance with the ICCPR."¹³

¹¹ *Report of the Working Group on the Universal Periodic Review: Thailand, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, U.N. Doc. A/HRC/19/8/Add.1, 6 March 2012, para. 7, available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/THindex.aspx> (last visited 4 July 2017).

¹² First UPR cycle: *Report of the Working Group, Addendum*, Thailand, para. 7.

¹³ First UPR cycle: *Report of the Working Group, Addendum*, Thailand, para. 8.

Thailand accepted the recommendations to combat discrimination against vulnerable people belonging to minorities, and promote their rights.¹⁴

During the UPR Interactive Dialogue, Thailand also received a specific comment from Austria concerning harassment and disappearance of HRDs.¹⁵ Thailand responded that steps had been taken to protect HRDs and their families.¹⁶

Second UPR Cycle (11 May 2016)

National Report Filed:¹⁷ Thailand's national report for the second UPR was published on 12 February 2016. The report explicitly referred to gender identity. It highlighted Thailand's 2015 Gender Equality Act which "aims to protect everyone, including persons with sexual expression that is different from biological sex, from gender-based discrimination."¹⁸

The report did not explicitly discuss HRDs. It instead noted generally that Thailand "fully respects freedom of opinion and expression and freedom of assembly." At the same time, the report stressed that freedom of expression must "be exercised in a constructive manner [...] in an appropriate context, which means time, place and manner' and must 'not disrupt social order and security."¹⁹

Stakeholders Submissions Made:²⁰ The summary of the 27 stakeholders' submissions was published on 23 February 2016. Stakeholders expressed considerable concern over the situation of HRDs and the LGBTIQ community. Stakeholders noted that, following the 22 May 2014 coup, at least 751 individuals including HRDs had been summoned for "attitude adjustment" or were arbitrarily detained for engaging in peaceful and legitimate human rights activities.²¹ Stakeholders also noted the human rights abuses and violations against HRDs and reports of armed men being hired to physically attack HRDs, with authorities failing to take action to protect HRDs against private actors.²²

Stakeholders recommended that Thailand make efforts to enable the visits of the Special Rapporteurs on the situations of human rights defenders and on the freedoms of expression, peaceful assembly and association.²³ They also recommended that Thailand end impunity for

¹⁴ First UPR cycle: *Report of the Working Group*, Thailand, paras. 88.24, 88.26-88.27.

¹⁵ First UPR cycle: *Report of the Working Group*, Thailand, para. 31.

¹⁶ First UPR cycle: *Report of the Working Group*, Thailand, para. 47.

¹⁷ *Summary of Stakeholders' submissions prepared by the Office of the United Nations High Commissioner for Human Rights: Thailand*, U.N. Doc. A/HRC/WG.6/25/THA/3, 23 February 2016, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/033/19/PDF/G1603319.pdf?OpenElement> (last visited 29 June 2017).

¹⁸ Second UPR cycle: *National Report*, Thailand, para. 19.

¹⁹ Second UPR cycle: *National Report*, Thailand, para. 116.

²⁰ *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Thailand*, U.N. Doc. A/HRC/WG.6/25/THA/1, 12 February 2016, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/025/43/PDF/G1602543.pdf?OpenElement> (last visited 29 June 2017).

²¹ Second UPR cycle: *Stakeholders' Summary*, Thailand, para. 22.

²² Second UPR cycle: *Stakeholders' Summary*, Thailand, para. 34.

²³ Second UPR cycle: *Stakeholders' Summary*, Thailand, para. 8.

actions against HRDs by developing legislation that explicitly acknowledged and protected HRDs' work and gave full force and effect to the United Nations (UN) 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).²⁴ Stakeholders further recommended the prompt, independent and effective investigation, prosecution and remediation of all threats and attacks against HRDs.²⁵

Finally, stakeholders expressed concern regarding discriminatory practices against the LGBTIQ community.²⁶ They recommended that Thailand ensure the new Constitution being drafted include a provision prohibiting discrimination on the grounds of sexual orientation or gender identity.²⁷

Second UPR Cycle for Thailand: Recommendations Received

In its second UPR, held in May 2016, Thailand received recommendations which referenced HRDs, sexual orientation and various freedoms:

- Ensure that human rights defenders in Thailand are treated in accordance with the General Assembly Declaration on Human Rights Defenders (New Zealand).
- Effectively implement the Gender Equality Act of 2015 (South Africa) to ensure better protection for its vulnerable population (Brunei Darussalam).
- Intensify efforts to promote policies in the area of prevention, sanction and eradication of all forms of violence against women, including measures aimed at promoting their rights regardless of its religion, race, sexual identity or social condition (Mexico).
- Protect HRDs and investigate any reported cases of intimidation, harassment and attacks against them (Luxembourg, Czech Republic, Botswana, Norway, Romania, United Kingdom of Great Britain and Northern Ireland).
- Ensure that the right to freedom of opinion, expression and assembly are fully respected and its exercise facilitated, including with respect to the drafting and adopting of the new Constitution (Czech Republic, Guatemala, Japan, Lebanon, Republic of Korea, Albania, Chile, France, Austria, Costa Rica, Colombia, United Kingdom of Great Britain and Northern Ireland, Finland).
- Amend various laws to ensure the legitimate exercise of freedom of opinion, expression and assembly (Belgium, Switzerland, Germany, Botswana, Italy, Iceland, Brazil).

²⁴ Second UPR cycle: *Stakeholders' Summary*, Thailand, para. 35.

²⁵ Second UPR cycle: *Stakeholders' Summary*, Thailand, para. 35.

²⁶ Second UPR cycle: *Stakeholders' Summary*, Thailand, paras. 58, 60.

²⁷ Second UPR cycle: *Stakeholders' Summary*, Thailand, para. 10.

- Ensure the Constitution contains key human rights principles in line with the obligations under international human rights law (Uganda, Switzerland, Pakistan, Republic of Korea).
- Encourage public debate on the draft Constitution (Republic of Korea) and allow for freedom of expression and assembly regarding the draft constitution (Czech Republic, Austria).

Source: *Report of the Working Group on the Universal Periodic Review: Thailand*, U.N. Doc. A/HRC/33/16, 15 July 2016, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/154/74/PDF/G1615474.pdf?OpenElement> (last visited 29 June 2017).

Comments Received; Response to Recommendations: Thailand received specific comments during the UPR Interactive Dialogue regarding the precarious situation of HRDs who are subject to prosecution, harassment, killings and enforced disappearance.²⁸ Thailand responded that it:

is aware of its duty to ensure that human rights defenders can work in a safe and enabling environment. The adoption of the draft act on the prevention and suppression of torture and enforced disappearance will strengthen the protection of human rights defenders.²⁹

In this sense, Thailand accepted every recommendation made about the situation and protection of HRDs.³⁰

During the Interactive Dialogue, various countries expressed concern over Thailand's restrictions on the right to expression, association and assembly.³¹ Thailand accepted the general recommendations which sought active measures to fully implement those freedoms,³² but merely noted without accepting the recommendations³³ which aimed to change the domestic law or remove undue restrictions. Regarding the latter, Thailand explained that it was:

not ready to accept these recommendations at this stage. But that is with an understanding that as the situation improves, there will continue to be more relaxation

²⁸ Second UPR cycle: *Report of the Working Group*, Thailand, paras. 36, 62.

²⁹ Second UPR cycle: *Report of the Working Group*, Thailand, para. 151.

³⁰ Second UPR cycle: *Report of the Working Group*, Thailand, paras. 158.22, 158.119-158.123.

³¹ Second UPR cycle: *Report of the Working Group*, Thailand, paras. 25, 27, 28, 36, 42, 45, 57, 62, 88, 96, 100, 108, 125, 130.

³² Second UPR cycle: *Report of the Working Group*, Thailand, paras. 158.131-158.142.

³³ This is standard diplomatic language commonly used by States under review to declare that they do not accept a given recommendation.

of unnecessary limitations. Some useful elements in the recommendations will also be taken into serious consideration by relevant agencies.³⁴

Thailand accepted the recommendation for the implementation of the Gender Equality Act and affirmed that this Act protects "everyone from gender-based discrimination, including persons whose sexual expression was different from their biological sex."³⁵ In this way, Thailand also accepted the recommendation concerning the development of its policies to prevent and ultimately eradicate violence against women.³⁶

Finally, Thailand accepted the recommendations which aimed to ensure the independence of its National Human Rights Commission and to better protect its vulnerable population.³⁷

Situation of the LGBTIQ Community and its HRDs in Thailand

Freedom of Opinion and Expression

Reputation: A report on prejudice against the LGBTIQ community in Thailand described Thailand's LGBTIQ-friendly reputation as a "façade that is quickly eroding as signs of intolerance and LGBT prejudice are beginning to emerge."³⁸ In addition, in 2014, the UN Resident Coordinator in Thailand and UN Development Programme (UNDP) Representative, Luc Stevens, said that despite the high visibility of the LGBT community, such visibility "does not always translate to equality."³⁹

Major LGBTIQ Events: In 2013, the International Lesbian and Gay Association (ILGA) Asia conference was hosted in Bangkok without interruption.⁴⁰ The success of the conference was of special significance as the previous ILGA Asia conference in Indonesia in 2010 was halted by protesters.⁴¹ In 2016, the ILGA World Conference was successfully hosted in Bangkok without interruption and with Thai officials giving opening and closing speeches.

Threats to LGBTIQ HRDs: In the wake of the *coup*, freedom of expression of HRDs working on LGBTIQ appears to have been jeopardised. For example, an ultranationalist and pro-junta Thai newspaper, Manager Daily, published a column describing in graphic detail how prisoners would gang-rape a Thai anti-junta LGBTIQ HRD known as Aum Neko.⁴² The column was

³⁴ Second UPR cycle: *Report of the Working Group, Addendum*, Thailand, paras. 18-19.

³⁵ Second UPR cycle: *Report of the Working Group*, Thailand, para. 75.

³⁶ Second UPR cycle: *Report of the Working Group*, Thailand, paras. 158.64, 158.84.

³⁷ Second UPR cycle: *Report of the Working Group*, Thailand, paras. 158.26-158.28, 158-40-158.48.

³⁸ Hunter Gray, "Negotiating Invisibility: Addressing LGBT Prejudice in China, Hong Kong, and Thailand", Master's Capstone Projects. 30. 2014, p. 16, available at http://scholarworks.umass.edu/cgi/viewcontent.cgi?article=1029&context=cie_capstones (last visited 4 July 2017).

³⁹ Pravit Rojanaphruk, "LGBT Thais 'still face stigma and hostility'", The Nation, 17 September 2014, available at <http://www.nationmultimedia.com/national/LGBT-Thais-still-face-stigma-and-hostility-30243455.html> (last visited 4 July 2017).

⁴⁰ Hunter Gray, "Negotiating Invisibility: Addressing LGBT Prejudice in China, Hong Kong, and Thailand", p. 19.

⁴¹ Hunter Gray, "Negotiating Invisibility: Addressing LGBT Prejudice in China, Hong Kong, and Thailand", p. 19.

⁴² "Pro-Coup Newspaper Publishes 'Parody Piece' Describing Gang-Rape of LGBT Activist", Khao Sod, 1 July 2014, available at http://www.khaosod.co.th/view_newsonline.php?newsid=TVRRd05ESXhORGmZTkEgPQ

published under the parody section of the extreme newspaper and detailed how the military junta's National Council for Peace and Order would arrest and send "Neko to a prison in Bangkok to 'return happiness to the male inmates who have been deprived of sex for years.'"⁴³ There were no apparent consequences for the newspaper for its graphic and violent column.

Freedom of Association and Assembly

Pride Celebrations: Phuket has successfully held Phuket Pride Week each year since 1999.⁴⁴ The week features an annual parade organised to raise awareness of the LGBTIQ community and money for LGBTIQ and Human Immunodeficiency Virus (**HIV**) charities within Phuket by charity organisation Phuket Loves You.⁴⁵ However, the 2016 parade gathered fewer people than previous years.⁴⁶ The low turnout was partly attributed to the area where the parade is hosted, which known for sex tourism, but also the failure to reach out to other Thai LGBTIQ communities.⁴⁷

Phuket Pride Week is the only pride celebration in Thailand. The last pride parade marching through the capital city of Bangkok was held a decade ago in 2006, while Chiang Mai's pride parade was last staged in 2009, as it was thereafter banned by the local government due to pressure from social conservatives.⁴⁸

In 2017, Thailand planned to hold the first gay pride parade in 11 years in Bangkok.⁴⁹ However, in the wake of the death of Thailand's King Bhumibol Adulyadej in October 2016, the pride parade was postponed to November 2017 due to the one-year period of mourning in place.⁵⁰

IDAHOT Celebrations: In contrast with the lack of public pride celebrations, in 2015 the United Nations Educational, Scientific and Cultural Organisation (**UNESCO**) Bangkok and its partners in Thailand celebrated the International Day Against Homophobia, Transphobia and Biphobia (**IDAHOT**). The celebrations featured 25 events over seven days at the Bangkok Art and Culture

[==§ionid=](#) (last visited 4 July 2017); Joe Lo, "Thailand: Major Newspaper 'Parody' Describes Gang-Rape of LGBT Activist and Politician", Pink News, 1 July 2014, available at <http://www.pinknews.co.uk/2014/07/01/thailand-major-newspaper-parody-describes-gang-rape-of-lgbt-activist-and-politician/> (last visited 4 July 2017).

⁴³ "Pro-Coup Newspaper Publishes 'Parody Piece' Describing Gang-Rape of LGBT Activist", Khao Sod, 1 July 2014.

⁴⁴ Watsamon Tri-yasakda, "Thailand's only pride parade marched in Phuket (Photo Essay)", Coconuts Bangkok, 11 May 2016, available at <http://bangkok.coconuts.co/2016/05/11/thailands-only-pride-parade-marched-phuket-photo-essay-o> (last visited 4 July 2017).

⁴⁵ Watsamon Tri-yasakda, "Thailand's only pride parade marched in Phuket" (Coconuts Bangkok, 11 May 2016).

⁴⁶ Watsamon Tri-yasakda, "Thailand's only pride parade marched in Phuket" (Coconuts Bangkok, 11 May 2016).

⁴⁷ Watsamon Tri-yasakda, "Thailand's only pride parade marched in Phuket" (Coconuts Bangkok, 11 May 2016).

⁴⁸ Watsamon Tri-yasakda, "Proud and fearless in Phuket: Coconuts visits Thailand's only 'pride march' (Photos)", Coconuts Bangkok, 29 April 2015, available at <http://bangkok.coconuts.co/2015/04/29/proud-and-fearless-phuket-coconuts-visits-thailands-only-pride-march> (last visited 4 July 2017).

⁴⁹ Yi Shu Ng, "Thailand's capital will hold its first gay pride parade in 11 years", Mashable, 18 January 2017).

⁵⁰ See the calendar of events on Facebook, "Bangkok Pride 2017", Facebook Page, 2017, available at <https://www.facebook.com/events/1577498905886980/> (last visited 5 July 2017). Bangkok Pride 2017, SignedEvents, 2017, available at <https://signedevents.com/thailand/bangkok/bangkok-pride-2017/> (last visited 5 July 2017).

Centre. These included cultural performances, such as concerts and theatrics, as well as workshops for members of the community to inform the public about the challenges faced by the LGBTIQ community.⁵¹

Celebrations were held throughout the State marking IDAHOT in 2017. In addition, a petition supporting a bill on civil partnership was handed to a representative of the Minister of Justice.⁵²

LGBTIQ Youth: In 2015, UNESCO Bangkok launched a campaign entitled "PurpleMySchool" and UNDP launched the initiative "Being LGBTI in Asia" in anticipation of International Youth Day. The "PurpleMySchool" campaign was designed to create safe education spaces for LGBTIQ youth.⁵³ The campaign "encouraged parents, peers and teachers to join the campaign as many LGBTI young people in the region experience dread at school."⁵⁴

Right to Work

In 2014, a transgender teacher and activist, Kath Khangpiboon, applied to become a permanent lecturer at Thailand's Thammasat University. However, a board committee rejected her application, and her subsequent appeal of the decision was likewise rejected.

Kath Khangpiboon is a renowned LGBTIQ activist throughout Southeast Asia. She established the Thai Transgender Alliance — an organisation promoting the rights of transgender people in Thailand and campaigning for equal rights for the LGBTIQ community.⁵⁵ Despite obtaining a Bachelor and Master's degree and working as an external lecturer at Thammasat University, Khangpiboon's application to become a permanent staff member was rejected on the grounds of her "inappropriate" social media activity from five years prior on her private Instagram account.⁵⁶ The social media post labelled "inappropriate" involved a picture of a penis-shaped lipstick offered for Halloween.⁵⁷

⁵¹ Noel Boivin, "Is Thailand the lesbian, gay, bisexual, transgender and intersex paradise it's often seen to be?", IDAHOT Thailand, 7 July 2015, available at <http://en.idahothailand.org/news/2015/7/7/is-thailand-the-lesbian-gay-bisexual-transgender-and-intersex-paradise-it-s-often-seen-to-be> (last visited 4 July 2017).

⁵² Kaewta Ketbungkan, "Call for Rights at annual celebration for LGBT advocacy (Photos)", Khaoso, 18 May 2017, available at <http://www.khaosodenglish.com/culture/2017/05/18/call-rights-annual-celebration-lgbt-advocacy-photos/> (last visited 5 July 2017).

⁵³ "Campaign to Support LGBTI Youth", The Nation, 7 August 2015, available at <http://www.nationmultimedia.com/detail/national/30266114> (last visited 4 July 2017).

⁵⁴ "Campaign to Support LGBTI Youth", The Nation, 7 August 2015.

⁵⁵ "Transgender Loses Fight for Reinstatement at Thammasat University", Chiangrai Times, 26 June 2015, available at <http://www.chiangraitimes.com/transgender-loses-fight-for-reinstatement-at-thammasat-university.html> (last visited 5 July 2017).

⁵⁶ Siam Voices, "Transgender Activist Takes on Thai University in Battle for LGBT Rights", Asian Correspondent, 8 June 2015, available at <https://asiancorrespondent.com/2015/06/thailand-kath-khangpiboon-lgbt/> (last visited 5 July 2017).

⁵⁷ Siam Voices, "Transgender Activist Takes on Thai University in Battle for LGBT Rights", Asian Correspondent, 8 June 2015.

This was the first instance of Thammasat University referring to social media activity when considering a lectureship application.⁵⁸ It is also noteworthy that the university decided to reject Kath Khangpiboon's application even though she met all other selection criteria and had received support from most members of the faculty, including the Dean. Moreover, although there are other members of the university's staff who identify as gay and transgender, Khangpiboon believes that some of these members came out after being appointed and that her circumstances as an outspoken activist are unique.⁵⁹

Right to Equality and Non-Discrimination

Gender Equality Act: In September 2015, the Thai military junta enacted the Gender Equality Act. This Act is a national non-discrimination law designed to protect individuals against discrimination on the grounds of gender expression.⁶⁰ The Act does so by prohibiting discrimination against someone based on their differing appearance from their sex at birth. It is the first national legislation in Southeast Asia to offer legal protection against discrimination based on gender expression.⁶¹

Although the law is seen by Thai LGBTIQ HRDs as imperfect in light of loopholes that may provide exemptions for religious institutions,⁶² the Gender Equality Act has been generally heralded as a positive step forward.⁶³ Indeed, Thailand's enactment of the Gender Equality Act fulfils recommendations it accepted in its first UPR to promote and protect the human rights of vulnerable groups, and to ensure its legislation is consistent with international human rights law pertaining to freedom of expression.

New Constitution: In 2015, it was expected that Thailand's new Constitution under the military junta would include the term "third gender" for the first time to empower and secure equal rights protections for the transgender community. A member of the panel drafting the Constitution suggested that the words "third gender" were to be included in the Constitution "because Thai society has advanced" such that "there are not only men and women' and 'all

⁵⁸ Siam Voices, "Transgender Activist Takes on Thai University in Battle for LGBT Rights", Asian Correspondent, 8 June 2015.

⁵⁹ Siam Voices, "Transgender Activist Takes on Thai University in Battle for LGBT Rights", Asian Correspondent, 8 June 2015.

⁶⁰ "World Report 2016: Events of 2015", Human Rights Watch, 2016, p. 569, available at https://www.hrw.org/sites/default/files/world_report_download/wr2016_web.pdf (last visited 3 July 2017).

⁶¹ Dominique Mosbergen, "The Darker Side of Being Transgender in Thailand", Chiangrai Times, 21 October 2015, available at <http://www.chiangraitimes.com/the-darker-side-of-being-transgender-in-thailand.html> (last visited 6 July 2017).

⁶² Kyle Knight, "Dispatches: Thailand Acts to End LGBT Discrimination", Human Rights Watch, 21 September 2015, available at <https://www.hrw.org/news/2015/09/21/dispatches-thailand-acts-end-lgbt-discrimination> (last visited 5 July 2017).

⁶³ Dominique Mosbergen, "The Darker Side of Being Transgender in Thailand", Chiangrai Times, 21 October 2015.

sexes need to be protected with all sexes to be equal.”⁶⁴ The draft Constitution did not, however, include the third gender as anticipated.

Groups also anticipated the inclusion of a clause in the Constitution would prohibit discrimination based on sexual orientation. The Constitution Drafting Committee in 2016 stated, however, that sexual orientation would not be included in the draft Constitution's equality clause.⁶⁵

In the lead up to the referendum, the military junta banned criticism of the draft Constitution.⁶⁶ A referendum on the draft Constitution was held on 7 August 2016, with voter turnout representing just over 80% of the Thai population; the referendum passed with over 60% in favour of the draft Constitution.⁶⁷

Conclusion

Since its first UPR, Thailand has accepted UPR recommendations to combat discrimination and promote human rights the LGBTIQ community and HRDs working on LGBTIQ issues. Moreover, Thailand has asserted its dedication to take steps to further protect HRDs from various forms of ill-treatment. Its commitment in this regard has been borne out in practice, particular through Thailand's introduction of the Gender Equality Act in 2015 and in the numerous LGBTIQ-related events that have been successfully staged in the State.

Areas for further progress do remain. In particular, Thailand has not supported UPR recommendations that have suggested to repeal the current legislation to protect further freedoms of expression, opinion and assembly, among others. This position may leave the LGBTIQ community and HRDs vulnerable to further attacks and ill-treatment in the future. Moreover, the junta's banning of criticism is in direct contradiction to the recommendations given to — and accepted by — Thailand during the second UPR which stated that debate about the draft constitution should be encouraged and freedom of expression and assembly ensured.

Nevertheless, it is worth noting that during the second UPR (the first to be attended by Thailand's currently-ruling military junta), Thailand's delegation indicated that it was not ready to support such recommendations “at this stage” but that “as the situation improves, there will

⁶⁴ Amy Sawitta Lefevre, “Thailand to Recognize ‘Third Gender’ in New Constitution: Panel”, Reuters, 15 January 2015, available at <http://www.reuters.com/article/us-thailand-politics-idUSKBN0K0oSC20150115> (last visited 5 July 2017).

⁶⁵ Khemthong Tonsakulrungruang, “Life Under Thailand's 2016 Constitution”, New Mandala, 5 February 2016, available at <http://asiapacific.anu.edu.au/newmandala/2016/02/05/liberties-and-rights-lost-under-thailands-2016-constitution/> (last visited 5 July 2017).

⁶⁶ “Thailand Unveils New Constitution Draft to Public”, Deutsche Welle, 29 March 2016, available at <http://www.dw.com/en/thailand-unveils-new-constitution-draft-to-public/a-19147871> (last visited 5 July 2017).

⁶⁷ “Thailand referendum: new constitution wins approval”, Al Jazeera, 7 August 2016, available at <http://www.aljazeera.com/news/2016/08/thailand-referendum-vote-favor-constitution-160807120506423.html> (last visited 5 July 2017).

continue to be more relaxation of unnecessary limitations." This presents an opportunity to revisit the need for further strengthening of protections for fundamental freedoms in the third UPR cycle and beyond.

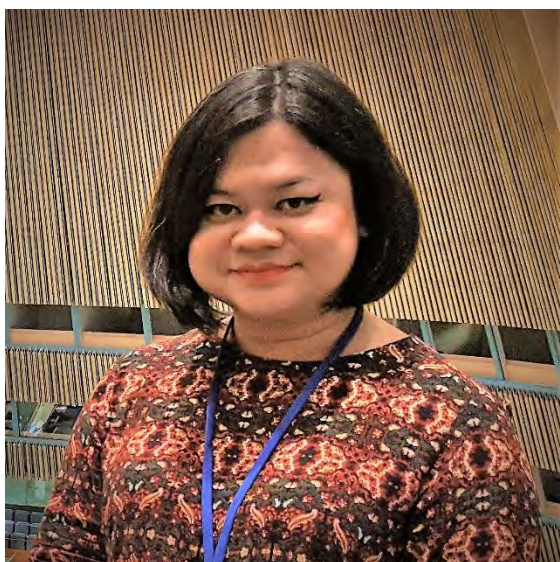
Recommendations

In the lead-up to the third UPR review of Thailand in April/May 2021:

- CSOs should actively engage in monitoring the implementation of those recommendations Thailand 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.
- CSOs and recommending states should work collaboratively to develop UPR recommendations for the third cycle that emphasise the benefit to Thailand of removing unnecessary limitations to, and strengthening the protection of, fundamental freedoms.

Thailand: LGBTIQ HRD Interview

Human Rights of LGBTIQ
Communities and HRDs:
Frontline Voices



Kath Khangpiboon, Founder, Thai Transgender Alliance

How did you become involved in LGBTIQ rights work?

I became interested in LGBT work because of my studies in social work, when I studied my Bachelor's degree. It was the first time I learned about the concept of gender. Before I studied and during my studies I didn't have any issues with my gender and I could do everything equally, but the problem is when I graduated, I sensed my difference — people treated me like the 'other' and

society's reaction strongly affected me. It was a turning point for me to want to work more for human rights and LGBT rights.

I did not go straight into LGBT work. I applied for a scholarship to train in social work, but my application was rejected, as the local government who are the funders of the scholarship said they could not support transgender people like me. It was the first time that I realised, as a transgender woman, I have a problem in society. This is why I became interested in being an activist.

When did you establish the Thai Transgender Alliance?

When I was studying social work, I studied transgender issues, and this is why I met a lot of transgender activists. I attended a lot of conferences and seminars about trans and LGBTI issues. Some of the transgender activists invited me to join as a working group member of the transgender community. After one year, we developed our community into a network, and we established the Thai Transgender Alliance. The Thai Transgender Alliance was founded in 2011.⁷⁶⁵

⁷⁶⁵ "Thai Transgender Alliance", Alturi, Website, available at <http://www.alturi.org/thai-transgender-alliance> (last visited 3 July 2017).

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

I see a lot of people who have a problem with social status in society. That is why if you are LGBTIQ under the middle class, your resources are limited, and that's why we see a lot of people who experience discrimination, because it's not only their identity or sexual diversity, but their social class. It is very important in Southeast Asia. If people from higher classes have problems, they may not talk about them because of their social status.

How would you overcome this challenge?

We need to work closer with the community; we need to talk more about gender-based discriminations. The civil society and the government need to work together to gather more data.

How have things have changed over the past few years regarding LGBTIQ rights?

Over the past 5 years, I have seen a lot of people talking about gender diversity in high society. Some people say the evidence of progress is that we can see a lot of the LGBT representatives in the media. A number of transgender actors are working at the peak of drama or theatre, as a lot of the topics focus on LGBTIQ issues. People say this is evidence of progress, but for me it is not. This does not show LGBTIQ people are accepted.

With the passing of the Gender Equality Act, have things changed legally and/or amongst civil society?

For me, I think I have seen only one side of the promotion of the Gender Equality Act⁷⁶⁶ – that the government is doing things. For me, it's not real though. I'm not sure this Act can help us. The rationale to develop this Act is not open for civil society to be involved and have a discussion about it. LGBT people have not been able to participate in the development of the Act. As you see in the law, some of the Act has limits, as there are exceptions to people not being able to discriminate, such as for religious or national security reasons.

I don't see practical changes, but I see more people talking about it, and LGBT people are proud of it, as they believe they can't be discriminated against, but they didn't read it or understand the meaning of the writing in the rules of the Act. Most people misunderstand the Gender Equality Act.

Does your government do enough to protect LGBTIQ rights?

We are not doing much with the politicians, as they are not permanent, because of the constant political changes. But we seek to work with the permanent staff and officers. For this year and the next five years, we focus a lot on working with the government staff to do some research projects or gender sensitivity projects, as we do with the Ministry of Defence to work on transgender military recruitment.

⁷⁶⁶ "Thailand Gender Equality Act", 21 September 2015, Human Rights Watch, available at <https://www.hrw.org/news/2015/09/21/thailand-gender-equality-act> (last visited 3 July 2017).

[hrw.org/news/2015/09/21/thailand-gender-equality-act](https://www.hrw.org/news/2015/09/21/thailand-gender-equality-act) (last visited 3 July 2017).

Do you think the UPR recommendations have an impact on Thailand? Do you think the recommendations lead governments to change policies to strengthen human rights protections?

The recommendations didn't talk much about gender identity and sexual orientation. But I think it is very good when we activists or those affected by the issues get together and draft issues affecting them, and discuss what is happening on the ground. It is really useful to have workshops to do this and to make the people understand where there are problems in society.

We will have another training with a UPR team to follow up the recommendations from the latest UPR when our government made submissions. For me, I think it cannot

change the government, to change the policies. The one thing that can change the policy is working with the permanent officers and staff of the government — working with them as partners.

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

Our work tries to change the attitudes of society so that they accept us. I think we need to get support from people who are not LGBT; we need to collaborate with other CSOs and the government. A lot of the successful stories come not from only working within our community, but we need to extend our concern and have sensitivity with other issues. For me, I really hope this cooperation will occur.

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.

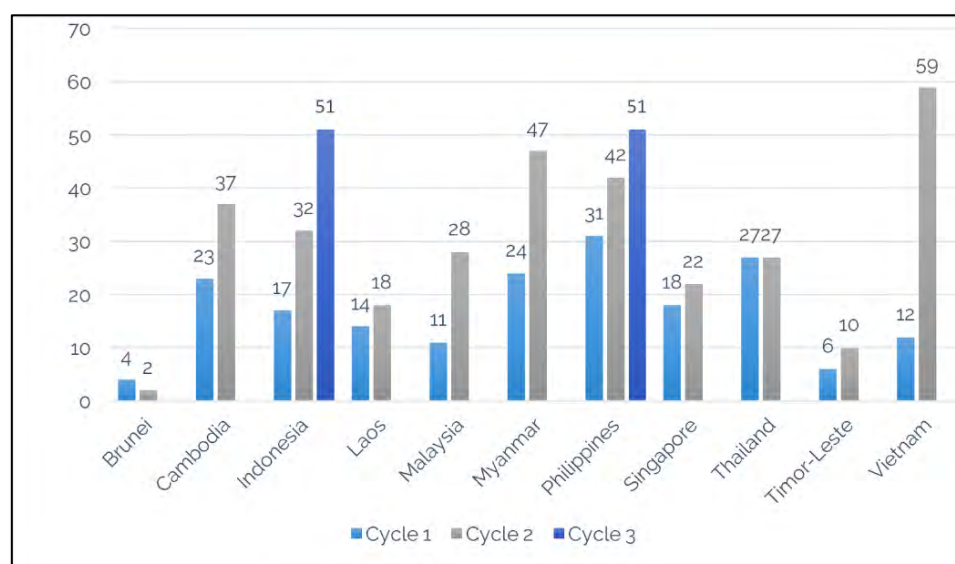


Figure 1: Southeast Asian Stakeholder UPR Submissions in Each Cycle

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/Files/Handler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsncLNPIYsTOQN5Sbrs%2f8hyEn2VHMCAZQ%2fCyDY96cYPxM8cQ8bbavViNnuV6YU3gyHlmioCM17RLf4esahJ5a1%2bxQTspR9eqkzThSr5nh9fhp> (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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