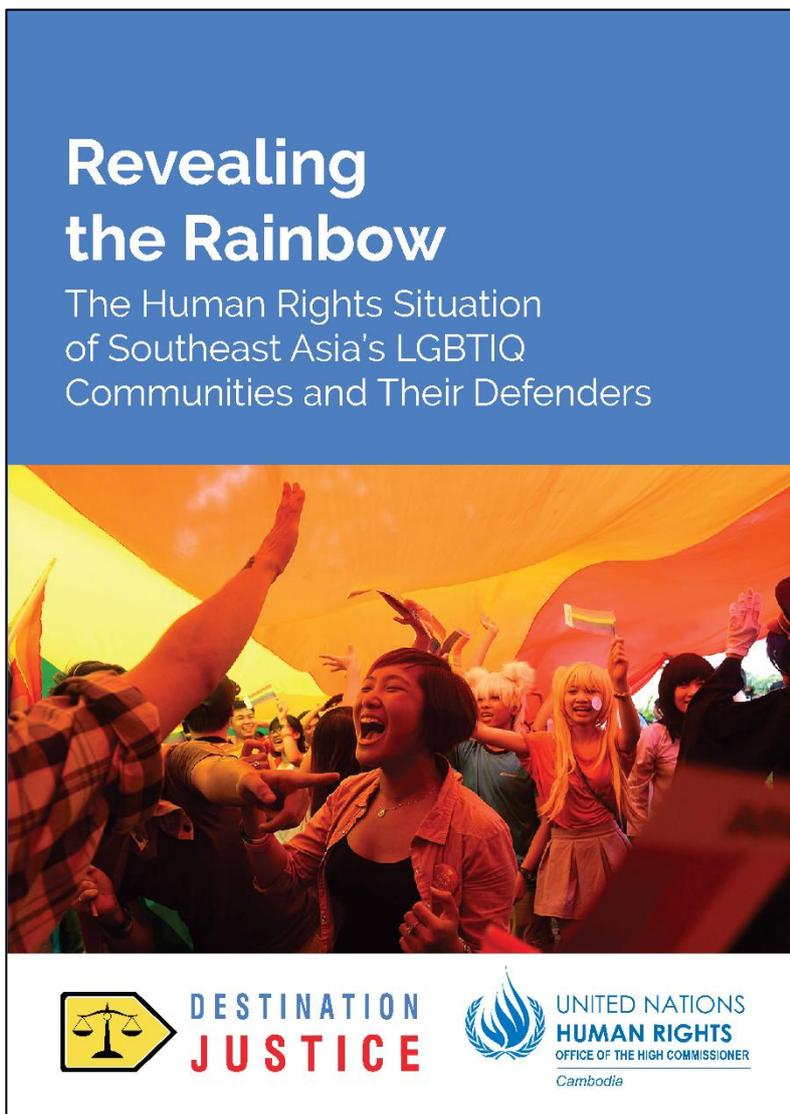


LGBTIQ Communities and Their Defenders
Country Information Pack:
The Philippines

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The Philippines: Country Profile

Human Rights of LGBTIQ Communities and HRDs: Situational Analysis

Introduction

UPR Cycles

First UPR Cycle: 11 April 2008

Second UPR Cycle: 29 May 2012

Third UPR Cycle: 8 May 2017

Fourth UPR Cycle: ~2021-2022

Issues concerning the lesbian, gay, bisexual, transgender, intersex, and queer (**LGBTIQ**) community and human rights defenders (**HRDs**) in the Republic of the Philippines (**Philippines**) were raised during all three of its Universal Periodic Review (**UPR**) cycles. The Philippines, moreover, has accepted a wide range of UPR recommendations it received, in particular in

relation to elimination of discrimination against its LGBTIQ community, increasing civil society organisation (**CSO**) involvement in the UPR process, and ensuring human rights training for State security forces. However, it has resisted recommendations in other areas, especially in relation to extrajudicial killings and specifically strengthening protections for HRDs.

This Country Profile sets out how on 20 September 2017 — following the Philippines' participation in the third UPR cycle in May 2017 — its Congress passed the SOGIE [sexual orientation, gender identity, and gender expression] Equality Act. This law outlaws a wide range of acts of discrimination on SOGIE grounds, making their commission punishable by fines and imprisonment. It marks a significant step forward in terms of the protection and equality of the Filipino LGBTIQ community. Other important milestones for Filipino LGBTIQ include the recognition of an LGBTIQ group as a political party, and the election of the first trans person as a Member of Parliament.

Nevertheless, causes for concern remain. The LGBTIQ community remains targeted not only for discrimination but violent attacks including murder. Moreover, a wider culture of extrajudicial

"I feel [the UPR has] an impact, but I think the impact may not be felt right away by the community. There are a lot of things to consider – lobbying, position of the government, the change of leadership. But yes, it really helps because the formulation of UPR is an instrument to unite different organisations, and not just trans or LGB organisations. The UPR alone, the formulation and writing the UPR, unites us."

Kate Montecarlo Cordova,
Founder and Chair, Association of
Transgender People in the Philippines (ATP)

killings leaves LGBTIQ people and in particular, their defenders, vulnerable, exacerbated by the Filipino government's reluctance to bolster laws protecting fundamental freedoms. The broader climate also appears to indicate that human rights in the Philippines are under threat, as exemplified by Congress's decision in September 2017 to cut the budget for the Commission on Human Rights to 1,000 pesos (or just under US\$20).¹

Following the Philippines third UPR and in the lead-up to its fourth UPR in 2021 or 2022, recommending States and civil society organisations (**CSOs**) have an opportunity to work with the Philippines on implementing recommendations the Philippines has accepted, and working to develop enhanced UPR recommendations that eliminate discrimination against the LGBTIQ community and provide greater protection to HRDs.

Past UPR Cycles for the Philippines

First UPR Cycle (11 April 2008)

National Report Filed:² The Philippines' national report for the first UPR was published on 7 March 2008. It did not mention the LGBTIQ community or LGBTIQ HRDs. It did, however, note the growing involvement of CSOs in human rights issues in the State, describing them as "robust and vocal" and playing an active role both as instruments of accountability and as partners in providing support services."³ The report also noted the establishment of human rights action centres designed to promote and protect human rights at the grassroots level.⁴

Stakeholders Submissions Made:⁵ The summary of the 31 stakeholders' submissions was published on 11 March 2008. Stakeholders expressed concern in relation to the lack of anti-discrimination laws for lesbians.⁶ Stakeholders also raised concern as to the risk of extrajudicial killings, enforced disappearances, arbitrary arrests, ill-treatment and torture in police custody, and threats and acts of harassment against activists working in the field of women's rights or other cause-oriented groups.⁷

¹ Harriet Agerholm, "Philippines cuts its human rights budget to £15", *The Independent*, 13 September 2017, available at <http://www.independent.co.uk/news/world/asia/philippines-human-rights-budget-cut-rodriago-duterte-war-drugs-isis-marawi-a7944086.html> (last visited 23 November 2017).

² *National report submitted in accordance with paragraph 15(a) of the annex to Human Rights Council resolution 5/1: Philippines*, U.N. Doc. A/HRC/WG.6/1/PHL/1, 7 March 2008, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/Go8/114/11/PDF/Go811411.pdf?OpenElement> (last visited 1 July 2017).

³ First UPR cycle: *National Report*, Philippines, para. 21.

⁴ First UPR cycle: *National Report*, Philippines, para. 15.

⁵ *Summary of Stakeholders' submissions prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1: Philippines*, U.N. Doc. A/HRC/WG.6/1/PHL/3, 11 March 2008, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/Go8/115/72/PDF/Go811572.pdf?OpenElement> (last visited 1 July 2017).

⁶ First UPR cycle: *Stakeholders' Summary*, Philippines, para. 7.

⁷ First UPR cycle: *Stakeholders' Summary*, Philippines, paras. 8, 21.

First UPR Cycle for the Philippines: Recommendations Received

At its first UPR, held in April 2008, the Philippines received a number of recommendations directly relevant to HRDs, albeit not explicitly referring to those working with the LGBTIQ community, namely:

- To establish an organic legal framework for eliminating gender-based discrimination and promoting gender equality (Italy).
- To ensure that members of the security forces are trained on human rights and on their responsibility to protect human rights and HRDs (Canada).
- To completely eliminate torture and extrajudicial killings (Holy See), to intensify its efforts to carry out investigations and prosecutions on extrajudicial killings and punish those responsible (Switzerland), as well as to provide a follow-up report on efforts and measures to address extrajudicial killings and enforced disappearances (The Netherlands).
- While noting the involvement of civil society in the preparatory process of the national report, to fully involve civil society in the follow-up to the review (United Kingdom).

Source: *Report of the Working Group on the Universal Periodic Review: Philippines*, U.N. Doc. A/HRC/8/28, 23 May 2008, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/Go8/136/75/PDF/Go813675.pdf?OpenElement> (last visited 1 July 2017).

Comments Received; Response to Recommendations: The Philippines received specific comments from delegations during the UPR Interactive Dialogue concerning gender equality⁸ and reiterated its willingness to advance gender equality⁹ by accepting the recommendation from Italy.

The Philippines also renewed its commitment as a HRD itself to protect the rights of all its citizens¹⁰ and, in this sense, accepted the recommendations about the human rights training to protect HRDs and intensify the prosecution on extrajudicial killings.¹¹ However, it declined to provide a follow-up on measures to address extrajudicial killings, without development of

⁸ First UPR cycle: *Report of the Working Group*, Philippines, paras. 14-15, 17-18, 22-23, 25, 29, 31-32, 45, 53.

⁹ First UPR cycle: *Report of the Working Group*, Philippines, paras. 39, 57(a).

¹⁰ First UPR cycle: *Report of the Working Group*, Philippines, para. 57.

¹¹ First UPR cycle: *Report of the Working Group*, Philippines, paras. 58.2, 58.6(a)(b); *Report of the Working Group on the Universal Periodic Review: Philippines, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, U.N. Doc. A/HRC/8/28/Add.1, 25 August 2008, paras. 2(b), 2(e)-2(f), available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/Go8/161/72/PDF/Go816172.pdf?OpenElement> (last visited 1 July 2017).

its position.¹² Finally, the Philippines accepted the recommendation concerning the involvement of civil society in the UPR process.¹³

Second UPR Cycle (29 May 2012)

National Report Filed:¹⁴ The Philippines' national report for the second UPR was published on 19 March 2012. The report noted the growing involvement of CSOs in discussions regarding the rights of the LGBTIQ community¹⁵ as well as efforts to tackle extrajudicial killings, enforced disappearances, and torture through the establishment of monitoring mechanisms.¹⁶

Stakeholders Submissions Made:¹⁷ The summary of the 42 stakeholders' submissions was published on 12 March 2012. Three joint submissions, submitted by 14 CSOs, reported on human rights violations based on sexual orientation and gender identity.¹⁸ Stakeholders expressed concern over the attitudes of government officials towards the LGBTIQ community following the rejection on "moral grounds" of the application for registration of a political party.¹⁹ Lack of legal protection against discrimination on the basis of sexual orientation and gender identity, in particular in the workplace, was also raised.²⁰ CSOs urged the Philippines to enact an anti-hate crime law, with particular emphasis on the LGBTIQ community.²¹

Second UPR Cycle for the Philippines: Recommendations Received

In its second UPR, held in May 2012, the Philippines received a number of recommendations both directly and indirectly relevant to the LGBTIQ community, including its HRDs:

¹² First UPR cycle: *Report of the Working Group*, Philippines, para. 58.6(c); First UPR cycle: *Report of the Working Group, Addendum*, Philippines, para. 5.

¹³ First UPR cycle: *Report of the Working Group*, Philippines, para. 58.12; First UPR cycle: *Report of the Working Group, Addendum*, Philippines, para. 2(i).

¹⁴ National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Philippines, U.N. Doc. A/HRC/WG.6/13/PHL/1, 19 March 2012, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/123/16/PDF/G1212316.pdf?OpenElement> (last visited 1 July 2017).

¹⁵ Second UPR cycle: *National Report*, Philippines, para. 87.

¹⁶ Second UPR cycle: *National Report*, Philippines, para. 25.

¹⁷ Summary of Stakeholders' submissions prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Philippines, U.N. Doc. A/HRC/WG.6/13/PHL/3, 12 March 2012, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/119/16/PDF/G1211916.pdf?OpenElement> (last visited 1 July 2017).

¹⁸ Second UPR cycle: *Stakeholders' Summary*, Philippines, paras. 28, 50, 82.

¹⁹ Second UPR cycle: *Stakeholders' Summary*, Philippines, para. 12; Commission on Human Rights of the Philippines, 'Submission to the Universal Periodic Review – Philippines', June 2012, para. 35, available at http://lib.ohchr.org/HRBodies/UPR/Documents/session13/PH/CHRP_UPR_PHL_S13_2012_CommissiononHumanRightsofthePhilippines_E.pdf (last visited 25 July 2017).

²⁰ Second UPR cycle: *Stakeholders' Summary*, Philippines, para. 28.

²¹ Second UPR cycle: *Stakeholders' Summary*, Philippines, para. 27; Philippine Alliance of Human Rights Advocates, "Joint Civil Society Report for the 2nd Cycle Universal Periodic Review", 28 November 2011, pp. 6-7 available at http://lib.ohchr.org/HRBodies/UPR/Documents/session13/PH/JS11_UPR_PHL_S13_2012_JointSubmission11_E.pdf (last visited 25 July 2017); *Submission of the Civil Society Organizations Coalition Report on the situations of Lesbian, Gay, Bisexual and Transgender persons in the Philippines for the 13th Session of the UN Universal Periodic Review For the Philippines*, 21 May - 1 June 2011, pp. 6-7, available at

- Consider establishing comprehensive legislation to combat discrimination faced by LGBT people (Argentina).
- Continue efforts to tackle extrajudicial killings and enforced disappearances to strengthen the rule of law and respect for human rights (Singapore, Republic of Korea, Trinidad and Tobago, Germany, Sweden, United States of America, Timor-Leste, Austria).
- Take necessary measures to provide adequate protection to journalists and HRDs (France).
- Continue human rights education and training programmes, including for security and law enforcement agencies (Egypt, Morocco, France, Japan, United States of America, Venezuela (Bolivarian Republic of)).
- Enhance cooperation with the Special Rapporteur on the situation of HRDs including by accepting the mandate holder's requests to visit the country (Ireland).

Source: *Report of the Working Group on the Universal Periodic Review: Philippines*, U.N. Doc. A/HRC/21/12, 9 July 2012, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/151/22/PDF/G1215122.pdf?OpenElement> (last visited 1 July 2017).

Comments Received; Response to Recommendations: In response to the recommendations received, the Philippines advised that the State had "embarked on a number of initiatives to protect and promote the rights of lesbian, gay, bisexual and transgender people."²² The Philippines noted the recommendation concerning the warning about discrimination faced by LGBT people, explaining that "[a]n Anti-Discrimination Bill that includes specific provisions that address discrimination faced by LGBTs is currently pending in the Philippine Congress."²³

The Philippines received specific comments from delegations during the UPR Interactive Dialogue concerning, among other things, efforts to address extrajudicial killings and enforced disappearances.²⁴ Representatives of the government responded by reiterating the government's commitment to consider such cases as priority cases.²⁵ The Philippines accepted every other recommendation it received in the second UPR cycle.

http://lib.ohchr.org/HRBodies/UPR/Documents/session13/PH/JS13_UPR_PHL_S13_2012_JointSubmission_13_E.pdf (last visited 25 July 2017).

²² Second UPR cycle: *National Report*, Philippines, para. 94.

²³ *Report of the Working Group on the Universal Periodic Review: Philippines, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, U.N. Doc. A/HRC/21/12/Add.1, 19 September 2012, para. 4, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/168/13/PDF/G1216813.pdf?OpenElement> (last visited 1 July 2017).

²⁴ Second UPR cycle: *Report of the Working Group*, Philippines, paras. 34, 37, 40, 43-44, 46, 51, 57-58, 63, 70, 75-76, 78, 104.

²⁵ Second UPR cycle: *Report of the Working Group*, Philippines, paras. 80-84.

Third UPR Cycle (8 May 2017)

National Report Filed:²⁶ The Philippines' national report for the third UPR was published on 1 May 2017. The report noted that the Philippines already had anti-discrimination laws and policies in place protecting LGBTIQ people²⁷ and added that a "bill prohibiting discrimination on the basis of SOGIE aimed to ensure equal treatment in the workplace, schools, commercial establishments, and government offices was currently pending before Congress."²⁸ The report also described how the Philippines "continues its conduct of seminars [education programs on the Anti-Torture Law and other human rights violations], workshops and other judicial and legal education programs for justices, judges, court personnel and lawyers."²⁹ However, the report did not mention cases concerning HRDs.

Stakeholders Submissions Made:³⁰ The summary of the 53 stakeholders' submissions was published on 27 February 2017. Stakeholders expressed concern about the discrimination endured by LGBTIQ people because of the absence of laws "enabling them to change their name and civil status"³¹ or "recognising same-sex partnership."³² They further noted the absence of constitutional protections for the LGBTIQ community and reported that LGBTIQ were subjected to hate speech, harassment and bullying.³³ Stakeholders also reported numerous cases of attacks against and extrajudicial killing of HRDs³⁴ and "excessive use of force by law enforcement agencies when dispersing peaceful assemblies."³⁵

Third UPR Cycle for the Philippines: Recommendations Received

In its third UPR, held in July 2017, the Philippines received a number of recommendations relevant to the LGBTIQ community and the HRD situation:

- Take action to eradicate violence and discrimination against women and LGBTI persons (Mexico).
- Consolidate its recent progress through implementation of comprehensive anti-discrimination legislation covering sex and sexual orientation, gender identity and intersex status (Australia).

²⁶ *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Philippines*, U.N. Doc. A/HRC/WG.6/27/PHL/1, 1 May 2017, available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/PHIndex.aspx> (last visited 1 July 2017).

²⁷ Third UPR cycle: *National Report*, Philippines, para. 96.

²⁸ Third UPR cycle: *National Report*, Philippines, para. 98.

²⁹ Third UPR cycle: *National Report*, Philippines, paras. 141, 155.

³⁰ *Summary of Stakeholders' submissions prepared by the Office of the High Commissioner for Human Rights: Philippines*, U.N. Doc. A/HRC/WG.6/27/PHL/3, 27 February 2017, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/046/69/PDF/G1704669.pdf?OpenElement> (last visited 1 July 2017).

³¹ Third UPR cycle: *Stakeholders' Summary*, Philippines, para. 23.

³² Third UPR cycle: *Stakeholders' Summary*, Philippines, para. 24.

³³ Third UPR cycle: *Stakeholders' Summary*, Philippines, paras. 22, 25-26.

³⁴ Third UPR cycle: *Stakeholders' Summary*, Philippines, paras. 63-64.

³⁵ Third UPR cycle: *Stakeholders' Summary*, Philippines, para. 67.

- Eliminate discriminatory stereotypes based on gender (Honduras).
- Take all necessary measures to protect the life of HRDs (Germany, Slovakia, Norway, Poland, Ukraine, United Kingdom of Great Britain and Northern Ireland) in particular regarding enforced disappearances and extrajudicial killings (Estonia, Denmark).
- Provide adequate resourcing to the Commission on Human Rights and allow it to investigate alleged extrajudicial killings (Australia).
- Take measures to put an end to extrajudicial, summary or arbitrary executions and prosecute the perpetrators of these acts (France, Costa Rica, Spain, Poland, Netherlands, Lithuania, Canada, Germany, Chile, Australia).
- Take steps to create and maintain in law and in practice a safe and enabling environment for civil society and HRDs (Ireland).
- Establish an effective protection system for HRDs and journalists and ensure the free exercise of their rights to freedom of opinion, expression and association (Luxembourg).
- Redouble efforts to protect freedom of opinion and belief and to promote media freedom and the rights of journalists (Botswana, Lebanon).
- Ensure human rights training for State security forces in order to enhance their capacity to protect human rights (Ghana).

Source: *Report of the Working Group on the Universal Periodic Review: Philippines*, U.N. Doc. A/HRC/36/12, 18 July 2017, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/194/21/PDF/G1719421.pdf?OpenElement> (last visited 13 November 2017).

Comments Received; Response to Recommendations: During the UPR Interactive Dialogue, the Philippines received comments welcoming its “efforts to prohibit discrimination based on sexual orientation and gender-identity.”³⁶ The Philippines also stressed that “Filipinos longed for the rule of law, equality and respect for the human rights of all people regardless of faith, social status, sexual orientation, age, disabilities, ethnicity, or whether they are from urban or rural areas,” and that there were State measures in place “that addressed discrimination and hate crimes, including on the grounds of sexual orientation and gender identity.”³⁷

The Philippines only noted the recommendations concerning the warning about discrimination faced by LGBTIQ people,³⁸ with the exception of the recommendation from Mexico

³⁶ Third UPR cycle: *Report of the Working Group*, Philippines, paras. 29, 117.

³⁷ Third UPR cycle: *Report of the Working Group*, Philippines, paras. 6, 72.

³⁸ *Report of the Working Group on the Universal Periodic Review: Philippines, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, U.N. Doc. A/HRC/36/12/Add.1, 19 September 2017, para. 6, available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/PHIndex.aspx> (last visited 13 November 2017).

concerning the eradication of the violence against women and LGBTI persons.³⁹ The Philippines accepted this recommendation, although it did not mention LGBTIQ people in its acceptance.⁴⁰

Various countries expressed concern with the recent high number of attacks on HRDs and extrajudicial killings in the Philippines.⁴¹ During the UPR Interactive Dialogue, government representatives responded that critics and media “deliberate[ly] attempt to include all homicides related to the campaign against illegal drugs as extrajudicial killings and to say that they were State-sponsored, which was not true”⁴² and explained that “although deaths arising from law enforcement operations were presumed to be legitimate, they were automatically investigated” nevertheless.⁴³ In this way, the Philippines noted all the recommendations on those attacks as on the protection of HRDs,⁴⁴ although it did not formally accept them.⁴⁵

The Philippines did, however, accept the recommendation for ensuring human rights training for State security.⁴⁶ At the same time, however, it merely noted without accepting recommendations about the protection of freedom of opinion, expression and association.⁴⁷

Situation of the LGBTIQ Community and its HRDs in the Philippines

Right to Equality and Non-Discrimination

Public Opinion: A 2013 survey conducted by the Pew Research Center shows that 73% of Filipinos believe that homosexuality should be accepted by society.⁴⁸ However, while the Philippines is ranked among the most LGBTIQ-friendly countries in the world, Filipino LGBTIQ HRDs questioned the results of this survey, claiming that the apparent acceptance of homosexuality may well only be a “veiled tolerance [...] centered around stereotypes.”⁴⁹ This is illustrated by the reprimands faced by gay and lesbian people in the military if they display “gay behaviour.”⁵⁰

³⁹ Third UPR cycle: *Report of the Working Group*, Philippines, para. 133.126.

⁴⁰ Third UPR cycle: *Report of the Working Group, Addendum*, Philippines, para. 5.

⁴¹ Third UPR cycle: *Report of the Working Group*, Philippines, paras. 41, 53, 57, 78.

⁴² Third UPR cycle: *Report of the Working Group*, Philippines, para. 8.

⁴³ Third UPR cycle: *Report of the Working Group*, Philippines, para. 8.

⁴⁴ Third UPR cycle: *Report of the Working Group, Addendum*, Philippines, para. 6.

⁴⁵ This is standard diplomatic language commonly used by States under review to declare that they do not accept a given recommendation.

⁴⁶ Third UPR cycle: *Report of the Working Group, Addendum*, Philippines, para. 5.

⁴⁷ Third UPR cycle: *Report of the Working Group, Addendum*, Philippines, para. 6.

⁴⁸ “The Global Divide on Homosexuality: Greater Acceptance in More Secular and Affluent Countries”, Pew Research Center, 4 June 2013, p. 1, available at <http://www.pewglobal.org/files/2013/06/Pew-Global-Attitudes-Homosexuality-Report-FINAL-JUNE-4-2013.pdf> (last visited 25 July 2017).

⁴⁹ Patricia Denise Chiu, “Pinoys are gay friendly? Only on paper, says LGBT activist”, GMA news, 11 June 2013, available at <http://www.gmanetwork.com/news/story/312328/news/nation/pinoys-are-gay-friendly-only-on-paper-says-lgbt-activist> (last visited 25 July 2017).

⁵⁰ Dona Z. Pazzibugan & Frances Mangosing, “PMA now open to gays but don’t show it”, Inquirer, 11 July 2012, available at <http://newsinfo.inquirer.net/226686/pma-no-ban-on-gay-lesbian-enrollees> (last visited 25 July 2017).

Legal Protection: On 20 September 2017, the Philippines Congress unanimously passed the SOGIE Equality Act.⁵¹ This bill, proposed and initially approved in principle in 2015,⁵² built on a series of failed attempts to enact specific protections for members of the LGBTIQ community since a 1995 attempt at a law recognising a “third sex.”⁵³

The SOGIE Equality Act introduces offences — punishable by fines and up to six years' imprisonment — for a wide range of discriminatory acts based on SOGIE grounds. Punishable acts include those in relation to equal access to public services; employment; education; health services; various forms of harassment (such as by law enforcement officers, or forced “outing” of LGBTIQ people); and child protection.⁵⁴ Another version of the SOGIE Equality Act⁵⁵ remains pending before the Philippines Senate.⁵⁶

The passage of the SOGIE Equality Act represents the Philippines' successful fulfilment of UPR recommendations it has previously accepted, namely Italy's recommendation during the first UPR that the Philippines establish an organic legal framework for eliminating gender-based discrimination and promoting gender equality, and Argentina's recommendation during the second UPR that the Philippines establish comprehensive legislation to combat discrimination faced by LGBT people. This act also goes towards fulfilment of Mexico's recommendation during the third UPR that the Philippines take action to eradicate violence and discrimination against women and LGBTI persons, despite the fact that the Philippines' acceptance of this recommendation did not specifically mention LGBTIQ people.

Right to Security of the Person

Extrajudicial Killings: Consistent with various delegations' concerns at the first, second and third UPRs,⁵⁷ the Philippines still struggles with addressing extrajudicial killings and, indeed, holds the highest record of hate crimes against the transgender community in ASEAN, with 43

2017); “PMA: No cross-dressing for gay, lesbian cadets”, ABS-CBN News, 11 July 2012, available at <http://news.abs-cbn.com/nation/07/10/12/pma-no-cross-dressing-gay-lesbian-cadets> (last visited 25 July 2017).

⁵¹ “House approves anti-discrimination bill on 3rd and final reading”, CNN Philippines, 23 September 2017, available at <http://cnnphilippines.com/news/2017/09/20/House-approves-anti-discrimination-bill-3rd-and-final-reading.html> (last visited 23 November 2017).

⁵² Fritzie Rodriguez, “The long road to an LGBT anti-discrimination law”, Rappler, 29 July 2015; “House panel OKs bill on sex discrimination”, The Manila Times, 25 June 2015, available at <http://www.manilatimes.net/house-panel-oks-bill-on-sex-discrimination/195063/> (last visited 25 July 2017).

⁵³ Rambo Talabong, “Proponents hope to pass anti-discrimination bill in 17th Congress”, Rappler, 30 June 2016, available at <http://www.rappler.com/move-ph/issues/gender-issues/137968-anti-discriminatory-bill-17th-congress> (last visited 25 July 2017).

⁵⁴ “House approves anti-discrimination bill on 3rd and final reading”, CNN Philippines, 23 September 2017.

⁵⁵ 17th Congress of the Republic of The Philippines, “An Act Prohibiting Discrimination on the Basis of Sexual Orientation and Gender Identity or Expression (SOGIE) and Providing Penalties Therefor”, Senate Bill 935, Explanatory Note, 1 August 2016, p. 1, available at <http://www.senate.gov.ph/lisdata/2449221076!.pdf> (last visited 25 July 2017).

⁵⁶ “House approves anti-discrimination bill on 3rd and final reading”, CNN Philippines, 23 September 2017.

⁵⁷ First UPR cycle: *Report of the Working Group*, Philippines, paras. 19, 24, 26, 28-29, 39, 41, 46-47, 52, 58.6; Second UPR cycle: *Report of the Working Group*, Philippines, paras. 129.12-129.16, 129.28-129.29, 129.35, 131.32; Third UPR cycle: *Report of the Working Group*, Philippines, paras. 133.43, 133.86, 133.100, 133.102-133.111, 133.116-133.119, 133.141-133.149, 133.152, 133.154, 133.173.

transgender and gender-diverse persons murdered between 2008 and 2016.⁵⁸ Moreover, with the presidency of Duterte, CSOs such as the International Peace Observers Network (**IPON**) have noted a stark increase in extrajudicial killings related to the “war on drugs” and have expressed concerns that these killings will be extended to HRDs and other activists,⁵⁹ a concern which is exacerbated by the Filipino Congress’s decision in September 2017 to slash the budget for the Philippines’ Commission on Human Rights.⁶⁰

High-Profile Cases: On 23 March 2015, the trial of U.S. Marine Joseph Scott Pemberton for the murder of Filipina transwoman Jennifer Laude commenced, with reporters being banned from the courtroom⁶¹ and one of the lawyers for the family barred from representing them in the criminal aspects of the case.⁶² Initially sentenced to 12 years’ imprisonment, Pemberton saw his sentence reduced to 10 years’ imprisonment on 29 March 2015.⁶³ A few weeks after the murder of Jennifer Laude, another Filipina transwoman, Mary Jo Añonuevo, was found dead after she was stabbed 33 times on 21 October 2014.⁶⁴

Activists reacted to the murders — in particular to the highly publicised case of Jennifer Laude — with protests and statements hoping that the media attention would start “a slow movement toward bringing transgender issues to the mainstream.”⁶⁵ It was also stated that while the transgender community was visible in the Philippines, violence against them was not discussed.⁶⁶

Right to Participation in Public Life

Participation in Elections: In 2009, the LGBTIQ group Ang Ladlad filed an application to become an accredited political party in order to run in the 2010 elections.⁶⁷ The group was

⁵⁸ “Trans Murder Monitoring Update: Trans day of visibility 2017”, Transrespect versus Transphobia Worldwide, 2017, p. 1, available at http://transrespect.org/wp-content/uploads/2017/03/TvT_TMM_TDoV2017_Tables_EN.pdf (last visited 25 July 2017).

⁵⁹ “One year Rodrigo Duterte: A dark chapter for human rights?”, International Peace Observers Network (IPON), 30 June 2017, p. 1, available at http://www.ipon-philippines.info/fileadmin/user_upload/20170630_Press_Release_One_Year_Duterte.pdf (last visited 25 July 2017).

⁶⁰ Harriet Agerholm, “Philippines cuts its human rights budget to £15”, The Independent, 13 September 2017.

⁶¹ Allan Macatuno, “PNP expert: Laude strangled, drowned”, Inquirer, 5 May 2015, available at <http://globalnation.inquirer.net/122413/pnp-expert-laude-strangled-drowned> (last visited 25 July).

⁶² Rserveen, “Trial Begins in the Killing of Jennifer Laude”, Dayli Kos, 25 March 2015, available at <http://www.dailykos.com/story/2015/03/24/1373040/-Trial-begins-in-the-killing-of-Jennifer-Laude#> (last visited 25 July 2017).

⁶³ AC Nicholls, “Court affirms Pemberton’s conviction but reduces sentence to up to 10 years”, CNN Philippines, 4 April 2016, available at <http://cnnphilippines.com/news/2016/04/03/joseph-scott-pemberton-jennifer-laude-olongapo-regional-trial-court-decision-downgraded.html> (last visited 25 July 2017).

⁶⁴ Lexie Cannes, “Second Philippines transgender murder fuels additional community outrage”, Lexie Cannes State of Trans, 31 October 2014, available at <https://lexiecannes.com/2014/10/31/second-philippines-transgender-murder-fuels-additional-community-outrage/> (last visited 25 July 2017).

⁶⁵ Per Liljas, “Philippine Transgender Murder Becomes a Rallying Point for LGBT Rights”, Time Magazine, 24 October 2014, available at <http://time.com/3536215/philippines-transgender-murder-jennifer-laude-lgbt-rights/> (last visited 25 July 2017).

⁶⁶ Per Liljas, “Philippine Transgender Murder Becomes a Rallying Point for LGBT Rights”, Time Magazine, 24 October 2014.

⁶⁷ “In the Matter of the Petition for Registration of Ang Ladlad LGBT Party for the Party-List System of Representation in the House of Representatives”, Commission on Elections of the Philippines (Second

originally denied accreditation by the Commission on Elections because the group “tolerates immorality which offends religious beliefs.”⁶⁸ On 8 April 2010, the Supreme Court of the Philippines held that Ang Ladlad had established its qualifications to participate in the party-list system, and that the moral objection offered by the Commission on Elections was not a limitation imposed by law.⁶⁹ Consequently, the Supreme Court overturned the Commission’s decision and marked a victory for LGBTIQ HRDs and the LGBTIQ community.

First Transgender Member of Parliament: Another triumph for LGBTIQ HRDs and the LGBTIQ community came with the election to the Filipino Congress in May 2016 of Geraldine Roman, the Philippines’ first openly transgender politician.⁷⁰ While Roman’s campaign faced mockery from her opponents, she ultimately won election to public office.

Conclusion

Since its first UPR cycle, the Philippines has shown a receptiveness to many recommendations it has received from other delegations in relation to issues relevant to its LGBTIQ community and its defenders. This does not extend to the issue of extrajudicial killings, however, with representatives of the government notably pushing back during the recent third UPR on this issue, and also failing to support recommendations that the Philippines bolster its protection of various fundamental freedoms.

Nevertheless, since the outset of the Philippines’ participation in the UPR process, there has been noted advancement in the area of LGBTIQ protection. Following two decades of work, the SOGIE Equality Act that was passed in September 2017 represents a potential watershed moment for the LGBTIQ community. In 2010, the Supreme Court upheld the right of the LGBTIQ group Ang Ladlad to be recognised as a political party, while in 2016, Geraldine Roman became the first transgender person to be elected as a Member of Parliament.

It remains to be seen whether these milestones will impact on the lived reality for Filipino LGBTIQ people. Violence against them, including extrajudicial killings, remaining an unfortunate reality. Similarly, the ongoing extrajudicial killings and lack of protection of fundamental freedoms means that HRDs are increasingly vulnerable.

Division), 11 November 2009, available at http://www.sxpolitics.org/wp-content/uploads/2009/11/spp_09_2281.pdf (last visited 25 July 2017).

⁶⁸ “In the Matter of the Petition for Registration of Ang Ladlad LGBT Party for the Party-List System of Representation in the House of Representatives”, Commission on Elections of the Philippines (Second Division), 11 November 2009.

⁶⁹ *Ang Ladlad v. Commission on Elections (COMELEC)*, Supreme Court of the Philippines, 8 April 2010, available at <http://sc.judiciary.gov.ph/jurisprudence/2010/april2010/190582.htm> (last visited 25 July 2017).

⁷⁰ Romil Patel, “Meet Geraldine Roman, Philippines’ first transgender Congress politician with ‘a beautiful message””, International Business Times, 14 May 2016, available at <http://www.ibtimes.co.uk/meet-geraldine-roman-philippines-first-transgender-congress-politician-beautiful-message-1559968> (last visited 25 July 2017).

Recommendations

Following the third UPR review of the Philippines in May 2017 and in the lead-up to the Philippines' fourth UPR review in 2021 or 2022:

- CSOs should actively engage in monitoring the implementation of those recommendations the Philippines accepted during the first three 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 Philippines that focus on eliminating discriminatory practices against the LGBTIQ community; and on strengthening legal protections for HRDs, in particular, through protection of the exercise of fundamental freedoms.

The Philippines: LGBTIQ HRD Interview

Human Rights of LGBTIQ
Communities and HRDs:
Frontline Voices



**Kate Montecarlo Cordova,
Founder and Chair,
Association of Transgender
People in the Philippines (ATP)**

When did you begin your activism and how did you become involved in lesbian, gay, bisexual, transgender, intersex, queer (LGBTIQ) rights work?

Currently, I do trans advocacy work but I work as a full-time employee in a US financial institution in the Philippines as a Unit Manager.

While full-time in my job as a Unit Manager, it also seems that I work full-time as a transgender activist due to the responsibilities I have as a Founding Chair of

the Association of Transgender People in the Philippines (ATP) and the issues that involve transgender community.

It all began when I felt a little bit stressed at work and I wanted a little bit of fresh air. So, I looked for something that would give me some fun but at the same time fun that empowers me and would lead to personal development and growth. Then a friend of mine introduced me to a transgender support group in 2011. That was the time I learned the concept of transgender phenomenon.

A couple of months after that, I was appointed as Vice-President. I was hesitant at first, because initially, my purpose was just to look for something to do during my rest days. However, it was explained to me that as a Vice-President, my task focuses on organisational management and people empowerment. I accepted the offer, thinking that I could be of help to the organisation while leveraging my leadership and managerial skills.

Being in the organisation and having the position, it exposed me to the different facets of transgender advocacy like HIV/AIDS [Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome] issues, transgender rights issues, sexual and reproductive health issues as well as the psychological well-being of the transgender people. Then, something

unexpected happened; the group faced a big organisational crisis and that demanded immediate elections.

Seeing the complexities, I did not want to run; however a friend told me again that the organisation needed me, in particular because I could help with structuring and that, after that I could reconsider stepping down. In the name of advocacy and love of service, I was convinced to run for re-election.

I was elected. Greater responsibilities, more exposures and enhanced knowledge in transgender issues are what I got. I realised then that the community needs a voice. That the community needs love and care. That the community must be heard. And to be heard, the voice must be loud. That to be loud, it needs the synergy of the community members. That there's a need for unity instead of division.

So, I thought of creating a website that would serve as a repository of transgender documents, photos, events, etc., of all transgender organisations in the Philippines (at that time there was none), which would also serve as a reference of the people. I called different trans leaders from different trans organisations and I introduced it to them. Initially, we had an agreement to create an alliance so we can calibrate the issues we need to prioritise. However, we encountered some challenges when it comes to schedule and leaders were busy doing their respective priorities. It was very challenging. Because of the challenge to gather trans leaders, I decided to convert it to a trans organisation dealing with hardcore trans issues like human rights, HIV/AIDS,

trans health, employment, community mobilisation and empowerment of trans leaders. That is how The Association of Transgender People in the Philippines (ATP) was conceived.

Prior to my involvement in the transgender activism, I had been immersed in the different transgender communities in the Philippines. I joined trans beauty pageants for a decade, before I moved to Japan where I worked for 8 years as an entertainer. During that time, every trans woman in the Philippines dreamed to work in Japan — where they earn not just money but also earning respect, love and care from Japanese men. The world of beauty pageant and the world of entertainment in Japan are two worlds that trans people would like to work in. I was with the community my whole life; so, when I joined the corporate world, everything was new to me.

After having worked for many years in the corporate world, away from the community, I changed a lot and it took time to get used to the trans world again.

Notwithstanding the stress and the responsibilities related to my position as chair of a hardcore transgender organisation, composed of transmen and transwomen, I enjoyed my work because it is fulfilling to make people smiling and happy; it is fulfilling to help and empower others. It's satisfying to know that more and more people of transgender experience are getting familiar of their rights and getting stronger to stand for their rights. It is equally satisfying to see cisgender men and women beginning to understand the issues of trans people and their number supporting our rights is getting

bigger. I was very pleased to see the community is getting stronger and different government agencies, private companies, local government units, NGOs, etc are getting familiar with our needs.

Now, before I know it, I am already into transgender activism. But now, I am more focus on community organisation and trans leadership empowerment.

What have been the biggest challenges you've faced in advocating for LGBTIQ rights as a human rights defender (HRD)?

One of the biggest challenges is involving the community. I recognise there are other challenges: funding, connection with government, etc. But I always believe that if the community really works hard and the community is really involved and the community itself has a deeper understanding of what we are fighting for, then it would be easier for transgender advocacy to progress naturally. Within the trans community, which is very diversified, there is not enough understanding of what are our rights. Transgender persons often suffer internalised stigma and subconsciously face internal transphobia — believing that we are lucky enough because we are tolerated. In our daily life, transgender discrimination still reigns supreme due to cultural and religious influence — classifying cis-hetero-normative gender binary as the order of nature and deviation from this, is an abomination to God. Philippines is one of the top countries in Asia when it comes to trans murder incidents. While the government remains silent about this, the community

sluggishly act on it. The community remains immobilised.

As of now, the challenge we have is the lack of human resources: there are a lot of highly educated and talented trans people in the Philippines, but these people are so busy with their personal lives. Those who have time to engage in advocacy don't have money to attend meetings. I think the greatest challenge is how to awake the members of the community from a slumber of indifference and apathy so they get involved in strengthening the assertion of our legal rights. Our voices, if united, are strong enough to shape the society. We have the numbers. We have the talent. We all have what it takes to make a difference. What we don't have is the consciousness to act in unity to realise the significance of our human rights, our legal rights.

What have been the most successful strategies or techniques you've used to create positive change?

Community mobilisation and leadership empowerment are key positive changes in trans advocacy. It is really connecting and engaging with the whole community through online (e.g. Facebook) and in-person activities. Raising awareness about the difficulties transgender persons endure in our society — from the impossibility to use public toilets without simply being identified as a man or a woman to the lack of access to education — is very important to create change.

For instance, our organisation was able to hold a big event — IDAHOT (the International Day against Homophobia, Transphobia and

Biphobia] — even without funding. We didn't spend anything at all. Our organisation had no money. However, we were able to gather a big number of transgender beauty queens, from past to present to parade celebration of the [IDAHOT]. It was a huge success. It was just the cooperation of the members of ATP in collaboration of the community. Our ATP members joined hands together from conceptualising to implementation. Our members did all the necessary requirements from securing permits to security implementation.

A good strategy I consider a success is really letting the community understand what the advocacy is for. Compared to three or four years ago, even the educated ones did not understand what transgender meant. People thought that surgery meant transgender. Now the community, even in the provinces of the Philippines, know what transgender means. They may not have the full knowledge and understanding of transgender advocacy but by just being aware of their rights and ready to commit when necessary, is a sign of progress. No one can help us, except us.

Working with the different organisations, private, government or NGOs also helps a lot. I believe having a good ally is equally important.

Again, the key is the community. Our community is composed of people from different levels of the society. If our community is tapped and is aware of the essence of what we are fighting for, we can simultaneously affect the different layers of our society — from the familial level to the

highest position in the government. And the effect is enormous.

What do you think about the election of Geraldine Roman to the government of the Philippines?

Her victory is a sign of good progress that gives our community hope — that there's a chance... Her election was not because of our advocacy though. She came from a family of politicians, her father had been a congressman, so whether she was transgender or not, it did not matter. However, it still promotes visibility. One good thing about her being in a position is her knowledge to trans issues. She can be a voice of LGBT people in Congress. She can also serve as an inspiration to the young ones — not to lose hope. Geraldine being in Congress is a big help. Her mere presence alone can somehow "sensitise" government officials and employees.

Her victory is our success. I would love to see her occupying the Senate in the near future.

Does your government do enough to protect LGBTIQ rights?

That is a very hard question, because I cannot speak for the government. But as we speak, there are no laws which protect LGBT rights, but that is debatable. We cannot also conclude that the Philippine government is detrimental to our rights, because our government does not criminalise any acts of homosexuality, or anything against the LGBT community. We are also positive that an anti-discrimination policy will be passed during the Duterte administration. In the

name of advocacy, we are far behind. There are some laws that can be used against us. An example is the anti-clerical law, which is a subtle anti-trans law. So speaking of transgender health, I can say our government does not protect us. We do not have anything that promotes the health and general well-being of transgender people. Our sexual and reproductive health needs are not addressed. There are not medical doctors specialising in trans healthcare in the Philippines.

To add, trans murder incidents in the Philippines are rampant. In fact, there's one trans woman who was killed by a US Marine which became sensationalised yet the government did not say anything about protecting transgender life, at least transgender rights. We need new politicians and lawmakers. We need younger political figures to occupy government positions to speed up the progress of what we are fighting for.

Do you think the Universal Periodic Review (UPR) recommendations have an impact on the Philippines?

I feel there is an impact, but I think the impact may not be felt right away by the community. There are a lot of things to consider: lobbying, position of the government, the change of leadership. But yes, it really helps because the formulation of UPR is an instrument to unite different organisations, and not just trans or LGB organisations. The UPR alone, the formulation and writing the UPR, unites us.

UPR recommendations is a way to pressure the government. Other countries are watching us...

Does civil society know how to use the UPR recommendations for advocacy in the Philippines?

Yes and no. While there are organisations involved in crafting documents for UPR and know how to use it, there are still a lot and a huge number of organisations which don't. So I think, better coordination, connection and unity will help. This instrument is very useful to advance our advocacy.

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

I am positive about the future of our LGBTIQ people in the Philippines. However, we also believe that our future is affected by the progress in the United States, United Nations, and other international agencies, etc. Whether we like it or not, globalisation influence the way we live. This is the reason why, we don't just work here, we support international progress. We monitor the development in the US and other nations. What we need to do is to continue educating our youth. They will decide what is good for them. Our young LGBTIQ people must be nurtured in such a way that they can withstand the pressure of the fight for their rights. We need to continue strengthening our leaders and empowering them to become great leaders of our community.

With the advent of information technology and the reign of globalisation, Philippines is getting an influx of call centers. The advent of foreign companies has changed a lot the

way trans people are treated. These foreign companies mostly coming from US have anti-discrimination policies. This paved a way for transgender people to get decent jobs, compared to before where they were only ensconced in the entertainment

industry and beauty salons. Before, transwomen were stereotyped as beauticians. But now, you see them as managers in companies, so I am seeing progress.

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.

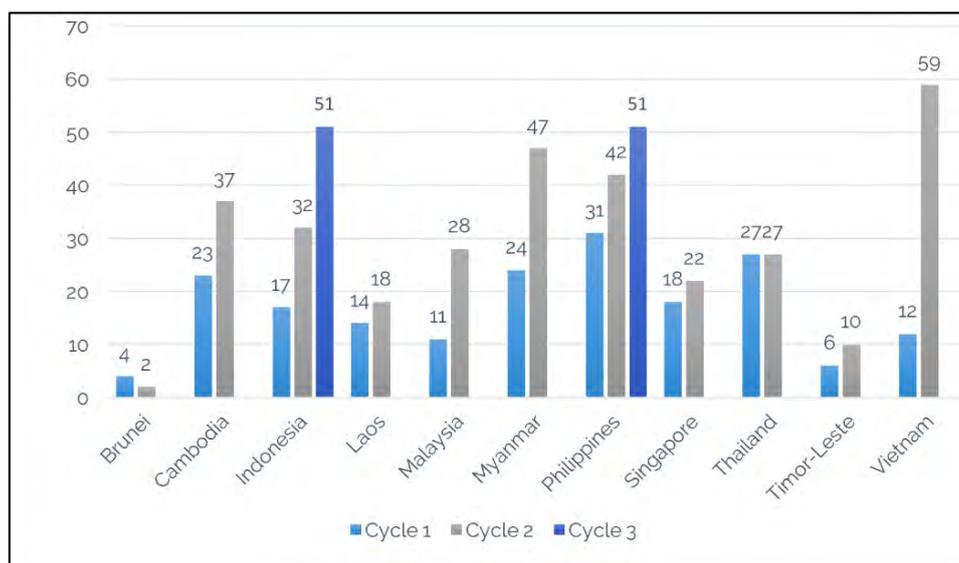


Figure 1: Southeast Asian Stakeholder UPR Submissions in Each Cycle

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%2bxQTspR9eqkzThSr5nhgfhp (last visited 17 November 2017).

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

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

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

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

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

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

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

Right to Liberty and Security of Person

Legal Foundation

UDHR: Article 3

ICCPR: Article 9

CEDAW: Article 11(f)

Yogyakarta Principles: Principle 5

AHRD: Article 12

DHRD: Article 12(2)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Right to Life

Legal Foundation

UDHR: Article 3

ICCPR: Article 6

ICCPR OP2: Generally

Yogyakarta Principles: Principle 4

AHRD: Article 11

DHRD: Article 12(2)

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

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

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

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

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

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

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

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

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

Prohibition of Torture

Legal Foundation

UDHR: Article 5

ICCPR: Article 7 and 2(3)

CAT: Article 2 and generally

Yogyakarta Principles: Principle 10

AHRD: Article 14

DHRD: Article 12(2)

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

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

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

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

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

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

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

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

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

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

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

Right to Privacy

Legal Foundation

UDHR: Article 12

ICCPR: Article 17

Yogyakarta Principles: Principle 6

AHRD: Article 12

DHRD: Article 12(2)

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

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

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

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

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

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

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

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

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

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

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

Right to Work

Legal Foundation

UDHR: Article 23

ICESCR: Article 6

CEDAW: Article 11

Yogyakarta Principles: Principle 12

AHRD: Article 27

DHRD: Articles 5, 9 and 11

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

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

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

[e]veryone 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 "[e]veryone 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=4slQ6QSmlBEDzFEovLCuW1a0SzabooXTdlmnsJZZVQfUKxXVisd7Dae%2FCu%2B13J25Nha7l9NlwYZ%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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