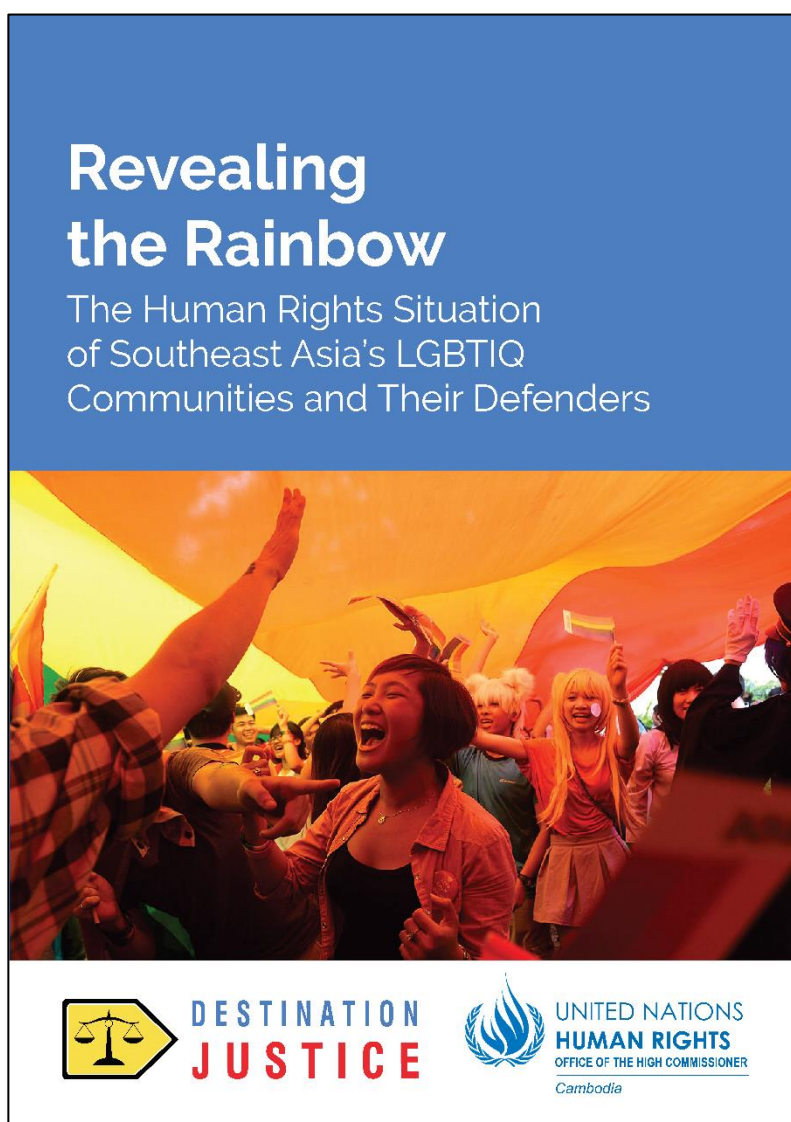


LGBTIQ Communities and Their Defenders Country Information Pack: **Timor-Leste**

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Timor-Leste: Country Profile

Human Rights of LGBTIQ Communities and HRDs: Situational Analysis

Introduction

UPR Cycles

First UPR Cycle: 12 October 2011

Second UPR Cycle: 3 November 2016

Third UPR Cycle: October/November 2021

Issues related to the lesbian, gay, bisexual, transgender, intersex, and queer (**LGBTIQ**) community and human rights defenders (**HRDs**) were raised in both the first and second Universal Periodic Review (**UPR**) cycles for the Democratic Republic of Timor-Leste

(**Timor-Leste**). Timor-Leste accepted all recommendations. These included, on the one hand, a recommendation to define marriage as being between a man and woman. On the other hand, they included a recommendation that Timor-Leste provide more resources for human rights mechanisms and proper investigations into human rights violations. Moreover, Timor-Leste advised during the second Interactive Dialogue that it was committed to protecting fundamental freedoms and that everyone in Timor-Leste was equal before the law.

As this Country Profile explains, Timor-Leste has adopted an encouraging official position in favour of the equality of LGBTIQ people. It is also open to human rights reforms, and has, among other things, taken steps to offer human rights training to its police and to develop and implement a national human rights action plan. However, vulnerabilities to the LGBTIQ community and HRDs remain, not only in Timor-Leste's laws on demonstrations, freedom of expression, freedom of the press, and labour. There have also been reports of violence and police brutality against the LGBTIQ community.

In the lead up to Timor-Leste's third UPR cycle in October/November 2021, recommending States and civil society organisations (**CSOs**) have the opportunity to develop improved UPR recommendations that aim to provide more protection for HRDs and LGBTIQ people.

"Timor-Leste is a small country, and the population is not a lot of people, and we get to know each other, so it's easy for us to discuss issues about LGBT. Honestly, I hope that in three to four years, the community will understand and feel an honour for themselves. The issue is not only for civil society, but the general community."

Feliciano da Costa Araujo,
President, Coalition for Diversity
and Action (CODIVA)

Past UPR Cycles for Timor-Leste

First UPR Cycle (12 October 2011)

National Report Filed:¹ Timor-Leste's national report for the first UPR was published on 19 July 2011. The report did not mention the LGBTIQ community or HRDs directly, but did note issues relevant to the work of LGBTIQ HRDs. It affirmed a commitment to international human rights standards² and noted that Timor-Leste had implemented national legislation protecting the freedom of assembly and demonstration,³ and that the arbitrary use of lethal force by security forces was already criminalised,⁴ with efforts underway to improve training for security forces to prevent human rights violations.⁵

Timor-Leste advised that its 2005 Decree Law No. 5 (the "NGO [i.e., non-governmental organisation] Registration Law") was part of a "coherent legal framework" ensuring freedoms of expression, association, assembly and demonstration.⁶ It reported that over 400 NGOs were registered in 2010,⁷ and that in 2007, the Office of the Adviser on Civil Society was formed to strengthen cooperation between government and civil society.⁸ Finally, Timor-Leste affirmed its intention to create "a more egalitarian society, without discrimination", through a human rights awareness campaign and educational efforts,⁹ and to ensure access to justice by implementing the Strategic Plan for the Justice Sector (2011–2030).¹⁰

Stakeholders Submissions Made:¹¹ The summary of the 6 stakeholders' submissions was published on 22 July 2011. Stakeholders argued that Timor-Leste needed to ensure the legitimate status of NGOs and CSOs by amending the NGO Registration Law.¹² They reported that the government had failed to respond to recommendations by its national human rights institution (NHRI),¹³ the Provedoria. They highlighted allegations of human rights violations by

¹ *National Report Submitted in Accordance with Paragraph 15(a) of the Annex to Human Rights Council Resolution 5/1: Timor-Leste*, U.N. Doc. A/HRC/WG.6/12/TLS/1, 19 July 2011, available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/TLIndex.aspx> (last visited 29 June 2017).

² First UPR cycle: *National Report*, Timor-Leste, paras. 14–15, 116.

³ First UPR cycle: *National Report*, Timor-Leste, paras. 23, 31.

⁴ First UPR cycle: *National Report*, Timor-Leste, para. 25.

⁵ First UPR cycle: *National Report*, Timor-Leste, para. 28.

⁶ First UPR cycle: *National Report*, Timor-Leste, para. 31.

⁷ First UPR cycle: *National Report*, Timor-Leste, para. 36.

⁸ First UPR cycle: *National Report*, Timor-Leste, para. 37.

⁹ First UPR cycle: *National Report*, Timor-Leste, para. 120.

¹⁰ First UPR cycle: *National Report*, Timor-Leste, para. 117.

¹¹ *Summary of Stakeholders' submissions prepared by the Office of the High Commissioner for Human Rights: Timor-Leste*, U.N. Doc. A/HRC/WG.6/12/TLS/3, 22 July 2011, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/152/11/PDF/G1115211.pdf?OpenElement> (last visited 29 June 2017).

¹² First UPR cycle: *Stakeholders' Summary*, Timor-Leste, para. 5.

¹³ First UPR cycle: *Stakeholders' Summary*, Timor-Leste, para. 6.

police and military, such as use of excessive force and failure to prosecute those responsible.¹⁴ Stakeholders also noted the need for a campaign to address gender-based violence.¹⁵

First UPR Cycle for Timor-Leste: Recommendations Received

In its first UPR, held in October 2011, Timor-Leste received the following recommendations related to the treatment of HRDs:

- Expedite the completion of statutes that provide a guarantee for further human rights promotion and protection (Indonesia).
- Strengthen the state of laws and good governance, especially on the legal enforcement and capacity building for national agencies on human rights (Vietnam), particularly regarding the Provedoria, Timor-Leste's National Human Rights Institution (Spain, New Zealand).
- Consult and involve NGOs as well as civil society in the follow-up to the UPR (Austria).
- Further increase regional and international cooperation on human rights, particularly with the ASEAN nations and with the Human Rights Council (Vietnam) and continue efforts to promote and protect the human rights of the vulnerable (Indonesia).
- Safeguard the family institution and marriage as a marital union between a man and a woman based on free consent (Holy See).

Source: *Report of the Working Group on the Universal Periodic Review: Timor-Leste*, U.N. Doc. A/HRC/19/17, 3 January 2012, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/100/26/PDF/G1210026.pdf?OpenElement> (last visited 29 June 2017).

Comments Received; Response to Recommendations: During the Interactive Dialogue, Timor-Leste was specifically commended for having established an inter-ministerial working group that worked together with the civil society to prepare for the UPR.¹⁶ Timor-Leste accepted all recommendations mentioned above, with the exception of Indonesia's and Vietnam's recommendation to enhance protection for vulnerable groups. In this regard, Timor-Leste declared that the promotion and protection of vulnerable people from all kind of abuses are embedded in previously existing domestic laws.¹⁷

Concerning the recommendation from the Holy See on defining marriage as being between a man and a woman, Timor-Leste specified that:

¹⁴ First UPR cycle: *Stakeholders' Summary*, Timor-Leste, para. 13.

¹⁵ First UPR cycle: *Stakeholders' Summary*, Timor-Leste, paras. 14, 49.

¹⁶ First UPR cycle: *Report of the Working Group*, Timor-Leste, para. 42.

¹⁷ First UPR cycle: *Report of the Working Group*, Timor-Leste, paras. 78.2, 78.41.

The Constitution [...] guarantees the right of everyone to establish and live in a family, and requires that marriage [...] be based on upon free consent by the parties and on terms of full equality of rights between spouses, in accordance with the law. The recently enacted Civil Code defines marriage as a union between a man and a woman.¹⁸

Second UPR Cycle (3 November 2016)

National Report Filed:¹⁹ Timor-Leste's national report for the second UPR was published on 22 August 2016. While it did not explicitly address issues relevant to HRDs, it did discuss its sexual minorities and its government's work with CSOs. Timor-Leste explicitly recognised "those with different sexual orientations"²⁰ as a minority group and acknowledged the Coalition for Diversity and Action (**CODIVA**), a national civil society network working with State agencies "to provide advocacy on HIV/AIDS [i.e. Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome] and rights in order to obtain protection for minority groups, including those of varying sexual orientations, at the national and municipal levels."²¹

On minority groups, Timor-Leste stated that "State institutions have always had a good relationship with minority groups [...] to create an environment of tranquility and safety in order to create national stability and to ensure harmony and mutual respect."²² Timor-Leste also discussed the government's current collaboration with CSOs in order to support advocacy and "to obtain protection for minority groups, especially those with different sexual orientations."²³

Stakeholders Submissions Made:²⁴ The summary of the 10 stakeholders' submissions was published on 17 August 2016. Stakeholders explicitly discussed the situation of the LGBTIQ community but not that of HRDs. They raised concerns about discrimination against the LGBTIQ community and cited the lack of "laws prohibiting discrimination on the basis of sexual orientation, gender identity and intersex status" as a "contributing factor to the discrimination experienced by [LGBTIQ people]."²⁵ They further noted that not having anti-discrimination laws puts LGBTIQ people at a disadvantage "in all areas of life where gender information is required, including employment, healthcare, education and access to justice."²⁶

¹⁸ *Report of the Working Group on the Universal Periodic Review: Timor-Leste, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, U.N. Doc. A/HRC/19/17/Add.1, 15 March 2012, para. 18, available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/TLIndex.aspx> (last visited 29 June 2017).

¹⁹ *National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21: Timor-Leste*, U.N. Doc. A/HRC/WG.6/26/T/LS/1, 22 August 2016, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/185/42/PDF/G1618542.pdf?OpenElement> (last visited 29 June 2017).

²⁰ Second UPR cycle: *National Report*, Timor-Leste, para. 60.

²¹ Second UPR cycle: *National Report*, Timor-Leste, para. 60.

²² Second UPR cycle: *National Report*, Timor-Leste, para. 59.

²³ Second UPR cycle: *National Report*, Timor-Leste, para. 60.

²⁴ *Summary of Stakeholders' submissions prepared by the Office of the High Commissioner for Human Rights: Timor-Leste*, U.N. Doc. A/HRC/WG.6/26/TLS/3, 17 August 2016, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/183/00/PDF/G1618300.pdf?OpenElement> (last visited 29 June 2017).

²⁵ Second UPR cycle: *Stakeholders' Summary*, Timor-Leste, paras. 21-22.

²⁶ Second UPR cycle: *Stakeholders' Summary*, Timor-Leste, para. 23.

Stakeholders reported that LGBTIQ people face discrimination in their access to work. In particular, they highlighted that the 2002 Labour Code, which prohibited discrimination on the basis of sexual orientation, had been repealed in 2012.²⁷ In addition, stakeholders advised that “difficulties to accessing healthcare in a safe and non-discriminatory manner discourages LGBTI people from accessing health care.”²⁸ Finally, stakeholders noted that the freedom of assembly is restricted by a police practice “requiring the organizers of a demonstration to obtain a permit and had banned a number of peaceful gatherings.”²⁹

Second UPR Cycle for Timor-Leste: Recommendations Received

During its second UPR, held in November 2016, Timor-Leste received recommendations referencing LGBTIQ people, sexual orientation, and gender equality for the first time:

- Adopt legal and administrative measures to investigate and punish acts of discrimination, stigmatisation and violence against LGBTI persons (Argentina) and strengthen the legal framework in order to ensure gender equality and ban discrimination on the grounds of sexual orientation and gender identity (Chile).
- Recognise the legitimacy of the work of HRDs and provide them with protection, and avoid arbitrary arrests and reprisals, investigate threats or attacks against them and bring those responsible to justice (Uruguay) and advance in the area of reparations for victims of human rights violations (Argentina).
- Effectively implement laws concerning sexual and gender-based violence by providing the human, financial and institutional resources necessary (Germany) and ensure access to justice for all the population, especially for victims of sexual and gender-based violence (Uruguay).
- Take further measures to ensure freedom of expression (Japan, United States of America).
- Work with civil society and local authorities to address domestic and sexual violence and provide the national police's Vulnerable Persons Unit with sufficient resources to maintain an adequate presence around the country (United States of America).
- Give continuity to strengthening of national human rights institutions and mechanisms (Nepal) in conformity with the Paris Principles (Costa Rica, Guatemala).

Source: *Report of the Working Group on the Universal Periodic Review: Timor-Leste*. U.N. Doc. A/HRC/34/11 (28 December 2016, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/442/42/PDF/G1644242.pdf?OpenElement> (last visited 29 June 2017).

²⁷ Second UPR cycle: *Stakeholders' Summary*, Timor-Leste, para. 50.

²⁸ Second UPR cycle: *Stakeholders' Summary*, Timor-Leste, para. 56.

²⁹ Second UPR cycle: *Stakeholders' Summary*, Timor-Leste, para. 49.

Comments Received; Response to Recommendations: During the Interactive Dialogue, Timor-Leste received specific comments related to its LGBTIQ community. Other comments focused on the continuous absence of laws tackling discrimination on the basis of sexual orientation; the need to take measures to hold individuals responsible for acts of violence against LGBTIQ persons; and persistent discrimination against LGBTIQ people.³⁰ Timor-Leste responded that their State "supported the first Human Rights Council resolution on LGBTI rights, and was tackling the relevant issues in terms of access to services and job placement."³¹

Timor-Leste accepted all recommendations mentioned above. It affirmed that it:

attaches great importance to promoting equality and combat discrimination (...) on the grounds of sexual orientation and gender identity. All the citizens are equal before the law and have the same rights, and public authorities must not discriminate citizens in any ground, included on the basis of sexual orientation and gender identity.³²

Timor-Leste further stated that "[a]ll kind of violence incidents, such as of excessive use of force, arbitrary detention, abuse of power and torture, are prohibited in Timor-Leste and punished accordingly. (...) Also, all the security forces receive frequently training on human rights."³³

Finally, on the protection of fundamental freedoms, Timor-Leste reaffirmed its commitment to fully guarantee freedom of expression, information, assembly and association and freedom of the press.³⁴

Situation of the LGBTIQ Community and its HRDs in Timor-Leste

Freedom of Association and Assembly

Limited Public Attention: Sexual orientation and gender identity issues receive limited public attention in Timor-Leste. As a transgender woman from Timor-Leste explained in 2015, "as a new country we don't have a big LGBT rights organisation that really supports us to have a pride march."³⁵ Nevertheless, Timor-Leste did hold some Pride events in 2016, and their first-

³⁰ Second UPR cycle: *Report of the Working Group*, Timor-Leste, paras. 33, 42, 44.

³¹ Second UPR cycle: *Report of the Working Group*, Timor-Leste, para. 85.

³² *Report of the Working Group on the Universal Periodic Review: Timor-Leste, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, U.N. Doc. A/HRC/34/11/Add.1, 9 March 2017, p. 3, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/054/91/PDF/G1705491.pdf?OpenElement> (last visited 29 June 2017).

³³ Second UPR cycle: *Report of the Working Group, Addendum*, Timor-Leste, p. 2.

³⁴ Second UPR cycle: *Report of the Working Group*, Timor-Leste, para. 15.

³⁵ Richard Ammon, "Gay Life in East Timor: Interview with Richa", Global Gayz, 6 June 2015, available at <http://www.globalgayz.com/gay-life-in-east-timor/> (last visited 6 July 2017).

ever Pride March in 2017.³⁶ In addition, "a small number of LGBT advocacy organisations have been active in recent years."³⁷

Growing Civil Society Spaces: Some LGBTIQ CSOs and NGOs have been established including in the spheres of public health and human rights, including in the area of non-discrimination.³⁸ Often supported by regional and international organisations, these local organisations have successfully organised educational trainings and advocacy events.

For example, ISEAN-Hivos Foundation, with funding from the Netherlands, operates an advocacy program in Timor-Leste to strengthen the community of gay men and the broader LGBTIQ community.³⁹ Community based organisations supported by South East Asia Networks and Hivos have also conducted workshops to explain gender identity and what it means to be transgender and androgynous,⁴⁰ while the international women's rights organisation JASS conducted a discussion in Timor-Leste about LGBTIQ issues in 2011.⁴¹

Restrictions on Demonstrations and Protests: Despite the fact that the freedom of association and assembly is constitutionally protected, the 2004 Law on Freedom, Assembly and Demonstration prohibits demonstrations aimed at "questioning constitutional order" or disparaging the reputation of government officials.⁴² The law also requires advanced authorisation for demonstrations and protests.⁴³ While these restrictions have generally not been enforced,⁴⁴ their mere existence nevertheless threatens the ability of HRDs working on LGBTIQ issues and the LGBTIQ community generally to operate freely and safely.

Freedom of Opinion and Expression

Criminal and Civil Sanctions: Freedom of opinion and expression in Timor-Leste is limited. The 2009 Penal Code provides that a person cannot, while knowing of the "falsity of the accusation" cast "suspicion on a certain person regarding commission of a crime, with the

³⁶ Shannon Power, "Timor Leste just had its first ever Pride March. Here are the 20 best photos", Gay Star News, 3 July 2017, available at <https://www.gaystarnews.com/article/timor-leste-just-first-ever-pride-march-20-best-photos/> (last visited 3 July 2017).

³⁷ "Freedom in the World: East Timor", Freedom House, 2016, available at <https://freedomhouse.org/report/freedom-world/2016/timor-leste> (last visited 6 July 2017).

³⁸ "Human Rights Report for 2013: Timor-Leste", U.S. Department of State: Bureau of Democracy, Human Rights and Labor, 2014, p. 17, available at <http://www.state.gov/documents/organization/220447.pdf> (last visited 6 July 2017).

³⁹ Richard Ammon, "Gay Life in East Timor: Interview with Richa", Global Gayz, June 2015.

⁴⁰ Gabriela Gonzalez-Forward, "Transcending gender in Timor-Leste", The Dili Weekly, 15 July 2014, available at <http://www.thediliweekly.com/en/news/capital/12565-transcending-gender-in-timor-leste> (last visited 6 July 2017).

⁴¹ Carrie Wilson, "Young Timorese Women Clear Up Confusion around LGBTI", JASS, 19 August 2011, available at <https://justassociates.org/en/blog/young-timorese-women-clear-confusion-around-lgbti> (last visited 6 July 2017).

⁴² "Freedom in the World: East Timor", Freedom House, 2016.

⁴³ "Freedom in the World: East Timor", Freedom House, 2016.

⁴⁴ "Freedom in the World: East Timor", Freedom House, 2016.

intent of having criminal proceedings initiated against said person."⁴⁵ Furthermore, the Civil Code also provides for civil sanctions for false accusations and defamation.⁴⁶

Restrictions on Freedom of the Press: The 2014 Media Law places specific constraints on the freedom of the press. It empowers the government-sponsored Press Council introduces a new licensing system enabling journalists' credentials to be revoked and restricting foreign investment in Timorese media; authorises the Press Council to fine journalists for "undesirable" reports, i.e., reports with "a slight to 'honour, dignity and privacy';"⁴⁷ and requires that all reporters have State accreditation.⁴⁸ The law also requires that journalists have certain qualifications and professional experience, setting a nearly impossible standard for a developing State.

It is noteworthy that literacy rates in Timor-Leste are low, and that as of 2015, only 13% of the population had internet access.⁴⁹ This puts radio journalists in a pivotal position to disseminate information nationwide. Moreover, since lack of awareness is a major obstacle to the promotion of LGBTIQ rights in Timor-Leste, the restrictions introduced by the Media Law have the potential to disproportionately hinder the advancement of LGBTIQ rights in the State.

Right to Equality and Non-Discrimination

Official Position on LGBTIQ Equality: Timor-Leste has ostensibly been one of the most progressive countries in Southeast Asia in terms of its official support for statements affirming equality for LGBTIQ people. For instance, it was "the only Southeast Asian country to support the 2008 UN Statement on Human Rights, Sexual Orientation and Gender Identity."⁵⁰ Timor-Leste is also the only State in the region to sign the United Nations Human Rights Council's 2011 joint statement⁵¹ on "Ending Acts of Violence and Related Human Rights Violations Based on Sexual Orientation and Gender Identity."⁵² The Joint Statement obligates all signatories to

⁴⁵ Article 285 (1) Defamatory false information, Decree Law No.19/2009, Penal Code, Democratic Republic of Timor-Leste, 2009, available at https://www.unodc.org/res/cld/document/penal-code_html/Penal_Code_Law_No_19_2009.pdf (last visited 6 July 2017).

⁴⁶ "Freedom in the World: East Timor", Freedom House, 2016.

⁴⁷ Mark Skulley, "In Timor-Leste, hurt feelings could land journalists in jail", The Walkley Foundation, 1 August 2016, available at <http://www.walkleys.com/in-timor-leste-hurt-feelings-could-land-journalists-in-jail/> (last visited 7 July 2017).

⁴⁸ "Freedom in the World: East Timor", Freedom House, 2015, available at <https://freedomhouse.org/report/freedom-world/2015/east-timor> (last visited 6 July 2017).

⁴⁹ "Freedom in the World: East Timor", Freedom House, 2016.

⁵⁰ "Human Rights Protections for Sexual Minorities in Insular Southeast Asia: Issues and Implications for Effective HIV Prevention", UNESCO Bangkok, 2011, p. 72, available at <http://unesdoc.unesco.org/images/0021/002110/211087e.pdf> (last visited 6 July 2017).

⁵¹ Kaleidoscope Australia, "The Human Rights of LGBTI Persons in Timor-Leste", 2016, para. 5, available at <http://sexualrightsinitiative.com/wp-content/uploads/Kaleidoscope-SRI-Joint-Submission-Timor-Leste-Oct-Nov-2016.pdf> (last visited 6 July 2017).

⁵² "Joint Statement on Ending Acts of Violence Related Human Rights Violations Based on Sexual Orientation and Gender Identity (UN Human Rights Council)", Arc International, 22 March 2011, available at <http://arc-international.net/global-advocacy/human-rights-council/hrc16/joint-statement/> (last visited 6 July 2017).

end human rights abuses committed against people because of their sexual orientation or gender identity.

At the regional level, in November 2013, Timor-Leste voted in favour of the Asian and Pacific Declaration on Population and Development, which announced that members of the United Nations Economic and Social Commission for Asia and the Pacific will “work to reduce vulnerability and eliminate discrimination based on sex, gender, age, race, caste, class, migrant status, disability, HIV status and sexual orientation and gender identity, or other status.”⁵³

Echoing its international and regional stance, His Excellency the Prime Minister of Timor-Leste, Rui Maria de Araújo, published a statement during Pride 2017 declaring his support for the LGBTIQ community in Timor-Leste.⁵⁴ The Prime Minister also expressly condemned acts of discrimination or violence against the LGBTIQ community.⁵⁵

Influence of the Catholic Church: In spite of Timor-Leste's official position on LGBTIQ issues and the assistance it has offered to some of the State's community-based LGBTIQ organisations,⁵⁶ it generally appears that measures to ensure LGBTIQ equality in practice are limited. It is reported that this may owe to the “very strong political and social influence” of the Catholic Church in Timor-Leste.⁵⁷ For example, a proposed constitutional provision against discrimination based on sexual orientation — included in the original draft of the Timorese Constitution — was voted down by 52 out of 88 Members of Parliament in 2002,⁵⁸ an act that some attribute in part to Church influence.⁵⁹

Limited Legal Protections: Outside of the Constitution, there are also limited legal protections for LGBTIQ equality and non-discrimination in other laws in Timor-Leste. For instance, although the 2009 Penal Code identifies discrimination based on sexual orientation as an aggravating circumstance,⁶⁰ this protection does not explicitly extend to gender identity and intersex status.

⁵³ *Report of the sixth Asian and Pacific Population Conference*, U.N. Doc. E/ESCAP/APPC(6)/3, 18 November 2013, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/B13/007/90/PDF/B1300790.pdf?OpenElement> (last visited 6 July 2017).

⁵⁴ “Official statement ‘Familia Simu Joven LGBT iha Timor-Leste’”, YouTube video, Timor One HD, 28 June 2017, available at <https://www.youtube.com/watch?v=t5y01VVNg8&feature=youtu.be&app=desktop> (last visited 3 July 2017).

⁵⁵ Shannon Power, “Timor Leste PM comes out supporting LGBTI rights”, Gay Star News, 3 July 2017, available at <https://www.gaystarnews.com/article/timor-leste-pm-comes-supporting-lgbti-rights/> (last visited 3 July 2017).

⁵⁶ Gabriela Gonzalez-Forward, “Transcending gender in Timor-Leste”, *The Dili Weekly*, 15 July 2014.

⁵⁷ “Religious Freedom in the World Report: East Timor”, Aid to the Church in Need, 2015, page 2, available at http://religion-freedom-report.org.uk/wp-content/uploads/country-reports/east_timor.pdf (last visited 5 July 2017).

⁵⁸ “Human Rights Protections for Sexual Minorities in insular Southeast Asia: Issues and Implications for Effective HIV Prevention”, UNESCO Bangkok, 2011, p. 44.

⁵⁹ “Homosexuality in East Timor”, East Timor Law and Justice Bulletin, 25 April 2009, available at <http://www.easttimorlawandjusticebulletin.com/2009/04/homosexuality-in-east-timor.html> (last visited 6 July 2017).

⁶⁰ Article 52 of the Penal Code states “(2) General aggravating circumstances may include the following: (e) The crime is motivated by racism, or any other discriminatory sentiment on grounds of gender, ideology,

In addition, Timor-Leste's 2012 Labour Code abolished an earlier prohibition on employment discrimination based on sexual orientation.⁶¹ This step backwards leaves workers of diverse sexuality vulnerable to discrimination and harassment, as well as interfering with their right to work.⁶²

Instances of Discrimination and Violence: Timor-Leste has also generally failed to address reports of discrimination and violence against LGBTIQ community members.⁶³ Data gathered in 2014 from 198 transgender and gay people in Timor-Leste showed that "27% reportedly had experienced physical maltreatment, 35% had been verbally maltreated, 31% had been refused access to health care services and 25% were provided with poor quality health services."⁶⁴

In particular, there have been reports of discrimination against transgender people and homosexual men when accessing health checks in hospitals and clinics.⁶⁵ There are also multiple reports of violence and police abuses against transgender people. For instance, in October 2014, a transgender woman was stabbed and beaten by her brother "after suffering physical violence at the hands of her family." When she reported these incidents to the police, she received ridicule instead of assistance.⁶⁶

Reforms Introduced: In line with recommendations it accepted in both its first and second UPRs,⁶⁷ Timor-Leste has taken steps to address incidents of excessive use of force, as well as ill-treatment and abuse by police and the military.⁶⁸ One such step has been the introduction of human rights training for police.⁶⁹ In addition, as of early 2016, Timor-Leste's NHRI, the Provedoria, was in discussions with the Chief of the Armed Forces and the Minister of Defence concerning human rights training for the military.⁷⁰ Nevertheless, reports of excessive use of force, ill-treatment and arbitrary arrest, continue to form the majority of human rights complaints received by the Provedoria.⁷¹

religion or beliefs, ethnicity, nationality, sex, sexual orientation, illness or physical disability of the victim." *For the full text of Decree Law No. 19/2009, see "Decree Law No.19/2009", Democratic Republic of Timor-Leste, 2009, available at https://www.unodc.org/res/cld/document/penal-code_html/Penal_Code_Law_No_19_2009.pdf (last visited 6 July 2017).*

⁶¹ "The Human Rights of LGBTI Persons in Timor-Leste", Kaleidoscope Australia, 2016, paras. 19-20.

⁶² "The Human Rights of LGBTI Persons in Timor-Leste", Kaleidoscope Australia, 2016, para. 20.

⁶³ Gabriela Gonzalez-Forward, "Transcending gender in Timor-Leste", *The Dili Weekly*, 15 July 2014.

⁶⁴ "Report for the Universal Periodic Review of Timor-Leste", United Nations Country Team in Timor Leste, 23 March 2016, para. 14, available at <https://www.laohamutuk.org/Justice/UPR/2016/UNCTUPRMar2016en.pdf> (last visited 6 July 2017).

⁶⁵ Gabriela Gonzalez-Forward, "Transcending gender in Timor-Leste", *The Dili Weekly*, 15 July 2014.

⁶⁶ "The Human Rights of LGBTI Persons in Timor-Leste", Kaleidoscope Australia, 2016, para. 9.

⁶⁷ First UPR cycle: *Report of the Working Group*, Timor-Leste, paras. 78.20-78.23.

⁶⁸ "Report for the Universal Periodic Review of Timor-Leste", UN Country Team in Timor Leste, 23 March 2016, para. 16; Second UPR cycle: *Report of the Working Group*, Timor-Leste, paras. 89.80, 89.109-89.113.

⁶⁹ Second UPR cycle: *Report of the Working Group*, Timor-Leste, para. 16.

⁷⁰ "Report for the Universal Periodic Review of Timor-Leste", UN Country Team in Timor Leste, 23 March 2016, para. 16; Second UPR cycle: *Report of the Working Group*, Timor-Leste, para. 89.41.

⁷¹ "Report for the Universal Periodic Review of Timor-Leste", UN Country Team in Timor Leste, 23 March 2016, para. 17.

Timor-Leste has also begun the process of drafting a national human rights action plan, as recommended in its first UPR.⁷² The process, which began in 2014, stalled because of insufficient resources.⁷³ As of March 2016, the Ministry of Justice, which is leading the process, had begun reviewing ways of resuming the initiative,⁷⁴ although it is unclear whether the plan is completed. With this plan in mind, recommendations in the second UPR cycle in November 2016 encouraged Timor-Leste to ensure effective implementation of the national action plan.⁷⁵

Conclusion

Since its first UPR cycle, Timor-Leste has accepted all recommendations from various States. The State has committed to protecting human rights and freedoms for its citizens and accepted many recommendations encouraging Timor-Leste to increase resources and supports for human rights mechanisms. While Timor-Leste has also accepted the recommendation to define marriage between a man and woman, excluding other types of marriages, the State has stated that all persons are equal before the law. In general, Timor-Leste has demonstrated its willingness to address the concerns and recommendations expressed by various States.

However, HRDs and LGBTIQ people may still be vulnerable to ill-treatment in practice. Timor-Leste's laws include restrictions on demonstrations and freedom of expression. The freedom of the press in particular is jeopardised by the stringent requirements of the recent Media Law, which may disproportionately hinder LGBTIQ rights in the State given the influential role that the media plays in disseminating information in Timor-Leste. A concerning recent reform to the Labour Code removes a previous protection it contained prohibiting discrimination on the basis of sexual orientation, while there also remain reports of violence and police brutality against the LGBTIQ community.

Nevertheless, Timor-Leste's remains demonstrably open to UPR recommendations. Its official position consistently supports LGBTIQ equality. The State has also initiated human rights reforms, including training for its police and the preparation of a national human rights action plan. Therefore, there would appear to be several promising avenues through which to engage with Timor-Leste on improving conditions for its LGBTIQ community and HRDs working on LGBTIQ-related issues.

⁷² First UPR cycle, *Report of the Working Group*, para. 78.3.

⁷³ "Report for the Universal Periodic Review of Timor- Leste", UN Country Team in Timor Leste, 23 March 2016, para. 10.

⁷⁴ "Report for the Universal Periodic Review of Timor- Leste", UN Country Team in Timor Leste, 23 March 2016, para. 10.

⁷⁵ Second UPR cycle: *Report of the Working Group*, Timor-Leste, paras. 89.50-89.52, 89.54.

Recommendations

In the lead-up to the third UPR review of Timor-Leste in October/November 2021:

- CSOs should actively engage in monitoring the implementation of those recommendations Timor-Leste accepted during the first two UPR cycles so as to gather relevant data on the improvement of the human rights situation in the country and to report at the third UPR cycle.
- CSOs should continue documenting violations and abuses endured by LGBTIQ people and their defenders so as to provide recommending states and the relevant UN mechanisms with solid evidence-based information.
- CSOs and recommending states should work collaboratively to develop UPR recommendations for the third cycle that emphasise the benefit to Timor-Leste of removing existing legal barriers to the full exercise of fundamental freedoms in the country, and of strengthening its labour law protections for LGBTIQ people.

Timor-Leste: LGBTIQ HRD Interview

Human Rights of LGBTIQ
Communities and HRDs:
Frontline Voices



**Feliciano da Costa Araujo,
President, Coalition for Diversity
and Action (CODIVA)**

How did you become involved in LGBTIQ rights work?

I have worked with NGOs since 2007 and I have the capacity to advocate for land rights and cooperation with human rights institutions in Timor-Leste. Initially I applied for a job with ISEAN HIVOS in Southeast Asia. So I started to work with ISEAN HIVOS and learned about the LGBTIQ community issues, particularly with MSM and transgenders. So I started there in February 2013. And in May of the same year I enrolled Fundasaun CODIVA as organisations working for LGBTIQ issues in Timor-Leste. I

then became president of my organisation, CODIVA, working on HIV issues in Timor-Leste. Now, we are still building a defender of human rights for civil society in Timor-Leste, particularly for LGBTIQ people.

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

My concern is that the LGBTI community is not united. So, we as an advocate for their rights, we are working for them and lobbying our government, but the LGBTIQ community itself is not united. It's a big problem for me. It is difficult to promote the community.

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

In Timor-Leste, at the moment, we have the SOGIE Caravan. It's like a campaign to the districts. We are joined together with other organisations that work for human rights. The first time we used the SOGIE Caravan was in the Timor-Leste city, Dili — we did it at the university, for university students and youth. We also collaborated with the ombudsman to work together and socialise information for the national police in the districts. I think it's better for us to change the minds and behaviours of the general community, including my government.

Have you ever felt personally at risk because of your work?

Honestly, I've never felt at risk when talking about LGBT issues. But sometimes, I have it, because when you talk about human rights, some people don't understand and sometimes I feel danger for myself. But honestly, Timor-Leste is not a big country, we know each other, we can say things, and we have strong cooperation with the other human rights institutions.

We have regular meetings every three months, under the United Nations Development Programme. They invite the organisations to talk about human rights, specific issues, so my organisation has done that before. They invite us to talk about existence of the LGBT community in Timor-Leste, so I have presented to them before.

How have things have changed over the past few years regarding LGBTIQ rights and being a human rights defender in Timor-Leste?

Now, honestly, we are still in the process of learning how to promote the existence of the LGBT community in my country. So, my observation for the other CSOs is that they are very cooperative with us. When we talk about LGBT issues, they are interested with how to discuss it with us. I hope, not only for now, but the future, that maybe we can change and more people can talk about how to protect and defend LGBT issues in Timor-Leste.

Does your government do enough to protect LGBTIQ rights?

In Timor-Leste, we have the Constitution to protect all people from violence and discrimination. For example, my organisation uses Article 16 in the Constitution, which prohibits violence and discrimination. So the other thing is that we already ratified seven human rights conventions. I think civil society can also do the job of monitoring and providing feedback to the government. So we have the constitution, we've ratified many UN conventions, and we also have the civil code.

Sometimes, the LGBT community, especially transgender people, have difficulty accessing information about justice. So now we are providing information on how to access justice.

Do you think the UPR recommendations have an impact on your country? Do you think the recommendations lead your government to change policies to strengthen human rights protections?

Of course, yes. I want to share with you my experience. When we prepared for the CEDAW report and the Child Protection report, the government of Timor-Leste was very interested in cooperating with civil society. They also shared with us the reports they prepare for these bodies. This is my experience.

Does civil society know how to use the UPR recommendations for advocacy in Timor-Leste?

Yes, of course. Timor-Leste, my members of the government, we know each other. It is a

small country and we know each other. So it is very easy to follow up with parliamentarians when they have already ratified or submitted a report, or received recommendations. It is easy to follow up, talk with them, work with them.

What gives you hope when looking to the future of LGBTIQ rights in Timor-Leste?

Timor-Leste is a small country, and the population is not a lot of people, and we get to know each other, so it's easy for us to

discuss issues about LGBT. Honestly, I hope that in three to four years, the community will understand and feel an honour for themselves. The issue is not only for civil society, but the general community.

In Timor-Leste, only my organisation works on LGBT issues. But when we talk about human rights, there are more organisations. But for the specific issues of LGBT, there is only CODIVA. So we hope to get more networks, not only in ASEAN but the Pacific region.

Introduction

Context

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

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

Purpose and Methodology

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

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

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

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

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

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

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

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

About the UPR Process

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

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

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

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

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

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

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

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

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

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

Terminology

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

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

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

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

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

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

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

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

Key Findings

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

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

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

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

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

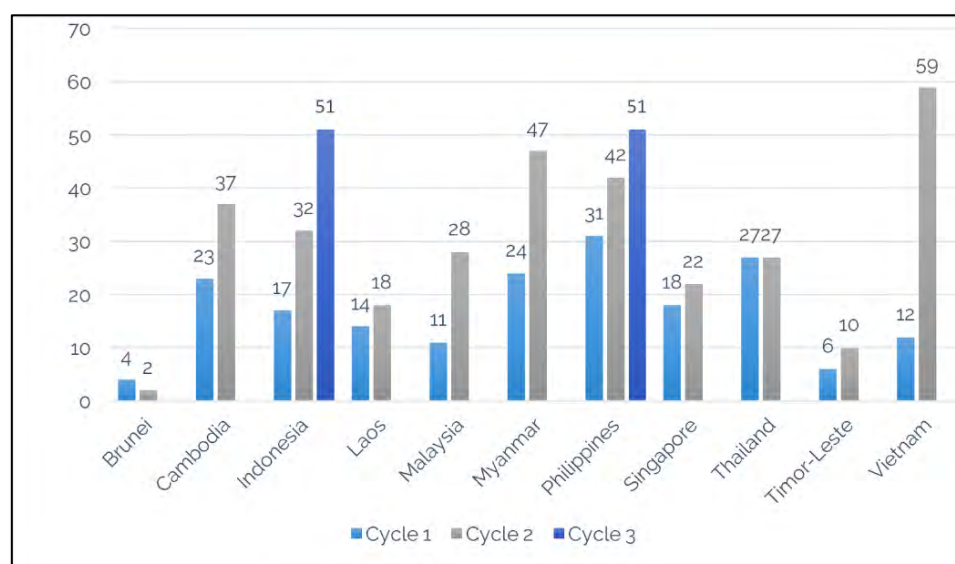


Figure 1: Southeast Asian Stakeholder UPR Submissions in Each Cycle

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

Legal Background

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Right to Equality and Freedom from Discrimination

Legal Foundation

UDHR: Articles 1 and 2

ICCPR: Article 2(1) and 26

ICESCR: Article 2(2)

CEDAW: Article 1

Yogyakarta Principles: Principle 2

AHRD: Principles 1 and 2

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Right to Liberty and Security of Person

Legal Foundation

UDHR: Article 3

ICCPR: Article 9

CEDAW: Article 11(f)

Yogyakarta Principles: Principle 5

AHRD: Article 12

DHRD: Article 12(2)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Right to Life

Legal Foundation

UDHR: Article 3

ICCPR: Article 6

ICCPR OP2: Generally

Yogyakarta Principles: Principle 4

AHRD: Article 11

DHRD: Article 12(2)

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

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

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

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

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

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

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

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

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

Prohibition of Torture

Legal Foundation

UDHR: Article 5

ICCPR: Article 7 and 2(3)

CAT: Article 2 and generally

Yogyakarta Principles: Principle 10

AHRD: Article 14

DHRD: Article 12(2)

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

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

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

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

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

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

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

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

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

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

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

Right to Privacy

Legal Foundation

UDHR: Article 12

ICCPR: Article 17

Yogyakarta Principles: Principle 6

AHRD: Article 12

DHRD: Article 12(2)

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

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

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

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

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

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

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

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

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

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

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

Right to Work

Legal Foundation

UDHR: Article 23

ICESCR: Article 6

CEDAW: Article 11

Yogyakarta Principles: Principle 12

AHRD: Article 27

DHRD: Articles 5, 9 and 11

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

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

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

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

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

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

³⁴ UN Human Rights Committee, *Consideration of reports submitted by States parties under article 40 of the Covenant: Concluding observations of the Human Rights Committee - Islamic Republic of Iran*, 29 November 2011, U.N. Doc. CCPR/C/IRN/CO/3, para. 10, available at <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsieXFSudRZs%2fX1ZaMqUUOS%2fToSmm6S6YKot4yT9B73L17SA%2feiYbnx2ciO3WOOtYqEMTBg8uMHZzpeXwyMOLwCLLxzMK2fpd8zvxoHOVVZsw> (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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