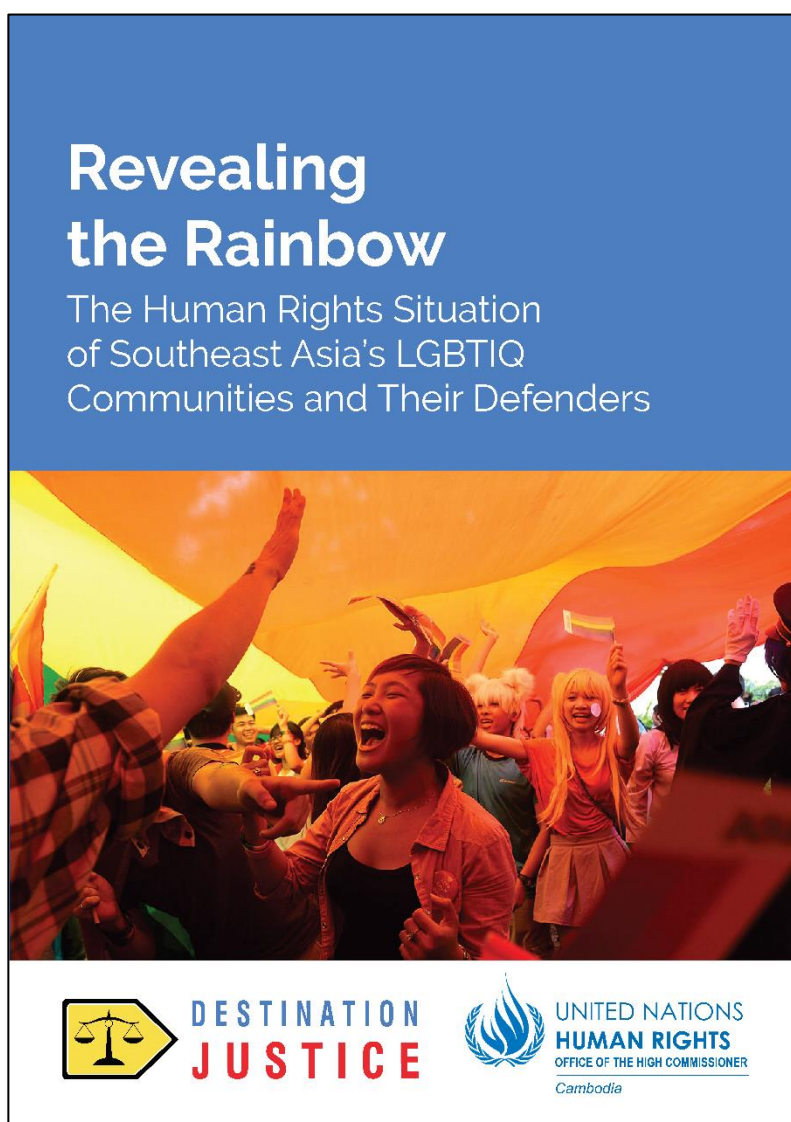


LGBTIQ Communities and Their Defenders

Country Information Pack:

Viet Nam

Selected Extracts From



Revealing the Rainbow (2018) is available in full at:
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Viet Nam: Country Profile

Human Rights of LGBTIQ Communities and HRDs: Situational Analysis

Introduction

UPR Cycles

First UPR Cycle: 8 May 2009

Second UPR Cycle: 5 February 2014

Third UPR Cycle: January/February 2019

Issues related to the lesbian, gay, bisexual, transgender, intersex, and queer (**LGBTIQ**) community and human rights defenders (**HRDs**) were raised more generally in the first Universal Periodic Review (**UPR**) cycle for Viet Nam and more explicitly and extensively in the

second UPR. While most recommendations in the first UPR did not enjoy Viet Nam's support — except for a recommendation to ensure citizens can fully enjoy freedoms of expression and religion — Viet Nam accepted many recommendations in the second UPR. These related to combating discrimination on the basis of sexual orientation or gender identity, supporting more freedoms of expression and assembly for non-governmental organisations (**NGOs**) and individuals, and creating a national human rights mechanism.

This Country Profile details the significant progress Viet Nam has made in terms of the conditions of its LGBTIQ community. Most strikingly has been Viet Nam's recognition of the equality of transgendered people. Progress has also been made in terms of the right to work and the right to freely and fully participate in the cultural life of the community. HRDs working on LGBTIQ issues have also been able to enjoy far greater freedoms of opinion, expression and assembly than other HRDs in Viet Nam, with an increasing number of LGBTIQ-focused events being successfully and safely staged.

As indicated in the recommendations outlined at the end of this chapter, civil society organisations (**CSOs**) and recommending States have an opportunity, in the lead-up to Viet Nam's third UPR cycle in January/February 2019 (and, in particular, the submission of

"The UPR has a big impact on my country because in the first round of the UPR, Viet Nam kept its vote and disagreed with the recommendations. But [in the second UPR], they said yes to the UPR and its recommendations. When they agree with the UPR, they change the laws and they want to bring equality for the LGBT people."

Khoa (Teddy) Nguyen,
Community Leader

stakeholder reports by 21 June 2018),¹ to work towards developing improved UPR recommendations that focus on the benefit to Viet Nam of reforms to ensure greater legal protections for fundamental freedoms.

Past UPR Cycles for Viet Nam

First UPR Cycle (8 May 2009)

National Report Filed:² Viet Nam's national report for the first UPR cycle was published on 16 February 2009. It did not mention the LGBTIQ community or HRDs explicitly. On fundamental freedoms, the report suggested generally that the media in Viet Nam was a forum for the expression of views by mass organisations and the people, and "an important force in the check and oversight over the implementation of policies and laws by State authorities."³ Viet Nam's report also stated that freedom of expression, press, and information of the Vietnamese people was demonstrated through the "rapid and diverse development of the mass media."⁴

Stakeholders Submissions Made:⁵ The summary of the 12 stakeholders' submissions was published on 23 February 2009. Stakeholders did not mention the LGBTIQ community or HRDs working on LGBTIQ issues either. Stakeholders did, however, report that Viet Nam systematically suppressed peaceful assembly⁶ and used the Penal Code to stifle freedom of expression.⁷ Stakeholders called on Viet Nam to amend its domestic legislation to ensure freedom of expression and assembly.⁸

First UPR Cycle for Viet Nam: Recommendations Received

In its first UPR, held in May 2009, Viet Nam received the following general recommendations that impact on the LGBTIQ community and their defenders:

- Continue efforts to improve all political as well as economic, social and cultural rights in conformity with the universally agreed human rights standards and norms (Egypt).

¹ "3rd UPR cycle: contributions and participation of 'other stakeholders' in the UPR", OHCHR, 22 May 2017, available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/NGosNhris.aspx> (last visited 21 August 2017).

² *National Report Submitted in Accordance with Paragraph (15)(a) of the Annex to the Human Rights Council Resolution 5/1: Viet Nam*, U.N. Doc. A/HRC/WG.6/5/VNM/1, 16 February 2009, available at http://lib.ohchr.org/HRBodies/UPR/Documents/Session5/VN/A_HRC_WG6_5_VNM_1_E.pdf (last visited 29 June 2017).

³ First UPR cycle: *National Report*, Viet Nam, para. 9.

⁴ First UPR cycle: *National Report*, Viet Nam, para. 25.

⁵ *Summary of Stakeholders' submissions prepared by the Office of the High Commissioner for Human Rights: Viet Nam*, U.N. Doc. A/HRC/WG.6/5/VNM/3, 23 February 2009, available at http://lib.ohchr.org/HRBodies/UPR/Documents/Session5/VN/A_HRC_WG6_5_VNM_3_E.pdf (last visited 29 June 2017).

⁶ First UPR cycle: *Stakeholders' Summary*, Viet Nam, para. 35.

⁷ First UPR cycle: *Stakeholders' Summary*, Viet Nam, para. 36.

⁸ First UPR cycle: *Stakeholders' Summary*, Viet Nam, para. 37.

- Reinforce advocacy and information measures through specific human rights education and training programmes (Morocco) and continue efforts aimed at the promotion and protection of human rights (Benin).
- Take the necessary steps to ensure that citizens can fully enjoy the rights to freedom of expression and freedom of religion (Argentina).
- Continue to build policy dialogue between the Government and independent civil society organisations (United Kingdom).
- Further efforts to engage all appropriate social and political organisations in the promotion and protection of human rights (Democratic People's Republic of Korea, Russian Federation).
- Fully guarantee the right to receive, seek and impart information and ideas in compliance with article 19 of ICCPR (Italy).
- Take steps to ensure that full respect for the freedom of expression, including on the Internet, is implemented in current preparations for media law reform (Sweden).
- Strengthen efforts in the areas of civil and political freedoms, including freedom of expression and the press and freedom of religion (Republic of Korea).
- Take all necessary measures to end restrictions on the rights to freedom of expression and peaceful assembly (Canada, Norway, Finland, Germany, France).
- Adopt various measures for prevention and early diagnosis of transmissible diseases and pandemics, notably HIV/AIDS [i.e., Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome], by giving priority to vulnerable groups, particularly national minorities, the poor and sex workers (Benin).
- Continue to make further efforts to advance the human rights of socially vulnerable people (Japan, Cambodia).
- Establish a national human rights institution in compliance with the Paris Principles (Mexico, Azerbaijan, New Zealand).

Source: *Report of the Working Group on the Universal Periodic Review: Viet Nam*, U.N. Doc. A/HRC/12/11, 5 October 2009, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G09/163/82/PDF/G0916382.pdf?OpenElement> (last visited 29 June 2017).

Comments Received; Response to Recommendations: During the Interactive Dialogue, Viet Nam also received a specific comment from Norway recommending that Viet Nam adopt appropriate measures to disseminate widely and ensure full observance of 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**).⁹ Viet Nam did not respond to this comment.

⁹ First UPR cycle: *Report of the Working Group*, Viet Nam, para. 41.

Viet Nam accepted the recommendation from Argentina that it take the necessary steps to ensure that citizens can fully enjoy the rights to freedom of expression and freedom of religion.¹⁰ At the same time, however, Viet Nam did not support the recommendations which aimed to end restrictions on freedom of expression and freedom of assembly.¹¹ Viet Nam did not offer an explanation for its seemingly contradictory approach on the regulation of the freedom of expression.

On the general promotion and protection of human rights, Viet Nam accepted a recommendation to engage all appropriate social and political organisations in such promotion.¹² Viet Nam also accepted a recommendation to reinforce advocacy in human rights training and offer better health protection and human rights education to vulnerable groups.¹³ At the same time, Viet Nam did not support a recommendation that it build a policy dialogue between the government and CSOs,¹⁴ or that it create an national human rights institution in accordance with the Paris Principles.¹⁵

Second UPR Cycle (5 February 2014)

National Report Filed:¹⁶ Viet Nam's national report for the second UPR cycle was published on 8 November 2013. The report did not mention HRDs or the LGBTIQ community. On freedom of expression, the report focused on the existence of mass media to illustrate the freedom of expression possessed by its citizens.¹⁷ The report also referred to the number of associations in Viet Nam as demonstrating the existence of freedom of association and assembly.¹⁸

Stakeholders Submissions Made:¹⁹ The summary of the 59 stakeholders' submissions was published on 4 November 2013. Stakeholders explicitly discussed both the LGBTIQ community and HRDs. On the LGBTIQ community, stakeholders recommended that Viet Nam enact an anti-discrimination law that would ensure equality of all people regardless of sexual orientation and gender identity.²⁰

On HRDs, stakeholders expressed concerns over the number of cases of HRDs being arbitrarily arrested, not informed of the reasons for arrest, denied access to lawyers and families for several weeks, denied bail, and with the HRDs' lawyers facing harassment or

¹⁰ First UPR cycle: *Report of the Working Group*, Viet Nam, para. 99.44.

¹¹ First UPR cycle: *Report of the Working Group*, Viet Nam, paras. 35, 41, 63, 65, 85, 102.

¹² First UPR cycle: *Report of the Working Group*, Viet Nam, paras. 99.14-99.15.

¹³ First UPR cycle: *Report of the Working Group*, Viet Nam, paras. 99.13, 99.18, 99.29, 99.59, 99.71.

¹⁴ First UPR cycle: *Report of the Working Group*, Viet Nam, paras. 51, 102.

¹⁵ First UPR cycle: *Report of the Working Group*, Viet Nam, paras. 51, 55, 56, 59, 102.

¹⁶ *National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21: Viet Nam*, U.N. Doc. A/HRC/WG.6/18/VNM/1, 8 November 2013, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/185/15/PDF/G1318515.pdf?OpenElement> (last visited 29 June 2017).

¹⁷ Second UPR cycle: *National Report*, Viet Nam, paras. 25-30.

¹⁸ Second UPR cycle: *National Report*, Viet Nam, paras. 35-36.

¹⁹ *Summary of Stakeholders' submissions prepared by the Office of the High Commissioner for Human Rights: Viet Nam*, U.N. Doc. A/HRC/WG.6/18/VNM/3, 4 November 2013, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/183/23/PDF/G1318323.pdf?OpenElement> (last visited 29 June 2017).

²⁰ Second UPR cycle: *Stakeholders' Summary*, Viet Nam, para. 8.

disbarment.²¹ The report also advised that high-profile HRDs or HRDs under surveillance were routinely prevented from going abroad, prevented from travelling upon their release, or those under probation being prevented from traveling outside designated areas and denied passports.²² Stakeholders recommended Viet Nam refrain from harassing, threatening, criminalising or arresting HRDs for reasons connected to their peaceful activities, including the legitimate exercise of freedom of expression.²³

Second UPR Cycle for Viet Nam: Recommendations Received

In its second UPR, held in February 2014, Viet Nam received the following specific recommendations on HRDs, sexual orientation, and gender identity for the first time:

- Enact a law to fight against discrimination which guarantees the equality of all citizens, regardless of their sexual orientation and gender identity (Chile).
- Ensure a favourable environment for the activities of HRDs, journalists and other civil society actors (Tunisia).
- Give individuals, groups and organs of society the legitimacy and recognition to promote human rights and express their opinions or dissent publicly (Norway).
- Further implement measures to promote the freedoms of expression, association, assembly and freedom of the media in line with the most advanced international standards (Italy, Lithuania, Belgium, Japan, Poland, Chile, France).
- Take measures to ensure the effective protection of the right to freedom of expression and information, as well as the independence of the media, and release all human rights defenders, journalists, and religious and political dissidents detained for the peaceful expression of their opinion (Czech Republic).
- Take the necessary measures to protect freedom of expression and press freedom, including through the Internet (Brazil).
- Continue appropriate measures to ensure the realisation of the socio economic rights (Islamic Republic of Iran, Madagascar) especially by increasing resources to ensure social security and welfare of its citizens as well as the rights of vulnerable groups (Brunei Darussalam, Myanmar, Russian Federation).
- Consider establishing a national human rights institution (Thailand, Morocco, Niger) in accordance with the Paris Principles (Portugal, Spain, Congo, France, Madagascar, Togo).
- Encourage strengthening of NGOs by promoting a legal, administrative and fiscal framework in which such institutions can be created and developed and perform their activities without any obstacles and with freedom of expression (Spain).

²¹ Second UPR cycle: *Stakeholders' Summary*, Viet Nam, para. 21.

²² Second UPR cycle: *Stakeholders' Summary*, Viet Nam, para. 40.

²³ Second UPR cycle: *Stakeholders' Summary*, Viet Nam, para. 52.

Source: *Report of the Working Group on the Universal Periodic Review: Viet Nam*, U.N. Doc. A/HRC/26/6, 2 April 2014, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/129/10/PDF/G1412910.pdf?OpenElement> (last visited 29 June 2017).

Comments Received; Response to Recommendations: During the Interactive Dialogue, Viet Nam also received specific comments welcoming its progress on protecting the rights of LGBTIQ people²⁴ and commending Viet Nam on its decision to decriminalise homosexuality.²⁵ Viet Nam advised that one of its post-2015 agendas was to improve results achieved in social equity.²⁶ In a similar vein, Viet Nam accepted the recommendation to combat discrimination based on sexual orientation and gender identity.²⁷ Similarly, every recommendation on the protection and development of the rights of vulnerable groups enjoyed Viet Nam's support.²⁸

Likewise, Viet Nam also accepted the recommendation calling for enhanced protection of HRDs, promotion of a safe environment for HRDs, and a larger space to exercise their freedom of expression.²⁹ However, Viet Nam did not support the recommendation from the Czech Republic requesting Viet Nam to release dissident HRDs detained for expressing their opinions.³⁰ On fundamental freedoms more generally, Viet Nam accepted recommendations that more broadly sought increased freedom of expression and the media, freedom of assembly and the strengthening of NGOs.³¹

Finally, Viet Nam accepted recommendations seeking the creation of a national human rights institution.³² However, it did not support the recommendation that such an institution be established in conformity with the Paris Principles.³³

²⁴ Second UPR cycle: *Report of the Working Group*, Viet Nam, para. 51.

²⁵ Second UPR cycle: *Report of the Working Group*, Viet Nam, para. 106.

²⁶ Second UPR cycle: *Report of the Working Group*, Viet Nam, para. 61.

²⁷ Second UPR cycle: *Report of the Working Group*, Viet Nam, para. 143.88.

²⁸ Second UPR cycle: *Report of the Working Group*, Viet Nam, paras. 143.47-143.49, 143.54, 143.56, 143.79, 143.124, 143.187, 143.194, 143.223.

²⁹ Second UPR cycle: *Report of the Working Group*, Viet Nam, paras. 143.160, 143.162, 143.167.

³⁰ Second UPR cycle: *Report of the Working Group*, Viet Nam, para. 143.60; *Report of the Working Group on the Universal Periodic Review: Viet Nam, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, U.N. Doc. A/HRC/26/6/Add.1, 20 June 2014, para. 2, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/059/36/PDF/G1405936.pdf?OpenElement> (last visited 6 July 2017).

³¹ Second UPR cycle: *Report of the Working Group*, Viet Nam, paras. 143.144-143.147, 143.58-143.59, 143.171-143.172.

³² Second UPR cycle: *Report of the Working Group*, Viet Nam, paras. 143.35-143.39, 143.43.

³³ Second UPR cycle: *Report of the Working Group*, Viet Nam, paras. 143.40-143.42; Second UPR cycle: *Report of the Working Group, Addendum*, Viet Nam, para. 2.

Situation of the LGBTIQ Community and its HRDs in Viet Nam

Right to Equality and Non-Discrimination

In January 2017, Viet Nam implemented amendments to its Civil Code³⁴ that give transgendered people the same rights as cisgendered persons of the same gender expression.³⁵ This law is the most progressive in Southeast Asia in terms of recognising the equality of transgendered people, and it came about as the result of efforts by government agencies. In August 2015, the Ministry of Health urged Viet Nam's government to legalise same-sex reassignment³⁶ and reform the Civil Code to simplify the process for transgender people to officially change their name and gender identification.³⁷ Later that month, various members of the National Assembly legal committee joined the Ministry of Health to "urge[] the government to recognise gender reassignment as a human right."³⁸ Public demonstrations were also staged in support of the proposed reforms.³⁹

The Vietnamese government's amendment of the Civil Code partially implements a recommendation from Chile which Viet Nam accepted in its second UPR.⁴⁰ This recommendation called on Viet Nam to guarantee the equality of all citizens, regardless of either gender identity or sexual orientation. Thus, to fully implement the recommendation, sexual orientation should also be included in the Code.

Freedom of Opinion and Expression, Association and Assembly, and the Right to Freely Participate in the Cultural Life of the Community

Pride Celebrations: Viet Nam's LGBTIQ community has become far more visible in recent years, and increasingly able to exercise fundamental freedoms of opinion, expression and assembly. Viet Nam's pride parade, now known as and hosted by VietPride, has become increasingly prominent since the inaugural parade in 2012.⁴¹ The first of its kind in Viet Nam, 100 people joined the parade and peacefully demonstrated in the streets of Hanoi. While the

³⁴ "Vietnamese law to recognize transgender people in 2017", VnExpress, 17 December 2016, available at <http://e.vnexpress.net/news/news/vietnamese-law-to-recognize-transgender-people-in-2017-3515044.html> (last visited 3 July 2017).

³⁵ Anh Vu & Khanh An, "Vietnam recognizes transgender rights in breakthrough vote", Thanh Nien News, 24 November 2015, available at <http://www.thanhniennews.com/politics/vietnam-recognizes-transgender-rights-in-breakthrough-vote-54168.html> (last visited 11 July 2017).

³⁶ "Vietnam health officials want to legalize gender reassignment surgery", Thanh Nien News, 13 August 2015, available at <http://www.thanhniennews.com/society/vietnam-health-officials-want-to-legalize-gender-reassignment-surgery-50047.html> (last visited 11 July 2017).

³⁷ "Viet Nam health officials want to legalize gender reassignment surgery", Thanh Nien News, 13 August 2015.

³⁸ Truong Son, "Vietnam's lawmakers support gender reassignment, call it basic human right", Thanh Nien News, 20 August 2015, available at <http://www.thanhniennews.com/politics/vietnams-lawmakers-support-gender-reassignment-call-it-basic-human-right-50445.html> (last visited 11 July 2017).

³⁹ "Vietnamese law to recognize transgender people in 2017", VnExpress, 17 December 2016, available at <http://e.vnexpress.net/news/news/vietnamese-law-to-recognize-transgender-people-in-2017-3515044.html> (last visited 11 July 2017).

⁴⁰ Second UPR cycle: *Report of the Working Group*, Viet Nam, para. 143.88.

⁴¹ "Human Rights Reports for 2012: Vietnam", U.S. Department of State: Bureau of Democracy, Human Rights and Labor, 2013, p. 44, available at <https://www.state.gov/documents/organization/204463.pdf> (last visited 9 July 2017).

organisers were denied permission to host the demonstration, no incidents occurred when the event nevertheless went ahead.

In 2013, participation in Viet Nam's pride parade increased to 200 activists.⁴² In 2014, this number reached over 300,⁴³ and in 2015, over 400.⁴⁴ In 2015, a separate pride rally was hosted in Ho Chi Minh City to celebrate the legalisation of same-sex marriage in the US, which more than 5,000 people attended.⁴⁵ In 2016, VietPride was hosted in Hanoi, though the number of attendees is unreported.⁴⁶ In 2017, Viet Pride and Hanoi Pride plan to host events across the State to celebrate Pride from July until October.⁴⁷

IDAHOT Celebrations: A series of events have also been hosted in Viet Nam's four largest cities to celebrate the International Day Against Homophobia, Transphobia and Biphobia (IDAHOT). These events, collectively known as "Awakening to the Rainbow", attracted more than 10,000 participants.⁴⁸

Participation in Cultural Life: Since 2016 in particular, Viet Nam's LGBTIQ community has become increasingly engaged in Viet Nam's cultural life. In June 2016, the SEA Pride music festival showcased the region's musical diversity, creating a safe space to celebrate LGBTIQ diversity and promote workplace diversity.⁴⁹ In July 2016, a young Vietnamese LGBTIQ rights activist was selected to take part in the YouthSpeak Ambassador Campaign. This campaign, designed by the International Youth Organisation AIESEC in Viet Nam and the Viet Nam

⁴² "Activists parade for gay rights in Vietnam", Malay Mail Online, 4 August 2013, available at <http://www.themalaymailonline.com/world/article/activists-parade-for-gay-rights-in-vietnam> (last visited 9 July 2017).

⁴³ "Country Reports on Human Rights Practices for 2014: Vietnam", U.S. Department of State: Bureau of Democracy, Human Rights and Labor, 2014, p. 42, available at <https://www.state.gov/documents/organization/236702.pdf> (last visited 9 July 2017).

⁴⁴ Tan Qiuyi, "Hundreds brave persistent rain at LGBT rally in Vietnam", Channel News Asia, 2 August 2015, available at <http://www.channelnewsasia.com/news/asiapacific/hundreds-brave-persistent/2024238.html> (last visited 9 July 2017).

⁴⁵ Minh Hung, "LGBT parade draws huge crowd in downtown Saigon", Thanh Nien News, 29 June 2015, available at <http://www.thanhniennews.com/society/lgbt-parade-draws-huge-crowd-in-downtown-saigon-47285.html> (last visited 9 July 2017).

⁴⁶ "LGBT Festival Viet Pride Hanoi 2016 kicks off next week", Tuoi Tre News, 11 November 2016, available at <http://tuoitrenews.vn/lifestyle/36443/lgbt-festival-viet-pride-hanoi-2016-kicks-off-next-week> (last visited 9 July 2017).

⁴⁷ "VietPride 2017", Facebook Page, 1 June 2017, available at <https://www.facebook.com/vietpride.vn/> (last visited 9 July 2017); "Hanoi Pride 2017", Facebook Page, 2017, available at <https://www.facebook.com/VietPride.info/> (last visited 9 July 2017).

⁴⁸ "Being LGBT in Asia: Viet Nam Country Report", United Nations Development Programme, 2014, pp. 22, 39, available at https://www.usaid.gov/sites/default/files/documents/1861/Being_LGBT_in_Asia_Vietnam_Country_Report.pdf (last visited 11 July 2017).

⁴⁹ "SEA Pride Music Festival 2016", Vietnam Breaking News, 5 July 2016, available at <https://m.vietnambreakingnews.com/2016/07/sea-pride-music-festival-2016/> (last visited 11 July 2017); "SEA Pride music festival to honour diversity", Viet Nam News, 16 June 2016, available at <http://vietnamnews.vn/lifestyle/298241/sea-pride-music-festival-to-honour-diversity.html#EYCyDAobitSfZwc.g9> (last visited 11 July 2017).

Chamber of Commerce and Industry, encourages youth to challenge societal norms and create positive change.⁵⁰

That same year, it was reported that 200 local youth gathered in Hanoi's Cau Giay District to express their support for the LGBTIQ community by hosting a community dance performance.⁵¹ In addition, in August 2016, the first Human Library project opened in Hanoi's Labour and Society College, which encouraged people to tell their stories to an audience. Among other individuals, a transwoman and 'bi-gender' person shared their stories openly with the audience.⁵² On 16 and 17 September in 2017, Queer Forever hosted an intimate series of film screenings and discussions projecting voices of the LGBTIQ community.⁵³ Most recently, hundreds of individuals gathered in Ho Chi Minh City to celebrate the new law recognising the rights of transgender people.⁵⁴

By allowing such a wide range of events to operate freely, Viet Nam has effectively allowed greater freedom of expression, association and assembly, as well as the right to freely participate in the community. This fulfils various relevant recommendations Viet Nam received during its first and second UPRs. Moreover, while Viet Nam accepted the majority of these recommendations, some of the recommendations which it did not support - but appears to have adhered to in practice - were first UPR recommendations from Canada, Norway, Finland, Germany and France that Viet Nam end restrictions on the rights to freedom of expression and peaceful assembly.⁵⁵

Right to Work

In 2015, a nationwide campaign was launched to campaign for LGBTIQ equality in the workplace. This campaign was jointly organised by Viet Pride Hanoi and the Information, Connection and Sharing Centre (an LGBT organisation in Viet Nam commonly known as ICS) and is entitled "Work with Pride."⁵⁶ The American Embassy in Hanoi launched the campaign by facilitating a dialogue between LGBTIQ activists and the corporate community in order to

⁵⁰ "Ambassadors address social change in YouthSpeak campaign", Việt Nam News, 10 July 2016, available at <http://vietnamnews.vn/sunday/299157/ambassadors-address-social-change-in-youthspeak-campaign.html#gXGxBOtfvsEEBWZ.97> (last visited 11 July 2017).

⁵¹ "Youths in big cities join dance to support homosexuals", Tuổi Trẻ News, 24 September 2012, available at <http://tuoitrenews.vn/lifestyle/1793/youths-in-big-cities-join-dance-to-support-homosexuals> (last visited 9 July 2017).

⁵² "Human Library Aims To Create Understanding", Việt Nam News, 28 August 2016, available at <http://vietnamnews.vn/sunday/features/301581/human-library-aims-to-create-understanding.html#5jKTvt07WM93mYTC.99> (last visited 11 July 2017).

⁵³ "Queer Forever 2016 gives LGBT films a voice", Viet Nam News, 15 September 2016, available at <http://vietnamnews.vn/life-style/342811/queer-forever-2016-gives-lgbt-films-a-voice.html#ufw3rZpWscEytAh1.99> (last visited 11 July 2017).

⁵⁴ Anh Vu & Khanh An, "Vietnam recognizes transgender rights in breakthrough vote", Thanh Nien News, 24 November 2015.

⁵⁵ First UPR cycle: *Report of the Working Group*, Viet Nam, paras. 35, 41, 63, 65, 85, 102.

⁵⁶ "Campaign for LGBT rights in the workplace launched", Việt Nam News, 15 October 2015, available at <http://VietNamnews.vn/society/277131/campaign-for-lgbt-rights-in-the-workplace-launched.html> (last visited 11 July 2017).

raise awareness about being LGBTIQ in the workplace, and how the corporate community can become engaged in the LGBTIQ movement.⁵⁷

The campaign was heralded as a success. The fact that Viet Nam has enabled it to be freely staged demonstrates the multifaceted progress it is making on LGBTIQ rights. This campaign speaks to not only the right to equality and non-discrimination but also to the universal right to work and to just and favourable conditions of work and protection against unemployment. Its success goes towards fulfilling the recommendation that Viet Nam accepted during its second UPR to ensure the realisation of socio economic rights and generally, the rights of vulnerable groups.⁵⁸

Conclusion

Since its first UPR, Viet Nam has accepted a broad range of UPR recommendations affecting its LGBTIQ community and HRDs working on LGBTIQ-related issues. These include recommendations aimed at combating discrimination on the basis of sexual orientation or gender identity; supporting greater freedom of opinion, expression, assembly; and encouraging the attainment of international human rights standards generally.

In practice, Viet Nam's legalisation of sex reassignment and simplification of name and gender identity changes serve as a watershed both for its transgender community and the broader Southeast Asian region, where this law is the first of its kind. In addition, the Vietnamese government's non-interference in a wide range of LGBTIQ events held or in a "Work with Pride" campaign encouraging equality in the workplace demonstrates that the LGBTIQ community may not only enjoy strengthened fundamental freedoms but also greater possibilities to obtain employment and to enjoy more favourable working conditions and protections.

The promising developments in Viet Nam in practice during the period of its first two UPR cycles represent an opportunity to build on these permissive practices by formalising them as legal reforms to remove restrictions on the exercise of fundamental freedoms. This is important because while HRDs working on LGBTIQ issues appear not to have been unduly hindered in their work, this is not the case for the wider community of HRDs in Viet Nam, and the existence of restrictions on fundamental freedoms continues to expose LGBTIQ HRDs and the LGBTIQ community to potential risk.⁵⁹

⁵⁷ "Campaign for LGBT rights in the workplace launched", *Việt Nam News*, 15 October 2015.

⁵⁸ Jörg Wischermann, "LGBT Rights Are Not Politically Sensitive in Vietnam", GIGA, 29 January 2015, available at <https://www.giga-hamburg.de/en/news/%E2%80%99Clgbt-rights-are-politically-not-sensitive-in-vietnam%E2%80%99D> (last visited 11 July 2017); Second UPR cycle: *Report of the Working Group*, Viet Nam, paras. 143.47-143.49, 143.54, 143.56, 143.79, 143.124, 143.187, 143.194, 143.223.

⁵⁹ Bennett Murray, "Vietnam's Quiet Human Rights Crisis", *The Diplomat*, 17 April 2017, available at <http://the-diplomat.com/2017/04/vietnams-quiet-human-rights-crisis/> (last visited 11 July 2017).

Recommendations

In the lead-up to the third UPR review of Viet Nam in January/February 2019:

- CSOs should actively engage in monitoring the implementation of those recommendations Viet Nam accepted and/or noted during the first two UPR cycles so as to gather relevant data on the improvement of the human rights situation in the country and to report at the third UPR cycle.
- CSOs should document violations and abuses endured by LGBTIQ people and their defenders so as to provide recommending states and the relevant United Nations 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 Viet Nam of removing unnecessary limitations to, and strengthening the protection of, fundamental freedoms.

Viet Nam: LGBTIQ HRD Interview

Human Rights of LGBTIQ Communities and HRDs: Frontline Voices



**Khoa (Teddy) Nguyen,
Community Leader**

How did you become involved in LGBTIQ rights work?

I became involved in LGBTIQ work in 2009. At the time I worked for an online gay forum in Viet Nam, because at the time the LGBT people were discriminated against a lot, and while working at the forum I learned about the ICS Center [Information, Connection and Sharing Center].

ICS was established in 2008 and they work on LGBT rights — the first LGBT organisation in Viet Nam — and I had the chance to work with them. After that in 2011 I worked at the ICS Center as a contributor, so while working at the ICS Center I had the chance to work

with the CSO world and I worked on many projects on LGBT rights.

Do you consider yourself a human rights defender?

Yes, I have been working for LGBT rights and other human rights since many years ago.

What work are you doing right now?

I am a university lecturer. I do not teach about LGBT rights at my university, but I am a volunteer for some CSOs such as the ICS Center. So in my free time I work as a contributor for ICS Center as well as for PFLAG [Parents and Friends of Lesbians and Gays] Viet Nam. My Mum is the President of PFLAG Viet Nam.

What do you think has been the most important things you've done for LGBT rights?

Actually, I have many stories when working on LGBTI rights. The interesting outcome we have made is we worked with the government and we asked them to remove laws which do not permit same-sex couples to have marriage. And we lobbied the government to change the laws to recognise transgender people. That was the most interesting outcome.

To be more precise, same-sex couples can now have a wedding, but their marriage will not be recognised by the government.

Before the laws changed, if gay people hosted a wedding they could be fined. The government could come and give gay people a fine and stop the wedding at any time. After the advocacy on LGBT rights in Viet Nam, the government issued the new laws and accepted gay weddings, though not recognising their marriage.

What was your involvement in the law changing?

I and my co-workers and PFLAG Viet Nam had to go to Hanoi to have workshops with government officers and Congress members and with the Ministry of Justice to give them the ideas and to tell them the story in which the LGBT community faces many problems in their lives.

We were very surprised with the result, because our government always sees human rights as a sensitive topic, but on the topic of LGBT rights they are very open-minded. And the law changed rapidly, because before 2009, 'LGBT' was an unknown word in society. And they only think that gay and lesbian people have some kind of sickness.

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

Actually no, I don't feel any risk at all because in Ho Chi Minh people are very open-minded. Being gay or not or being hetero isn't your life, and people don't care about it, so I don't feel risk about anything — even in my work. LGBT people in some other provinces, they face many problems and face stigma and discrimination. In the

country, even in some big cities like Hanoi, people often see LGBT people as weird.

What role does religion play in the pursuit of LGBTIQ rights?

We do not have a main official religion, so religion plays a small role in intervening with the laws. But in the small areas, especially in some areas with the Christian church, they always say that LGBT people are a sin. Luckily most of Vietnamese people are Buddhist. Some Christians are open-minded to this issue too, only the Protestants are very strict to the LGBT issue.

Does your government do enough to protect LGBTIQ rights?

Yes, they do many things to protect LGBT rights, especially in this day, and they hold many workshops to make the laws. Currently, they are making some laws to allow the transgender people to have surgery, to change their sexual status. And the Ministry of Education are hosting many workshops to put the knowledge of sexuality into the books for students. The government needs to push in order to bring equal rights to every people as soon as possible.

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

Yes. The UPR has a big impact on my country because in the first round of the UPR, Viet Nam kept its vote and disagreed with the recommendations. But on the two other rounds, they said yes to the UPR and its recommendations. When they agree with

the UPR, they change the laws and they want to bring equality for the LGBT people.

Does civil society know how to use the UPR recommendations and comments for advocacy in Viet Nam?

Yes, civil society uses the UPRs in their work with the government.

Is there much cooperation between civil society organisations in the pursuit of LGBTIQ rights?

PFLAG Viet Nam was established in 2011 and it has helped a lot in our movement. When PFLAG met with government officers and Congress members, they tell the government officers about their stories. Their stories are very touching, so it makes the government officers realise what problems their families are facing.

In our oriental culture, in Viet Nam, family is one of the most important factors. And when the parents, and especially the mothers, speak up about their lives, it makes the government understand the difficulties the LGBT people are facing every day. So it helps a lot with the movement. PFLAG is one of the most important factors for the movement.

The media has also had one of the biggest impacts on the movement. Before 2009, the media had many articles saying bad things about LGBT people. They described LGBT people as criminals and this made society think LGBT people are criminals. But after the ICS Center was established, the first project of the ICS Center was to work with the media and to give the media the exact information about the LGBT people and let the journalists have contact directly with LGBT people.

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

I have been working for LGBTI rights in Viet Nam since 2009, and I have seen a rapid change in our society. In the past, LGBT people faced many problems and they faced stigma and discrimination, and they cannot tell anyone about their sexuality. But after our work from 2009 until now, things changed rapidly – there are more and more people being confident in their lives and they freely tell anyone about their sexuality without having fear or being afraid of discrimination and stigma. Society welcomes and encourages people to talk about their sexuality.

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.

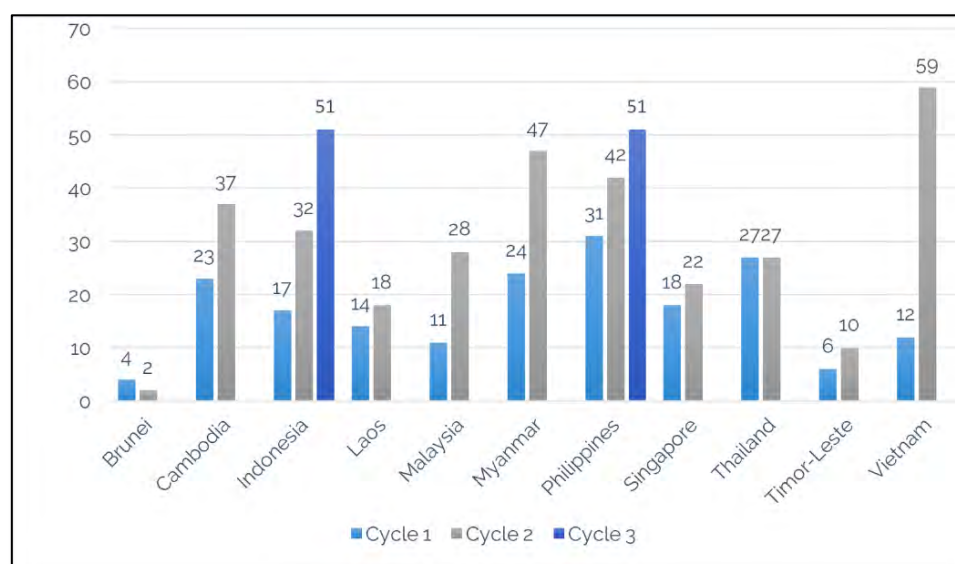


Figure 1: Southeast Asian Stakeholder UPR Submissions in Each Cycle

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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