



The Rainbow in Context

An Overview of the Situation
of Lesbian, Gay, Bisexual,
Transgender, Intersex,
and Queer (LGBTIQ) Persons
in Southeast Asia

CITATION: ASEAN SOGIE Caucus (2017). The Rainbow in Context: An Overview of the Situation of Lesbian, Gay, Bisexual, Transgender, Intersex, and Queer (LGBTIQ) Persons in Southeast Asia



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ASEAN SOGIE Caucus is a regional network of human rights defenders advocating for the protection, promotion and fulfilment of the rights of all persons regardless of sexual orientation, gender identity, gender expression and sex characteristics (SOGIESC). The organization envisions a SOGIESC-inclusive ASEAN community.

This publication was produced with funding support from UNDP Being LGBTI in Asia Program and Arcus Foundation, and with operational support from Outright Action International.



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Acknowledgements

This report was a collaborative effort spanning the whole of 2017 and would not have been possible without the input of allies and networks across Southeast Asia.

ASEAN SOGIE Caucus extends its appreciation to Chang Jordan, Ryan Silverio, and Jan Gabriel Castañeda in the Philippines for the writing of this report, and to Ng Yi-Sheng in Singapore for final editing and proofreading. We also extend our thanks to Cornelius Damar Hanung in Indonesia for helping facilitate the collection of feedback from contacts.

We also want to thank our dear members within ASEAN SOGIE Caucus for giving their insight in the various phases of revision of this report, to make sure that all information was appropriately framed and understood in their various contexts.

Lastly, we wish to thank our other friends and colleagues who happily shared their knowledge to help strengthen sections of the report in which they had specific expertise.

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Foreword

WE ARE LIVING IN A TIME when we are seeing regressive trends in some countries in Southeast Asia in relation to human rights. Branding and criminalizing LGBTIQ groups and their allies as extremists, enemies and threats to culture, religion and national security are serious violations of the inherent rights to life, dignity and non-discrimination.

We are all born free and equal, and all human beings regardless of our background, ethnicity, sexual orientation, and gender identity are entitled to equal protection with no exceptions.

I welcome this regional report, 'The Rainbow in Context: An Overview of the Situation of Lesbian, Gay, Bisexual, Transgender, Intersex, and Queer (LGBTIQ) Persons in Southeast Asia', by the ASEAN SOGIE Caucus (ASC). The report has comprehensively surveyed and taken stock of the current state of affairs in the region. It has documented the worrying trends we are seeing today, and analyzed the impact of marginalization and exclusion on persons based on their sexual orientation, gender identity, gender expression and sex characteristics.

In spite of the challenges, it is heartening that the UN Human Rights Council had appointed an eminent academic, Professor Vitit Muntarbhorn, from this region as the UN's first Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity. We have also seen greater participation by LGBTIQ persons in advocating their causes.

Further, I commend the ASC for its commitment to action, and perseverance to seek meaningful changes in the lives of all the peoples of ASEAN. I am hopeful that in time to come the ASEAN ambition to build a more people centered, people oriented, and resilient Community, will be realized.

We must join with governments and civil society in ASEAN to shift the discourse of human rights towards one of inclusiveness, not exclusiveness; one of celebration, not castigation; and one that embraces, not rejects, all of humankind in their diversity.

Dated this 28th day of October 2017

EDMUND BON TAI SOON
*Representative of Malaysia to the
ASEAN Intergovernmental Commission
on Human Rights (AICHR)*

SINCE THE ADOPTION by the United Nations General Assembly of the Universal Declaration of Human Rights, the global community has come a long way in terms of upholding and protecting the rights of all. Unfortunately, the continuing plight of the lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) community, shows that for this sector in society, there is still a long way to go. Obtaining the universal recognition of the rights of the LGBTIQ community is still one of the persistent challenges facing human rights defenders, and in particular advocates of diversity in sexual orientation, gender identity, expression, and sex characteristics (SOGIESC). This challenge is particularly acute among the countries of the Association of Southeast Asian Nations (ASEAN), several members of whom continue to criminalize homosexuality, or refuse to take concrete action to protect LGBTIQ communities against blatant discrimination and hate crimes frequently being perpetrated against them.

The work of the ASEAN SOGIE Caucus towards addressing this daunting situation highlights both the root and the scale of the problem, especially in the region. It exposes the problem as not merely one of a simple lack of protective legislation, but which is rooted deeply in social, cultural and even religious norms. In the process, it has revealed both the true situation and the true scope of the work that still needs to be done.

The work of the Caucus has also helped to manage expectations as to what kind of reform is realistically possible over the short term, especially as one of the key principles of ASEAN when it was founded nearly 50 years ago was a consensus to respect the cultural differences between and among member-states. Notably, conservative attitudes are evident—not only in nations where culture is deeply rooted in religion—but also in more culturally diverse nations but where a majority still hold on to “traditional” norms. The fact that even outwardly pluralistic states still harbor prejudices against a particular segment of society shows the extent of the problem in the whole of ASEAN.

At present, several ASEAN countries which fall short in protecting homosexuals from discrimination and abuse have invoked the need to respect cultural differences and local traditions to justify their insistence on maintaining the status quo. The very integrity of the ASEAN has been

invoked by some of its member nations as justification for continuing inaction on LGBTIQ discrimination, or in some cases, their outright criminalization. If we are to move forward, it is imperative that the human rights community find ways to engage constructively and meaningfully with the various governments concerned, especially in supporting their efforts to convince their respective constituencies of the need for serious legal reform. Engaging governments has always been a daunting task, but engaging societies with deep-seated prejudices is even more so. But there is no turning back if true gender equality is to be attained.

It is encouraging to note that within the ASEAN community, there have already been initial steps taken in recognizing the rights of persons of diverse sexual orientation, identity expression, and sexual characteristics. These include efforts at reshaping legislation and public policy in both the Philippines and Indonesia, as well as continued efforts in Malaysia to engage with its majority Muslim community in understanding the roots of opposition to homosexuality. Considering though that the problem of LGBTIQ discrimination is ingrained in the national consciousness of the various populations, we know it will take a lot more initiatives such as these to strategically address the problem. The need to change laws is only secondary to the need to change people’s hearts and minds.

We at the Commission on Human Rights of the Philippines (CHRP) have constantly pushed for the respect and protection of all people, especially those who are marginalized, disadvantaged, and vulnerable. Our commitment, especially with regards to gender equality, is embodied in the fact that we serve as the Philippines’ Gender Ombud, and our policy advocacy on inclusivity and respect for diversity is well documented.

We commend the tireless efforts of our colleagues at the ASEAN SOGIE Caucus to promote the recognition and protection of the rights of the LGBTIQ community. We pledge to support your work and collaborate more strategically so that current gains are defended and eventually expanded.

Mabuhay!

JOSE LUIS MARTIN C. GASCON
*Chairperson, Commission on Human Rights
of the Philippines (CHRP)*



Introduction

LESBIAN, GAY, BISEXUAL, transgender, intersex and queer (LGBTIQ) persons may be found throughout Southeast Asia.¹ However, their existence is marked by stories of stigmatization, violence, and exclusion within the social, economic, and political lives of their communities and nations. Within ASEAN member-states, LGBTIQ people have been stigmatized as dangers to national security and threats to the moral fabric of society.² What are often described as fundamental freedoms – rights to free expression, political association, family, health, and so on – are denied to people of diverse sexual orientation and gender identity and expression, and sex characteristics (SOGIESC).³ This denial of LGBTIQ people’s human rights is often justified on the grounds of religious beliefs (e.g. that being LGBTIQ is un-Islamic, un-Christian, or un-Buddhist), cultural identity (e.g. that being LGBTIQ is incompatible with the country’s history and traditions), and defense of sovereignty (e.g. that being LGBTIQ is a “Western” construct that is alien and destructive to the nation), though these rationales often overlap.

A statement from February 2016 by the Indonesian Psychological Association’s Institute of Clinical Psychology (IKP-HIMPSI) helps illustrate this. While policy-wise IKP-HIMPSO “oppose[s] all efforts to exploit, manipulate and abuse LGBTIQ individuals” to “coerce” their “recovery”, the organization also denounces those who support the “LGBTIQ phenomena” as

this “conflicts with the nation’s pride and [has] potential to ruin the order and public life of Indonesia.” Note also that the statement affirms that they oppose efforts not just to “coerce” recovery, but efforts to “hinder” it, referring to the belief that people should not be stopped from trying to change if they are LGBTIQ.⁴ This conflation of various forms of stigmatization reflects a cultural atmosphere that leaves LGBTIQ people in many parts of Southeast Asia with few easy answers. In the case of IKP-HIMPSI (whose attitudes are by no means unique to Indonesia), it is a combination of perceptions that cast LGBTIQ people as both dangerous political entities and mentally ill people in need of treatment. These perceptions are buttressed by religious convictions, as seen at the end of the statement wherein they call on God to “bestow upon us hearts that trust and are full of love in helping others.”⁵

International human rights instruments have established that the rights of LGBTIQ persons, like all other persons, are indivisible, inalienable, and interdependent. Yet even in countries whose governments are party to human rights conventions, these rights continue to be attacked almost unabated. There is, for example, an increasing trend of criminalization of LGBTIQ persons within ASEAN member-states, including laws that criminalize homosexuality, same-sex acts, cross-dressing, and other acts that disproportionately target LGBTIQ people. Some

examples are Brunei's Syariah Code of 2013, which penalizes same-sex conduct and "gender impersonation", and ambiguous state policies like Cambodia's Village Commune Safety Policy, which has been used to label LGBTIQ people as sex workers.^{6,7}

Meanwhile, LGBTIQ activism is situated against a political landscape of weak democracies, authoritarian regimes, and rising religious extremism. For example, the government of Singapore has actively obstructed LGBTIQ people's capacity to exercise their political rights: in 2004, the registration of an LGBTIQ organization was denied by the Registrar of Societies because it was "contrary to public interest to grant legitimacy to the promotion of homosexual activities and viewpoints"; and in 2013, the charges against a prominent human rights activist was justified by the government as a means "to protect the competing interest of safeguarding society's confidence in the administration of justice and the judiciary."^{8,9} In the context of diplomatic relations within Southeast Asia, governments are often reluctant to exercise political will to address human rights violations, particularly violations against LGBTIQ persons, fearing that raising "sensitive issues" will strain relationships with other ASEAN member-states or provoke a growing number of violent conservative groups within their own borders.

In ASEAN's history of community-building up to the touted era of regional integration, the organization has simply not put much effort into promoting and protecting the rights of the LGBTIQ persons. Its weak human rights infrastructure keeps LGBTIQ people, as well as other historically marginalized groups, unprotected in the region. Many of the human rights declarations, including the new ASEAN Community 2025 vision, have left LGBTIQ persons and their issues behind. As a whole, ASEAN member-states continue to be hostile and alienating environments.

This report presents an overview of the situation of LGBTIQ persons within ASEAN. Its objectives are: a.) to describe the persistent and emerging challenges in the promotion and protection of the rights of LGBTIQ people in Southeast Asia; b.) to discuss recent successes gained in the realization of the rights of LGBTIQ people; and c.) to offer recommendations on engaging with ASEAN, particularly through its human rights mechanisms. This report covers the following issues:

- ASEAN's weak human rights infrastructure
- Increasing criminalization of LGBTIQ people in ASEAN
- Absence of de jure recognition and protection of LGBTIQ people's rights
- Shrinking civil society spaces for LGBTIQ activism
- Continuing stigmatization of LGBTIQ persons.

The report covers the period of 2012 to 2017, the time in which the ASEAN Human Rights Declaration took effect as a normative framework among member-states.¹⁰ The report was produced through correspondences with LGBTIQ activists in Southeast Asia and a desk review of relevant literature, such as research and reports produced by civil society organizations. This overview was also guided by the principle of intersectionality, which considers the position of LGBTIQ persons in the region as situated in the intersections of various identities and social categories. That is, LGBTIQ people's experiences are dependent not just on their SOGIESC but on their social class, ethnicity, citizenship, age, religious affiliation, and so on. In assessing the information used in this report, such intersections – particularly intersections which have not yet been explored or have been given little attention (e.g. LGBTIQ persons who are victims of human trafficking) – should always be considered.



Human Rights and SOGIESC: global advances and key challenges

THERE HAVE BEEN historical advances in the recognition of SOGIESC as a key human rights issue at the UN. At the UN Human Rights Council (HRC), resolutions have been passed since 2011 tackling sexual orientation and gender identity directly, most notably the resolution establishing the mandate of the Independent Expert on sexual orientation and gender identity. At the UN General Assembly (GA), there were resolutions on extrajudicial, summary, or arbitrary executions which included references to sexual orientation and gender identity. And among the UN Special Procedures and other treaty bodies, issues relating to SOGIESC have been tackled to various degrees. These as well as other initiatives – the most popular being the UN Free & Equal campaign and the Being LGBTIQ in Asia program – have helped create avenues for LGBTIQ rights advocates to call on their governments to address human rights violations against LGBTIQ persons.^{11,12} To these, ASEAN member-states have responded in different ways.

1.1. UN Human Rights Council resolutions

At the HRC, the 2011 resolution was a turning point in LGBTIQ rights at the international level. Said resolution called for a study “documenting discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity” and to “have constructive, informed and transparent dialogue” following its submission. Of the two ASEAN member-states who voted, Malaysia voted against the resolution and Thailand voted in favor.¹³ (See Annex 1.)

The 2011 resolution paved the way for the very first UN report focusing on sexual orientation and gender identity. The report reviewed relevant human rights standards and affirmed, among other things, that “human rights treaty bodies have confirmed that States have an obligation to protect everyone from discrimination on grounds of sexual orientation or gender identity” and that “the fact that someone is lesbian, gay, bisexual or transgender does not limit their entitlement to enjoy the full range of human rights.” An example from the region was cited, describing an event in Indonesia wherein “a man and his male partner were allegedly severely beaten and sexually abused by police officers a day after reportedly having been assaulted by 16 civilians.” (The response of the Indonesian

government noted that the police officers had been sentenced to three years imprisonment and a fine. “At the time,” the government response explained, “it was said that the assault was a direct result of the disapproval felt in their community for their sexual misconduct which contravened the local laws, traditions and religious values.”¹⁴ It also highlighted the role of National Human Rights Institutions (NHRIs) in addressing these issues, specifically naming the NHRIs of Indonesia, Malaysia, the Philippines, and Thailand as having contributed positively to ongoing discussions.¹⁵

Not long after, the HRC convened a panel on ending violence and discrimination against individuals based on their sexual orientation and gender identity in March 2012. The contentiousness of the subject was evident in a short sentence recorded in the published summary: “A number of [unnamed] States had signaled their opposition to any discussion of sexual orientation and gender identity by leaving the Council chamber at the start of the meeting.” Among the objections raised were that sexual orientation and gender identity had no legal foundation “because they had not been sufficiently well defined and were not mentioned in any international human rights instrument”; that “imposing the concept of sexual orientation would breach the social and cultural rights of communities concerned”; and that such changes “challenged the 6 principles of universality and cultural pluralism and threatened the common ownership of the international human rights programme.”¹⁶

Following this, a coalition of NHRIs submitted a statement for the HRC’s 23rd session in 2013. They affirmed their “obligation to protect and promote human rights of all individuals without prejudice or discrimination” and reiterated their call “for the continued mainstreaming of protection for individuals discriminated against because of their sexual orientation, gender identity or because they are intersex, through existing international and regional human rights systems.” The NHRIs of two ASEAN member-states, the Philippines and Thailand, were part of this coalition.¹⁷ A coalition of NHRIs submitted a follow-up statement for the HRC’s 27th session in 2014, in which they “call for unity and ongoing dialogue to ensure that the Council maintains the

universality, indivisibility and interdependence of all human rights, including LGBTIQI rights”, though no NHRI from any ASEAN member-state was part of this submission.¹⁸

Another HRC resolution was adopted in 2014, which requested the UN Secretary General to produce a follow-up report “with a view to sharing good practices and ways to overcome violence and discrimination, in application of existing international human rights law and standards”. Of the ASEAN member-states present, Indonesia voted against the resolution while Viet Nam and the Philippines voted in favor.¹⁹ (See Annex 1.)

This follow-up report was submitted in 2015, with updated information on the issues presented in 2011, including positive developments on government efforts to enact laws and policies to address discrimination and conduct gender sensitivity training for state personnel in various social institutions. But as the report grimly stated, these developments “are overshadowed by continuing, serious and widespread human rights violations perpetrated, too often with impunity, against individuals based on their sexual orientation and gender identity.” Worse still, it found that “violence motivated by homophobia and transphobia is often particularly brutal, and in some instances characterized by levels of cruelty exceeding that of other hate crimes.” It also cited reports on various ASEAN member-states to highlight other forms of discrimination: the use of vague laws to persecute LGBTIQ people through arbitrary arrests and other means, such as the use of provisions on “grave scandal” in the Philippines; the imposition of cruel punishments, such as the death penalty for homosexual conduct in Brunei Darussalam; the disproportionate impact of bullying on LGBTIQ youth, such as in Thailand; and the continued existence of discriminatory laws and policies, such as in the various provinces and autonomous regions in Indonesia.²⁰

1.2. The Independent Expert on sexual orientation and gender identity

Perhaps the most significant move in the UN in terms of institutionalizing the human rights of LGBTIQ people was the adoption of a resolution appointing an Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (IESOGI).²¹ The resolution established a mandate-holder tasked with assessing the implementation of international human rights mechanisms in connection to sexual orientation and gender identity and to conduct awareness-raising on these issues, among others. It is critical however to note that the mandate limits itself in important ways in some of its provisions, reflecting not just the limitations of the mandate-holder's work but the contentiousness of SOGIESC as a whole in human rights discourse. Two examples are the provisions "underlining", when carrying out the functions of the IESOGI, "the fundamental importance of respecting relevant domestic debates at the national level on matters associated with historical, cultural, social and religious sensitivities" and the reminder that such "should be implemented while ensuring respect for the sovereign right of each country as well as its national laws, development priorities, the various religious and ethical values and cultural backgrounds of its people, and should also be in full conformity with universally recognized international human rights." Nevertheless, the establishment of the IESOGI, whose mandate will last until 2018, was a significant success in the face of strong opposition.

Among the ASEAN member-states, only Viet Nam voted in favor of the resolution establishing the IESOGI. Indonesia voted against the resolution, while the Philippines abstained. Equally important were the rationales submitted by the delegations voting on the resolution. The government of Viet Nam, in supporting the resolution, "stressed that the mandate holder endorsed in the draft should discharge his or her duty strictly in line with the code of conduct" and that "differences among societies had to be respected." For Indonesia, the delegation stated that "Members of the Council should refrain from imposing values which did not enjoy international consensus", that the resolution was "divisive", and

that they wished to put on record that "Indonesia would not engage with the mandate holder." The Philippines voted to abstain on the basis that "the creation of a mandate holder would apply a set of rules specific to a certain sector on which there was no international agreement." Confusingly, the Philippines also rationalized that "a human rights mandate holder specific to lesbian, gay, bisexual, transgender and intersex rights would run counter to the universality of human rights" – an objection not directed at other mandates with equally specific domains.²² (See Annex 1.)

The appointment of the IESOGI was challenged two times in the GA. During the GA 3rd Committee meeting on November and December 2016, there were significant attempts to block the mandate of IESOGI. The first attempt, a resolution submitted in November by Botswana on behalf of the Group of African States, recommended deferring action on the IESOGI "in order to allow time for further consultations to determine the legal basis upon which the mandate of the special procedure established therein will be defined."²³ During the vote, only Cambodia, Thailand, Viet Nam, and Timor-Leste voted in favor of the IESOGI.²⁴ The second attempt, submitted the following month by Burkina Faso also on behalf of the Group of African States, called for a similar deferment on the IESOGI.²⁵ (The representative of Burkina Faso, speaking before the GA, claimed that the mandate-holder's actions – referring to his speech in an ILGA conference where the IESOGI discussed their mandate – "clearly shows that the mandate has already been violated without legal basis by the Independent Expert to promote new rights that are not internationally recognized, through actions that cultivate hostility among the Member States and create acrimony within the United Nations system.") During the vote, these same four ASEAN member-states also voted to defend the IESOGI.²⁶ On both the November and December votes, the Philippines abstained. Lao PDR did not vote. (See Annex 1.)

The delegation of Thailand was the only ASEAN member-state to speak during the December 2016 plenary meeting to explain their vote on the IESOGI. They explained that, though it “fully respects the rights of Member States to exercise their prerogative at the General Assembly on human rights issues”, they hoped “the membership will continue to engage in a constructive dialogue on the issue, regardless of the outcome of the voting”. Emphasizing earlier pronouncements and reflecting once again on the issue’s sensitivity, the delegation expressed confidence that the IESOGI would work in an “objective and non-confrontational manner.”

Since then, the IESOGI has produced two reports to the GA, the first in April 2017 and the second in July 2017. In the first report, the IESOGI describes violence and discrimination as “a local-global phenomenon that traverses the home, the educational system, community relations, national scenarios and the international setting” and frames their analysis as “based on existing international human rights law and its interrelationship with sexual orientation and gender identity.” (The IESOGI also emphasized, based on previous accusations by other government delegations, that “there is no advocacy of new rights for particular groups.”) The IESOGI, as part of this analysis, viewed these issues as “multiple and multiplied”, as part of larger systems in which the intersecting roles and identities of people play a part. The 2012 ASEAN Human Rights Declaration was mentioned as one of the regional instruments which “offer opportunities for advocacy”.²⁷

The second report of the IESOGI went into more detail regarding recent developments, building on the vision of the first report as a “clarion call to embrace diversity, complemented by the belief that respect for human rights energizes human society, yielding a positive dividend in terms of peace, sustainable development and societal inclusiveness.” As in the first report, the IESOGI reiterated that they are “totally conscious of the various sensitivities underlying the mandate.” Documented in the second report was a submission by ASEAN SOGIE Caucus and the Civil Society Coalition on the Convention on the Rights of the Child on the plight of children and youth, the participation of the IESOGI in a seminar for human rights defenders in the Philippines, and

the submission of the Human Rights Commission of Malaysia detailing its “step-by-step approach” such as its meeting with religious groups “with the objective of gaining a better understanding of Islamic perspectives of LGBTI and of substantiating Islamic sensitivities and views regarding such LGBTI actions as same sex intercourse, cross dressing, imitation of the opposite gender and gender reassignment.”²⁸

1.3. UN General Assembly resolutions on extrajudicial, summary or arbitrary executions

The resolutions adopted by the GA on extrajudicial, summary or arbitrary executions since 2003 have included references to sexual orientation. The 2003 resolution “reaffirms the obligation of Governments to ensure the protection of the right to life of all persons under their jurisdiction”, which includes “all killings committed for any discriminatory reason, including sexual orientation”.²⁹ Similarly, the resolutions from 2004 to 2010 urged governments “to ensure the effective protection of the right to life of all persons under their jurisdiction and to investigate promptly and thoroughly all killings”, including those killed on the basis of sexual orientation. It was in the 2012 and 2014 resolutions that gender identity was also included.³⁰

ASEAN member-states also voted in the 2012 and 2014 votes to include references to sexual orientation and gender identity into the GA resolutions. Thailand, Timor-Leste, and Singapore voted in favor of including these references, while Brunei Darussalam, Malaysia, and Indonesia voted to remove them. Viet Nam and Lao PDR were absent in the 2012 vote and abstained during the 2014 vote. Myanmar voted to remove the reference in 2012 but abstained in 2014. Cambodia was absent on both votes. The Philippines, as in other similar resolutions, abstained on both votes.^{31,32} (See Annex 1.)

1.4. UN Special Procedures and treaty bodies

To various degrees, SOGIESC has become a key point of contention within the human rights mechanisms of the UN. Among the human rights conventions, recent communications and other reports have made references to SOGIESC and the issues of LGBTIQ people as they relate to the treaties.³³ The Convention to End Discrimination Against Women (CEDAW) and the Convention of the Rights of the Child (CRC) are important examples in the context of Southeast Asia, for three reasons. First, all ASEAN member-states have ratified these conventions, with the exception of Brunei Darussalam which as of this writing has not ratified the CRC. Second, both conventions have included references to SOGIESC in its various documents, such as in General Recommendations 27 (concerning the rights of older women) and 28 (on the core obligations of state parties under article 2) of CEDAW and the various Concluding Observations of CRC.^{34,35} And third, both conventions are heavily referenced in the work of ASEAN's own human rights institutions, such as the ASEAN Commission for the Protection and Promotion of Rights of Women and Children (ACWC).

Some mandate-holders of the UN Special Procedures have also actively made references to SOGIESC. Their work is critical such that they allow for a more comprehensive analysis of the issues facing LGBTIQ people by integrating SOGIESC into the examination of diverse thematic areas. One example is the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, who wrote in relation to the penalization of same-sex relations that “the decriminalization of such conduct is necessary to address the disempowerment that affected individuals and communities face, and to enable full realization of the right to health.”³⁶ Another example was the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, which cited instances of “persons being denied medical treatment, subjected to verbal abuse and public humiliation, psychiatric evaluation, a variety of forced procedures such as sterilization, State-sponsored forcible anal examinations for the prosecution of

suspected homosexual activities, and invasive virginity examinations conducted by health-care providers, hormone therapy and genital-normalizing surgeries under the guise of so called ‘reparative therapies.’”³⁷

Especially relevant to ASEAN is the work of Special Procedures mandate-holders who have reported on ASEAN member-states or have communicated directly with ASEAN governments. As work on human rights in the region progresses, some important examples of both the uses and limitations of the Special Procedures have surfaced. For example, Malaysia received a joint letter of allegation in 2012 from mandate-holders regarding the banning of the fourth annual *Seksualiti Merdeka* Lesbian, Gay, Bisexual and Transgender (LGBT) festival in Kuala Lumpur. The government's response a few months later reasoned that the festival “incited strong feelings of enmity and disharmony among Malaysians” and that “if allowed to persist, the situation will cause or pose a threat to the security of the Federation”. The government argued further that the banning was compatible with international human rights standards, writing that “the exercise of such rights and freedoms of such rights and freedoms are similarly subject to limitations” and that “there cannot be any such thing as absolute or uncontrolled liberty, wholly free of restraint, for that would lead to anarchy and disorder”.^{38,39} This reasoning is similar to the case of Singapore, when they received a joint urgent appeal in 2013 from other mandate-holders regarding charges lobbied against a prominent human rights activist who tackled SOGIESC and migrant worker issues. Like Malaysia, the government of Singapore replied that “the UDHR recognizes that individual rights must be subject to legal limits in order to protect the rights of others” and that the “right to freedom of opinion and expression has to be subject to legal limits in order to protect the competing interest of safeguarding society's confidence in the administration of justice and the judiciary”.^{40,41}

1.5. Universal Periodic Review

During the first cycle of the various ASEAN member-states, only three countries received SOGIESC-specific recommendations: Brunei, Malaysia, and Singapore. The recommendations were mostly focused on decriminalizing homosexuality and consensual same-sex relations. Unfortunately, these recommendations did not enjoy the support of any of these governments. During the Working Group reviews, these governments explained their positions on these recommendations. Brunei Darussalam explained that “the core value of Brunei Darussalam society was the family institution as the basic unit of society” and that “family values were an important factor in development as well as in securing a safe and loving environment”. Malaysia reaffirmed the observations made by other countries, stating plainly that as far as they were concerned, “such sexual conduct was not only against the tenets of Islam, which was Malaysia’s official religion, but also the other major religions in Malaysia such as the Christian and Buddhist religions.” Taking a more diplomatic route, Singapore insisted that “lesbian, gay, bisexual and transgender persons did not have to hide their sexual orientation for fear of losing their jobs or for fear of prosecution”, though this is contrary to the lived experiences of LGBTIQ people living there.⁴² During debates regarding decriminalization, their delegation explained that “the decision had been taken to retain the status quo” because “much of Singapore remained conservative, a fact which could not be changed by legislation alone.”^{43,44,45}

The second cycle saw an increase in the number of Southeast Asian countries receiving SOGIESC-specific recommendations. Eight countries – Brunei, Indonesia, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Viet Nam – received recommendations regarding diverse issues. Recommendations issued to Brunei, Malaysia, and Singapore were similar to the first cycle in that they focused on the decriminalization of consensual same-sex relations, which were again “Noted” for similar reasons as those during the first cycle. For example, Brunei Darussalam maintained that “the *Syariah* Penal Code Order 2013 is necessary to strengthen the current criminal law and the current provisions of the domestic legislation are sufficient to protect such freedom and maintain public order.”⁴⁶ Myanmar similarly “Noted” recommendations to decriminalize same-sex relations.⁴⁷ An important point of interest can be found in the addendum to Myanmar’s Working Group review, in which the government explained that other recommendations did not enjoy Myanmar’s support because “they do not reflect the true situation of the country and constitute interference in domestic jurisdiction of a sovereign state.”⁴⁸ The government of Indonesia took a similar position to a recommendation to decriminalize same-sex relations, claiming that “the recommendations do not reflect the actual situation in the Provinces they refer to [i.e. the autonomous province of Aceh].”⁴⁹

Singapore framed their position in terms of social and cultural milieus, noting recommendations to end workplace discrimination and discriminatory media guidelines because the government “had to manage lesbian, gay, bisexual, transgender and intersex issues sensitively and pragmatically without fracturing society because Singapore was basically a conservative society”. The delegation explained that the state’s position on the question of SOGIESC was “to live and let live”, preserve the common space for all communities, and let society evolve gradually and decide collectively.”⁵⁰ Similarly, the government of Malaysia stated that “matters involving lesbian, gay, bisexual, and transgender persons and adherents of other schools of Islamic thought would be handled carefully and consistent with cultural traditions, religious doctrine and societal norms, and domestic laws and regulations.”⁵¹

The recommendations for the Philippines, Thailand, Viet Nam, and Timor-Leste focused on legal reform to ensure protection of LGBTIQ persons from discrimination. The recommendation for Thailand focused on strengthening policies to combat violence against women regardless of their sexual orientation, and the recommendation for Viet Nam was “to enact an anti-discrimination law guaranteeing equality of all citizens, regardless of sexual orientation and gender identity.”⁵² The Philippines “noted” the recommendation to enact anti-discrimination legislation, stating that there is already a pending Anti-Discrimination Bill in Congress.⁵³ Thailand, Viet Nam, and Timor-Leste were the only countries in ASEAN who accepted the SOGIESC-specific recommendations during the second cycle. (However, in the case of Viet Nam, the government did not appear to have concrete plans to realize the recommendation made, as the law and ordinance making program for 2018 passed in 8 June 2017 had no agenda for anti-discrimination legislation.)^{54,55} On the part of Timor-Leste, the government accepted the recommendations on its position that “all the citizens are equal before the law and have the same rights, and public authorities must not discriminate citizens in any ground, included on the basis of sexual orientation and gender identity.”^{56,57,58}

As of this writing, only Indonesia and the Philippines have undergone the third cycle of the UPR, the latter being noteworthy for its inclusion of a section on LGBT issues in its national report.⁵⁹ Both countries received SOGIESC-specific recommendations and are expected to address the recommendations before the end of 2017.^{60,61} While Indonesia “noted” various recommendations to create laws ensuring the rights of LGBTIQ people or otherwise repealing laws contrary to these rights, it did however support two recommendations to “prioritize progress on equality and nondiscrimination, including in relation to lesbian, gay, bisexual and transgender persons,” and “take further steps to ensure a safe and enabling environment for all human rights defenders, including those representing the lesbian, gay, bisexual and transgender community and *adat* communities.” Indonesia explained, echoing previous sentiments, that it noted certain recommendations on the basis that these require the country to “accept legal framework that has not gained universal support or international consensus” and “accept recommendations that are factually incorrect or unclear that made them difficult to be translated into policies.”⁶² The Philippines meanwhile supported the recommendation to “take action to eradicate violence and discrimination against women and lesbian, gay, bisexual, transgender and intersex persons, primarily in educational institutions”. The Philippines noted the recommendation to “consolidate its recent progress through implementation of comprehensive anti-discrimination legislation covering sex and sexual orientation, gender identity and intersex status”, explaining that though they can support similar recommendations pertaining to legislation, “the State cannot guarantee or commit to their fruition given that the results of processes required to implement them are beyond the sole control of any of the branches of the government.”⁶³

1.6. Ongoing challenges

These developments have bolstered LGBTIQ rights advocacy in many countries in Southeast Asia. In ASEAN member-states, they have invigorated the momentum among activists who have recognized the importance of strengthening LGBTIQ rights advocacy within these human rights mechanisms. The increasing references to SOGIESC in these mechanisms are an indication not only of growing international consensus that SOGIESC is a critical part of human rights issues, but of the growing capacities of LGBTIQ activists to engage these mechanisms effectively. Also important are the increasing collaborations between LGBTIQ activists and other civil-society groups, which have allowed LGBTIQ people's needs to surface in other human rights issues. As one advocate remarked: "It has given us hope that when LGBTIQ rights are suppressed, it can be reported directly to the UN."⁶⁴

Not discounting these gains, key challenges remain. As is evident in the positions made by governments, most ASEAN member-states still do not recognize LGBTIQ issues as integral to the national agenda, and continue to invoke non-interference, national or regional particularities, and respect for cultures and religions to justify inaction in addressing SOGIESC. On the domestic level, increased engagement with both domestic and international mechanisms has not only drawn more attention to LGBTIQ issues: it has also drawn attention to activists themselves, making them vulnerable to potential backlash.⁶⁵ There is a growing fear among LGBTIQ activists that these efforts within the UN to address LGBTIQ issues will be met with resistance from both state and non-state forces, and potentially lead to LGBTIQ persons being targeted by violent conservative groups. One advocate from Brunei Darussalam cautioned how "the extra visibility poses concerns to those who identify with the LGBTIQ community and its allies to both supporters and adversaries."⁶⁶ An LGBTIQ activist in the Philippines similarly observes that "the rise in awareness also triggered opposition from both the conservatives and politicians who vehemently oppose same-sex marriage and promotion of other LGBTIQ rights."⁶⁷

As a whole, engagement with the UN mechanisms has had a significant effect on LGBTIQ activism on various fronts. On the one hand, there is increased capacity among activists to do human rights work (e.g. effective documentation), increased support within UN systems to address SOGIESC, and increased opportunities for activists to engage with states. On the other hand, you have the increased visibility of said activists which have translated in various occasion to increased risks to their security and wellbeing (e.g. heightened surveillance efforts by state actors and threats of and real acts of violence by civilian groups). In a volatile region such as Southeast Asia, it is important to balance foreseen gains at the international level with the developing situations at the regional and domestic levels. The oft-cited point raised by ASEAN member-states regarding sensitive cultural differences – though by no means an excuse for the continuing disregard of LGBTIQ people's human rights – should serve to caution activists as we continue to engage with governments and communities. This is especially true in areas where recent political and social developments (e.g. increasing strength of fundamentalist religious groups, the crackdown on critics by government forces, etc.) have made such risks more immediate. Balance this with the fact that UN human rights mechanisms have limited capacity to respond to emergencies resulting from engagement with them: in the case of Special Procedures, for example, it was emphasized that mandate-holders have no means of ensuring the safety of those for whom they may intervene.^{68,69} In sum, ASEAN SOGIE Caucus believe that LGBTIQ activists in Southeast Asia must continuously evaluate their work and work together to take necessary steps to address foreseen vulnerabilities.



ASEAN's weak Human Rights Infrastructure leaves LGBTIQ people unprotected

IT MUST BE EMPHASIZED that human rights as a concept was not a central aim in ASEAN's founding: established in 1967, its key goals of "accelerating economic growth, social progress and cultural development in the region" and "promoting regional peace and stability through abiding respect for justice and the rule of law."⁷⁰ In other words, ASEAN was formed in the interests of building stronger economic and diplomatic ties among member-states, which involves the managing of "cultural differences" in the interest of sustaining and affirming "regional peace and stability". In practice, the question of human rights has been seen by governments as counter to these goals

It was only in 2007, with the adoption of the ASEAN Charter, that human rights was officially integrated into the purposes of the regional body. The Charter reframed ASEAN as a rules-based organization, whose mandate includes "to strengthen democracy, enhance good governance and the rule of law, and to promote and protect human rights and fundamental freedoms, with due regard to the rights and responsibilities of the Member States of ASEAN."⁷¹ The ASEAN Charter also provided basis for the establishment of the ASEAN human rights body: of these, the ASEAN Intergovernmental Commission on Human Rights

(AICHR) was created in 2009, followed by the ASEAN Commission on the Promotion and Protection of the rights of Women and Children (ACWC) in 2010. Both human rights bodies have specific mandates to protect and promote human rights, with members appointed by their respective governments. However, in the same vein, the principles of non-interference and consensus were retained and reaffirmed in the Charter. What this means is that the adoption and eventual implementation of human rights principles remains hinged on managing "cultural differences".

The Association embarked on a "new era for the region" with the "formal establishment of the ASEAN Community" in 2015. This came with the proclamation of becoming a "full-fledged politically cohesive, economically integrated, socially responsible Community." In this new phase of community building, a new vision entitled, the ASEAN Community 2025 Vision was adopted. The new vision "chart(s) the path of the ASEAN Community in the next ten years."⁷² The term "Human Rights" is found in three provisions of the ASEAN 2025 Vision, in the preamble, ASEAN Political-Security Community (APSC) Blueprint, and ASEAN Socio-Cultural Community (ASCC).^{73,74,75}

2.1. ASEAN human rights bodies and declarations

The AICHR, which was created pursuant to Article 14 of the ASEAN Charter, serves as the overarching human rights body. Foremost of its purposes is “to promote and protect human rights and fundamental freedoms of the peoples in ASEAN.” It is also mandated *inter alia* to: “uphold the right of the peoples of ASEAN to live in peace, dignity and prosperity, to uphold international human rights standards as prescribed by the Universal Declaration of Human Rights, the Vienna Declaration and Programme of Action, and international human rights instruments to which ASEAN Member States are parties.”⁷⁶ But activists have denounced problematic provisions of AICHR’s Terms of Reference (TOR), which reflects the same problems seen in the ASEAN Charter. One clause states that AICHR is to “promote human rights within the regional context, bearing in mind national and regional particularities and mutual respect for different historical, cultural and religious backgrounds, and taking into account the balance between rights and responsibilities.” The TOR also reemphasized the principles of non-interference and consensus, writing that AICHR is to be guided by “respect for independence, sovereignty, equality, territorial integrity and national identity of all ASEAN Member States, non-interference in the internal affairs of ASEAN Member States.” Accordingly, the AICHR must also respect “the right of every Member State to lead its national existence free from external interference, subversion and coercion.” The AICHR’s modality in decision-making also subscribes to the consensus rule: it cannot enforce its mandate without the approval of all member-states.

These provisions drastically limit AICHR’s protection mandate by funneling its work into narrow areas of concern that are at low risk of being interpreted as “interference, subversion and coercion”. LGBTIQ issues have been repeatedly framed as such, specifically as a dangerous Western agenda, and for this reason have been avoided in formal discussions between governments. The consensus rule also essentially paralyzes AICHR, wherein the disapproval of even one member-state can derail its programs. Taken together, these weaknesses translate to yet another layer of danger to the human rights situation of LGBTIQ persons in the region. Laws remain which criminalize same-sex relations and “gender impersonation”, most countries continue to lack legal recognition of and protection on the basis of SOGIESC, and the provisions of many existing laws are abused and misused to target LGBTIQ persons. But as many activists have rightly questioned, how can AICHR carry out its functions to promote and protect human rights in the region when it is barred from interfering with the internal affairs of member-states? How can human rights be protected when governments can invoke “regional and national particularities” and “respect for sovereignty”? And when ASEAN governments refuse to take on “sensitive” issues, what is the recourse of AICHR to perform its mandate?

Central to ACWC's mandate is to promote and protect the human rights of women and children within the region. It is mandated to "advocate on behalf of women and children, especially the most vulnerable and marginalized, and encourage ASEAN Member States to improve their situation." However, in performing its work, it is still bound to managing "different historical, political sociocultural, religious and economic context in the region and the balances between rights and responsibilities."⁷⁷ While the ACWC's mandate does not explicitly mention non-interference, its principles undermine its "primary responsibility to promote and protect the fundamental freedoms and rights of women and children rests with each Member State." The ACWC also mentions the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC) as guides for its work, as it seeks to "complement, [rather than duplicate] the function of the CEDAW and CRC." One of the functions of the ACWC is "to advocate on behalf of women and children, especially in the most vulnerable and marginalized, and encourage ASEAN Member States to improve their situation."⁷⁸ Like the AICHR, the ACWC abides by the consensus rule.

The ASEAN Human Rights Declaration (AHRD) adopted in 2012 serves to establish "a framework for human rights cooperation through various ASEAN conventions and other instruments dealing with human rights." It has a twin document, the Phnom Penh Statement on the Adoption of the ASEAN Human Rights Declaration, which was adopted as a supplementary document to respond to criticisms to the AHRD and affirms ASEAN's commitment to international human rights instruments.⁷⁹ Non-discrimination is enshrined in the AHRD, stating that "every person is entitled without discrimination to equal protection of the law" and that every person has rights and freedoms "without distinction of any kind, such as race, gender, age, language, religion, political or other opinion, national or social origin, economic status, birth, disability or other status." The AHRD also identifies "vulnerable and marginalized groups" such as women, children, the elderly, persons with disabilities, and migrant workers. While granting a comprehensive set of rights, the AHRD maintains, in the same spirit as all other ASEAN

human rights documents before it, that the "realization of human rights must be considered in the regional and national context bearing in mind different political, economic, legal, social, cultural, historical and religious backgrounds."⁸⁰

Following the adoption of the AHRD, the ACWC launched the Declaration on the Elimination of Violence against Women and Elimination of Violence against Children in ASEAN (EVAW/ EVAC) in 2013. The declaration offers a framework on violence against children by explicitly defining sexual violence as among the forms of violence against children, though it contains no specific reference to the gender-specific character of sexual violence (e.g. nuanced descriptions of sexual violence against girl-children). The Declaration on EVAW/ EVAC contains progressive provisions in line with its precursor declaration, the 2004 Declaration on the Elimination of Violence against Women in the ASEAN Region. It recognizes the need for ASEAN member-states to "take all appropriate measures to promote and protect human rights and fundamental freedom and to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of inferiority or the superiority of either of the sexes or on stereotyped roles for men and women."⁸¹ The Declaration on EVAW/ EVAC names some potentially vulnerable groups, including women and children who are sexually exploited, women and children with disabilities, women and children living with and affected by HIV and AIDS, and so on.

2.2. The new vision of ASEAN leaves LGBTIQ people behind

The obstructions to the fulfillment of LGBTIQ people's human rights, as of this writing, remain painfully clear. LGBTIQ activists in Southeast Asia are "deeply concerned that there is an emerging pattern of SOGIESC exclusion from human rights declarations in the ASEAN." ASEAN SOGIE Caucus bemoaned how the regional body continues to disregard these issues, with members asking in one statement: "Why exclude them? They are productive members of the ASEAN community too!"⁸²

As has been noted, all ASEAN human rights documents from the ASEAN Charter to the AHRD are beholden to the principles of consensus and cultural sensibilities. While the documents are morally binding to member-states, the dominant systems guiding cultural sensibilities of governments and communities frame LGBTIQ people as morally and politically suspect. That said, these mechanisms for the protection of human rights in the region, particularly through the ASEAN Socio-Cultural Community, ACWC, and the AICHR, are an opportunity to move LGBTIQ people's human rights forward.

There have been some positive developments. The previous chair of the ASEAN Socio-Cultural Community, Sec. Judy Taguiwalo of the Philippine Department of Social Welfare and Development "reiterated the need to end discrimination against LGBTIQ persons and to understand them better so they would be accepted by society." In her keynote speech, Sec. Taguiwalo said that "it still cannot be ignored that efforts to push forward a national law on the same continue to be blocked, mainly by religious groups and formations that oppose civil rights legislation for the LGBTIQ community."⁸³ Unfortunately, recent events saw Judy Taguiwalo removed as Secretary.⁸⁴ The newly-appointed Philippine Representative to AICHR, H.E. Leo Herrera-Lim said in a CSO consultation dated 6 March 2017 that there is a need to continue testing the comfort level of AICHR with regards sensitive issues such as LGBTIQ. During the consultation, he added: "We know it is sensitive, but we have to start it now."⁸⁵ And in the Regional Plan of Action on the

Elimination of Violence against Children, "children from the lesbian, gay, transgender or transsexual community" as among the potentially vulnerable groups of children.⁸⁶ Strangely, the parallel Regional Plan of Action on the Elimination on Violence against Women contains no references to lesbian, bisexual, and transgender women.

While specific references were made to marginalized groups, the AHRD did not include LGBTIQ persons as needing protection. Despite demands from LGBTIQ groups, the AHRD left out SOGIESC as among the grounds for equal protection of the law. Worse still, this exclusion of SOGIESC was compounded by the continued emphasis on "the regional and national context", which in practice has allowed ASEAN member-states to freely disregard LGBTIQ people's rights in their respective countries. ASEAN SOGIE Caucus has decried how "ASEAN Human Rights Declaration refused to protect LGBTIQ Rights", expressing its outrage and disappointment on "the decision of the ASEAN Head of States to adopt the AHRD that intentionally excludes sexual orientation and gender identity (SOGI)."⁸⁷ The AHRD contained the same retrogressive provisions and was heavily criticized and rejected by civil society for falling short of widely accepted international human rights standards.^{88,89} The Declaration on EVAW/EVAC was also silent on SOGIESC despite intensive advocacy from LGBTIQ activists.⁹⁰

2.3. The Ghost of Southeast Asian Values: LGBTIQ still perceived as a western concept

The pervasive view of governments of ASEAN and society in general is that LGBTIQ rights activism is a push from the “Global North” (e.g. Western and European states), and is thus not in line with the values of Southeast Asian cultures. This perspective – which asserts the problematic concepts of non-interference and independence on a larger scale – overshadows discussions regarding the legal recognition and protection of LGBTIQ people in the region. Government officials from ASEAN member-states have certainly said as much, their comments grounded on the same concepts of sovereignty and culture mentioned earlier. As activists have shared, these discriminatory remarks by public officials have resulted in, among other things, LGBTIQ students refusing to attend classes in fear of violence.⁹¹

One such comment comes from the Technology, Research and Higher Education Minister of Indonesia, Muhammad Nasir, who stated publicly that the “LGBTIQ community should not be allowed to grow or be given room to conduct its activities ... [and] even more serious is those LGBTIQ members who go into universities with scientific studies, or hold discussion groups.”⁹² Another, by the Indonesian Minister for Education and Culture, Anies Baswedan, declared that “being LGBTIQ among adolescents is a deviant behavior that goes against religious and cultural values” and that “teachers and parents to teach values to protect children from becoming LGBTIQ.”⁹³ In Malaysia, former Law Minister Datuk Seri Nazri Aziz put this more bluntly, saying “Malaysia’s lesbians, gays, bisexuals and transgenders will never be able to lead the life they want” and that “the Federal Constitution expressly mentions Islam as the religion of the federation, so there is no way for the LGBTIQ to be given equal rights even though they may argue that human rights should be the rights of everyone.” Malaysian Prime Minister Datuk Seri Najib Razak added further that the “threat of liberalism” will ruin the Muslim identity, commenting that LGBTIQ events such as gay parades are unsuitable for Muslim Malaysia.⁹⁴ Recently, the Philippine President Rodrigo Duterte reacted to a popular Time

Magazine article on gender and said “that’s not allowed with us because we are Catholics,” citing the Civil Code which only allows marriage between heterosexual couples.⁹⁵ President Duterte maintains that the so-called culture of western countries cannot be the same for Filipinos – the same line of thought in pronouncement regarding human rights as a whole, that “western values like human rights are [apparently] being forced on the Philippines.”⁹⁶

In sum, the struggle for the rights of LGBTIQ people in Southeast Asia – and in recent years, the entire concept of human rights – has been caricatured as an enemy of ASEAN’s mission of sustaining “regional peace and stability” because of its perception as an alien concept with no grounding in Southeast Asian cultures and traditions. LGBTIQ issues have been framed as a destabilizing force which unjustly interferes in national and regional dynamics and constitutes a political assault on the sovereignty of ASEAN member-states, and in the experience of some countries has been used as a scapegoat to rally popular support for conservative political groups.⁹⁷ The regional human rights mechanisms, though relatively young in the ASEAN system, have progressed slowly and are constrained by provisions that keep them tied to the interests of individual member-states, lest actions are interpreted, in the words of AICHR’s mandate, as “external interference, subversion and coercion”. While engagement with ASEAN remains critical to the overall goal of advancing human rights, activists must find ways to leverage their political and material resources more effectively to maximize their engagement with this regional body.



Increasing criminalization of LGBTIQ people in ASEAN

THERE IS AN UNABATED and increasing trend of criminalization of LGBTIQ persons in ASEAN. In many countries, laws continue to exist that criminalize, or are invoked to criminalize, LGBTIQ persons. Countries like Brunei Darussalam, Myanmar, Malaysia, Singapore, and local districts of Indonesia have laws that criminalize same-sex acts, cross-dressing, and other acts targeting LGBTIQ groups. The presence of such laws makes not just LGBTIQ persons but all gender non-conforming people vulnerable to discrimination, harassment, including arbitrary arrests. Other countries claim that they do not actively enforce laws that criminalize LGBTIQ persons, whilst reiterating that handling issues of LGBTIQ persons should not “fracture the society”.⁹⁸

Brunei Darussalam

In Brunei Darussalam, the Syariah Penal Code of 2013 criminalizes consensual same-sex relations and gender non-conformity. The law penalizes acts such as *liwat*, defined as sexual intercourse between a man and another man or between a man and a woman, other than his wife, done against the order of nature that is through the anus; and *musahaqah*, defined as “physical activities between a woman and another woman which would amount to sexual acts if it is done between a man and a woman, other than

penetration”. *Liwat* is an act punishable by stoning or whipping with 100 strokes, and *musahaqah* is punishable by imprisonment, a fine of not more than 40,000 Brunei dollars, and whipping of not exceeding 40 strokes.⁹⁹

Gender non-conformity is also penalized. Section 198 of the law criminalizes “any man who dresses and poses as a woman or any woman who dresses and poses as a man in any public place without reasonable excuse is guilty of an offence and is liable on conviction to a fine not exceeding \$1,000, imprisonment for a term not exceeding 3 months or both.”

The *Syariah* law is expected to be implemented in three phases. The first phase, involving acts punishable by fines and imprisonment, have been implemented since 2014. There were delays with regards the second phase, meant for crimes punishable by amputation and flogging, and the third phase, for crimes punishable by death. The *Syariah* Criminal Procedure Code, which details the implementation of the *Syariah* Penal Code, is still being finalized. The Sultan of Brunei has urged the speedy enforcement of the law.¹⁰⁰

A joint operation codenamed “*Sepadu Cegah Jenayah*” was launched by the Religious enforcement officers and the Royal Brunei Police Force (RBPF). On 16 August 2016, a local man was arrested and detained for wearing women’s clothes and improper conduct in a public area.

The person was accused of violating under Section 198 (1) of the *Syariah* Penal Code Order 2013. The joint operation also targeted three areas in the capital, namely the Tamu Kianggeh, the Bumiputra Commercial Building, and the Bus Terminal.¹⁰¹

Cambodia

Cambodia does not have a specific law that criminalizes LGBTIQ people. However, prevailing social stigma results in abusive treatment by society, including by state actors. A study done by the Cambodian Center for Human Rights revealed “highly significant numbers of arrests and detentions of trans women based on their trans identities, including for crimes they have not committed, in order to extract bribes.”¹⁰² The research found that of 129 transgender respondents, 38.7% were arrested by the police, and most believed that their arrest was because of their gender identity. Trans women during arrest and detention experience verbal, physical and sexual harassments. Over forty percent of respondents reported to have been “harassed or bullied by the police because they are transgender”. There are also incidents of physical assault by police as reported by 17.16% of all respondents, three of whom experienced this more than ten times in the past 12 months. Meanwhile, 14.93% of respondents were sexually harassed by the police. Some respondents disclosed that they were arrested because of having or spreading HIV. Those arrested experienced taunting and were forced to pay bribes or carry out humiliating and demeaning tasks.

Indonesia

The Constitutional Court in Indonesia deliberated a petition to amend Indonesia’s Criminal Code concerning adultery. The proposed amendment, filed by Islamic conservative groups, sought to make it explicit that consensual same-sex acts are prohibited. It intends to criminalize homosexuality, which was seen by conservatives as a threat to Indonesia’s youth and morality. On a positive note, the Constitutional Court in December 2017 rejected the petition, with one justice explaining that “petitions filed [to the court] are meant to protect someone’s rights from being limited.”¹⁰³

In Aceh, two men were caned in public, receiving 83 lashes each, for having sexual relations. Under the *Qanun Jinayah* law, same-sex relationships are punishable with 100 lashes in front of the public. The public caning was held on 23 May 2017 and the crowd cheered and booed as the two men received the most severe punishment, a greater reaction compared to others who were caned on the same day.¹⁰⁴ A news report noted that the execution of the punishment “was so great that not one but three masked floggers were on call to split their burdens.”¹⁰⁵ This was the first time that the *Syariah* Court in Aceh, and in the whole of Indonesia, had sentenced people to public caning for homosexual acts. The two men were targeted by vigilantes who broke into their room to catch them in the act of having sex. The vigilantes recorded them on video and later circulated the recording, which showed both men naked and distressed.

Many fear that the public caning is “an emblem of rising Islamism across Indonesia.” It took place soon after the arrest of a Christian governor in Jakarta for blasphemy. In the same week, 141 men were arrested in a sauna. These mass arrests were pursued under Indonesia’s anti-pornography law which the police used in targeting what they call “gay sex parties.”¹⁰⁶

In 2015, two women were arrested by *Syariah* Police in Aceh, Indonesia for embracing in public. The women were suspected to be lesbians and were detained by *Syariah* morality police in Banda Aceh.¹⁰⁷ While other states in Indonesia do not criminalize homosexuality, Aceh province strictly enforces *Syariah* law that penalizes consensual same-sex acts. Under the *Qanun Jinayah* 2014

article 63, *Liwat*, “an act of a man inserting his penis to the anus of another man with mutual consent” is punishable by *Uqubat Ta’zir* or a maximum of 100 lashes or a maximum fine of 1,000 grams pure gold or a maximum term of imprisonment of 100 months. The same punishment is imposed for *Musahaqah* or “an act of two women or more by rubbing body parts or *faraj* to gain sexual arousal (satisfaction) with mutual consent.”¹⁰⁸

Myanmar

Myanmar law expressly discriminates against LGBTIQ persons. Consensual same-sex conduct is criminalized under Section 377 of the Myanmar Penal Code of 1860. According to the Joint Submission “although incarceration on the basis of Section 377 is now rare in respect of consenting adults, Myanmar law enforcement officials continue to perpetrate discriminatory and abusive acts against LGBTIQ people through various other indirect laws, particularly Myanmar’s Police Act 1945.” The Police Act grants power to law enforcers to arrest “in respect of public nuisance.”¹⁰⁹ In Section 377 (Unnatural Offenses) of Myanmar’s Penal Code, same-sex conduct or sexual relations is criminalized and deemed as “against the order of nature.”¹¹⁰ The said provision states that “whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to a fine.”¹¹¹

LGBTIQ persons can also be targeted by using provisions from various laws:

- negligently spreading sexual disease (Section 269, Penal Code of 1861)
- activities that may “affect the morality” of an individual or society in a negative way (Section 5(j), Emergency Provisions Act of 1950)¹¹²
- being found between sunset and sunrise with a covered face or being otherwise disguised and therefore unable to give satisfactory account of oneself (Section 35C, Police Act of 1945).

Law enforcers used the Police Act of 1945 in arresting 10 gay men and transgender women in Mandalay in 2013.¹¹³ It was reported that “while one person was able to escape, the remaining nine were subjected to verbal, physical and sexual abuse.” Two other transgender women in the area were also arrested. The women recounted:

“When we arrived at the Division Police Station, the police forcibly pulled off our clothes, kicked and beat us. Our breasts were squeezed, scratched and beaten with police batons.

They forced us to do frog jumps, without clothes, and shouted that we were not women but men. When we did as they said, we were beaten again because our voices sounded feminine. They slapped our faces and shouted out, ‘Shout like a man! Sound like a man!’ I’ve never experienced terror like this.”¹¹⁴

Such statement, however, was denied by the Mandalay Police, who claimed that the arrests

were made on the grounds of public disturbance.

Research performed by Colors Rainbow from the period of January to December 2015 in 3 areas in Myanmar, namely, Yangon, Pyay and Mawlamyine, revealed incidents of police abuse. There were 68 recorded cases of arrests involving violations of the Police Act of 1945. Of that number, 52 were transgender women.¹¹⁵

Singapore

Singapore continues to preserve the law that criminalizes sodomy and targets LGBTIQ persons. Section 377A of Singapore's Penal Code outlaws consensual same-sex sexual relations and classifies it as "outrages on decency". It establishes that any "male person who, in public or private, commits, or abets the commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person, shall be punished with imprisonment for a term which may extend to 2 years."¹¹⁶

The Singapore government pronounced in the Universal Period Review plenary on Singapore that it does not "proactively enforce" Section 377A of the Penal Code. In its statement, the government maintained that,

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"Singapore affirmed that lesbian, gay, bisexual, transgender and intersex persons were part of Singaporean society and their contributions were acknowledged like those of all citizens. The Government had to manage lesbian, gay, bisexual, transgender and intersex issues sensitively and pragmatically without fracturing society because Singapore was basically a conservative society."

While Section 377 was repealed in 2007, the provision on homosexual acts was retained. It was listed adjacent to other punishable acts such

as sexual intercourse with a corpse and an animal. The government was of the view that "it was better to accept the legal untidiness and ambiguity of leaving the law as it was, and it would not be wise to force this issue by settling it one way or the other".¹¹⁷

In 2010, a petition was made to the Supreme Court seeking its unconstitutionality. However, the court ruled that such a matter must be decided by the legislature. In so doing, the court upheld the constitutionality of criminalizing sexual relations between consenting men.¹¹⁸ From 2014 to 2016, activists attempted to use the UN Human Rights mechanisms to persuade the Singapore government to change its stance on 377A, but to no avail.

Since 2010, there have been no known cases of persons being charged under 377A. However, the law exerts its influence in other ways. In sex education classes, the country's Ministry of Education writes that students are taught the "current legal provisions concerning homosexual acts in Singapore".¹¹⁹ Gay and bisexual men may also have concerns about seeking police aid in cases of sexual violence and domestic abuse, for fear of being prosecuted themselves.¹²⁰

Malaysia

Like other Muslim-majority countries in Southeast Asia, Malaysia is becoming increasingly conservative and regressive in terms of human rights. State-sponsored activities targeting LGBTIQ persons have increased in the past few years with JAKIM, the federal Islamic agency, playing an active and leading role in developing and rolling out the activities. Most of the activities, including the release of videos, action plans and *mukhayyam* camps (rehabilitation or "return to the right path" camps) for LGBTIQ persons are focused on "curing" sexual orientation and gender identity. According to an article by a right-wing online media outlet, the *mukhayyam* program has managed to reach out to 1,195 LGBTIQ persons since its introduction in May 2011.¹²¹ Compounding this are the multiple laws, including *Syariah* laws, that regulate gender identities, sexual orientations, sexual behavior, public

morality, and personal choices, increasing discrimination and violence perpetuated with impunity by state actors. As a result, Malaysia is becoming increasingly unsafe for many LGBTIQ persons.

Malaysia's laws criminalizing homosexuality and cross-dressing or "males posing as women" create a hostile environment for LGBTIQ persons. The country has a dual legal system: at the federal level, civil laws are administered that cover all citizens, and at the state level, *Syariah* laws are enforced which only apply to Muslims. Both civil and *Syariah* laws criminalize same-sex acts and cross-dressing. The country continues to enforce Section 377 of its Penal Code, an archaic law introduced in 1860 during British colonial era that outlaws "carnal intercourse against the order of nature" and outlaws same-sex relations. These offenses are punishable by up to 20 years imprisonment, whipping, or a fine.¹²² Under *Syariah* laws, sodomy (*liwat*) and lesbianism (*musahaqah*) are criminalized. Being a "male person posing as woman" is prohibited under the law in 13 states, while being a "female person posing as man" is forbidden in 3 states.¹²³ A document by JAKIM citing arrests made of those "posing as a woman" puts the number of arrests at 736 from 2008 to 2012.¹²⁴ A more recent community-based data gathering effort documented 63 cases from January to May 2016 of transgender women apprehended by police and state religious authorities on similar grounds.¹²⁵

In 2014, two women were arrested in Johor Bahru after a dildo was found in their hotel room. The Police raided a budget hotel and arrested other heterosexual couples accused of violating adultery.¹²⁶ In 2016, 12 Malaysian transgender women, together with an Indonesian transgender woman, were arrested during a police raid in Penang. There were various charges against them including violation of Section 28 of the Penang *Syariah* Criminal Offences Enactment 1996, which prohibits a male person from "posing as a woman".¹²⁷

Section 377 of the Penal Code has been used to defame opposition politicians. One of the most high-profile cases involving the law has been the

"sodomy trial" of opposition leader Anwar Ibrahim, who was accused of having sex with a male aide in 1998. Ibrahim has served multiple prison sentences, with the court denying his petitions. In the case of Anwar Ibrahim, his conviction to a prison sentence of five years on the grounds of sodomy was also a move to silence political opposition.^{128,129} The uproar surrounding this case has made it more "difficult for human rights defenders and activists to push for the human rights of LGBTIQ persons as the issues have been politicized and used as a political tool."¹³⁰

There are also indirect laws that are commonly used against LGBTIQ persons, such as the dangerous drugs act that is used to raid establishments frequented by LGBTIQ persons, and Section 21 of the Minor Offences Act of 1955 on public Indecency which is commonly used to target transgender people.¹³¹ When LGBTIQ persons are prosecuted under these laws, they have limited avenues for redress. In the case of transgender people, these limitations are more pronounced: the Attorney General's Chambers, in defending laws on cross-dressing, has stated that transgender people "have no rights in the country and must continue to be subjected to moral policing."¹³² There is also anecdotal evidence of gay men being extorted for money by state actors.¹³³

The Malaysian judiciary has established a trend of overturning constitutionally sound decisions that promote and protect human rights of LGBTIQ persons. This may be seen in the case of Section 66 of the Negeri Sembilan State *Syariah*, which prohibits cross-dressing and has been used by religious authorities to conduct violent and arbitrary arrests of transgender women.¹³⁴ In 2014, the Court of Appeal declared Section 66 unconstitutional. However, shortly after, the highest court overturned and dismissed the lower court's judgment on the basis on "non-procedural compliance", citing that the lower court has no jurisdiction to challenge the law.¹³⁵



Absence of de jure recognition and protection of LGBTIQ people's rights

ACROSS SOUTHEAST ASIA, there is a pervasive lack of comprehensive legal frameworks that recognize and protect LGBTIQ persons. The absence of de jure recognition and protection denies LGBTIQ persons of legal basis for claiming equal rights. It increases their vulnerability to violence, and reinforces prejudice and discriminatory treatment against LGBTIQ persons, including their families.

In the Philippines, while there may be local anti-discrimination ordinances in some districts, these have limited jurisdiction. LGBTIQ persons outside these jurisdictions are not legally protected. There are a few national laws that mention sexual orientation and gender identity, such as the Magna Carta of Women of 2008 and the Magna Carta of Public Social Workers of 2007, yet legal barriers remain as these are still circumvented by discriminatory provisions in other laws.^{136,137} A huge gap also exists in the implementation of such laws and local ordinances. For example, these laws failed to correct and remedy harmful attitudes and practices against LGBTIQ persons. They fell short of providing a safe and enabling environment for LGBTIQ persons and their families. LGBTIQ persons are in effect segregated, deprived of their rights and fundamental freedoms, and barred from enjoying equal entitlements.

4.1. Lack of anti-discrimination law denies LGBTIQ persons legal protection

Even in cases when their Constitutions guarantee equal rights and non-discrimination, most ASEAN member-states have no enabling national legislation explicitly prohibiting discrimination on the basis of SOGIESC. Only the Philippines and Thailand have laws or policies addressing gender-based discrimination which also cover LGBTIQ persons. Without legal protection, LGBTIQ persons are exposed to greater risks of discrimination and violence. The perpetrators of human rights violations against LGBTIQ persons are not held accountable, and are even emboldened to commit crimes against LGBTIQ persons with impunity.

Most ASEAN member-states have no laws prohibiting discrimination against LGBTIQ persons. The laws in these countries fail to provide LGBTIQ persons protection from or remedies for human rights violations. The laws are often subject to interpretation and subjectivity, replete with biased and negative views against LGBTIQ persons. LGBTIQ persons are confronted with uncertainty and difficulty in accessing their rights or seeking remedies. The

lack of clear legal framework is used by intolerant groups to criminalize homosexuality and target the LGBTIQ community. Thus, LGBTIQ persons continue to face discrimination in both hiring and promotion. The lack of anti-discrimination legislations provides no recourse for LGBTIQ persons whose rights are violated.¹³⁸

The Philippines' Magna Carta of Women of 2008, in its statement of principles, prohibits discrimination on the basis of sexual orientation. It also defines discrimination as any gender-based distinction, exclusion, or restriction, which covers lesbian, bisexual, and transgender women.¹³⁹ Similarly, the Philippines' Magna Carta for Public Social Workers of 2007 prohibits discrimination of social workers on the basis of sexual orientation.¹⁴⁰ However, the country itself has no comprehensive anti-discrimination law, but one version of the Anti-Discrimination Bill (House Bill 4982) was very recently approved in Congress while a similar bill continues to be debated in the Senate.¹⁴¹ While local ordinances banning discrimination on the basis of SOGIESC have been passed, these have limited jurisdiction.¹⁴² Most of these ordinances are not accompanied by implementing rules and regulations (IRR) providing no guidance and clarity on how they should be implemented. Despite the prevalence of violence against LGBTIQ persons, there are no laws which criminalize hate crimes or include SOGIESC as an aggravating circumstance or motivation for such crimes. There is also a lack of coordinated and comprehensive mechanisms that monitor the instances of discrimination and violence.¹⁴³

In Thailand, the Gender Equality Act of 2015 includes in its definition of "unfair gender discrimination" actions which discriminate against persons on the basis of being "male or female or of a different appearance from his/her own sex by birth."¹⁴⁴ However, another provision exempts acts committed "for protection of the persons' safety and welfare, or for the compliance with religious principles, or for the national security", which effectively forfeits the spirit of the law.¹⁴⁵

4.2. Challenges Towards Gender Recognition

In Southeast Asia, only two countries have laws allowing the change of a person's gender marker on their legal documents: Singapore and Viet Nam. But as correctly pointed out by Human Rights Watch, the requirement to undergo sex-reassignment surgery before being afforded legal recognition – a prerequisite existing in both countries – "imposes a burden on transgender people that is at odds with their fundamental rights to be recognized in the gender with which they identify."¹⁴⁶ The requirement also constitutes an unjust economic burden for transgender people who intend to change their gender marker. Such existing laws contradict the gender self-determination model, in that a person's self-identification should be sufficient; that "no eligibility criteria" (e.g. medical interventions) should be a pre-requisite for affirming one's gender identity in legal documents; and that "no status ... may be invoked as such to prevent the legal recognition of a person's gender identity."^{147,148} Laws allowing for the legal recognition of one's gender identity should aspire to be simple, transparent, and accessible, without unnecessary judicial and medical barriers.

In 24 November 2015, Viet Nam approved a new Civil Code which amends the 2005 Civil Code and Decree No. 88/2008/ND-CP ("On Sex Reassignment").¹⁴⁹ Under the old Civil Code, Article 36 stated that "the re-determination of gender of a person shall be performed in cases where his/her gender is affected with inborn defects or has not been properly shaped, which needs the medical intervention to clearly determine the gender".¹⁵⁰ Meanwhile, Decree No. 88 only allows "sex reassignment" procedures only for individuals having specific intersex characteristics, which the decree describes as "persons with congenital sex defects or of unidentifiable sex."¹⁵¹ These laws are problematic because they incorrectly lump together physiological sex and gender identity; they force people to undergo medical procedures when they would otherwise choose not to do so, as not all people desire to undergo such interventions; and that they ground legal recognition solely on the basis of certain sex characteristics as defined by the law.¹⁵²

In Viet Nam's new Civil Code, Article 37 states that "Each surged transgender has the right and obligation to apply for change of civil status affairs as prescribed in law on civil status affairs and has the personal rights in conformity with the transformed gender as prescribed in this Code and relevant laws".¹⁵³ In Article 37, the full text in Vietnamese on "surged transgender" can be translated alternatively as "people who have transitioned". According to one Vietnamese LGBTIQ activist, this is because they want to debate the definition of "transition" later on so that it is not limited to people who have had undergone surgical procedures.¹⁵⁴ The new law legalizes state-regulated gender affirming surgery and enables individuals who have undergone these procedures to change their civil status. However, the law is unclear whether a person who has not undergone such procedures to be allowed to change their legal gender marker.

In Singapore, the Women's Charter contains provisions that may allow a person to change their legal marker. Section 12(2) of the said law recognizes that a marriage is valid if it is entered into by "a person who has undergone a sex re-assignment procedure and any person of the opposite sex", clarifying in Section 12(3b) that "a person who has undergone a sex re-assignment procedure shall be identified as being of the sex to which the person has been re-assigned".¹⁵⁵ The said law reinforces the idea that surgical alteration of the person's genitalia as a prerequisite for gender recognition. In addition, Singapore does not offer state-sponsored medical operations for this purpose, which immediately excludes people who cannot afford these procedures from having their gender identities affirmed under the law.¹⁵⁶ The situation is further complicated for transgender women whose gender identity have not been legally recognized and who are engaged in romantic or sexual relations with cisgender men: outside the context of marriage and barring access to sex-reassignment surgery, their relationships are considered sexual offenses and are punishable under Section 377A ("Outrages on decency") of the Penal Code.¹⁵⁷

While these countries have no laws on legal gender recognition (i.e. changing of one's gender marker but also the change of one's legal name and other details), court cases in the Philippines and Malaysia offer insights into how this issue has been tackled so far in the practice of law.

In the Philippines, a 2001 law on amending clerical errors in the civil register forbids the changing or correction of entries in birth certificates (e.g. sex) without a judicial order.¹⁵⁸ Various petitions were filed in the Supreme Court on changing gender markers. However, the court reversed a previous decision allowing a transgender person to change her gender legal marker citing that a person's biological sex is "an essential factor in family relations" and that "there is no special law in the Philippines governing sex reassignment and its effects".¹⁵⁹ Equally problematic was the decision's additional contention that the transgender person "failed to show, or even allege, any prejudice that he [sic] might suffer as a result of using his true and official name", failing not only to respect her agency as an individual but also failing to realize the broader consequences this non-recognition of a transgender person's chosen name.¹⁶⁰ The Supreme Court only allowed a change of gender marker for an intersex person in a 2008 case on the basis of his Congenital Adrenal Hyperplasia, concluding:

"We do no more than give respect to (1) the diversity of nature; and (2) how an individual deals with what nature has handed out. In other words, we respect respondents congenital condition and his mature decision to be a male."¹⁶¹

In Malaysia, various cases since the early 2000s have been put forward by transgender people to change their legal gender markers to match their gender identities. Evidence put forward for these cases has typically focused on their having undergone medical procedures (e.g. hormone replacement therapy, sex reassignment surgery). Meanwhile, courts relied on the use of old legal decisions from other countries such as the landmark 1970 *Corbett v. Corbett* decision in the United Kingdom. Since no laws dictating this process exist, it has been up to the discretion of the courts to decide on these cases.

In the 2005 *JG v. Pengarah Jabatan Pendaftaran Negara* case, three expert witnesses were called on to attest that the plaintiff was female in “the physical sense with reference to both her genitalia and body structure” and “lives a full and satisfying life as a woman and has done so for the last 8 years following her [gender-affirming] surgery”.¹⁶² The plaintiff’s request to change the gender on her identity card to female was granted by the courts, reasoning that “when medical evidence has established that the gender of the plaintiff was other than the biological sex, it was the duty of the Court to grant relief”.¹⁶³ While providing precedence, the 2005 case was not followed in subsequent jurisprudence, such as in the 2012 *Kristie Chan v. Ketua Pengarah Jabatan Pendaftaran Negara* case which denied a similar request by a transgender woman who had undergone gender-affirming surgery in Thailand. The court reasoned that, among other things, “there was no evidence ... whether sex reassignment surgery changes a person’s gender to warrant a change of the gender description in that person’s identity card”.¹⁶⁴ This is similar to the earlier *Wong Chiou Yong v. Pendaftar Besar/Ketua Pengarah Jabatan Pendaftaran Negara* case in 2005, where it was ruled that “a person who has undergone a sex change operation cannot be regarded as belonging to the sex for which reassignment surgery was undertaken”.¹⁶⁵

The 2016 *Tan v. Ketua Pengarah Jabatan Pendaftaran Negara* case, which ruled in favor of the transgender man to change his legal gender marker to male, set an interesting precedent. Similar to the abovementioned cases, the judge’s decision was made in consideration of testimonies from medical professionals, but went further by writing that “the Plaintiff has a precious constitutional right to life under Article 5(1) of the Federal Constitution of Malaysia” which “must necessarily encompass the Plaintiff’s right to live with dignity as a male and be legally accorded judicial recognition as a male.”¹⁶⁶ Sadly, the Court of Appeals later overturned this decision, upholding the appeal by the National Registration Department going back to the argument on physiological grounds.¹⁶⁷ This overturn was hotly contested by various LGBTIQ activists, with one organization arguing that “seeking evidence of medical intervention in order to legally recognise a transgender person’s gender is not only a backdated practice, but also exposes a fundamental misunderstanding of transgender people and gender identity.”¹⁶⁸

4.3 Absence of marriage equality laws renders LGBTIQ partnerships and families invisible

Across ASEAN countries, there are no laws that recognize same-sex marriage. As a consequence, the absence of laws also excludes families headed by LGBTIQ people and partners. The lack of marriage equality laws has rendered LGBTIQ families invisible, putting them more at risk of discrimination and violence. Same-sex couples are denied of the many benefits and rights enjoyed by married opposite-sex couples. Same-sex couples are not recognized as legal spouses, and are thus not granted medical visitation, subsidized public housing, and tax allowances for married couples.¹⁶⁹ An important clarification raised by one Vietnamese activist is that, while Viet Nam's 2014 Law on Marriage and Family removed the clause "two people of the same sex" from the prohibitions on marriage, article 8.2 still provides that "the State shall not recognize marriage between persons of the same sex."¹⁷⁰ So while LGBTIQ persons will not face prosecution for marrying their same-sex partners in ceremonies, the law still does not provide protection and equal rights afforded to heterosexual married couples.

Similarly, same-sex marriage ceremonies are not criminalized in the Philippines, but they are not given the same legal recognition accorded to the marriage of cisgender-heterosexual couples.¹⁷¹ This is because the Family Code defines marriage as between a man and woman based on sex assigned at birth. Without a marriage equality law, LGBTIQ persons in the Philippines are also denied spousal rights such as hospital and prison visitations, making medical and burial decisions, transfer of joint properties, custody of children and insurance benefits. LGBTIQ persons also cannot be dependents or beneficiaries of their partners. Same-sex couples are also not allowed to adopt, and only person can be recognized as adoptive parent.¹⁷²

In Thailand, the absence of a same-sex marriage law has grave implications to LGBTIQ couples and families in terms of custody of children, transfer of property, taxation, insurance, and so on.¹⁷³ There was an attempt to draft a law on marriage registration for same-sex couples during the 2014 coup, but it did not cover transgender persons' marriages in the absence of gender recognition legislation. Civil society organizations drafted a proposed law, but suspended submission until a democratic government was established.

The lack of same-sex marriage legislation has ill effects on same-sex partnerships. In Thailand in 2012, a lesbian woman died due to lack of immediate medical attention, because the law did not grant spousal privileges to her partner. When the lesbian woman brought her partner to the emergency room in a private hospital, she was not allowed to sign the informed consent form. Furthermore, she was not allowed to avail of the Civil Servants' Medical Benefit Scheme which could have covered the treatment for her partner. Her partner died after a few weeks. In another case, a same-sex couple was not allowed to be registered as the parents of their child.¹⁷⁴



Shrinking civil society spaces for LGBTIQ activism

LGBTIQ ACTIVISM is integral and closely tied to LGBTIQ persons' full enjoyment of rights and fundamental freedoms. As rights are interdependent and indivisible, any repression or restriction with regards to civil and political rights has an impact on the other rights of LGBTIQ persons.

However, activism in Southeast Asia faces great challenges, often situated against a political landscape of weak democracies, dictatorships and authoritarian regimes. Several nations in the region have recently experienced retrogressions from democracy: Thailand now has a repressive government controlled by a military junta, while the Philippines is moving towards authoritarianism. This has resulted in a decline of rule of law and respect for the rights of peoples, particularly with regards to the freedom of expression and freedom of association in the region.

While all activists are affected by these conditions, LGBTIQ activists are in a particularly perilous situation. When governments often lack the political will to address human rights violations against LGBTIQ persons, conservative and fundamentalist forces are effectively given free rein to persecute activists.^{175,176} This is especially true in places where states uphold laws criminalizing homosexuality and non-gender conforming behaviors.

Consequently, LGBTIQ human rights defenders face considerable risks and threats to their security. They remain vulnerable to physical and verbal attacks, as well as to arrests and imprisonment. In other cases, they are also in danger of losing their formal employment.

There is also a lack of institutional support for LGBTIQ activists: resources remain scarce for grassroots work pushing for change. Many organizations do not have full-time staff, and activists have low or no pay, no pension and other benefits, all while facing threats to their security and their lives.

Malaysia

In Malaysia, LGBTIQ persons are further confronted with many restrictions in terms of freedom of speech, expression, assembly and association. For example, the annual sexuality rights festival *Seksualiti Merdeka* (loosely translated as Sexuality Independence) was banned by the Royal Police of Malaysia in 2011. The organizers and allies of the festival were investigated under Section 298A of the Penal Code and Section 27A(1)(C) of the Police Act of 1967 as the festival “could create disharmony, enmity and disturb public order”.^{177,178,179}

Meanwhile, Malaysian transgender persons face severe harassment, with their events often becoming the target of raids. In May 2015, the Mayor of Miri, Lawrence Lai, discouraged the organization and participation of beauty pageants by transgender women. He further added that the Miri local council would not approve any application to hold such an event out of respect to religious and local sensitivities. He further noted that Muslim transgender women would be vulnerable to arrest if they participated in the event. The Dayak Miri Association also announced that transgender events should be banned from using, promoting and integrating Iban culture in their events.¹⁸⁰ (It is important to note that indigenous terms of diverse gender identities exist in the region, such as *manangbali*, *basir* and *balian*.)¹⁸¹

In April 2016, a charity dinner held in a hotel in Kuala Lumpur and organized by transgender women was raided by officers of the Federal Territories Islamic Department (JAWI). The organizer was investigated under Section 9 of the *Syariah Criminal Offences Enactment (Wilayah-Wilayah Persekutuan)* of 1997, for obstruction of duty of the religious officers, as well as under Section 35, for encouraging vice.¹⁸² She was detained for almost 24 hours by the state religious department following the raid. Transgender women arrested at these raids are sometimes paraded in front of the media, which leads to further stigma, discrimination and violence.¹⁸³

In 2017, two events were cancelled following online protests and concerns over security. A three-day campaign for social awareness of LGBTIQ issues at Taylor’s University, which was

initially planned for June in celebration of Pride Month, was cancelled purportedly due to threats by extremist religious groups.¹⁸⁴ The student-led campaign, named “Courage in the Face of Adversity”, was cancelled by the university “following protests since Tuesday by pro-Islamists blogs that were incensed it would be held during the Muslim fasting month of Ramadan.”¹⁸⁵ A Vietnamese gay-themed film which was scheduled for screening at the Performing Arts Center of Penang was cancelled following protests, though the institution held that the cancellation was due to a technical problem and not due to external pressure.¹⁸⁶ A protest organized by Jaringan Muslimin Pulau Pinang, a religious organization, proceeded despite the cancellation, with its leader Mohamed Hafiz Mohamed Nordin stating that “no Malaysian should think of bringing in such a movie.”¹⁸⁷

Singapore

In Singapore, the government made reassurances that Section 377A was not proactively enforced. Yet by allowing its existence, the government ignores the cascading and intersectional effects of the law that encourage discrimination by the State. It also retains other laws and guidelines that promote violence and discrimination against LGBTIQ people.¹⁸⁸

In 2016, the Ministry of Home Affairs imposed additional restrictions on the Pink Dot annual event, which serves as Singapore’s Gay Pride event, limiting foreign sponsorship and participation.¹⁸⁹ The Public Order Act was amended to bar foreign entities from supporting the event, and prohibited foreigners from assembling at Hong Lim Park. Organizers are required to acquire a police permit for the event and hire security to prevent foreigners from participating.¹⁹⁰

Under the Societies Act of 1967, the Registrar of Societies has denied registration of LGBTIQ groups citing reasons of “contrary to the national interest.”¹⁹¹ The lack of legal status for LGBTIQ groups makes them vulnerable to threat of arrests and prosecution. Furthermore, without registration, the legitimacy of LGBTIQ groups is always questioned and undermines their efforts to organize events and raising funds.¹⁹²

Thailand

Like all activists in Thailand, LGBTIQ human rights defenders face real threats. Since the military coup in 2014, four LGBTIQ persons have faced legal charges for expressing dissent towards the government. The charges filed against LGBTIQ activists include violating Article 112 (Insulting or Defaming Royal Family) of the Criminal Code, and NCPO Announcement No. 7/2014 or Head of NCPO Order No. 3/2015 Article 12 (banning political gatherings of more than 5 people).^{193,194} A transgender student was arrested for raising a junta-banned three-finger salutation, a sign of resistance to military rule, during a demonstration in September 2014. She reported being harassed and threatened with sexual assault by military officers. She was incarcerated in a men's facility despite her request to be kept in custody at a women's facility. Other cases exist in which transgender women were treated as male inmates in Thailand's prison facilities.¹⁹⁵

In February 2017, discriminatory treatments and threats were suffered by Buku Books, a gender and sexuality class located in the deep south of Thailand. The group was under public scrutiny and hate speech conducted by Muslims religious groups and local citizens. The incident was incited by an episode of the Klang Muang Documentary Series which aired on public television on February 7th 2017. It focused on the "Gender and Sexuality Class", one of the Gender, Sexuality and Human Rights Classroom activities run by the organization. Soon after the broadcast, several Muslim scholars published articles on websites and social media to criticize the activity. This generated hate speech inciting violence against LGBTIQ human rights defenders and participants of the activity. Groundless accusations were made that the activity and Buku Football Club encourages or "teach[es]" Muslims to become homosexuals. There is a serious concern that the situation will further worsen and lead to physical abuse and violence.

Indonesia

A series of unconstitutional statements against the country's LGBTIQ community was made by several government officials in early 2016. This began with the Minister of Research and Higher Education Muhammad Nasir who stated that "the LGBT community should not be allowed to grow or be given room to conduct its activities".¹⁹⁶ This statement created a domino effect and incited more discriminatory statements from other public officials against the community, resulting in hate speech and negative comments in the media. A pronouncement was made by the Indonesian Commission for the Protection of Children (known as KPAI) in 2016 prohibiting "LGBTIQ Propaganda to target children." Campaigns promoting LGBTIQ "as normal behaviour" and same-sex marriage were considered LGBTIQ propaganda. This in effect curtailed and encumbered LGBTIQ organizations' ability to operate and conduct programs, including programs that empower young LGBTIQ people vulnerable to bullying and suicide. This was immediately followed by the Sectoral Police of Central Jakarta forcibly dismissing a training session by Arus Pelangi on Access to Justice for LGBTIQ in Indonesia. The reason for the dismissal was that an Islamic group named the Islamic Defender Front reported the training to the police and threatened to attack both organizers and participants if the Police would not dismiss them. Consequently, the Indonesian Broadcasting Commission (known as KPI) disallowed LGBTIQ groups to campaign on national television. It also prohibited male hosts or talents from exhibiting or promoting feminine behaviour, and from screening any shows involving LGBTIQ persons.¹⁹⁷

In Yogyakarta province, a group calling themselves Kalimosodo Warriors raided an art exhibition on 30 May 2016, mistakenly identified as a celebration of the International Day Against Homophobia and Transphobia (IDAHOT). Another Islamic mass organization, Islamic Community Forum, initiated the raid and intimidation campaign against the same art exhibition, which lasted for two days. Instead of providing protection, the police closed the exhibition and seized a number of paintings.¹⁹⁸



Continuing stigmatization of LGBTIQ persons

SOCIAL STIGMA CREATES a hostile and alienating environment for LGBTIQ persons, treating them as deviants and disgracing them in their own communities. Perpetrators invoke religious beliefs, culture, and traditions to justify acts of violence against persons of diverse SOGIESC. Because of social stigma, LGBTIQ persons face barriers in reporting violations and seeking redress for violations against them. Doing so could very well threaten their physical security and livelihood.

Social institutions such as the media, the education sector, religious and faith-based institutions, and political officials reinforce social stigma as they perpetuate negative portrayals, prejudice, and condemnation of LGBTIQ persons. This is dangerous as such institutions have a powerful role in shaping the consciousness, perceptions and behaviours of the public. Social stigma incites hatred and violence against the LGBTIQ community, and as long as social stigma persists, LGBTIQ persons will continue to live in fear and shame.

6.1. Media

Malaysia

In 2015, the Malaysian Film Censorship Board issued guidelines for television and film contents. Such guidelines explicitly prohibit passionate scenes between men and women and members of the same sex.¹⁹⁹ There are instances when LGBTIQ characters are allowed on film but only if they are portrayed in a negative light, are punished, repent or die at the end of the film.²⁰⁰ In 2016, a local film, *Banglasia*, was banned because of its portrayal of LGBTIQ-related content which government deemed as promoting “negative sociocultural lifestyles”.²⁰¹

Thailand

Thailand’s media persistently portrays LGBTIQ persons in a negative light. In television shows, they are presented as deviant or comic characters. Thai-language tabloid newspapers notoriously feature headlines saturated with derogatory and sensational coverage LGBTIQ stories, particularly those concerned with murder and violence. One tabloid, *Thai Rath*, described a queer festival as a party for sexual deviants. These negative representations of LGBTIQ persons are accompanied by a substantial lack

in reportage of incidents of harassment, discrimination and violence towards LGBTIQ people.

The Ministry of Thai Culture's National Film banned the 2010 gay-themed film entitled 'Insects in the Backyard' which was directed by a transgender woman. The Ministry called the film a "disruption of national order and public morals." The filmmaker appealed the decision and the case has been pending in the Constitutional Court for three years. And in 2012, a local bookstore chain issued a policy that bans and labels publications with LGBTIQ content in the same category as pornography. The bookstore notified publishers of its screening standards classifying all LGBTIQ content as erotica and inappropriate material for minors.²⁰²

Singapore

The Singapore government regulates licensing and censors content of the media. The Infocommunications Media Development Authority of Singapore (IMDA) is granted the power to ban, classify and, through licensing, restrict the content of various media.²⁰³ The Free-to-Air Television Program Code, which is one of the guidelines that regulates the content of broadcast media, states that "music associated with drugs, alternative lifestyles (e.g. homosexuality) or the worship of the occult or the devil should not be broadcast."²⁰⁴ Meanwhile, the Free-to-Air Radio Program Code instructs that "information, themes or subplots on lifestyles such as homosexuality, lesbianism, bisexualism, transexualism, transvestism, paedophilia and incest should be treated with utmost caution", and dialogue or information concerning such topics should not in any way "promote, justify or glamorise such lifestyles".²⁰⁵

The IMDA routinely cuts out and bars positive depictions of LGBTIQ characters, or any speech that advocates for their dignity and rights.²⁰⁶ This censorship deprives citizens of any representation of LGBTIQ persons as positive role models. It instead reinforces a stereotypical, negative and skewed depiction of LGBTIQ persons, perpetuating prejudice and stigma.

Viet Nam

The increasing visibility of LGBTIQ persons in the media is not necessarily a positive development for LGBTIQ advocacy. Often, the media is a tool for reinforcing negative attitudes towards homosexuality. In Viet Nam, print and online media has increasingly made references to homosexuality. However, these express a discriminatory social attitude towards LGBTIQ people. One study conducted by the Institute for the Study of Society, Economy and Environment (ISEE) found that out of 125 media articles, 29% refer to LGBTIQ people as perpetrators of crimes such as stealing, robbery, murder and trafficking, 24 % portray LGBTIQ people as a group with abnormal social behaviours, and 16% portrayed LGBTIQ people as having "indulgent" lifestyles, "immoral behavior" and "corrupt personality".²⁰⁷

In the six years since that study was conducted, however, this picture has changed significantly. Since organizations began sensitization work with journalists and more people have come out with their stories, mainstream media's portrayals have changed enormously: many online news outlets have dedicated sections to LGBTIQ people, and there are now more examples of positive portrayals of LGBTIQ issues. LGBTIQ people appear very frequently in movies and TV shows, although much of the treatment of LGBTIQ characters still focuses on feminine gay men and transgender individuals as comic figures.²⁰⁸

6.2. School and Education

Thailand

Schools continue to be an unsafe environment for LGBTIQ persons. Many male students in Thailand who express stereotypically feminine behaviors are afraid to use school toilets or attend overnight school camps. They report that they have been in danger of being ridiculed and rejected in either male or female toilets. In an exclusive school for boys, a group of feminine boys experienced unwanted sexual advances from other boys; and requested their school to provide segregated sleeping arrangements. When LGTBIQ students report to their teachers that they were being bullied, they are told it is their own fault. Teachers and school personnel themselves bully and humiliate LGBTIQ students. There are schools that pose announcements in bulletin boards condemning feminine males and masculine females.²⁰⁹

Secondary school health education textbooks are replete with negative portrayals of LGBTIQ persons, characterizing them as deviants that should keep their abnormality secret. Thai students are required to wear ‘male’ or ‘female’ school uniforms based on their birth sex especially in primary and secondary schools. Upon the intensive campaign of LGBTIQ groups, some universities rectified dress codes allowing transgender students to wear uniforms based on their identified gender. In many schools however, there remain punitive regulations and pressure for students to conform to existing dress codes.²¹⁰

Philippines

Schools and other educational institutions in the Philippines are still run according to policies that incite hate and discriminatory treatment against LGBTIQ persons. Gender-insensitive curricula and regulations, especially in relation to haircuts and dress codes, enable a culture of bullying that targets students on the basis of their diverse SOGIESC.

In 2013, in the province of Batangas, a secondary school student committed suicide following incidents of bullying by his classmates who accused him of being gay. Based on an online survey, experiences of unfair treatment partially or fully motivated by LGBTIQ identity are slightly higher in schools than in general settings, with 48.79% saying they “often” or “sometimes” encounter unfair treatment or bias attitude because of their SOGI. Specific cases continue to be underreported.

Heteronormative discourses are evident in public schools’ textbooks, as seen in a 2014 study. These textbooks reinscribed binary notions of masculinity and femininity, portraying men as firm, strong, affirming, skilled, knowledgeable and suited to the role of economic foundation; while women were depicted as nurturing, self-doubting, physically inferior and focused on aesthetics. The heterosexual family was upheld as an ideal model, with the father as the foundation of the home and the mother given the main responsibility of child rearing.²¹¹

Discriminatory policies against LGBTIQ persons are actively enforced in some educational institutions. A dean in one university forced transgender women students to cut their hair and comply with a “prescribed male haircut.” The students feared that non-compliance with the said directive will likely result to negative implications on their academic standing. They filed a complaint with the Commission on Human Rights, citing CEDAW as the school violated their rights and reinforced traditional and stereotyped notions of gender despite their self-identification as transgender women.²¹²

Indonesia

In the aftermath of the 2016 crackdown against LGBTIQ persons, several universities in Indonesia issued anti-LGBTIQ provisions for its students. Andalas University in Padang issued a rule stating that incoming students should not be associated with LGBTIQ behavior or organizations. The rule was revised and deleted after the university was criticised by activists and voices on social media.

6.3. Faith-based organizations

Philippines

The Philippines does not have a law explicitly criminalizing homosexuality or LGBTIQ persons. However, social stigma remains pervasive. Roman Catholic bishops issued a statement in August 2015 urging all Catholics to “resist all attempts to normalize homosexual behavior and homosexual unions in their culture” and to “oppose all gravely unjust laws that contravene both divine law and natural law – including all laws that legalize homosexual unions.”²¹³ Though the Catholic church preaches mercy and understanding towards LGBTIQ persons, it maintains the view that homosexuality is a “familial shame.”²¹⁴

Malaysia

The Department of Islamic Development Malaysia (JAKIM), in collaboration with other government agencies and NGOs, has proactively promoted messages that LGBTIQ persons can be cured or corrected, and that a person’s SOGIESC can be suppressed through spiritual guidance.²¹⁵ In 2016, JAKIM launched an “Action Plan to Address Social Ills Resulting from LGBTIQ Behavior” which is being implemented with other government agencies such as the Ministry of Health, Ministry of Youth and Sports, and Ministry of Women, Development and Community.²¹⁶ A key element of JAKIM’s action plan is conducting a “*Mukhayyam Programme*” designed as a spiritual camp to rehabilitate gay men and transgender women.²¹⁷ Religious organizations claim that around 2,000 LGBTIQ persons have been rehabilitated through the *Mukhayyam Programme* since 2005.²¹⁸

Indonesia

The influence and proliferation of Islamic Defender Fronts are growing increasingly alarming. The groups have executed attacks against the LGBTIQ community through the disruption of events related to the community, as well as conducting arbitrary raids and arrests based on accusations of promiscuity against the community. Hate speech against the community also proliferates through sermons conveyed during Friday prayers, especially during the crackdown in 2016 and the election period for the Governor of Jakarta in early 2017. These sermons state that LGBTIQ and ethnic minorities are against Islamic values and threaten national sovereignty.²¹⁹ Fortunately, a few religious groups have made remarks in support of LGBTIQ persons. The Communion of Churches in Indonesia (CCI) has issued a statement stating that “the existence of humans with LGBTIQ tendencies is a phenomenon that has existed since the past. LGBTIQ is not a modern culture product; and not a Western cultural product either. This LGBTIQ phenomenon exists in our society, and socio-anthropologically, LGBTIQ has already been accommodated in several tribal cultures in our society”. Furthermore, the statement recommends depathologization of LGBTIQ people and promotion of acceptance in the church and community.²²⁰

Although Singapore is a secular society, the convictions of its Christian and Muslim communities have been specifically cited as reasons not to repeal its law against homosexual sex acts.²²¹ Both Christian and Muslim groups have routinely spoken out against the LGBTIQ movement. Since 2014, religious leaders from both faiths have joined forces to hold the Wear White campaign, held on the same day as the pro-LGBTIQ rally Pink Dot. This is portrayed as an effort to “push back... their homosexual lifestyle and liberal ideologies that openly and outrageously contradict our laws.”²²²

6.4. Employment

LGBTIQ persons face extensive discrimination at all stages of employment, from education and training to access to employment, career opportunity and advancement, as well as in access to employment and social security benefits.

Thailand

In Thailand for example, a 28-year-old lecturer at the Faculty of Social Administration, Thammasat University was denied her regular lecturer post after having lectured at the university for 10 months.²²³ She asserted that the dismissal was because of her transgender identity and has fought the case. The concerned person is a prominent LGBTIQ human rights activist in Thailand and is more than qualified for the position, having obtained both an undergraduate and master's degree from Thammasat University. The university cited inappropriate behavior and speech in the media as cause for her dismissal, but did not provide specific examples.

Viet Nam

In Viet Nam, the Labor Code prohibits discrimination on various grounds such as gender, race, social strata, marital status, belief or disability. However, cases of employment discrimination were still reported. A study involving more than 2,000 self-disclosed LGBTIQ persons across Viet Nam revealed that almost 30% of respondents were disqualified from jobs due to their SOGIESC. Meanwhile, around 33% to almost 50% of the respondents encountered negative comments and behaviour from their colleagues, superiors and clients.²²⁴

6.5. Hate Crimes

The absence of legal recognition and protections for LGBTIQ persons in ASEAN often results in their deaths. Many cases of murder are left undocumented or unreported.

Philippines

In the Philippines, a spate of LGBTIQ killings has been reported. In 2014, at least four transgender women have been reported to be murdered in under a month.²²⁵ One of the high profile cases was the case of Jennifer Laude who died in the hands of a US marine. The police report stated that it was a "crime of hatred" where the discovery of Laude's gender identity prompted the perpetrator to assault her.²²⁶ The court, however, convicted the accused of a lower crime with lighter penalties: homicide instead of murder. There have also been other reports of killings of LGBTIQ persons in different parts of the country.²²⁷

Indonesia

In Indonesia, between 2012 and 2016, there have been at least five alleged hate killings against transgender women. These cases have occurred throughout the country, in North Sulawesi, West Java and Jakarta. There has been an observed lack of willingness from the police to adequately investigate the cases.²²⁸

Malaysia

In Malaysia, a transgender woman was found dead, with her body mutilated, early in 2017. She was a survivor of a case of kidnapping, torture and rape in 2015. Her brutal murder came in time for the trial of the accused men in the earlier incident. Another transgender person was recently assaulted and went into a brief coma. However, many transgender persons fear reporting crimes to the authorities as they themselves are at risk of prosecution for cross-dressing. Many of them have also experienced abuse from the police during detention.²²⁹



Conclusion

LGBTIQ PERSONS IN SOUTHEAST ASIA suffer multiple forms of stigma and discrimination. Their issues require critical and urgent attention. The pursuit of legal recognition and social inclusion is central to their struggle for equal enjoyment of fundamental rights and freedoms.

Among the governments of ASEAN, and society in general, there is a pervasive view that LGBTIQ and SOGIESC are western concepts, inconsistent with the dominant cultures and religions in Southeast Asia, and that the pressure for LGBTIQ rights comes from the global north. This overshadows the crucial need for legal recognition and protection of the LGBTIQ persons as equal citizens of ASEAN.

At the same time, LGBTIQ groups are becoming increasingly active, and there is growing support for their causes from broad civil society groups. These developments have created a fertile ground to build LGBTIQ rights advocacy, yet it also led some governments to view them as a threat. It is thus crucial for LGBTIQ issues and human rights defenders to have greater visibility in multiple spaces and levels, without the danger of backlash or reprisals.

A deeper understanding of the human rights of LGBTIQ persons is central to ASEAN taking a more progressive stance. This would lead to significant changes in the situation of LGBTIQ persons in ASEAN. Education is instrumental in changing and influencing the mindsets and attitudes of states and the public, especially among the younger generation.



Recommendations

THERE SHOULD BE A CLEAR and strong national and regional legal framework that recognizes SOGIESC, and recognizes and protects the rights of LGBTIQ persons. Discriminatory laws and laws that criminalize LGBTIQ persons must be repealed. Progressive laws must be put in place to ensure protection and promotion of the rights of LGBTIQ persons. LGBTIQ concerns and SOGIESC concepts should be explicitly integrated to legislations and programs of the government. These include social protection laws that recognise same-sex partners as beneficiaries or dependents. Labor laws must have a non-discrimination clause specifically on the basis of SOGIESC. Anti-discrimination and hate crimes legislations should be enacted. Schools should have policies explicitly prohibiting discrimination against LGBTIQ students. Likewise, laws on freedom of expression and freedom of assembly must similarly protect LGBTIQ activists, and provide and enabling environment for LGBTIQ activism within the countries and the region as a whole.

Gender recognition should be legislated enabling change of name and gender markers; in the case of Malaysia, this should include the last digit in the serial number of identification cards and other legal documents. Stricter penalties must be imposed on violations against LGBTIQ persons to show the seriousness and severity of the human rights violations against members of the community.

There must be official pronouncements from the government leaders, such as the President or Prime Ministers of the countries, ensuring the promotion and protection of the rights of LGBTIQ persons. State-funded/endorsed activities that target and harass LGBTIQ persons must be abolished. It is also important to review good practices, including court decisions, and in addressing barriers of LGBTIQ persons in accessing justice.

ASEAN should also initiate a regional report on the human rights situation of LGBTIQ persons, just as the UN has done on a global scale. Research and data collection would shed light on discrimination, abuse, and human rights violations experienced by LGBTIQ persons in Southeast Asia. ASEAN should undertake a comparative study on legal recognition and protection in different countries in ASEAN. This would show that an enabling environment for LGBTIQ persons to enjoy their rights and fundamental freedoms forms part of – and is integral to – ASEAN’s community-building process. There should be more comprehensive and in-depth information and research on the situation of LGBTIQ persons. Governmental statistics and baselines should include data on LGBTIQ persons. This should ultimately translate into legislative reforms, such as anti-discrimination and SOGIESC recognition legislations and a strong legal framework for LGBTIQ recognition and protection.

The work of the Independent Expert on SOGI should start in ASEAN. The LGBTIQ persons continue to be vulnerable given the repressive political situations especially in some parts of Southeast Asia. The importance of a strong legal framework on LGBTIQ rights recognition and protection in ASEAN and at the country level cannot be overemphasized.

There should be intersectional conversations and integration of a SOGIESC lens in other areas (e.g. SOGIESC and religion/culture/extremism, SOGIESC and women’s rights, SOGIESC and freedom of Expression/ freedom of association) as many LGBTIQ human rights defenders are already exploring diverse UN mechanisms and tools (ICCPR etc.) to highlight discrimination and violence faced by LGBTIQ persons. Much work has to be done in mainstreaming SOGIESC in various discussions and platforms.

The partnerships among and between CSOs, LGBTIQ groups, and government agencies must be strengthened. These dialogues should yield concrete actions for the rights of the LGBTIQ community. There should be more community action research, community building, coalition building, and active campaigns.

Massive education is needed. There should be more awareness-raising on the issues and rights of LGBTIQ persons. Stigmatization and negative portrayal of LGBTIQ persons in media, education policies and curricula, and in other platforms must be addressed and eliminated. Anti-LGBTIQ activities must be stopped, and governments must be held accountable for their failure to stop oppression.

LGBTIQ activism and advocacy should pave the way to making the recognition of LGBTIQ rights as a regional norm, part of ASEAN Values. Stronger human rights mechanisms in the UN and ASEAN are needed to protect LGBTIQ persons, especially activists, so they will feel safe in speaking out on the human rights issues in their countries, the region, and elsewhere. A stronger LGBTIQ rights activism requires a safe and enabling space for LGBTIQ persons whose lives are on the line simply for coming out or speaking up.

ANNEX 1

Votes of ASEAN Member-States on UN resolutions related to SOGIESC

1.1. Votes on UN Human Rights Council Resolutions

Year	Resolution	Votes of Southeast Asian Countries		
		In favor of resolution	Against the resolution	Abstain
2011	Resolution 17/19: Human rights, sexual orientation and gender identity. (A/HRC/RES/17/19)	Thailand	Malaysia	
2014	Resolution 27/32: Human rights, sexual orientation and gender identity. (A/HRC/RES/27/32)	Philippines Viet Nam	Indonesia	

1.2. Votes on the Mandate of the Independent Expert on Sexual Orientation and Gender Identity

Year	Resolution	Votes of Southeast Asian Countries		
		In favor of the IESOGI	Against the IESOGI	Abstain
2016	UN Human Rights Council resolution on the Protection against violence and discrimination based on sexual orientation and gender identity (A/HRC/32/2)	Viet Nam	Indonesia	Philippines
2016	UN General Assembly Third Committee Amendment (A/C.3/71/L.52) aimed to defend establishment of the IESOGI	Cambodia Thailand Viet Nam Timor-Leste	Brunei Darussalam Indonesia Malaysia Singapore	Philippines Myanmar
2016	UN General Assembly Resolution amendment (A/71/L.45) aimed to defer consideration and action to establish the IESOGI	Cambodia Thailand Viet Nam Timor-Leste	Brunei Darussalam Indonesia Malaysia Singapore	Philippines Myanmar

1.3. Votes on UN General Assembly resolutions on extrajudicial, summary or arbitrary executions

Year	Resolution	Southeast Asian Country		
		In favor of the inclusion of "sexual orientation and gender identity" in the document	Against the inclusion of "sexual orientation and gender identity" in the document	Abstain
2012	UN General Assembly Third Committee Amendment (A/C.3/67/L.68) aimed to remove reference to sexual orientation and gender identity in the resolution	Brunei Darussalam Indonesia Malaysia Myanmar	Singapore Thailand Timor-Leste	Philippines
2014	UN General Assembly Third Committee Amendment (A/C.3/69/L.64) aimed to remove reference to sexual orientation and gender identity in the resolution	Brunei Darussalam Indonesia Malaysia	Singapore Thailand Timor-Leste	Lao PDR Myanmar

Notes

- 1 ASEAN SOGIE Caucus recognizes that there are other non-heteronormative and non-cisgender identities and terminologies that exist in Southeast Asia apart from "LGBTIQ". But for the purposes of clarity, "LGBTIQ" will be the standard term used in this publication.
- 2 The Association of Southeast Asian Nations (ASEAN) is a regional body of Southeast Asian governments currently composed of ten countries: Brunei, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Viet Nam. For more information, see: www.asean.org.
- 3 While the scholarship on SOGIESC is necessarily complex, certain basic definitions will be used for the purposes of this publication. "Sexual orientation" refers to enduring patterns of sexual, emotional, and romantic attraction to people of a particular sex or gender. "Gender identity" refers to a person's inner sense of maleness, femaleness, or other similar gender category. "Gender expression" refers to the outward expression of a person's gender, including but not limited to clothing, hairstyle, and other alterations to the body. "Sex characteristics" refers to a person's physiological and anatomical makeup related to sex, including but not limited to their genital sex.
- 4 Such efforts to push people to conform to heterosexual norms are referred to as "conversion therapy". Alternative terminology is "sexual orientation change efforts" (SOCE), since the word "therapy" implies that these practices are scientific and evidence-based. The best evidence available however suggests that such practices are not only ineffective (i.e. SOCE does not change a person's sexual orientation in any significant or enduring way), but are potentially harmful (i.e. SOCE can cause serious psychological and physical harm).
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This publication was produced with funding support from
UNDP Being LGBTI in Asia Program and Arcus Foundation,
and with operational support from Outright Action International.