



ASEAN SOGIE CAUCUS

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SEXUAL ORIENTATION, GENDER IDENTITY, GENDER EXPRESSION AND SEX CHARACTERISTICS (SOGIESC) AND VIOLENCE AGAINST CHILDREN IN SOUTHEAST ASIA

*A Submission for the 7th Cross-Regional Meeting on Violence Against Children
June 6-8, 2017, Manila, Philippines*

1. International human rights frameworks and SOGIESC

International human rights frameworks relevant to the rights of the children have increasingly been interpreted to be inclusive. The non-discrimination provisions of human rights texts, including the Convention on the Rights of the Child, include non-exhaustive list of protected categories that may be invoked to include sexual orientation, gender identity and expression, and sex characteristics (SOGIESC).

General Comment 13 of the Committee on the Rights of the Child (CRC) stressed the need to address the gender dimension of discrimination and violence in all settings. Accordingly, General Comment 15 identifies sexual orientation and gender identity as a ground for discrimination. Consequently, these interpretations require states to address gender-based inequalities and other forms of discrimination that support and perpetuate violence, and also requires that they report on these issues accordingly.

Increasingly, the CRC have raised concerns about discrimination and violence faced by children on the basis of SOGIESC in their concluding observations. In Brunei, for example, the treaty body expressed that discrimination against certain groups of children – including lesbian, gay, bisexual and intersex (LGBTI) children – still exist in practice, and called on the state to adopt a comprehensive strategy to eliminate gender stereotypes as well as de jure and de facto discrimination.¹

International human rights experts have similarly begun to urge discussions on the issues faced by children of diverse SOGIESC. In October 2016, a group of international human rights experts issued a joint statement on the issues of intersex children, expressing concerns including the subjection of intersex infants and adolescents to medically unnecessary surgeries, hormonal treatments, and other procedures to forcibly change their appearance to conform to societal expectations towards female and male bodies. The statement reiterated that procedures to change one's body should be done with children's informed consent.² And in May 2017, another group of experts issued a joint statement calling on states to strengthen protection measures to ensure full respect of the rights of children irrespective of their actual or perceived SOGIESC, urging government to adopt comprehensive legal measures including but not limited to laws on anti-discrimination and the prohibition of conversion therapies.³

Regionally, the ASEAN Regional Plan of Action on Violence Against Children elaborates on the measures to address all forms of violence, including mental, physical, sexual violence. The said document stressed the need to have inclusive programming with special emphasis on "vulnerable groups of children", which specifically includes "children from the lesbian, gay, transgender or transsexual community".⁴

1 UN Committee on the Rights of the Child, 2016. Concluding Observations on the Combined Second and Third Periodic Reports of Brunei Darussalam. CRC/C/BRN/CO/2-3.

2 Office of the High Commissioner on Human Rights, October 26, 2016. "End Violence and Harmful Medical Practices on Intersex Children and Adults, UN and Regional Experts Urge".

3 Office of the High Commissioner on Human Rights, May 17, 2017. "Embrace Diversity and Protect Trans and Gender Diverse Children and Adolescents".

4 ASEAN Regional Plan of Action on Elimination of Violence Against Children.

2. Discrimination and violence experienced by children because of their actual or perceived SOGIESC

Across Southeast Asia, children remain vulnerable due to their self-determined or perceived SOGIESC. Incidents take place in various spaces (such as homes, schools, and larger communal places) and involve a diverse range of perpetrators (including parents, relatives, peers, teachers, school personnel, and public officials). These incidents are encouraged and perpetuated by the existence of laws that criminalize persons of diverse SOGIE. For example, Brunei, Indonesia, Malaysia, Myanmar, and Singapore retain criminal laws against consensual same-sex relations. Meanwhile, persons who “cross-dress” or do not conform with accepted gender expressions have been arrested in Brunei, Indonesia, and Malaysia.

In the **Philippines**, discriminatory policies coupled by social stigma against LGBTI persons translate into violence. In a 2016 consultation with self-identified LGBT children aged 13 to 17 years old, narratives illustrating violence have been reported. Many reported instances of verbal abuse by family members, with slurs such as “*ipako sa krus*” (“crucify”), “*salot sa lipunan*” (“disgrace to society”), and “*anak kayo ng demonyo*” (“you are the devil’s children”). One child even reported extortion, reporting: “I was on my way home from school and someone put an arm over my shoulder and asked for a peso. The next day, a kid pushed me and asked for money. He threatened me with a sharp object.”⁵

In **Myanmar**, existence of discriminatory laws were used by police forces to abuse and attack LGBTI persons, including children. These laws include Section 377 of the Penal Code, which criminalize consensual same-sex relations; and Section 35 of the Police Act of 1945, which emboldens police to arrest anyone who between sunset and sunrise are found covering their face or otherwise disguised, as and persons found in public places without a satisfactory account for their presence. A report by local civil society organizations documented more than 800 cases of discrimination and violence against LGBTI persons between January to December 2015. In that report, 10 LGBTI children were arrested.⁶

In **Vietnam**, research on LGBT street children looked into the connections between domestic violence and economic marginalization. The research noted that non-acceptance of their SOGIESC pushed children to leave their homes, cutting them off from support and leaving them without access to basic necessities. They report being forced into various high-risk behaviors, such as joining street gangs, using illegal substances, and engaging in unsafe sexual practices. They also reported discomfort in accessing social services provided by government and non-government organizations due to social stigma.⁷

In **Indonesia**, several government officials have made public statements that entrench the stigmatization of LGBTI persons. The officials of Komnas Perlindungan Anaka Indonesia (Indonesian Child Protection Commission) made public pronouncements that same-sex relations are a form of addiction and the lack of a regulation to criminalize consensual same-sex relations will lead children to think that such acts are normal. KPAI officials stressed that the absence of a law criminalizing LGBTI persons is contrary to the best interest of the child, and that LGBT persons spread sexually-transmitted diseases and pedophilia. They have also encouraged public that LGBT children should be cured and undergo therapy. These and similar pronouncements further children of diverse SOGIESC in serious danger. In fact, Indonesian civil society organizations have already reported several cases of violence against LGBTI persons, and Arus Pelangi and PLUSH found that around 17% of LGBT youth they interviewed have attempted suicide. Data from Sanggar SWARA revealed many transgender women ran away from their families at an early age, and many of them do not have identity cards and access to health services and social security.

⁵ ASEAN SOGIE Caucus, 2016. Bata at Bahaghari: Children’s Workshop on the Rights of LGBT Children.

⁶ Colors Rainbow, Equality Myanmar and USAID, 2016. From Victims to Agents of Change: Live and Voices of LGBT Individuals.

⁷ Nguyen Thu Huong, Nguyen Thi Thu Nam, et. al., n.d. Situation Assessment of LGBT Street Children in Ho Chi Minh City. Hanoi: The Gioi Publishers

In **Thailand**, a study covering five provinces revealed that more than half of the self-identified LGBT students have experienced bullying. Around 30% of those who self-identified as LGBT reported experiences of physical abuse, and around 24% reported being sexually harassed because of their SOGIE. The long-term impact of these experiences are varied, as the study reports: “When compared to those who had not been bullied at all, a significantly higher proportion of those who had been bullied on the basis of perceived transgenderism or same-sex attraction had missed classes in the past month, drank alcoholic beverages, were depressed, had unprotected sex in the past 3 months, and had attempted suicide in the past year. They were also significantly more likely to be depressed or have attempted suicide when compared to those who had been bullied for other reasons.”⁸

In **Malaysia**, the Department of Islamic Development of Malaysia (JAKIM) released a reference material that reinforces social stigma against LGBTI persons.⁹ The said reference reinforces the government’s plan to engage LGBT persons into “Ilaj Wa Shifa” (treatment and rehabilitation). LGBTI activists in Malaysia have reported that government organized “Mukhayyam Camps” exists aimed to “cure” LGBT persons from deviant behavior.¹⁰

3. Good Practices in Addressing Violence Against Children on the Basis of SOGIESC

Specific countries have adopted national laws and policies addressing violence and discrimination against children on the basis of SOGIESC:

In the **Philippines**, the Anti-bullying Act of 2013 requires all schools to adopt policies and programs to address all forms of bullying, including gender-based bullying, and to establish child protection committees tasked with monitoring, reporting, and responding to these cases. The Implementing Rules and Regulations (IRR) of the said law defined “gender-based bullying” as an act that humiliates or excludes a person on the basis of perceived or actual sexual orientation and gender identity. Meanwhile, the 2012 Child Protection Policy of the Department of Education stressed that children should be protected from all forms of discrimination, including on the grounds of sexual orientation and gender identity, and instructs all school officials to monitor and respond to all child protection cases.

In **Vietnam**, the Ministry of Education and Training adopted Decision No. 42/2012/TT-BGDĐT which specifically prohibits gender-based discrimination or abuse, violence or bullying incidents in schools. It is note however that the implementation of the policy needs to be more inclusive of SOGIESC. Community-led initiatives aimed at promoting social acceptance of LGBTI persons are also underway. For example, Parents and Friends of Lesbians and Gays (PFLAG), an organization led by parents of LGBTI persons, now conducts groups discussions with fellow parents and provides counseling to families to help them understand and support their LGBTI children. They also engage in policy dialogues with the government.

In **Cambodia**, CamASEAN which is a youth-led local organization have collaborated with the Ministry of Education to train teachers and school personnel on social awareness and acceptance of LGBTI students.

⁸ Mahidol University, Plan International Thailand and UNESCO, 2014. Bullying Targeting Secondary School Students Who Are or Are Perceived to be Transgender or Same-sex Attracted: Types, prevalence, impact, motivation and preventive measures in 5 provinces of Thailand.

⁹ Department of Islamic Development Malaysia (JAKIM), 2015. Hadith Sahih on the Behaviour of LGBT.

¹⁰ JAKIM, Program Intervensi Kerohanian Terhadap Golongan LGBT Oleh Jakim.

3. Recommendations

The following recommendations are proposed:

1. Review all monitoring and reporting mechanisms, including relevant tools, to enable them to capture and respond to cases of SOGIESC-based violence.
2. Review and revise all legislation and policies that directly or indirectly criminalize, discriminate and stigmatize persons because of their SOGIESC.
3. Review and revise health policies, manuals and guidelines that stigmatize LGBTI persons, as well as legitimize gender conversion practices.
4. Ensure that protocols to respond to gender-based violence against children reflect and recognize the nuances of violence experienced by LGBTI children.
5. Ensure that response and redress mechanisms are inclusive and affirmative towards the actual or perceived SOGIESC of children.
6. Conduct training and awareness raising for all personnel, volunteers and other stakeholders to enable them to be sensitive and affirmative towards persons' diverse SOGIESC.

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ASEAN SOGIE Caucus (ASC) is a regional organization of human rights defenders (HRDs) from various countries in Southeast Asia. ASC advocates for the promotion, protection and fulfillment of the rights of all persons regardless of their sexual orientation, gender identity and expression, and sex characteristics (SOGIESC). The organization aims to support capacities of local HRDs to engage with domestic, regional and international human rights mechanisms.

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