

EXECUTIVE SUMMARY

The human rights of lesbian, gay, bisexual, transgender, intersex, and queer (LGBTIQ) persons from Southeast Asia are under assault. Various forms of aggression and exclusion on the basis of sexual orientation, gender identity and expression, and sex characteristics (SOGIESC) have been documented, ranging from failures to establish redress mechanisms protecting LGBTIQ persons to the criminalization of consensual same-sex relations. Considering these realities, **we believe that LGBTIQ people in Southeast Asia must assert stronger claims in the formulation of international policies, which define human rights norms, through engagement with UN human rights mechanisms.**

This series of country briefings provide baseline information regarding SOGIESC in the engagements by civil society organizations' (CSOs) with UN human rights, as well as inclusion of SOGIESC in reviews of human rights situations of selected countries in the region. The human rights mechanisms covered are the Universal Periodic Review, the treaty monitoring bodies, and UN Special Procedures. Twelve (12) countries are reviewed: **Brunei, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand, Viet Nam, Timor-Leste, and China.** Information used in these briefs are based on discussions with CSOs and individual activists, and a desk review of relevant UN documents.

The **Universal Periodic Review (UPR)** is one of the most accessed mechanisms, with information on SOGIESC issues generated in 11 of the 12 reviewed countries. The only exception is Lao PDR, where CSOs do not feel safe to engage in human rights mechanisms in fear of government backlash.¹ That said, levels of engagement vary across countries. In Brunei Darussalam and Myanmar² for example, information related to SOGIESC were submitted by international organizations but none were submitted by local groups. In other countries such as Viet Nam, Malaysia, and Cambodia, local LGBTIQ CSOs have been submitting shadow reports either as coalitions of LGBTIQ organizations or as part of broader CSO networks.

Some States touted advances in SOGIESC-related legislation in their UPR government submissions. Viet Nam wrote in its first UPR report that "efforts to strengthen lesbian, gay, bisexual and transgender rights within the revision of the Law on Family and Marriage were an opportunity for Viet Nam to emerge as a regional leader in the fight against homophobia."³

Similarly, Thailand reported in its 2nd UPR cycle that the Gender Equality Act of 2015 established mechanisms to promote gender equality in all government agencies, handle complaints, and provide a fund for victims' redress.⁴

UN human rights treaties are generally perceived as more legally binding than the UPR, but are less accessible to CSOs because they are dependent on ratification by the State. The Human Rights Committee is one of the treaty-monitoring bodies where SOGIESC issues have been raised, one example being a 2012 shadow report submission during the Philippines' review on the use of the Revised Penal Code's provision on "grave scandal" to arrest LGBTIQ people.⁵ Another example is a shadow report to the Committee on Economic, Social, and Cultural Rights (CESCR) review of Indonesia in 2013, which raised issues of bullying in schools, barring of people with "sexual orientation disorders" in one civil service position, and the categorization of LGBTIQ people as deviants under the Anti-Pornography Law.⁶ And in China, the issue of forced "conversion therapy" was reported to the Committee Against Torture in 2015.⁷

The country briefs also cover efforts by UN Special Procedures to highlight SOGIESC issues. For example, the Special Representative of the Secretary General on the situation of human rights defenders expressed concern about the lack of protection for activists engaged in LGBTIQ and HIV advocacies in her report on her mission to Indonesia in 2008.⁸ In 2013, the Special Rapporteurs on freedom of expression and human rights defenders sent a joint urgent appeal to Singapore regarding the contempt of court charge against a human rights activist and blogger working on issues related to SOGIESC and migrants.⁹ Other mandate-holders who mentioned SOGIESC-related issues include the Special Rapporteur on the right to health, the Special Rapporteur on the situation of human rights in Myanmar, and the Special Rapporteur on adequate housing.

Member-states have increasingly raised SOGIESC issues in the UN General Assembly and Human Rights Council (HRC), resulting for example in joint statements which gathered significant support in 2005 and 2011.¹⁰ These also led to the adoption of two resolutions in 2011 and 2014 requesting the High Commission for Human Rights to submit reports to the HRC, and a 2016 resolution mandating the establishment of an Independent Expert on violence

1 This was noted in the joint stakeholder submission by FORUM-ASIA and Asia-Europe People's Forum during Lao's second cycle review. See: A/HRC/WG.6/21/LAO/3.

2 In the 2nd UPR Cycle of Myanmar, the Myanmar LGBT Network was part of the Burma/Myanmar UPR Forum which submitted a joint stakeholder report. The report did not address SOGIESC issues, but the forum included SOGIESC issues in its factsheet.

3 UN Human Rights Council, 2013. Compilation prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21: Viet Nam, A/HRC/WG.6/18/VNM/2.

4 UN Human Rights Council, 2016. Compilation prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21: Thailand, A/HRC/WG.6/25/THA/1.

5 International Gay and Lesbian Human Rights Commission, 2011. Human Rights Violations on the Basis of Sexual Orientation, Gender Identity, and Homosexuality in the Philippines: A Coalition Report Submitted to the 103rd Session of the Human Rights Committee. Retrieved from: http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/PHL/INT_CCPR_NGO_PHL_106_991_E.pdf.

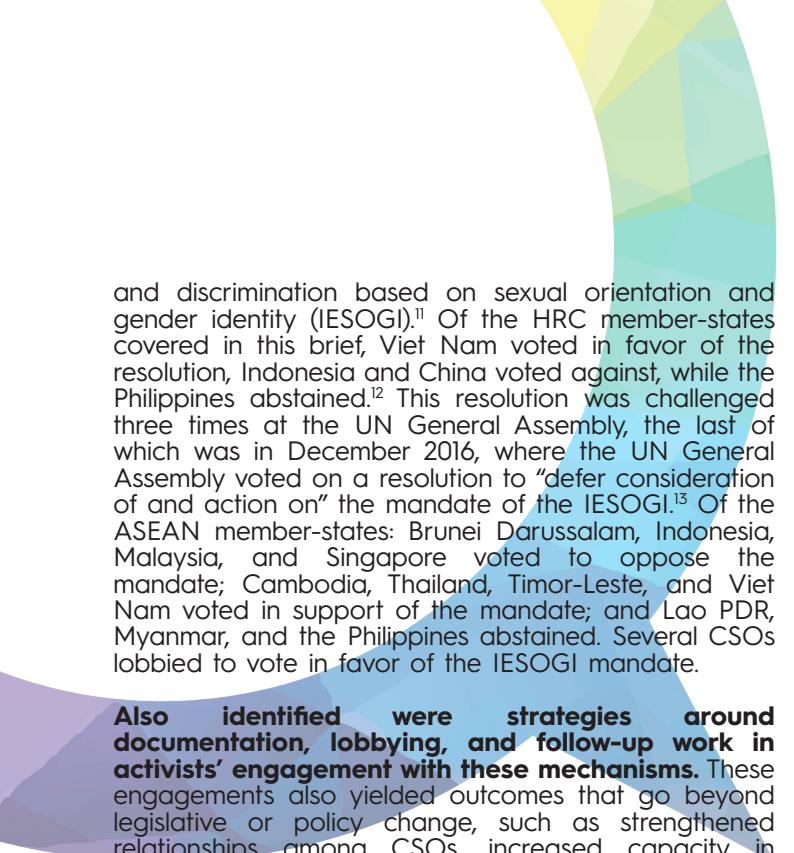
6 Human Rights Working Group, 2013. Alternative Report to the Indonesia State Report on the Implementation of ICESCR. Retrieved from: http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/IDN/INT_CESCR_NGO_IDN_I5360_E.doc

7 Chinese Human Rights Defenders, 2015. Specific Information on the Implementation of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Retrieved from: http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/CHN/INT_CAT_NGO_CHN_I9726_E.pdf.

8 UN Human Rights Council, 2008. Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Ms. Hina JILANI, Addendum: Mission to Indonesia, A/HRC/7/28/Add.2.

9 United Nations Office of the High Commissioner for Human Rights, 8 July 2015. Singapore / Freedom of expression: UN expert alarmed by sentencing of teenager blogger. Retrieved from: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16213&LangID=E>.

10 ARC International. SOGI Statements. Retrieved from: <http://arc-international.net/global-advocacy/sogi-Statements/>.



and discrimination based on sexual orientation and gender identity (IESOGL).¹¹ Of the HRC member-states covered in this brief, Viet Nam voted in favor of the resolution, Indonesia and China voted against, while the Philippines abstained.¹² This resolution was challenged three times at the UN General Assembly, the last of which was in December 2016, where the UN General Assembly voted on a resolution to “defer consideration of and action on” the mandate of the IESOGL.¹³ Of the ASEAN member-states: Brunei Darussalam, Indonesia, Malaysia, and Singapore voted to oppose the mandate; Cambodia, Thailand, Timor-Leste, and Viet Nam voted in support of the mandate; and Lao PDR, Myanmar, and the Philippines abstained. Several CSOs lobbied to vote in favor of the IESOGL mandate.

Also identified were strategies around documentation, lobbying, and follow-up work in activists’ engagement with these mechanisms. These engagements also yielded outcomes that go beyond legislative or policy change, such as strengthened relationships among CSOs, increased capacity in advocacy, and greater visibility. Finally, challenges in these engagements were also identified, such as access to and understanding of the mechanisms, language barriers, documentation, government responses, and follow-up and implementation.

These country briefs are outputs of a regional research project with UNDP which examined civil society participation in UN human rights reporting mechanisms. Support for the country briefs was provided by UNDP Bangkok Regional Hub and Arcus Foundation. **Through these, ASEAN SOGIE Caucus hopes to support civil society efforts in engaging with UN human rights mechanisms.**

¹¹ UN Human Rights Council, 2016. Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity, A/HRC/32/L.2/Rev.1.

¹² UN Office of the High Commissioner for Human Rights, 2016. Council establishes mandate on protection against violence and discrimination based on sexual orientation and gender identity. Retrieved from <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20220>.

¹³ APCOM, 21 December 2016. Another Victory of the UN Rejecting Another Effort to Suspend the Mandate of Independent Expert on Sexual Orientation and Gender Identity. Retrieved from <https://apcom.org/2016/12/21/gbtiq-regional-organizations-asia-pacific-welcome-decision-ungas-5th-committee-meeting-safeguard-mandate-independent-expert-sexual-orientation-gender-identity/> Retrieved from <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16213&LangID=E>.