



Civil society engagement with UN human rights mechanisms on sexual orientation, gender identity and expression, and sex characteristics (SOGIESC)

VIETNAM

ABOUT THE COUNTRY BRIEF

This country brief charts efforts by lesbian, gay, bisexual, transgender, intersex, and queer (LGBTIQ) activists to raise issues related to sexual orientation, gender identity and expression, and sex characteristics (SOGIESC) within UN human rights mechanisms. This brief is based on a review of engagements with various mechanisms, including a desk review of civil society submissions and national-level discussions and individual interviews with activists and stakeholders. The discussions took place over the first half of 2016, with additional data gathered on review cycles. **The objective is to provide baseline information for LGBTIQ activists to help maximize their engagement with UN human rights mechanisms.**

UNIVERSAL PERIODIC REVIEW

1ST CYCLE (2009)

During the first cycle, there were no references to SOGIESC issues in the input reports or during the review process.¹

2ND CYCLE (2014)

The UN Country Team stated in a submission 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.”²

The broader national UPR coalition and the LGBT organization iSEE recommended in stakeholder submissions that Viet Nam “ensure the equal right to marriage for all persons, regardless of their sexual orientation.” iSEE reported further that “in many cases, doctors denied medical care to patients who are gay or transgender because of their sexual orientation and gender identity.”³

During the UPR Working Group review, the United States of America “welcomed progress on protecting the rights of LGBT persons,” and Germany commended “[Viet Nam’s] decision to decriminalize homosexual partnerships”. Viet Nam accepted a recommendation made by Chile to “enact a law to fight against discrimination which guarantees the equality of all citizens, regardless of their sexual orientation and gender identity.”⁴

1 UN Human Rights Council, 2009. Report of the Working Group on the Universal Periodic Review: Viet Nam, A/HRC/12/11

2 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

3 UN Human Rights Council, 2013. Summary prepared by the Office of the 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/3

4 UN Human Rights Council, 2014. Report of the Working Group on the Universal Periodic Review: Viet Nam, A/HRC/26/6

TREATY MONITORING BODIES

VIET NAM HAS RATIFIED⁵ THE FOLLOWING HUMAN RIGHTS TREATIES:

- 01 International Convention on the Elimination of All Forms of Racial Discrimination
- 02 International Covenant on Civil and Political Rights
- 03 International Covenant on Economic, Social and Cultural Rights
- 04 Convention on the Elimination of All Forms of Discrimination against Women
- 05 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- 06 Convention on the Rights of the Child (with Optional Protocols 1 and 2)
- 07 Convention on the Rights of Persons with Disabilities

In 2015, Kaleidoscope Human Rights Foundation and iSEE submitted a shadow report to CEDAW on the rights of LGBTI women in Viet Nam. The report provided recommendations on an anti-discrimination law, legal gender recognition, including SOGI in the national school curriculum, ensuring the legal status of gender-reaffirming surgery, sensitizing health professionals on LGBTI women's health, access to IVF without discrimination, and ensuring gender-neutral sexual assault laws.⁶

Overall, the treaties were understood as being more legally binding than the UPR by participants of the discussions. However, they expressed uncertainty as to how SOGIESC issues were covered by the various treaties, and suggested that the UN provide more support in engaging the monitoring mechanisms. Furthermore, there was a sense that generalist human rights organizations acted as gatekeepers to the process.

Unfortunately CEDAW did not address these issues in its Concluding Observations on Viet Nam in 2015.⁷

5 UN Office of the High Commissioner for Human Rights, n.d. Status of Ratification. Retrieved from <http://indicators.ohchr.org/>

6 Kaleidoscope Human Rights Foundation, 2015. The Rights of Lesbian, Bisexual, Transgender and Intersex (LBTI) Women in Viet Nam – Shadow Report for the 61st Session of the Committee on the Elimination of Discrimination against Women. Retrieved from http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/VNM/INT_CEDAW_NGO_VNM_20790_E.pdf

7 UN Committee on the Elimination of All Forms of Discrimination Against Women, 2015. Concluding observations on the combined seventh and eighth periodic reports of Viet Nam, CEDAW/C/VNM/CO/7-8

SPECIAL PROCEDURES

There has been very little or no engagement with the UN Special Procedures on issues relating to SOGIESC in Viet Nam. Participants of the discussions suggested that this was due to a lack of opportunity to do so.

Nevertheless, the Special Rapporteur on health addressed the issue of HIV/AIDS in a report in 2012. In the report, he noted that stigma both “contributes to the spread of the epidemic by deterring affected individuals from accessing such health services” and “present barriers to the development and implementation of preventative measures tailored to the needs of these vulnerable groups”, recommending that Viet Nam “(b) eliminate stigmatization and create an enabling environment, in which at-risk populations, including injecting drug users, female sex workers and men who have sex with men, are able to effectively access health care, by de-penalizing drug use and sex work.”⁸

Viet Nam has not issued a standing invitation to the Special Procedures, but has hosted visits from 6 mandates: on freedom of religion and belief (1998, 2014), on minority issues (2010), on extreme poverty (2010), on foreign debt (2011), on right to health (2011), and on cultural rights (2013).⁹ Invitations to visit have been requested by mandate-holders on torture, food, sale of children, freedom of expression, extrajudicial executions, human rights defenders, migrants, freedom of association and assembly, and contemporary forms of slavery.

OTHER POSITIONS AT THE UNITED NATIONS

Viet Nam voted in favor of the Human Rights Council resolutions on sexual orientation and gender identity in 2014 and 2016. Viet Nam also abstained on votes to include references to sexual orientation and gender identity in resolutions on extrajudicial executions of the General Assembly.^{10,11,12}

In June 2016, the UN Human Rights Council approved a resolution establishing a new special procedure called the “Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity” (IESOGI), whose mandate is to assess the implementation of existing international human rights instruments with regard to ways to overcome violence and discrimination against persons on the basis of their sexual orientation or gender identity, and to identify and address the root causes of violence and discrimination.¹³ Viet Nam voted in favour of the resolution.¹⁴

In November 2016, the African regional group filed a resolution in the UN General Assembly that sought to block the work of the IESOGI. Viet Nam voted in favor of a counter-resolution that amended the earlier resolution by deleting the postponement of the IESOGI's functions.¹⁵ In another attempt to halt the mandate in December 2016, Viet Nam once again voted in support of the IESOGI.¹⁶

- 8 UN Human Rights Council, 2012. Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover: Addendum – Mission to Viet Nam, A/HRC/20/15/Add.2
- 9 UN Office of the High Commissioner on Human Rights, n.d. View Country visits of Special Procedures of the Human Rights Council since 1998. Retrieved from http://spinternet.ohchr.org/_Layouts/SpecialProceduresInternet/ViewCountryVisits.aspx?Lang=en
- 10 UN Human Rights Council, 2014. Human rights, sexual orientation and gender identity, A/HRC/RES/27/32
- 11 UN General Assembly, 2014. Amendment to draft resolution A/C.3/69/L.47/Rev.1, A/C.3/69/L.64. Retrieved from http://www.un.org/en/ga/third/69/docs/voting_sheets/L64.L47Rev1.pdf
- 12 UN General Assembly, 2016. 6th Plenary Meeting, A/65/PV.65
- 13 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
- 14 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, available from <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20220>
- 15 UN General Assembly, 2016. Amendment to draft resolution A/C.3/71/L.46, A/C.3/71/L.52. Retrieved from: https://www.un.org/en/ga/third/71/docs/voting_sheets/L.52.pdf
- 16 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/lgbtiq-regional-organizations-asia-pacific-welcome-decision-ungas-5th-committee-meeting-safeguard-mandate-independent-expert-sexual-orientation-gender-identity/>

STRATEGIES

Participants in the discussions shared insights into various strategies around documentation, lobbying, and follow-up:

DOCUMENTATION

Participants chose to focus on those issues that were most relevant and timely at the time of review, namely same-sex marriage and gender affirmation, during the 2nd cycle of the UPR. Campaigns were already underway on these issues meant that relevant data was already accessible. The coalition working on the UPR held open and participatory consultations as well as discussions on social media platforms. Social media was perceived as a safe environment, and facilitated easy access to updates on key issues, meetings, and demonstrations. It was also decided that they would contribute to two stakeholder reports: one with a thematic focus on SOGIESC, and another with a broader human rights view submitted with other organizations. Participants also indicated that working with intersectionality in mind was a challenge, but that the UPR provided an opportunity to educate other organizations on SOGIESC human rights issues. The consultations and trainings that led to the second coalition report, additionally contributed to awareness-raising with other organizations.

LOBBYING

UPR Info funded a coalition representative to attend the UPR pre-session in Geneva. The group also met with embassies in Hanoi whenever possible. Targeted countries included the EU member states, the G4 countries, and Latin American states. The group primarily reached out to those that have a good relationship with Viet Nam. There was some caution around reaching out to Western states, which were perceived as focusing more on civil and political rights. The participants emphasized that they lobbied not just on SOGIESC issues, but also on the human rights of women and immigrants. Following the UPR Working Group review, the coalition met with the Ministry of Foreign Affairs in Viet Nam to convince them to accept the recommendation made by Chile. They also sent a representative to Geneva to make a statement during the adoption of the UPR report at the Human Rights Council.

FOLLOW-UP

Following the UPR, a meeting was organized among CSOs to discuss the dissemination and implementation of accepted recommendations, including advocacy towards laws on association and non-discrimination. A year after the adoption of the UPR report however, participants expressed disappointment with the national action plan, and tried to contact with the Ministry of Foreign Affairs on the implementation of the recommendation. The action plan lacked timelines, commitments, and concrete steps, and instead proposed to continue existing government policies. However, it was acknowledged that the state might be slow to implement recommendations due to a lack of resources. UNDP, iSEE and USAID launched an online survey on discrimination and stigma based on SOGIE, in order to better understand and document the current situation, and to provide evidence-based analysis for further advocacy toward and anti-discrimination law.

OUTCOMES

IT WAS RECOGNIZED THAT ENGAGING THE UPR PROCESS YIELDED OUTCOMES BEYOND LEGISLATIVE OR POLICY CHANGE:

Alliances and networks among CSO for other work (e.g. lobbying for constitutional amendments)

Raising of awareness of key issues, including with the government

A sense of empowerment among civil society organizations

Improved relationship with and recognition by the government of CSOs working on SOGIESC issues, and an increased awareness on the part of the government regarding commitments made by Viet Nam

The development of new tools for communication and data gathering

Participants indicated that the acceptance of the UPR recommendation gave them hope, and that they felt empowered through being organized in this process, building confidence to speak out and not wait for change to happen by itself. Their perspectives on lobbying also shifted from engaging not only with domestic process but also with international platforms. Participants were particularly pleased that Viet Nam voted in favor of the Human Rights Council resolution on “human rights, sexual orientation and gender identity” in September 2014, and saw its own work in sensitizing the government as having influenced this decision.

Furthermore, there was a sense that the strategy on advancing SOGIESC issues in Viet Nam was so successful that it could be used as a model for advancing other human rights issues. The broader national strategy on SOGIESC issues was seen to be setting a new advocacy model for human rights recognition in Viet Nam, separate from the traditionally confrontational relationship between human rights defenders and the government. Furthermore, the national survey on SOGIE-based discrimination was suggested as a research model to provide data to support the advocacy of other marginalized populations and groups. Participants also focused on SOGIESC-built alliances with organizations working on broader issues, and each developed a more of an intersectional approach.

Through the UPR process, participants also developed social media groups that provided information on human rights law and helped to popularize the review process. These were also spaces where people shared stories and photographs, enhancing broader understanding of SOGIESC issues and making them more acceptable in society.

CHALLENGES

PARTICIPANTS OF THE DISCUSSIONS IDENTIFIED CHALLENGES IN THE FOLLOWING STAGES OF THEIR ENGAGEMENT WITH THE UPR:

There was no clear process or official mechanism to document human rights violations

The data collected may either conflict with government data or was not recognized by the government

Lack of confidence in report writing skills and lack of specific training

Government hostility to human rights as a concept because of its association with the West and the US-Viet Nam war and its linking of human rights defense with political dissidence

Censorship, monitoring, and police harassment, such as the shutting down of UPR awareness-raising events

Self-censorship, i.e. avoiding certain terminology to avoid the "taboo" subject of human rights

Fear of associating with human rights defenders due to risk of reprisals

English language skills in report writing and advocacy was an obstacle to many in the coalition, and burdened the few who were fluent



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ASEAN SOGIE Caucus (ASC) is a regional organization of human rights defenders from various countries in Southeast Asia. ASC advocates for the promotion, protection and fulfilment 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 activists to engage with domestic and international human rights mechanisms. The organization envisions a SOGIESC-inclusive Southeast Asian community, and advocates for the human rights of all persons regardless of SOGIESC to be respected, protected, promoted, and fulfilled.

The country briefs are outputs of a regional research project with UNDP and ASC which examined civil society participation in UN human rights reporting mechanisms. Support for the regional research project and country briefs was provided by UNDP and Arcus Foundation.

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