



**SUBMISSION ON THE SITUATIONS OF LESBIAN, GAY, BISEXUAL AND
TRANSGENDER (“LGBT”) PEOPLE IN VIETNAM**

**FOR THE EIGHTEENTH SESSION OF THE UNITED NATIONS
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This report is submitted to the OHCHR by:

Institute for Studies of Society, Economy and Environment

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iSEE is a Vietnamese non-profit organization established in 17th July 2007 working towards the rights of minority groups, which include ethnic minorities and LGBT people. iSEE was the first organization dedicated to advocate for LGBT rights in Vietnam.

Online forums take an important role in LGBT people in Vietnam as a place to get connected. The number of registered members of the largest online forums are up to more than 370,000 people. This submission has been assisted and supported by the following civil society organizations and websites working on LGBT in Vietnam:

- Center for Innovative Communication, Services and Studies on Sexuality (ICS)
- Centre for Creative Initiatives in Health and Population (CCIHP)
- Center for Studies and Applied Sciences in Gender, Family, Women and Adolescents (CSAGA)
- Forum Ban Gai VN for Vietnamese Lesbian (www.bangai.vn)
- Forum Tao Xanh for Vietnamese Teenager Gay (www.taoxanh.net)
- Forum Tinh Yeu Trai Viet for Vietnamese Gay (www.tinhyeutraiviet.com)
- Forum Vuon Tinh Nhan for Vietnamese Gay (www.vuontinhnhan.net)
- Vietnam’s Online News for LGBT (www.lgbt.vn)

I. METHODOLOGY

1. The data in this report are collected from the following sources: the existing provisions of the law, the actual incidents reflected in the press, the published data and research reports of iSEE and other researchers, and individual cases of people who were in direct contact with iSEE.

II. BACKGROUND AND FRAMEWORK

2. As a member of the United Nations since 1977, Vietnam became a member of the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the Convention to Eliminate All Forms of Discrimination Against Women (CEDAW) in 1982 and the Convention on the Rights of the Child (CRC) in 1990, etc. As a result, Vietnam has shown its commitment to respect the dignity and rights of all human beings equally.

3. Nevertheless, the violations of human rights towards LGBT have still been observed and recorded, although not completed and meticulous. There are institutionalized violations of the law, in addition to the violations in execution and attitude of the state as well as the public.

4. Vietnam has never criminalized homosexuality, yet also never established specific provisions to protect and promote the rights of LGBT. In the first Universal Periodic Review of Vietnam, there were no sections of the national report or any related reports mentioning the rights of LGBT, and also there were no recommendations to ensure rights related to sexual orientation and gender identity.

5. Existing LGBT groups on the internet develop strongly without being censored. A number of organizations working for the rights of LGBT operate legally, concentrating on research, public education, event organizing¹ and advocacy work. Since 2012, several government agencies have started to consider and protect the rights of LGBT people. However, the institutional and legitimate changes are still be waiting in the future.

III. GENERAL RECOMMENDATIONS

- Enact an anti-discrimination law that will ensure equality of all people regardless sexual orientation and gender identity.
- Recognize an institution of equal marriage for all persons, regardless of their sexual orientation or gender identity.
- Recognize the right to recognition before the law and the right to one's body, regardless of their gender identity or gender expression.
- Conduct comprehensive sexuality education and public awareness to eliminate discrimination in reality, through current programs and policies on culture, education, health, health care, youth, etc.
- Sign the LGBT Rights Declaration in the General Assembly, or sponsor the 2011 LGBT Rights Resolution in the UNHRC, or both.
- Apply the Yogyakarta Principles as a guide of policy development to apply the international human rights standards in relation to sexual orientation and gender identity.

IV. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

A. The right to equality and non-discrimination

6. Everyone has the right to enjoy human rights without being discriminated against because of the sexual orientation or gender identity.² Vietnam's Constitution of 1992, amended in 2001, provides that "all citizens are equal before the law."³ In reality, the cases of discrimination are very diverse and varied, from the refusal to provide services, goods⁴, job rejection⁵, discrimination at work⁶, job dismissal based on one's sexual orientation or gender identity⁷, to facing difficulties with the administrative authorities...⁸ This requires that the law needs to become more inclusive and effective enough to protect and respect the rights of all individuals equally.⁹

7. In criminal law, transgender or gay men are not protected in the crime of rape¹⁰ because they registered their gender as male in official documents.¹¹ There was a case of a transgender person who was raped, but the rapist was not prosecuted because the law does not recognize that the victim of rape crime could be a male person.¹²

8. In criminal cases, the homosexuals are considered "easy to slip into the criminal scenes,"¹³ but there will be mitigating factors for the defendant if the victim is gay, reasoning that the victim must have led "an unrestrained lifestyle"¹⁴ or is not serious-minded.¹⁵ These opinions are likely to affect the fairness of judges as well as the justice of the verdict. The expression of gender identity sometimes is viewed as acts of "imitating, disturbing society, violating morality and good traditions"¹⁶ and thus can be intervened and disposed.¹⁷

9. In addition to institutionalized discriminations in the law, the stigma and discrimination against LGBT people take place frequently in the view of law enforcement and the public's attitudes on the aspects of culture, society, health care, and education, etc.

10. Vietnam law contains provisions, which prohibit all acts of domestic violence,¹⁸ but in reality, LGBT people in Vietnam are physically and mentally abused primarily by their own families.¹⁹ Such behaviors as torture, mistreatment, beating, frequent pressure psychologically or financially, supervision of personal relationships, being forced to leave home, or being forced not to leave home based on one's sexual orientation or gender identity are still considered as the family's business,²⁰ leading to serious consequences such as depression, running away from home, losing confidence, suicide.²¹ There was one case in which the family arranged for a stranger to rape their lesbian daughter in hope that it could change her sexual orientation.²²

11. Discrimination and prejudice based on sexual orientation and gender identity at medical facilities have occurred, even though these are prohibited behaviors. In many cases, the doctors scolded, scorned and even denied medical care to patients who are gay or transgender because of their sexual orientation and gender identity. In contrary to the lack of access to friendly and sensitive health services, many LGBT people are forced to take medical treatment, take medications, due to the fact that they are LGBT, leading to many serious consequences.^{23 24}

12. Many teachers have not been updated with scientific knowledge about homosexuality and sexual orientation, which leads to abusive behaviors, insulting or discriminating against certain students because of their sexual orientation or gender identity.²⁵

RECOMMENDATION:

- Promote the development of anti-discrimination laws or regulations in the Constitution, making discrimination based on one's sexual orientation and gender identity become one of the prohibited discrimination factors.
- Promote the development of anti-discrimination laws, making discrimination based on sexual orientation and gender identity elements becomes one of the prohibited discrimination aspect.
- Sign the LGBT Rights Declaration in the General Assembly, or sponsor the 2011 LGBT Rights Resolution in the UNHRC, or both.
- Apply the Yogyakarta Principles as a guide of policy development to apply the international human rights standards in relation to sexual orientation and gender identity.

B. The right to recognition before the law

13. People everywhere has the right to be recognized as a person before the law,²⁶ and to have their self-defined gender identity made legitimate, to enjoy legal capacity in all aspects of life. Some lawmakers believed that the law should only redefine gender for the cases of “congenital defect of the sex.” Yet they have not acknowledged the cases of deliberated transgender surgeries, because they are afraid that they would not be able to manage them all.²⁷

14. The law only identifies “redefining gender”²⁸ for the intersex people²⁹ instead of stipulating “changing gender” for all people. Although clearly recognize the principle to “ensure that each person can live his/her life according to his/her true gender”,³⁰ and also have medical qualifications to perform, the doctors are prohibited to execute sex reassignment surgery³¹ as transgender people are considered “those who already had complete sex”. This regulation also contains a hidden ability that a young intersex person may be taken to have sex surgery without that person's consent,³² leading to the risk that the gender after the operation might not be the desired sex of that person when he/she grows up.³³

15. In 2009, a teacher named Pham Le Quynh Tram became the first intersex person to be recognized by the law.³⁴ However, in the beginning of 2013, the local authority at Binh Phuoc province spoke up in order to cancel the decision to recognize the gender of Quynh Tram, as they claimed there had been a violation during the administrative process.³⁵ They also wanted to discipline the staff directly involved in the case.³⁶

16. The law also recognizes the change in documentation only for intersex people who have been through gender surgery.³⁷ The conversion to a desired gender is considered “going against the laws of nature, serving deviant psychological mindsets, corrupting the morality”³⁸ or “due to psychological illness.”³⁹ The transgender people who have gone abroad for gender cannot get their identity papers (ID cards) because the registered gender does not match their biological gender. This therefore causes many difficulties in daily civil transactions, especially when the authorities require presenting identification.⁴⁰

17. The right to change one's name is an conditional right, only available for those “whose genders have been redefined.”⁴¹ Transgender people, whether or not acquire surgery, always come across difficulties in their daily life because they cannot change their names to be consistent with their gender appearance and current body conditions.

RECOMMENDATION:

- Allow one to change his/her name to match with his/her desired gender.
- Clarify that the sex reassignment surgery can be done in the case of intersex statuses or according to his/her wish to change to the desired gender.
- Add a new option “Other” to the gender category for the intersex or transgender people who have not been able to determine their sex yet.
- The decision to choose a gender for an intersex person can only be determined when that person becomes an adult. Only allow gender surgery for an intersex person whose intersex status affects or threatens the life and health of that person.

C. The right to marriage and found a family

18. Everyone has the right to get married, regardless of his/her sexual orientation and gender identity.⁴² Family can exist in many different forms. No family shall be subjected to discrimination on the basis of sexual orientation and gender identity of any member of the family, including in the cases of adoption or assisted reproduction.

19. Although not acknowledging the legitimacy of the weddings,⁴³ but in reality, many weddings of homosexual couples in provinces such as Ca Mau,⁴⁴ Kien Giang,⁴⁵ Binh Duong⁴⁶ have been intervened by the authorities, who ask the couple to do to get education about traditional culture, pay fine, or promise to end the relationship.⁴⁷

20. The main objections are mostly based on the argument that same sex marriage is contrary to our country’s habits and customs; it can erode traditional values or promote the deviant lifestyle of the young generation.⁴⁸

21. The possibility of adoption is also limited as “adoption is only available for a single parent or a couple of husband and wife.”⁴⁹ Gay men also cannot be supported by means of reproductive surrogacy.⁵⁰

22. Vietnam also does not allow its citizens to get married to same-sex citizens of countries that have legalized same-sex marriage in the authorized agencies in Vietnam,⁵¹ and does not recognize same-sex marriages conducted and registered legally in other countries.⁵²

RECOMMENDATION:

- Recognize an institution of equal marriage for all persons, regardless of their sexual orientation or gender identity. Two people of the same sex have the right to get married and fully enjoy all the rights and obligations as two people of the opposite sexes;
- Develop an institution of registered cohabitation between two people. Ensure to provide all the rights including but not limited to personal rights, right to represent each other, the right to common property, the right to inheritance, the right to joint adoption, the right to division of property...

V. ACHIEVEMENTS AND GOOD PRACTICES

23. In 20 December 2012, Vietnam Ministry of Justice held the “Workshop on Comparative Experiences in Protection of LGBT Rights in the Family and Marriage Relations” which invited international and Vietnamese experts to share information and experiences from the progress of legalizing same-sex unions in several countries.

24. More than 50 members of National Assembly, government officials and members of LGBT and their parents participated in a joint workshop on the “LGBT: Legal Provisions and Opinion of the Insiders” organized by the Institute for Legislative Studies in 10th May 2013.

25. Justice Minister Ha Hung Cuong took a positive stance towards same-sex marriage stating: “We must not create social prejudice against the homosexual community and individual” and “should develop a legal mechanism to protect the legitimate interests of a person, his/her property and children (if any) for people of the same gender in a relationship and living together.”⁵³

26. In the process of revision the Marriage and Family Law, there were three options proposed by the Justice Ministry: legalize marriage between same sex, or remove the ban of same-sex marriage from the law, but just recognize some rights regarding personal and property rights of the cohabitation of same sex couples, or keep the current prohibited regulations.⁵⁴

ENDNOTES

¹ Many outdoor events have been organized such as “Hand in Hand,” “Viet Pride” event, flash mob “Love is Love”, and “Embrace Diversity” festival... attracting tens of thousands of people to participate.

²*Universal Declaration of Human Rights* (Article 2), *the International Covenant on Civil and Political Rights* (Article 2.1), *the International Covenant on Economic, Social and Cultural Rights* (Article 2.2), *Convention on the Rights of the Child* (Article 2.1), *the ASEAN Declaration on Human Rights* (Article 2)... have all listed their anti-discrimination basis's, among which sexual orientation and gender identity both can be classified as the “any other status” basis.

³*The Constitution of 1992*, amended in 2001. Article 52.

⁴ One case of a lesbian in direct contact with the Institute for Studies of Society, Economy and Environment shares that a life insurance company refused to sell her the insurance package for reason that in her health record, a doctor had recorded “homosexual.”

⁵ L.Lieu - Tieu Long, “*The suffering*” of homosexuals’ employment, *Nguoi Dua Tin Magazine*, 2012, <http://www.nguoiduatin.vn/noi-thong-kho-viec-lam-cua-nguoi-dong-tinh-a55855.html>

⁶ Thuc Anh, *Half laughing, half crying with homosexuals’ stories at work*, *Thebox.vn*, 2012, <http://www.baomoi.com/Do-khoc-do-cuoi-chuyen-dong-tinh-noi-cong-so/139/8712120.epi>

⁷ Hoang Yen, *Restaurant sued for firing a homosexual*, *Phap Luat TP.HCM newspaper*, 2012, <http://phapluattp.vn/20120528104119876p1063c1016/nha-hang-bi-kien-vi-sa-thai-nguoi-dong-tinh.htm>

⁸ A case of a lesbian in direct contact with the Institute for Studies of Society, Economy and Environment shares that the police once came by to check the rental place that she and her partner stayed at, then fined them for not registering their temporary residence. When they went to the police department for temporary registration, the police asked them to move to another area, as they would not register for such couple of homosexuals.

⁹ Currently, Vietnam does not have anti-discrimination laws, discriminating behaviors are specified in specific articles.

¹⁰*The Penal Code*. Article 111. Even though this article does not specify that the victim of the rape crime has to be a female, but by interpreting that the “sexual intercourse” has to be between a man and a woman, and because the law does not recognize the gender identity and physical status of transgender people, so the case of rape between a man and a male-to-female transgender is not recognized as a rape crime.

¹¹ Hoang Yen, *Raping a Transgender person, guilty or not guilty?*, *Phap Luat TP.HCM*, 2010, <http://phapluattp.vn/20100824122757371p1063c1016/hiep-dam-nguoi-chuyen-doi-gioi-tinh-co-bi-toi.htm>

¹² *Phap luat TP.HCM, The case of raping a transgender: Has to examine before judging?*, 2010, <http://phapluattp.vn/20100826111728969p0c1063/vu-hiep-dam-nguoi-chuyen-doi-gioi-tinh-phai-giam-dinh-moi-xu-duoc.htm>

¹³ Trieu Duong, *Homosexual criminals: Increasing everyday*, *Ha Noi Moi*, 2012, <http://www.baomoi.com/Toi-pham-dong-tinh-Ngay-cang-gia-tang/104/9032554.epi>

¹⁴ Phong Anh, *The murderer killing a homosexual director escaped the death penalty*, *Dat Viet newspaper*, 2010, <http://www.baomoi.com/Hung-thu-sat-hai-giam-doc-dong-tinh-thoat-an-tu-hinh/104/5945010.epi>

¹⁵ Canh Sat Toan Cau, *Murder, cutting body into pieces: The homosexual criminal concern*, 2013, <http://www.anninhthudo.vn/Phap-luat/Giet-nguoi-chat-xac-Moi-lo-toi-pham-dong-tinh/481099.antd>

¹⁶ Director of Ho Chi Minh City Department of Justice Uong Thi Xuan Huong said during the Review Conference on the Implementation of Marriage and Family Law on 16/4/2013: “*The young generation is racing to the trend of changing genders. (...) disturbing society, vilolating the good morality and traditions of our country.*”

¹⁷ Many cases of transgender people in direct contact with the Institute for the Studies of Society, Economy and Environment share that the local officials often disperse their gatherings and prohibit them from coming to certain places, they also often give a warning regarding the “curfew,” specifying that the transgender people cannot be outside after midnight. Some public places also deny transgender people’s entrance.

¹⁸ *Law against domestic violence*. Article 2.

¹⁹ Nguyen Cuc, *To keep families from abusing homosexuals*, Tin Tuc newspaper, 2011, <http://www.baomoi.com/De-gia-dinh-khong-bao-hanh-nguoi-dong-tinh/139/6922896.epi>

²⁰ Phuong Trang, *Homosexuals and the tragedy of family denial*, Vnexpress, 2011, <http://giadinh.vnexpress.net/tin-tuc/to-am/nguoi-dong-tinh-va-bi-kich-bi-gia-dinh-choi-bo-2321906.html>

²¹ Study ‘Discrimination and prejudice for homosexuals, bisexuals and transsexuals in Vietnam’ CCIHP, 2008; Study ‘Discrimination and prejudice for women who love women’ ISEE, 2009; Study ‘The needs of lesbians in Hanoi’ CSAGA, 2009; Study ‘Violence against gays and transsexual people’ CCIHP, 2010.

²² Duc Chuong, *Locked up, thrown into mental institution to “stop” being homosexual*, Nguoi Dua Tin, 2012, <http://www.nguoiduatin.vn/xich-chan-tong-vaio-trai-tam-than-cai-dong-tinh-a10448.html>

²³ <http://www.nguoiduatin.vn/mat-an-mat-ngu-chua-benh-dong-tinh-cho-con-a62441.html>

²⁴ A case in direct contact with the Institute for the Studies of Society, Economy and Environment shares that when her family found out that she was a lesbian, they took her to Hospital 103 to cure her “disease”. A doctor here even adopted the measure to use two neural electrodes as well as to use a variety of mental medications for her to take in two consecutive years.

²⁵ Ho Huong Giang, *Homosexual students, the teachers are 20 years behind*, Vietnamnet, 2012, <http://vietnamnet.vn/vn/giao-duc/72607/hoc-tro-dong-tinh--thay-co-lac-hau-20-nam.html>

²⁶ *The International Declaration of Human Rights*, Article 6.

²⁷ Tue Khanh, *Homosexual marriage should be defined in the Constitution?*, Vnmedia, 2013, <http://www.baomoi.com/Hon-nhan-dong-tinh-can-duoc-quy-dinh-trong-Hien-phap/139/10533561.epi>

²⁸ *Civil Code*. Article 36.

²⁹ A person whose biological sexuality does not specify male or female.

³⁰ *Decree 88/2008/NĐ-CP*. Paragraph 1 of Article 3.

³¹ *S*. Paragraph 1 of Article 4.

³² If a person is under 9 years of age, the requirement for medical intervention and changes to documents are decided by the parents and guardians without that person’s consent. If that person is between the age of 9 and 18, the requirement for medical intervention and changes to documents will need to have the consent of that person. Refer to *Form number 08, TP/HT-2012-TKTD, CCHT* in the attached appendix of *Circular number 05/2012/TT-BTP*.

³³ A case in direct contact with the Institute for the Studies of Society, Economy and Environment shares that as a child, this person was operated to define gender as male. However, when that he grows up, he has the sense that his gender identit is female.

³⁴ Thi Tran, *The first transgender person to be recognized in Vietnam*, Vnexpress, 2012, <http://giadinh.vnexpress.net/tin-tuc/to-am/nguoi-chuyen-gioi-dau-tien-duoc-cong-nhan-tai-vn-2307222.html>

³⁵ Bui Liem, *Retrieving “the first decision of transgender in Vietnam,”* Tuoi Tre, 2013, <http://tuoitre.vn/chinh-tri-xa-hoi/531078/thu-hoi-quyet-dinh-chuyen-gioi-dau-tien-cua-vietnam.html>

³⁶ The Ministry of Justice later on ordered a temporary break in the proceeding of cancelling this decision to consult with the Prime Minister.

³⁷ *Decree 88/2008/NĐ-CP*. Paragraph 1 of Article 10 – Article 11.

³⁸ Thu Hue, *The gender defects take back their gender identity*, An Ninh Thu Do, 2013, <http://www.anninhthudo.vn/Loi-song/Nguoi-khiem-khuyet-ve-gioi-tinh-duoc-tro-lai-dung-danh-phan/491218.antd>

³⁹ “Mr. Nguyen Duy Quang, Ma., Deputy Director of Legal Affairs (Ministry of Health), also a member of the drafting committee, said: “Not everyone who needs a transgender surgery can be complied with. The decree draft has clarified, only in the cases of gender disorders such as birth defects or genetic diseases can the appointed specialist doctors decide to redefine the gender. Among those in need, there is a small group with a deviant lifestyle, they only want to change their genders to satisfy their personal interest or for some other reasons, these cases are prohibited by law. From a physical standpoint, their gender has been completed without interference. For these “patients,” they only need psychological treatment.”

Mai Tam, *Transsexual: Cannot comply by demand*, Dan Tri, 2007, <http://dantri.com.vn/suc-khoe/chuyen-doi-gioi-tinh-khong-dap-ung-theo-nhu-cau-209805.htm>

⁴⁰ *Decree 38/2005/NĐ-CP*.

⁴¹ *Civil Code*. Point e Paragraph 1 of Article 27.

⁴² *The Universal Declaration of Human Rights*. Article 16.

⁴³ *As above*. Paragraph 1 of Article 11.

⁴⁴ In February 2012 at the town of Dam Doi, Ca Mau province, the two girls N. and Nh. got married. After the local authority called them up to reeducate, they broke up and moved to another area to live.

Minh Anh, *Scandalous lesbian marriage in Ca Mau*, Vietnamnet, 2012, <http://vietnamnet.vn/vn/xa-hoi/60843/xon-xao-dam-cuoi-dong-tinh-nu-o-ca-mau.html>

⁴⁵ In May 2012 at the town of Ha Tien, Kien Giang province, the two guys H. and Q. got married. After that the local authority called them up to reeducate and made them pay the fine of 500.000vnd, gave them warning to get kicked out of the province if they repeat their action.

PV (TH), *Gay wedding were forced to pay fine, the couple fled*, Vietnamnet, 2012, <http://vietnamnet.vn/vn/doi-song/74113/dam-cuoi-dong-tinh-bi-phat--doi-uyen-uong-bo-tron.html>

⁴⁶ In July 2012 at the city of Thu Dau Mot, Binh Duong province, the two girls P. and Ph. got married. The wedding venue was criticized, while the two girls ran away when they knew the government was looking for them to reeducate.

Truong Khoi, *After a gay marriage, “the love birds” disappeared*, Vietnamnet, 2012, <http://vietnamnet.vn/vn/xa-hoi/82982/sau-dam-cuoi-dong-tinh---doi-uyen-uong--bien-mat.html>

⁴⁷ Explained that the local authorities misunderstand between “marriage” and “wedding”, after the public’s protest, the Ministry of Justice is planning to eliminate the regulation of financial penalty for same-sex marriage.

⁴⁸ Uong Thi Xuan Huong, Director of the Ho Chi Minh City Department of Justice said during the Review Conference on the Implementation of Marriage and Family Law on 16/4/2013: “*From many aspects such as culture, tradition, morality..., we should not recognize [same-sex marriage]. Acknowledging same-sex marriage could erode the values of a decent traditional marriage and advocate the deviant sexual lifestyle of young people.*”

⁴⁹ *Adoption Law*. Paragraph 3 of Article 8.

⁵⁰ *Decree 12/2003/NĐ-CP*. Paragraph 1 of Article 6.

⁵¹ *Decree 24/2013/NĐ-CP*. Point i Paragraph 1 of Article 12.

⁵² *Ibid.* Paragraph 1 of Article 1.7.

⁵³ Le Kien, *Should not hold prejudice against the homosexuals*, Tuoi Tre, 2012, <http://tuoitre.vn/Chinh-tri-Xa-hoi/503408/khong-nen-dinh-kien-voi-nguoi-dong-tinh.html>

⁵⁴ Phan Duong, *Vietnam might not ban same-sex marriage*, Vnexpress, 2013, <http://giadinh.vnexpress.net/tin-tuc/gioi-tinh/viet-nam-co-the-khong-cam-ket-hon-dong-gioi-2658225.html>