



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

MALAYSIA

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)

The Coalition of Malaysian NGOs in the UPR Process (COMANGO) addressed SOGIESC issues in its input report to the session. It reported that “Syariah laws criminalise homosexuality and homosexual acts” and that “Homosexuals and the trans-gendered are routinely harassed and persecuted” (C2).¹ Concerns expressed in the submission regarding the penal code, violations of the right to freedom of expression, barriers in equal access to health care, and the criminalization of sex work were reflected in the official summary of stakeholder information.²

The following recommendations³ did not enjoy the support of the government of Malaysia and were “Noted”:

“The elimination from the Penal Code of standards which allow for discrimination against people on the grounds of their sexual orientation” **(Chile)**

“To respect the human rights of all individuals, including homosexuals, by de-penalizing homosexuality” **(France)**

2ND CYCLE (2013)

During the second UPR cycle, submissions on SOGIESC issues were made by the following groups:

JOINT SUBMISSION 1 (JS1) COMANGO

JOINT SUBMISSION 9 (JS9) Knowledge and Rights with Young people through Safer Spaces (KRYSS), Seksualiti Merdeka, Justice for Sisters and PT Foundation.

The summary of stakeholder information reported that laws criminalizing consensual same-sex relations “stigmatize LGBT persons and make it difficult for them to claim and assert their rights”. Related to this, it records a recommendation by CSOs for the government to “stop targeting and intimidating children and adults on the basis of gender identity or sexual orientation, and make reparation for those who have been harmed through their anti-LGBT programmes”. It also records a recommendation to “embark on a process of repealing Section 377A, Section 377B and Section 377D of the Malaysian Penal Code that criminalise consensual same-sex conduct between adults”⁴

JS1 reported that “Malaysia refuses to recognise SOGI rights as human rights”, noting cases of “effeminate boys were sent to camps to make them more ‘masculine’” and of “a transgendered person ran away from a centre for ‘rehabilitation’”. LGBTIQ people are also used as tools for radical political agendas, noting cases of when “Sexual orientation is used as tool to attack *Pakatan Rakyat* (PR), the opposition coalition”. It also reported that the “The Prime Minister has labelled the LGBT community as enemies of Islam”.⁵

JS9 contextualizes the developments in human rights advocacy on SOGIESC, explaining that “since the banning of [Seksualiti Merdeka] in 2011, there have been concerted efforts by the government to politicize issues pertaining to sexual orientation and gender identity (SOGI) and encourage hate, stigmatisation, discrimination and persecution of LGBTIQ people”. It notes, among other things, Malaysia’s opposition as resulting in the exclusion of sexual orientation in the ASEAN Human Rights Declaration; and a Malaysian minister’s announcement “to enact specific laws (Syariah laws) to

1 The Coalition of Malaysia NGOs in the UPR Process, 2009. Universal Periodic Review on Malaysia for the 4th Session of UPR. Retrieved from: http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/MY/COMANGO_MYS_UPR_S4_2009_CoalitionofMalaysianNGOsInTheUPRProcess_JOINT_upr.pdf

2 UN Human Rights Council, 2008. Summary prepared by the Office of the High Commissioner for Human Rights, in accordance with paragraph 15(c) of the Annex to Human Rights Council Resolution 5/1 - Malaysia, A/HRC/WG.6/4/MYS/3.

3 UN Human Rights Council, 2009. Report of the Working Group on the Universal Periodic Review - Malaysia, A/HRC/11/30.

4 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-Malaysia*, A/HRC/WG.6/17/MYS/3.

5 The Coalition of Malaysian NGOs in the UPR Process, 2013. Stakeholder Report on Malaysia for the 17th Session in the 2nd Cycle of the HRC’s Universal Periodic Review in 2013. Retrieved from: <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=181&file=EnglishTranslation>.

categorize lesbianism and homosexuality as a deviant cult". It also reported a statement of the wife who was then the Malaysian Prime Minister, who reasoned that "the anti-LGBT position of the Malaysian government as the state's approach to curb the spread of HIV and AIDS". Among the report's observations was on the rights of children of diverse SOGIESC, writing that the state's actions against LGBTIQ people "suggest that the government is undertaking measures to prevent and correct gender non-conformity and gender variance at a young age, which is a clear violation of the Convention of the Rights of the Child, to which Malaysia is a State party".⁶

In addition, the Human Rights Commission of Malaysia (SUHAKAM) expressed concern of the "ill-treatment, discrimination, bullying, vilification, humiliation and intimidation of sexual minority groups" and reiterated that "everyone is entitled to fundamental rights and liberties".⁷

In its submission, the UN Country Team "expressed concerns about discrimination against indigenous, disabled, refugee, asylum-seeking, migrant, stateless, and lesbian, gay, bisexual and transgender children".⁸

In the Working Group's report, the government of Malaysia stated that "matters involving LGBT and adherents of other schools of Islamic thought will be handled carefully and consistent with cultural traditions, religious doctrine, societal norms, and in accordance with national laws and regulations."⁹

THE FOLLOWING RECOMMENDATIONS¹⁰ WERE NOT ACCEPTED BY THE GOVERNMENT OF MALAYSIA:

Germany

Take legislative and practical steps to guarantee that LGBTI persons can enjoy all human rights without discrimination.

Croatia

Introduce legislation that will decriminalize sexual relations between consenting adults of the same sex.

France

Decriminalize homosexuality and respect the fundamental rights of LGBT persons.

Argentina

Take the necessary measures to eradicate the discrimination based on sexual orientation.

Chile

Delete those provisions that could favour discriminatory practices against persons based on their sexual orientation and gender identity.

Netherlands

Repeal sections of the Malaysian Penal Code that criminalize consensual same-sex conduct between adults.

Canada

Enact legislation prohibiting violence based on sexual orientation, and repeal laws that directly or indirectly criminalize consensual same-sex sexual activities.

6 Knowledge and Rights with Young people through Safer Spaces, Seksualiti Merdeka, Justice for Sisters & PT Foundation, 2013. Malaysia: Human Rights Violation against Lesbian, Gay, Bisexual, Transgender, Intersex and Queer Persons. Retrieved from: <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=182&file=EnglishTranslation>.

7 Human Rights Commission of Malaysia, 2013. Submission to the Universal Periodic Review (UPR) Malaysia. Retrieved from: <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=201&file=EnglishTranslation>.

8 UN Human Rights Council, 2013. Compilation 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 : Malaysia, A/HRC/WG.6/17/MYS/2.

9 UN Human Rights Council, 2013. Report of the Working Group on the Universal Periodic Review: Malaysia, A/HRC/25/10.

10 UN Human Rights Council, 2014. Report of the Working Group on the Universal Periodic Review, Addendum: Malaysia, A/HRC/25/10/Add.1.

TREATY MONITORING BODIES

MALAYSIA HAS RATIFIED THE FOLLOWING INTERNATIONAL HUMAN RIGHTS TREATIES:¹¹

01

Convention on the Elimination of All Forms of Discrimination against Women

02

Convention on the Rights of the Child (with Optional Protocols 1 and 2)

03

Convention on the Rights of Persons with Disabilities

In 2007, the Committee on the Rights of the Child issued Concluding Observations on Malaysia, expressing concern at “insufficient efforts made to address discrimination based on sexual orientation.”¹²

SPECIAL PROCEDURES

In his report on a 2014 mission to Malaysia, the Special Rapporteur on the right to health expressed concern regarding particular issues under a section on LGBT persons. He reported that the criminalization of consensual same-sex relations have created “significant barriers in access to health care” and have given law enforcement opportunities to “arrest transgender women and subject them to various abuses”. Also reported were transgender women’s association with sex work and instances in which they are “forcibly tested for HIV/AIDS”, as well as “programs and practices supported by public institutions to change the sexual orientation of adolescents”. Further, he reported that “State-led programmes to identify, “expose”, and punish LGBT adolescents contribute to a detrimental educational environment where the inherent dignity of the child is not respected and discrimination on basis of sexual orientation and gender identity is encouraged”.¹³

In 2012, Special Rapporteurs on freedom of expression, freedom of association and assembly, and human rights defenders issued a joint letter of allegation regarding the banning of the fourth annual *Seksualiti Merdeka* Lesbian, Gay, Bisexual and Transgender festival in Kuala Lumpur.¹⁴ In reply, the government of Malaysia reasoned that the activity “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”. It also argued 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”.¹⁵

11 UN Office of the High Commissioner for Human Rights. Ratification of 18 International Human Rights Treaties-Malaysia. Retrieved from <http://indicators.ohchr.org/>

12 UN Committee on the Rights of the Child, 2007. Concluding Observations, Malaysia, CRC/C/MYS/CO/1.

13 UN Human Rights Council, 2015. Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Addendum: Visit to Malaysia (19 November–2 December 2014), A/HRC/29/33/Add.1.

14 UN Human Rights Council, 2012. Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai- Addendum Observations on communications transmitted to Governments and replies received”, A/HRC/20/27/Add.3.

15 Permanent Mission of Malaysia, 2012. [State Reply (24/04/2012). Alleged banning of the Lesbian, Gay, Bisexual and Transgender (LGBT) festival, harassment and questioning of organizers]. Retrieved from: [https://spdb.ohchr.org/hrdb/20th/Malaysia_24.04.2012_\(11.2011\).pdf](https://spdb.ohchr.org/hrdb/20th/Malaysia_24.04.2012_(11.2011).pdf).

OTHER POSITIONS AT THE UNITED NATIONS

Malaysia voted against the inclusion of references to sexual orientation and gender identity in resolutions on extrajudicial executions at the General Assembly in 2010, 2012, and 2014.^{16,17,18} It voted against the Human Rights Council resolution on “Human rights, sexual orientation and gender identity” in 2011.¹⁹ In addition, it joined a statement delivered to the General Assembly in 2008, opposing attention to sexual orientation at the UN.²⁰

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.²¹

In November 2016, the African regional group filed a resolution in the UN General Assembly that sought to block the work of the IESOGI. Malaysia voted against a counter-resolution that amended the earlier resolution by deleting the postponement of the IESOGI's functions.²² Malaysia once again voted against the IESOGI in another attempt to halt its functions in December 2016.²³

16 UN General Assembly, 2010. 65th Session, 71st Plenary Meeting, A/65/PV.71.

17 UN General Assembly, 2012. “Amendment to draft resolution A/C.3/67/L.36” as contained in document L.68 (list of votes). Retrieved from http://www.un.org/en/ga/third/67/docs/voting_sheets/L68.pdf.

18 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.

19 UN Human Rights Council, 2012. Report of the Human Rights Council on its 17th session, A/HRC/17/2.

20 ARC International, 2008. [Response to SOGI Human Rights Statement, read by Syria]. Retrieved from: <http://arc-international.net/global-advocacy/sogi-statements/syrian-statement/>

21 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.

22 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.

23 APCOM, 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/>



ASEAN SOGIE CAUCUS

Room 8R, Future Point Plaza 3
111 Panay Avenue, South Triangle
Quezon City 1103, Philippines
Phone: (+63 2) 285 7950

Web: www.aseansogiecaucus.org
Facebook: [/aseansogie](https://www.facebook.com/aseansogie)
Twitter: [@aseansogie](https://twitter.com/aseansogie)

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.

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