



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

THAILAND

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 (2011)

The government of Thailand stated in its national report that it was in the process of drafting a gender equality promotion bill that would inter alia prohibit discrimination on the basis of sexual orientation.¹ The report acknowledged that discrimination on the basis of gender identity was a problem, despite the fact that the Constitution intended to prohibit discrimination on these grounds.

There were three civil society coalition submissions which discussed SOGIESC issues:

JOINT SUBMISSION 10 (JS10) by Foundation for Human Rights on Sexual Orientation and Gender Identity, Teeranat Kanjanauksorn Foundation, Anjaree Lesbian Group, Rainbow Sky Association Of Thailand, Thai Transgender Alliance, Swing (Bangkok), and M-Plus (Chiang Mai)

JOINT SUBMISSION 9 (JS9) facilitated by People's Empowerment Foundation

JOINT SUBMISSION 10 (JS10) facilitated by Civil Society and Human Rights Coalition of Thailand (CHRC - Thailand)

JS5 noted various issues, such as the non-recognition of same-sex relations, "resulting in discrimination against homosexual couples on issues such as inheritance, immigration, hospital visitation, child custody, social security benefits, and government health and pension schemes"; and that "Thai military policies stating transgender individuals as suffering from "mental problems" in their discharge documents remain unresolved." They also noted that, in the government's activities in the UN, it has "not supported the granting of "consultative status" to non-governmental organizations concerned with sexual orientation and gender identity issues". Among others, they recommended that the government "enact a law and implement necessary policies for the full recognition of the changed "sex" for transsexuals for all purposes", and to "provide funds for the study of health care needs of and improve health care services for LGBT communities."²

JS9 highlighted other issues. They noted that "there have been no real efforts to include sex education in schools to help counter discriminatory social attitudes on issues of sexual orientation and gender identity." They also noted that LGBTIQ people "people do not receive adequate provision of physical and mental health care services by government and private health sectors". Similarly, they recommended that the government of Thailand "abolish military policies describe transgender people as "mentally ill" and "proactively support equality rights for LGBTI in its domestic laws and policies and in its work within ASEAN and the UN".³

JS10 reported similar challenges to LGBTIQ people under the section "Discrimination and the sexual orientation". Among others, they noted that the country's laws "discriminate by omission" and that "LGBT presence in television and films is often subject to arbitrary banning and censorship". Similar to other submissions, they recommended that the government "enact a law to recognize same-sex relationships on equal basis with opposite-sex relationships" and to "proactively support equality rights for lesbians, gay men, bisexuals and transgendered individuals (a) in its domestic laws and policies, (b) in its work within the Association of South East Asian Nations and (c) at the United Nations."⁴

The UN Country Team submitted information noting Thailand's commitment to the "Three Zeros" (i.e. zero new HIV infections, zero discrimination on the basis of HIV status, and zero AIDS-related deaths).⁵ However, they cautioned that discrimination against vulnerable groups "inhibits the ability to

1 United Nations, Office of the High Commissioner for Human Rights, 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- Thailand", A/HRC/WG.6/12/THA/3 (25 July 2011).

2 Foundation for Human Rights on Sexual Orientation and Gender Identity, et al, 2011. The Universal Periodic Review of the Kingdom of Thailand: Issues Related to Sexual Orientation and Gender Identity. Retrieved https://www.upr-info.org/sites/default/files/document/thailand/session_12_-_october_2011/js5-jointsubmission5-eng.pdf.

3 People's Empowerment Foundation, et al, 2010. Universal Periodic Review (UPR), Thailand: Joint CSO Submission to the Office of the High Commissioner of Human Rights. Retrieved from https://www.upr-info.org/sites/default/files/document/thailand/session_12_-_october_2011/js9-jointsubmission9-eng.pdf.

4 Civil Society and Human Rights Coalition of Thailand, et al, 2011. A Universal Periodic Review of Thailand For the 12th Session of Universal Periodic Review on October 2-14, 2011. Retrieved from https://www.upr-info.org/sites/default/files/document/thailand/session_12_-_october_2011/js10-jointsubmission10-eng.pdf.

5 UNAIDS, 2010. Getting to Zero: 2011-2015 Strategy. Retrieved from http://www.unaids.org/sites/default/files/sub_landing/files/JC2034_UNAIDS_Strategy_en.pdf.

reach these populations with prevention effort, and thus increase their vulnerability to HIV/AIDS.” The vulnerable groups indicated were injecting drug users, sex workers, men who have sex with men, and transgender people.⁶

There were no references to SOGIESC during Thailand’s UPR Working Group review, or during the formal adoption of the UPR Working Group report at the 19th session of the Human Rights Council in March 2012.

2ND CYCLE (2016)

In its national report, the government of Thailand noted that the Gender Equality Act of 2015 aimed to protect everyone, “including persons with sexual expression that is different from biological sex”, from gender-based discrimination. The Act established mechanisms, namely the Gender Equality Promotion Committee to promote gender equality in all agencies; the Committee on Consideration of Unfair Gender Discrimination to receive complaints and order sanction or compensation for the victims of discrimination; and the Gender Equality Promotion Fund for compensation or redress.⁷

Two civil society coalition submissions were focused on SOGIESC issues:

JOINT SUBMISSION 6 (JS6) by Kaleidoscope Human Rights Foundation, Sexual Rights Initiative, Togetherness for Equality and Action, and Thai Transgender Alliance

JOINT SUBMISSION 11 (JS11) by Buku's Gender, Sexuality, and Human Rights Classroom (Buku Classroom), Commetive production, Krapooktak Yakkhaya for SOGIE and Environment, Health and Opportunity Network-HON, Pinkmonkeylopuri, Rainbow sky association of Thailand, Sangsan Anakot Yawachon Development Project (SAYDP), Sexual Diversity Group, SISTERS Foundation, TEA law, The Coalition on Democracy and Sexual Diversity Rights, Togetherness for Equality and Action (TEA), Tom laday Sabay Community, www.LovePattaya.com, and the LGBTI-UPR Thailand Working Group (Thai Transgender Alliance - Thai TGA, ILGA Asia, Bangkok Transportation Union, Tom laday Sabay Community, TEA, Sexual Diversity Group, Mplus, and HON)

JS6 noted that Thailand did not recognize any sex or gender transitions, resulting in transgender people encountering difficulties on a daily basis, including when seeking employment, pursuing education, and travelling abroad. The submission also noted that in the public school system, there was no mandated curriculum regarding sexual orientation and gender identity, and there were reports of negative portrayals of LGBTI people in school textbooks. While noting that Thailand is in the process of drafting a new constitution which includes specific new grounds for the prohibition of discrimination in relation to gender, the submission recommended that Thailand ensure that the new Constitution include a provision specifically prohibiting discrimination on the grounds of sexual orientation or gender identity.⁸

JS11 noted that there was no legislation that recognizes gender-related laws and supports civil union for LGBTI people resulting in a wide range of discrimination against same-sex couples and still has in place laws and policies which discriminate against LGBTI individuals. The submission also expressed concern about discriminatory practices, including unequal standards of healthcare given to LGBTIQ persons, the disclosure of sensitive and private health information, the refusal of treatment, and placing transgender persons in hospital wards opposite their gender identity.⁹

7 UN Human Rights Council, 2016. National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/2: Thailand, A/HRC/WG.6/25/THA/1.

8 Kaleidoscope Human Rights Foundation, et al., 2016. Report on Thailand regarding the human rights of LGBTI persons. Retrieved from https://www.upr-info.org/sites/default/files/document/thailand/session_25_-_may_2016/js6_upr25_tha_e_main.pdf

9 Togetherness for Equality and Action, et al., 2015. Submission to the United Nations Universal Periodic Review Regarding the Protection of the Rights of LGBTI Persons in Thailand. Retrieved from https://www.upr-info.org/sites/default/files/document/thailand/session_25_-_may_2016/js11_upr25_tha_e_main.pdf

Following the UPR review, Thailand accepted the following recommendations:

“Intensify efforts to promote policies in the area of prevention, sanction and eradication of all forms of violence against women, including measures aimed at promoting their rights regardless of its religion, race, sexual identity or social condition” (Mexico)¹⁰

THE GOVERNMENT OF THAILAND MADE RECOMMENDATIONS TO OTHER STATES UNDER REVIEW AT THEIR 2ND UPR CYCLES.¹¹ THESE WERE:

“Consider decriminalizing homosexuality, in particular relations between consenting adults”

Noted by Burundi

“Continue its effort in eliminating discrimination against LGBT starting with the review of its related legislation”

Accepted by Guyana

“Ensure equal treatment and non-discrimination against lesbian, gay, bisexual and transgender persons, and other vulnerable groups”

Noted by Senegal

“Eliminate violence and discrimination based on sexual orientation and gender identity”

Accepted by Latvia

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¹¹

UN Human Rights Council, 2016. Draft Report of the Working Group on the Universal Periodic Review: Thailand, A/HRC/WG.6/25/L13.
UPR Info, n.d. Database of Recommendations. Retrieved from <https://www.upr-info.org/database/>

TREATY MONITORING BODIES

THAILAND HAS RATIFIED¹² THE FOLLOWING HUMAN RIGHTS TREATIES:

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

In Thailand's 2nd ICCPR review, Togetherness for Equality and Action (TEA) raised in a shadow report several SOGIESC-related human rights issues, such as the subjection of lesbian women and "toms" to different forms of violence, discrimination against LGBTIQ persons in education and employment, and the lack of legal gender recognition which put transgender prisoners at risk of abuse.¹³ TEA also reported that the Gender Equality Act puts reservations on protection against discrimination on the purposes of the individual's safety, religious practices or national security, in which cases the action will not be considered cases of discrimination. The National Human Rights Commission in its report expressed concern about discrimination and abuse in treatment of prison detainees based on their sexual orientation.¹⁴

The government of Thailand was asked to describe legislative or administrative measures and any recent court decisions taken to protect against discrimination on the grounds of sexual orientation or gender identity, including discrimination in employment and accessing education in the List of Issues adopted by the Human Rights Committee.¹⁵ In their reply, Thailand cited the establishment of government bodies that work on these issues, including the Committee on Consideration of Unfair Gender Discrimination established under the Gender Equality Act to receive and consider complaints, and the Ministry of Justice's Committee to Protect the Rights of Person with Different Sexual

¹² UN Office of the High Commissioner for Human Rights, n.d. Status of Ratification. Retrieved from <http://indicators.ohchr.org/>

¹³ Togetherness for Equality and Action, 2017. Human Rights Violations of women and LBT people in Thailand: A Shadow Report. Retrieved from http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fCSS%2fTHA%2f26546&Lang=en.

¹⁴ National Human Rights Commission of Thailand, 2016. Alternative Report on Thailand's Implementation of the International Covenant on Civil and Political Rights (ICCPR). Retrieved from: http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/THA/INT_CCPR_IFL_THA_23738_E.doc.

¹⁵ UN Human Rights Council, 2016. List of issues in relation to the second periodic report of Thailand, CCPR/C/THA/Q/2.

Orientation and Gender Identities in Criminal Justice Procedure tasked to discuss and monitor situation of LGBTIQ people in the administration of justice.¹⁶ Thailand also stated that the rights of LGBTIQ persons have been included in the 3rd National Human Rights Plan, and in the National Policy Framework on Protection of Children from Bullying and Sexual Harassment in Schools.

In the CEDAW 6th and 7th cycle review, Thailand was asked to provide information on steps taken to eliminate discrimination against women belonging to disadvantaged groups, including “lesbian, bisexual and transgender women and intersex persons”.¹⁷ Thailand replied that “the elimination of discrimination against women with disability, elderly women, marginalized women and LGBTI has been stipulated under the Gender Equality Act.”¹⁸

SPECIAL PROCEDURES

There has been very little or no engagement with the UN human rights Special Procedures on issues relating to SOGIESC in Thailand. Prior to the establishment of the Independent Expert on protection against violence and discrimination based on Sexual Orientation and Gender Identity (IESOGI), participants in the discussions questioned where SOGIESC issues would fit into the system.¹⁹

OTHER POSITIONS AT THE UNITED NATIONS

Thailand supported the joint statement on sexual orientation and gender identity delivered to the Human Rights Council in March 2011.²⁰ It voted in favour of the first resolution on human rights, sexual orientation and gender identity adopted by the Human Rights Council in June 2011.²¹ It also voted in favour of including references to sexual orientation and gender identity in resolutions on extrajudicial executions at the General Assembly in 2012 and 2014.^{22,23}

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.²⁴ In November 2016, the African regional group filed a resolution in the UN General Assembly that sought to block the work of the IESOGI. Thailand voted in favor of a counter-resolution that amended an earlier resolution by deleting the postponement of the IE SOGI's functions.²⁵ In another attempt to halt the mandate in December 2016, Thailand once again voted in support of the IESOGI.²⁶

16 UN Human Rights Council, 2016. List of issues in relation to the second periodic report of Thailand: Addendum - Replies of Thailand to the list of issues, CCPR/C/THA/Q/2/Add.1.

17 UN Committee on the Elimination of Discrimination Against Women, 2016. List of issues in relation to the combined sixth and seventh periodic reports of Thailand, CEDAW/C/THA/Q/6-7

18 UN Committee on the Elimination of Discrimination Against Women, 2017. List of issues and questions in relation to the combined sixth and seventh periodic reports of Thailand Addendum- Replies of Thailand”, CEDAW/C/THA/Q/6-7/Add.1

19 UN Office of the High Commissioner on Human Rights. Independent Expert on sexual orientation and gender identity Retrieved from <http://www.ohchr.org/EN/Issues/SexualOrientationGender/Pages/Index.aspx>

20 22 March 2011. Joint statement: Ending acts of violence and related human rights violations based on sexual orientation and gender identity. Retrieved from <http://arc-international.net/global-advocacy/human-rights-council/hrc16/joint-statement/>

21 UN Human Rights Council, 2011. Human rights, sexual orientation and gender identity, A/HRC/RES/17/19

22 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

23 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

24 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

25 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/L52.pdf

26 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 created a social media group to discuss the submission and to encourage participation. They collated contributions through the use of an online document, and produced an advocacy “fact sheet” outlining priority issues.

LOBBYING

CSOs met with the Thai Ministry of Foreign Affairs, relevant ministries in the country, and Thai delegates abroad. They also met, facilitated by UPR Info, with ten recommending countries on SOGIESC issues: Canada, Netherlands, France, Spain, Norway, Czech Republic, Slovenia, United States, Argentina, Sweden. Also included in their meeting were Latin American countries who were supportive of SOGIESC issues and have a history of making recommendations. Malta, for its model Gender Identity Law, was also consulted.

FOLLOW-UP

CSOs recognized the need for a platform to monitor implementation. The National Human Rights Commission encouraged CSOs, according to an interview with the Chair of the NHRC.

OUTCOMES

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

Capacity building in documentation, advocacy, and monitoring

Particular groups, such as those representing transgender men, were able to call for more visibility through the advocacy process

Increased civil society empowerment and leadership

Strengthened relationships between CSOs and other organizations

Increased diplomatic engagement with the government

Increased opportunities to work for policy change at the national level

CHALLENGES

THE FOLLOWING CHALLENGES WERE IDENTIFIED IN ENGAGING WITH THE UN HUMAN RIGHTS MECHANISMS:

Only a few activists were confident in their knowledge of the mechanism

Language was a barrier for those without English skills or access to interpreters

Capacity to document human rights concerns and produce advocacy documents was limited

There was a knowledge gap on the human rights of bisexual persons and LGBTIQ persons living in poverty

In terms of the effectiveness of the mechanism, CSOs were concerned that it was reactive rather than proactive, and that international commitments and recommendations may:

- a.) simply be the State whitewashing human rights at the international level;
 - b.) become void with government change; and
 - c.) lack implementation or fail to make a difference to people on the ground
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There was a risk of reprisals, with some human rights defenders having faced threats regardless of whether they had travelled to Geneva



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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.

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