

# Submission to the UN Universal Periodic Review regarding the protection of the rights of LGBTI persons in Vietnam



Kaleidoscope  
Human Rights Foundation



*i*see

Compiled by the Kaleidoscope Human Rights Foundation and the  
Institute for Studies of Society, Economics and the Environment (iSEE)

32<sup>nd</sup> session of the Universal Periodic Review  
(January–February 2019)

## 1. Executive Summary

- 1.1 This report has been prepared by **Kaleidoscope Human Rights Foundation**<sup>1</sup> and the **Institute for Studies of Society, Economics and the Environment (iSEE)**<sup>2</sup> for the United Nations Human Rights Council (**UNHRC**) and relates to the rights of lesbian, gay, bisexual, transgender and intersex (**LGBTI**) people in Vietnam.
- 1.2 In recent years, Vietnam has taken several positive steps to advance the rights of LGBTI persons, including removing administrative penalties for holding same-sex wedding ceremonies and taking initial steps in the new *Civil Code 2015* to allow transgender persons to access gender affirmation therapy and legal gender recognition in official documents.
- 1.3 Despite these advances, legal and policy reforms are still needed to address the ongoing human rights concerns of the LGBTI communities and to achieve full compliance with Vietnam's international obligations. In particular:
  - (a) there are no anti-discrimination laws prohibiting discrimination against a person based on their sexual orientation, gender identity or sex characteristics across all areas of public life, including education, health care and employment; and
  - (b) despite high-level commitments in the *Civil Code*, implementing legislation has not yet been passed allowing transgender people to access gender affirmation therapy and to have their gender legally recognised in official documents;
  - (c) there is no prohibition on medically-unnecessary, non-consensual surgical and medical interventions on intersex children; and
  - (d) same-sex couples are unrecognised and do not have the same legal protections and rights as opposite-sex married couples.

## 2. Positive steps taken by Vietnam

- 2.1 In recent years, Vietnam has amended its domestic laws to abide by certain obligations under international human rights law.

### *Removal of prohibitions on same-sex weddings*

- 2.2 On 24 September 2013, *Decree 110/2013/ND-CP* was issued, removing all administrative fines related to same-sex weddings and ceremonies.<sup>3</sup> Further, in June 2014, the National Assembly of Vietnam approved amendments to the *Law on Marriage and Family* (effective 1 January 2015) which removed the language contained in Article 10 of the previous *Law on Marriage and Family* (2000) which stated that "[m]arriage is forbidden...between people of the same sex".<sup>4</sup> Accordingly, there is no longer any legal basis for fining or otherwise taking action against same sex couples holding wedding ceremonies.

---

<sup>1</sup> **Kaleidoscope Human Rights Foundation** is a non-governmental organisation that works with local activists to protect and promote the rights of lesbian, gay, bisexual, transgender and intersex (**LGBTI**) persons in the Asia-Pacific Region.

<sup>2</sup> The **Institute for Studies of Society, Economics and the Environment (iSEE)** is a Vietnamese NGO that works towards the rights of minority groups, including LGBTI people.

<sup>3</sup> '*Vietnam Context Analysis Report on human rights, health and well-being of Vietnamese LGBT community*', Luong The Huy, 31 May 2017, at

<<https://static1.squarespace.com/static/526c21b5e4b0d43e45f6c4c2/t/59c18ff38a02c77cab2e26e0/1505857530763/Country+Context+Analysis+Vietnam.pdf>>; 'Vietnam to remove fines on same-sex marriage', *Tuoi Tre News*, 3 October 2013 at <<http://tuoitrenews.vn/society/13750/vietnam-to-remove-fines-on-samesex-marriage>>.

<sup>4</sup> '*Vietnam Context Analysis Report on human rights, health and well-being of Vietnamese LGBT community*', Luong The Huy, 31 May 2017, at

<<https://static1.squarespace.com/static/526c21b5e4b0d43e45f6c4c2/t/59c18ff38a02c77cab2e26e0/1505857530763/Cou>

### *Penal Code*

2.3 Prior to 2015, only sex between a man and a woman was recognised for the purposes of laws against sexual assault.<sup>5</sup> As a result, persons engaging in same-sex sexual activities were not protected by laws criminalising rape. However, in 2015 a new *Penal Code* was adopted which extended the crime of rape to any forced sex activities between two people irrespective of their sex.<sup>6</sup> The *2015 Penal Code* took effect in January 2018.<sup>7</sup>

### *Civil Code*

2.4 In November 2015, the National Assembly passed a new *Civil Code*, which was a first step to allowing transgender persons the right to undergo gender affirmation treatment in Vietnam as well as having their gender recognised on identity documents.<sup>8</sup>

2.5 Article 37 of the *Civil Code 2015* states:

*“The sex change is performed as regulated by law. Individuals who underwent transition have the rights and obligation to register the change of civil status according to the law on civil status; and have the personal rights consistent with new gender as stipulated by this Code and other relevant laws.”<sup>9</sup>*

2.6 However, additional laws must be enacted to give effect to the amendments to the *Civil Code*. Despite the *Civil Code 2015* entering into effect in 2017, there have been no laws enacted with respect of gender affirmation treatment and legal gender recognition of transgender people, and therefore this right cannot practically be realised.<sup>10</sup>

### *Advocacy and discussion of issues relating to sexual orientation and gender identity*

2.7 NGOs, LGBTI organisations and an increased LGBTI presence on social media have assisted educating the public and advocating for policy and law reform on issues relating to sexual orientation and gender identity. As a result, mainstream media has changed significantly in recent years. For example, online news outlets such as Kenh14, Mot The Gioi, Viet Nam Moi have dedicated an entire section to LGBTI news.<sup>11</sup>

ntry+Context+Analysis+Vietnam.pdf>; ‘Vietnam removes ban on same-sex marriage’, *Tuoi Tre News*, 20 June 2014 at <<http://tuoitrenews.vn/society/20478/vietnam-removes-ban-on-same-sex-marriage>>; *Law on Marriage and Family* (Law 22/2000/QH10 of 9 June 2000)

<[http://vbqppl.moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View\\_Detail.aspx?ItemID=373](http://vbqppl.moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=373)>.

<sup>5</sup> Hoang Yen, ‘*Raping a Transgender person, guilty or not guilty?*’, Phap Luat TP.HCM, 2010 at <<http://phapluattp.vn/20100824122757371p1063c1016/hiep-dam-nguoi-chuyen-doi-gioi-tinh-co-bi-toi.htm>>.

<sup>6</sup> *Vietnam Context Analysis Report on human rights, health and well-being of Vietnamese LGBT community*, Luong The Huy, 31 May 2017, at

<<https://static1.squarespace.com/static/526c21b5e4b0d43e45f6c4c2/t/59c18ff38a02c77cab2e26e0/1505857530763/Cou ntry+Context+Analysis+Vietnam.pdf>>; *NA adopts changes to 2015 Penal Code*, Viet Nam News, 22 June 2017 at <<http://vietnamnews.vn/politics-laws/378677/na-adopts-changes-to-2015-penal-code.html>>.

<sup>7</sup> *Ibid.*

<sup>8</sup> Commonwealth Department of Foreign Affairs and Trade, *DFAT Country Information Report Vietnam*, 21 June 2017 at <<http://dfat.gov.au/about-us/publications/Documents/country-information-report-vietnam.pdf>>.

<sup>9</sup> <http://isee.org.vn/en/blog/article/10-things-you-need-to-know-about-the-recognition-of-transgender-rights-in-viet-nam>

<sup>10</sup> iSEE, *10 things you need to know about the recognition of transgender rights in Viet Nam*, 24 November 2015 at <<http://isee.org.vn/en/Blog/Article/10-things-you-need-to-know-about-the-recognition-of-transgender-rights-in-viet-nam>>.

<sup>11</sup> *Vietnam Context Analysis Report on human rights, health and well-being of Vietnamese LGBT community*, Luong The Huy, 31 May 2017, at

<<https://static1.squarespace.com/static/526c21b5e4b0d43e45f6c4c2/t/59c18ff38a02c77cab2e26e0/1505857530763/Cou ntry+Context+Analysis+Vietnam.pdf>>.

- 2.8 Public events to raise the visibility of LGBTI people have been able to be organized without interference from the Vietnamese Government, including Hanoi Pride. However, these events are held without permits from the Government. The 2017 Hanoi Pride brought together over 1,000 LGBTI community members and allies.<sup>12</sup>

#### *UN Human Rights Council*

- 2.9 In November 2013 Vietnam was elected to the Human Rights Council and in 2016 voted in favour of the resolution “Protection against violence and discrimination based on sexual orientation and gender identity (SOGI)” which appointed a first ever Independent Expert on protection against violence and discrimination based on SOGI.<sup>13</sup>

### **3. Discrimination against LGBTI persons**

#### *Lack of anti-discrimination laws*

- 3.1 Discrimination against LGBTI people remains a significant phenomenon in Vietnamese society, particularly in family, employment and education. According to a 2015 study by The Institute for Studies of Society, Economy and Environment, one in three surveyed LGBT people stated that they feel they had been subject to discrimination based on their sexual orientation or gender identity within 12 months preceding the survey, with high frequency. Over 60% of surveyed LGBT people faced verbal abuse within their families, 13-14% faced physical violence and 20% were subjected to forced treatment. 30% of surveyed LGBT people had been denied a job due to their sexual orientation or gender identity.<sup>14</sup>
- 3.2 According to a 2017 study by UNESCO, 71% of LGBT students had been physically abused and 72.2% had been verbally abused at school.<sup>15</sup> According to a 2015 survey by Save the Children and the Institute of Social and Medical Studies, 23% of LGBT students faced harassment or bullying from teachers. Data on intersex people is lacking, largely due to a low level of social visibility.
- 3.3 Despite high levels of discrimination, LGBTI persons in Vietnam have no legal protection against discrimination based on their sexual orientation, gender identity or sex characteristics in any area, including education, health care and employment.
- 3.4 On December 2013, as part of the UN Universal Periodic Review, Chile recommended that Vietnam “*enact an anti-discrimination law guaranteeing equality of all citizens, regardless of sexual orientation and gender identity*”.<sup>16</sup>
- 3.5 While Vietnam formally accepted this recommendation in 2014, the government has not yet taken any concrete steps towards enacting anti-discrimination laws.

---

<sup>12</sup> Viet Nam News, *Largest event for LGBTQ community underway in Hanoi*, Vietnam News Agency, 20 September 2017 at <<http://english.vietnamnet.vn/fms/society/186805/largest-event-for-lgbtq-community-underway-in-hanoi.html>>.

<sup>13</sup> United Nations Human Rights Council, *Protection against violence and discrimination based on sexual orientation and gender identity*, 30 June 2016, UN Doc GE.16-12176(E).

<sup>14</sup> Luong The Huy and Pham Quynh Phuong, *Is it because I am LGBT?: Discriminations on Sexual Orientation and Gender Identity in Vietnam*, The Institute for Studies of Society, Economy and Environment, p. 14 <[https://static1.squarespace.com/static/526c21b5e4b0d43e45f6c4c2/t/5731c269cf80a12bea56b379/1462878925635/iS\\_EE\\_SOGI+Discrimination+in+Viet+Nam.pdf](https://static1.squarespace.com/static/526c21b5e4b0d43e45f6c4c2/t/5731c269cf80a12bea56b379/1462878925635/iS_EE_SOGI+Discrimination+in+Viet+Nam.pdf)>.

<sup>15</sup> UNESCO, *Reaching Out: Preventing and Addressing SOGIE-related School Violence in Viet Nam*, 2017, p. 30 <<http://unesdoc.unesco.org/images/0024/002469/246928E.pdf>>.

<sup>16</sup> Report of the Working Group on the Universal Periodic Review on Viet Nam, A/HRC/26/6, paragraph 143.88 at <[http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A\\_HRC\\_26\\_6\\_ENG.DOC](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A_HRC_26_6_ENG.DOC)>.

### Recommendations

Vietnam should enact legislation that prohibits discrimination on the basis of sexual orientation, gender identity and sex characteristics in all areas of public life, including education, health care and employment.

#### *Access to gender affirmation therapy and legal gender recognition*

- 3.6 As discussed at paragraphs 2.4 and 2.5, Article 37 of the *Civil Code 2015* provides a legal basis for transgender people to access gender affirmation therapy and have their gender recognised on official documents, although Article 37 provides that such rights are to be “regulated by law”.
- 3.7 However, no law has yet been passed to allow for the practical realisation of these rights. Without an implementing law, transgender people continue to be denied access to gender affirmation therapy (requiring them to go abroad, as significant cost), while also resulting in their official documents continuing to not reflect their gender identity (exposing them to significant discrimination, especially in employment).
- 3.8 The government is currently consulting on a law to implement the rights in Article 37 of the *Civil Code*, with a view to submitting a draft law to the National Assembly in 2019.<sup>17</sup> LGBTI rights NGOs are currently working with the Ministry of Justice and other relevant government agencies as part of the law reform process.<sup>18</sup>

### Recommendations

Vietnam should:

- (a) expedite the passage of legislation that allows transgender people to access gender affirmation therapy and have their gender legally recognised in official documents; and
- (b) ensure that such legislation allows transgender people to have their gender identity reflected in official documents on the basis of self-determination, without requiring “sex reassignment surgery” or other medical procedures as pre-requisites.

#### *Non-consensual surgeries on intersex infants*

- 3.9 Intersex people are people who are born with physical or biological sex characteristics that do not fit typical notions of male or female bodies. Surgeries and other medical interventions performed on intersex infants and children without their informed consent have been recognised by several UN treaty bodies as a violation of international human rights law, including as a form of cruel, inhuman or degrading treatment.<sup>19</sup> Such medical interventions

<sup>17</sup> Tuoi Ret News, “Vietnam to Draft Law Protecting Transgender Rights”, 17 October 2017, <https://tuoitrenews.vn/news/society/20171017/vietnam-to-draft-law-protecting-transgender-rights/42081.html>

<sup>18</sup> ILGA Trans Legal Mapping Report, November 2017, p. 48, [https://ilga.org/downloads/ILGA\\_Trans\\_Legal\\_Mapping\\_Report\\_2017\\_ENG.pdf](https://ilga.org/downloads/ILGA_Trans_Legal_Mapping_Report_2017_ENG.pdf).

<sup>19</sup> As of June 2018, non-consensual surgeries on intersex children have been characterised as a violation of international human rights law 11 times in concluding observations of the Committee on the Rights of the Child, 7 times by the Committee on the Elimination of All Forms of Discrimination Against Women, 6 times by the Committee Against Torture, 6 times against the Committee on the Rights of Persons with Disabilities and 2 times by the Human Rights Committee. See “32 UN Reprimands for Intersex Genital Mutilations – and Counting ...”, STOP Intersex Genital Mutilations, 6 June 2018, <http://stop.genitalmutilation.org/post/IAD-2016-Soon-20-UN-Reprimands-for-Intersex-Genital-Mutilations>.

can lead to medical problems, such as infertility, and can cause severe, lifelong physical and mental suffering.<sup>20</sup>

- 3.10 No specific information is available with respect to the occurrence of non-consensual surgeries on intersex infants in Vietnam. However, Article 36 of the *Civil Code 2015* allows for “*medical intervention to clearly identify the gender*” in cases where “*the gender of [a] person is subject to a congenital defect or has not yet been accurately formed*”. A person who has undergone such medical intervention can then obtain a “*change of civil status*”, updating their gender on official documents.
- 3.11 Article 36 may provide a legal basis for non-consensual medical interventions on intersex infants and children, in violation of their right to bodily autonomy. The reference to “*congenital defects*” is also problematic, as it portrays intersex variations as if they need fixing, rather than as a normal variation of human biology.

### Recommendations

Vietnam should take effective steps to prohibit medically-unnecessary surgical and medical interventions on intersex children until they reach an age at which they can provide informed consent.

### Recognition of same-sex couples

- 3.12 Despite the 2002 decision in *Joslin v New Zealand*,<sup>21</sup> in which the denial of two same-sex couples in New Zealand of the right to marry was not held to be a violation of the ICCPR, there is growing support in the international community that international human rights law can and should be interpreted to include a right for same-sex couples to marry.<sup>22</sup>
- 3.13 Notwithstanding the removal of administrative penalties for same-sex wedding ceremonies (see paragraph 2.2), the Government does not formally recognise same-sex marriages, meaning that same-sex couples are not afforded the legal protections enjoyed by heterosexual married couples.
- 3.14 Article 8.1.2 of the *Law on Marriage and Family 2015* continues to explicitly state that “the State does not recognize marriage between people of the same sex”.<sup>23</sup> This also applies to same-sex marriages which are conducted in other countries.
- 3.15 The absence of recognition of same-sex marriage or any other form of relationship recognition denies same-sex couples the legal protections that heterosexual couples enjoy, including inheritance rights and adoption.

<sup>20</sup> Senate of Australia, Community Affairs Reference Committee, “Second Report: Involuntary or Coerced Sterilisation of Intersex People in Australia”, October 2013, p. 62, citing evidence given by Morgan Carpenter, then Secretary of Organisation Intersex International Australia.

<sup>21</sup> Human Rights Committee, *Views: Communication No 902/1999*, 75th sess, UN Doc CCPR/C/75/D/902/1999 (17 July 2002).

<sup>22</sup> Paula Gerber, Kristine Tay and Adiva Sifris, ‘Marriage: A Human Right for All?’, (2014) 36 *Sydney Law Review* 643.

<sup>23</sup> Institute for Studies of Society, Economy and Environment (iSEE), *Explanatory information on “Unbanning same-sex marriages” from January 1st 2015*, 27 December 2014 at <<http://isee.org.vn/en/Blog/Article/explanatory-information-onunbanning-same-sex-marriages-from-january-1st-2015>>.

### Recommendations

Vietnam should:

- (a) provide same-sex couples with the same legal protections and rights as opposite-sex married couples; and
- (b) explicitly legalise same-sex marriage in the *Law on Marriage and Family*, to ensure that same-sex couples are able to enjoy the same legal protections and benefits as those granted to married heterosexual couples.

### Adoption

3.16 Article 8 of the *Law on Child Adoption* states adoption is limited to "a single parent or a couple of husband and wife". Accordingly, same-sex couples are not entitled to jointly adopt a child.

3.17 LGBTI persons are able to adopt a child individually, if they can satisfy conditions required by law, regardless of their gender identity or sexual orientation.<sup>24</sup>

### Recommendations

Vietnam should legalise adoption by same-sex couples in the *Law on Child Adoption*.

## 4. Summary of recommendations

4.1 The UNHRC should make recommendations that Vietnam:

- (a) enact legislation that prohibits discrimination on the basis of sexual orientation, gender identity and sex characteristics in all areas of public life, including education, health care and employment;
- (b) expedite the passage of legislation that allows transgender people to access gender affirmation therapy and have their gender legally recognised in official documents;
- (c) ensure that such legislation allows transgender people to have their gender identity reflected in official documents on the basis of self-determination, without requiring "sex reassignment surgery" or other medical procedures as pre-requisites;
- (d) take effective steps to prohibit medically-unnecessary surgical and medical interventions on intersex children until they reach an age at which they can provide informed consent;
- (e) provide same-sex couples with the same legal protections and rights as opposite-sex married couples;
- (f) explicitly legalise same-sex marriage in the *Law on Marriage and Family*, to ensure that same-sex couples are able to enjoy the same legal protections and benefits as those granted to married heterosexual couples; and
- (g) legalise adoption by same-sex couples in the *Law on Child Adoption*.

<sup>24</sup> UNDP-USAID, *The Right to Adoption of Lesbian, Gay, Bisexual, and Transgender People in Viet Nam – Reality and Recommendations*, 2014 at

<[http://www.vn.undp.org/content/vietnam/en/home/library/democratic\\_governance/right-to-adoption-of-lgbt-viet-nam/](http://www.vn.undp.org/content/vietnam/en/home/library/democratic_governance/right-to-adoption-of-lgbt-viet-nam/)>.