

Report on Thailand regarding the human rights of LGBTI persons

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Executive Summary

1. This report has been prepared by Kaleidoscope Human Rights Foundation¹ and the Sexual Rights Initiative² together with Thai NGOs, TEA: Togetherness for Equality and Action³ and Thai Transgender Alliance.⁴ It highlights some instances where Thailand is failing to adequately protect the human rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) persons.

Key words

2. Sexual orientation, gender identity, transgender, gender equality, anti-discrimination, HIV, health, education, constitution, LGBTI rights.

Positive steps taken by Thailand

3. Thailand should be commended for the positive steps it has taken towards the recognition and protection of LGBTI rights. In 2002, the Department of Mental Health (acting under the Ministry of Public Health) announced that it depathologised homosexuality, stating that it no longer views homosexuality as a mental illness, adopting the World Health Organisation's stance on homosexuality as outlined in the *International Classification of Diseases (10th Revision)*.⁵ In 2005, the Thai armed forces lifted its ban on LGBTI individuals serving in the military. Prior to this reform, LGBTI people were exempted as suffering from a "mental disorder" and issued a certificate.⁶ In the same year, Bangkok hosted the first international conference on Asia's gay, lesbian and transgender communities.
4. In 2007, the *Constitution of the Kingdom of Thailand B.E. 2550 (2007)* was accompanied by a statement specifically providing that the anti-discrimination provisions in article 30, which prohibited discrimination on the grounds of gender, specifically included homosexuals, bisexuals, hermaphrodites, transgender people, and post-operative transsexuals.

¹ **Kaleidoscope Human Rights Foundation (Kaleidoscope)** is a non-government 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.

² **The Sexual Rights Initiative** is a coalition including Akahata – a Latin American team working on sexualities and genders, Action Canada for Population and Development, Creating Resources for Empowerment and Action - India, the Polish Federation for Women and Family Planning, and others.

³ **TEA: Togetherness for Equality and Action** is a Thai NGO that targets lesbians, bisexual women, trans men, queer and intersex people (LBTQIs) in Thailand with special emphasis on marginalized populations, e.g. people with disabilities, impoverished populations, grassroots, ethnic minorities, migrants and workers. Activities include: TEA Talk, monthly community dialogues (ongoing); Tea Law: Legal services for LBTQI community; Thailand National Lesbian Network; Documentation of SOGIE-based human rights discrimination and abuse.

⁴ **Thai Transgender Alliance** is a network of people who were born and were identified as male due to their sexual organ, but perceived themselves as other gender, as well as persons, groups and organizations working for human rights and sexual health of transgender in Thailand.

⁵ Timo T. Ojanen, "Sexual/Gender Minorities in Thailand: Identities, Challenges and Voluntary-Sector Counseling," in *Sexuality Research & Social Policy: Journal of NSRC*, Vol 6, Issue 2, pg 4-34 at 5,

https://www.academia.edu/3120339/Sexual_gender_minorities_in_Thailand_Identities_challenges_and_voluntary-sector_counseling. See also website for the International Day Against Homophobia, Transphobia and Biphobia (IDAHOT)

Thailand, "LGBTI rights in Thailand" available at <http://en.idahotthailand.org/facts/>. See also, United Nations Development Programme report, "Being LGBT in Asia: Thailand Country Report: A Participatory Review and Analysis of the Legal and Social Environment for Lesbian, Gay, Bisexual and Transgender (LGBT) Persons and Civil Society", page 33, 2014, available at:

https://www.usaid.gov/sites/default/files/documents/1861/Being_LGBT_in_Asia_Thailand_Country_Report.pdf

⁶ Canada: Immigration and Refugee Board of Canada, *Thailand: Situation and treatment of homosexuals, transsexuals and transgender persons; whether the government updated the constitution to provide rights to homosexuals, transsexuals and transgender persons (2005-2007)*, 7 January 2008, THA102695.E, available at: <http://www.refworld.org/docid/47d6547d28.html>

5. In 2011, in the Human Rights Council, Thailand voted in favour of a resolution requesting a study on discrimination and sexual orientation.⁷ In 2012, Thailand joined 85 other member states of the UN to vote in favour of the first UN resolution that condemned violence and discrimination against LGBTI people.
6. Most recently, in March 2015, the Thai parliament passed the *Gender Equality Act B.E. 2558 (2015)*, which has been described by Thai LGBTI activists as a "legislative breakthrough in LGBTI rights in Thailand"⁸ and is the first time that Thai law has stated that an individual can be male, female or "a person who has a sexual expression different from that person's original sex."⁹ The Act criminalises discrimination among the sexes and genders and imposes a jail term of up to 6 months for those discriminating on the basis of gender.¹⁰
7. The *Gender Equality Act* also provides for the establishment of three organisations to protect and promote gender equality: the Committee on the Promotion of Gender Equality, which will be responsible for promoting gender equality and receiving petitions on sexual discrimination; the Committee for Ruling on Gender Discrimination Cases, which will consider and rule on complaints related to discrimination and issues and remedies for those who are discriminated against; and the Fund for the Promotion of Gender Equality.¹¹
- 8.

Obligations under international and domestic law to protect LGBTI persons from discrimination

9. Thailand is currently drafting a new Constitution which includes specific new grounds for the prohibition of discrimination in relation to gender, and is understood to cover lesbian, gay, bisexual, transgender and intersex persons.¹²
10. The Spokesperson for the Constitution Drafting Committee, stated the wording was included with the aim that the new constitution would be "inclusive" and stated that "no one should be discriminated because of they are gay, lesbians, transvestites or transsexuals."¹³

Recommendation

The State of Thailand should:

11. Ensure that the new Constitution include a provision specifically prohibiting discrimination on the grounds of sexual orientation or gender identity.

Discrimination against LGBTI persons

⁷ United Nations Human Rights Council, 17th Session of the Human Rights Council, 16 June 2011, "Human rights, sexual orientation and gender identity", Resolution A/HRC/17/L.9/Rev.1

http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/17/L.9/Rev.1

⁸ Thailand IDAHOT website, LGBTI in Thailand Factsheet: Where we stand and where we need to go, available at <http://en.idahothailand.org/facts-sheet/>

⁹ *Gender Equality Act B.E. 2558 (2015)*, Article 3.

¹⁰ *Prachatai English*, "Gender Equality bill enacted", published 18 March 2015, available at <http://www.prachatai.com/english/node/4876>

¹¹ *Prachatai English*, "Gender Equality bill enacted", published 18 March 2015, available at <http://www.prachatai.com/english/node/4876>

¹² Constitution of the Kingdom of Thailand (2015, draft), Section 2 "Human Rights", section 34.

¹³ *The New York Times*, "Draft of New Thai Constitution Would Protect LGBT Rights"

http://www.nytimes.com/aponline/2015/01/16/world/asia/ap-as-thailand-gender-equality.html?_r=0

11. Despite Thailand's positive steps, the current lack of adequate legal protections against discrimination on the basis of sexual orientation and gender identity, the continuing difficulties facing LGBTI persons in the areas of education and healthcare and the lack of legal recognition of same-sex relationships, demonstrate a number of violations of Thailand's international obligations.¹⁴

Education and young people

12. Thailand fails to respect the rights of LGBTI persons in education, including in the curriculum, school regulation, and treatment by their peers and teachers. Bullying of LGBTI students is widespread within Thai schools and includes verbal abuse, such as teasing, and physical harassment and sexual abuse, such as rape. This has caused many LGBTI students to become depressed or in some instances suicidal.¹⁵
13. In the public school system there is no mandated curriculum regarding sexual orientation and gender identity, and there are reports of negative portrayals of LGBTI people in school textbooks.¹⁶
14. Policies at educational institutions also present problems for LGBTI persons, including the policy that requires students to wear uniforms. The policy upholds that individuals legally registered as girls or women must wear skirts and individuals registered as men must wear pants. In 2009, the University Presidents Council of Thailand issued a resolution that mandated university students "wear clothing appropriate to their gender"¹⁷ – individuals dressed opposite to their registered sex are unable to sit exams or submit coursework for review. Still, some higher education institutions, such as Thammasat University, have changed their policies to allow students to receive their graduation diploma in the dress of their choice. However this kind of flexibility is unusual in Thai Education Institutes.

Recommendations

The State of Thailand should:

15. Undertake measures to increase education and the understanding of LGBTI rights, including the introduction of sexual orientation and gender identity in the official school curriculum.
16. Undertake measures to eliminate bullying and harassment of LGBTI students in Thai schools, including by developing a model anti-bullying policy.
17. Review all school textbooks and direct schools to cease using those that contain negative portrayals of LGBTI people.

¹⁴ See Article 2, 17, and 26 of the *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171;

Article 1(1), 2(2) and 3 of the *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3;

Article 2 of the *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13; and

Article 2, of the *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3.

¹⁵ Mahidol University, Plan International, UNESCO. (2014) *Bullying targeting secondary students who are or are perceived to be transgender or same-sex attracted: Types, prevalence, impact, motivation and preventive measures in 5 provinces of Thailand*. Bangkok, Thailand.

¹⁶ "Being LGBT in Asia: Thailand Country Report: A Participatory Review and Analysis of the Legal and Social Environment for Lesbian, Gay, Bisexual and Transgender (LGBT) Persons and Civil Society", page 8, 2014, available at:

https://www.usaid.gov/sites/default/files/documents/1861/Being_LGBT_in_Asia_Thailand_Country_Report.pdf

¹⁷ Nation Multimedia (2012), Not all follow TU's lead on cross-dressing grads.' *The Nation*, 18 August 2012,

<http://www.nationmultimedia.com/national/Not-all-follow-TUs-lead-on-cross-dressing-grads-30188603.html> although noting that some universities have changed.

Access to Services

18. On 1 January 1, 2015 at approximately 11:45pm, 4 Sarina Thai and 4 of her friends (foreigners) went out to celebrate the coming year at Onyx, a nightclub in Bangkok. Upon arrival, Sarina's friends handed a card to a host, of which she thought to be a proof of beverage retrieval from a few nights ago when they were at the premise. The host stamped their wrists and then proceeded to ask Sarina "Are you Thai? If so, please present your Thai national ID card." Sarina showed hers to the security officer. The guard glanced at the card and then said: "You are not allowed to enter." Sarina asked "How come?" "Because you're a transwoman," the guard replied. This encounter made Sarina feel degraded and ashamed, and she has filed a complaint with the Office of the National Human Rights Commission of Thailand.

Recommendation

The State of Thailand should:

20. Undertake measures to combat the social stigmatization of, and stereotypes, prejudice and discrimination against LGBTI persons in all areas of public life, including access to services, and provide remedies for breaches.

Gender identity

21. Currently the Thai state does not recognise any sex or gender transitions. Thus, even if an individual has undergone complete gender reassignment, their official documentation will continue to reflect the sex assigned to them at birth. The impact of this is clearly illustrated in the experience of Sarina Thai described in paragraph 18 above.
22. Transgender people encounter difficulties on a daily basis, as their physical appearance differs from what appears on legal documentation, including when seeking employment, pursuing education and even travelling abroad as foreign immigration officers often suspect falsified documents.¹⁸
23. In 2007, the Thai National Legislative Assembly debated a bill that would have allowed post-operative transsexuals to change their personal title from Mr. to Miss (or vice versa) allowing transgender persons to legally change their name, however this provision was not included in the final version of the legislation passed.¹⁹

Recommendation

The State of Thailand should:

24. Enact legislation to allow LGBTI individuals to change their gender on all their official documentation, including the birth certificate.

Health and well-being

25. A high proportion of HIV sufferers in Thailand are LGBTI. Due to a lack of research in relation to the transgender population, and long standing social stigma in relation to

¹⁸ Timo T. Ojanen, "Sexual/Gender Minorities in Thailand: Identities, Challenges and Voluntary-Sector Counseling," in *Sexuality Research & Social Policy: Journal of NSRC*, Vol 6, Issue 2, pg 4-34 at 11 citing a report from the National Human Rights Commission of Thailand published in March 2008 (in thai) "Evaluative report of the human rights situation in the field of sexual diversity in the years.

¹⁹ Timo T. Ojanen, "Sexual/Gender Minorities in Thailand: Identities, Challenges and Voluntary-Sector Counseling," in *Sexuality Research & Social Policy: Journal of NSRC*, Vol 6, Issue 2, pg 4-34 at 5, https://www.academia.edu/3120339/Sexual_gender_minorities_in_Thailand_Identities_challenges_and_voluntary-sector_counseling.

identifying as LGBTI in Thailand, precise figures in relation to LGBTI individuals living with HIV in Thailand are not well known. However recent reports suggest that HIV among men who have sex with men (MSM) is on the rise, particularly in Thai urban settings. Young men face the greatest risk of HIV exposure – HIV prevalence for those under 25 is 5.3%, while the rate of HIV among transgender women in Thailand at 12.5%.²⁰ These figures indicate that more attention is needed to key groups such as MSM under 25 years of age, and transgender women.²¹

26. The attitude of some health care providers also presents a considerable barrier to LGBTI's health and wellbeing. Discrimination within the healthcare sector may include unequal standards of health care given to LGBTI persons, the disclosure of sensitive and private health information, the refusal of treatment, placing transgender persons in hospital wards opposite their preferred gender identity, and the perception by health care professionals that LGBTI persons are mentally unstable.²² Some commentary suggests this may stem insufficient knowledge of sexual identity issues.²³

Recommendation

The State of Thailand should:

27. Increase the number and funding of HIV programmes directed at LGBTI persons, including in particular those aimed at MSM under 25 and transgender women.

²⁰ See <http://en.idahothailand.org/facts-sheet/>.

²¹ UN AIDS and Thai National AIDS Committee, *2014 Thailand AIDS Response Progress Report*, Reporting Period 2012 – 2013, "Summary Report", page 1 http://www.unaids.org/sites/default/files/country/documents/THA_narrative_report_2014.pdf.

²² Timo T. Ojanen, "Sexual/Gender Minorities in Thailand: Identities, Challenges and Voluntary-Sector Counseling," in *Sexuality Research & Social Policy: Journal of NSRC*, Vol 6, Issue 2, pg 4-34, https://www.academia.edu/3120339/Sexual_gender_minorities_in_Thailand_Identities_challenges_and_voluntary-sector_counseling.

²³ Timo T. Ojanen, "Sexual/Gender Minorities in Thailand: Identities, Challenges and Voluntary-Sector Counseling," in *Sexuality Research & Social Policy: Journal of NSRC*, Vol 6, Issue 2, pg 4-34 at 27, https://www.academia.edu/3120339/Sexual_gender_minorities_in_Thailand_Identities_challenges_and_voluntary-sector_counseling.