

The Rights of Lesbian, Bisexual, Transgender and Intersex (LBTI) Women in Viet Nam

**Shadow Report for the 61st Session of the Committee on the
Elimination of Discrimination against Women**

**Compiled by the Kaleidoscope Human Rights Foundation with
the assistance of DLA Piper International LLP and the
Institute for Studies of Society, Economics and the
Environment (iSEE)**

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1. BACKGROUND

- 1.1 **Kaleidoscope Australia Human Rights Foundation** is an NGO 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.
- 1.2 Kaleidoscope has prepared this report with assistance of global law firm **DLA Piper International LLP** and with the input and support of the **Institute for Studies of Society, Economics and the Environment (iSEE)**, a Vietnamese NGO which works towards the rights of minority groups, including LGBTI people.
- 1.3 This report has been prepared to inform the Committee on the Elimination of Discrimination against Women (**Committee**) of areas of concern regarding Viet Nam's obligations under the Convention on the Elimination of All Forms of Discrimination against Women (**CEDAW**) to respect the human rights of lesbian, bisexual and transgender (**LBTI**) women. It concludes with recommendations for inclusion in the Committee's concluding observations.
- 1.4 Kaleidoscope gives its permission to the Committee to post this report on the Committee's website for public information purposes.

2. EXECUTIVE SUMMARY

- 2.1 In recent years, Viet Nam has taken several positive steps to advance the rights of LBTI women, including removing barriers to conducting same-sex wedding ceremonies, consulting on amending the Civil Code to allow transgender persons to legally change their gender, and providing a space for civil society, including NGOs, LGBTI groups and mass media, to discuss issues relating to LGBTI rights, educate the public and advocate for policy and law reform.
- 2.2 However, there are still significant areas of law, regulation and policy where considerable work is required in order for Viet Nam to meet its obligations under CEDAW and to achieve compliance with regard to the human rights of LBTI women. In particular, Viet Nam has:
 - 2.2.1 not yet implemented anti-discrimination legislation to reduce discrimination on the basis of sexual orientation, gender identity and intersex status in education, health care and employment;
 - 2.2.2 not yet enacted a legal framework for transgender women to undergo sex affirmation surgery and to have their legal gender changed on official documents; and
 - 2.2.3 not yet provided any protections or rights to same-sex couples, whether in the form of marriage or another legal institution.
- 2.3 We therefore urge the Committee to make the following **recommendations** to Viet Nam in its concluding observations:
 - 2.3.1 enact legislation that prohibits discrimination on the basis of sexual orientation, gender identity and intersex status in all areas of public life, including employment, education and health care;
 - 2.3.2 amend the Civil Code to allow transgender persons to legally change their gender, without requiring sex affirmation surgery as a prerequisite;

- 2.3.3 include sexual orientation, gender identity and intersex status in the school curriculum and in teacher training materials, in order to promote understanding and cultural awareness and to reduce bullying and discrimination;
- 2.3.4 remove the prohibition on transgender persons accessing sex affirmation surgery;
- 2.3.5 improve the training of health professionals to increase their understanding of and sensitivity to the specific health needs of LGBTI women;
- 2.3.6 provide same-sex couples with the same legal protections and rights as opposite-sex married couples;
- 2.3.7 broaden the scope of the universal public health care system to include access to IVF for all women, regardless of their relationship status, sexual orientation or gender identity; and
- 2.3.8 amend laws on sexual assault to be gender-neutral.

3. POSITIVE STEPS TAKEN BY THE GOVERNMENT

- 3.1 Since its last periodic review by the Committee, the Vietnamese Government has taken several positive steps to further the rights of LGBTI women, as discussed below.

Removal of prohibitions on same-sex weddings

- 3.2 On 24 September 2013, the Government issued *Decree 110/2013/ND-CP*, which removed administrative fines for holding same-sex weddings.¹ Before this new decree entered into force on 11 November 2013, same-sex couples holding public wedding ceremonies could be fined up to 500,000 dong (US\$23).² A couple was fined 200,000 dong as recently as May 2012.³
- 3.3 Moreover, on 19 June 2014, the National Assembly of Viet Nam approved an amended *Law on Marriage and Family* which entered into force on 1 January 2015. While the new law does not recognise same-sex marriage or provide any rights to same-sex couples, it has removed 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”.⁴ Accordingly, there is no longer any legal basis for fining or otherwise taking action against same-sex couples holding (legally unrecognised) wedding ceremonies.

¹ ‘Vietnam to remove fines on same-sex marriage’, *Tuoi Tre News*, 3 October 2013 <<http://tuoitrenews.vn/society/13750/vietnam-to-remove-fines-on-samesex-marriage>>; Sudeshna Sarkar, ‘It’s final: gay wedding fines to go in Vietnam’, *Gay Star News*, 13 October 2013 <<http://www.gaystarnews.com/article/it%E2%80%99s-final-gay-wedding-fines-go-vietnam131013>>.

² Article 8(f) of Decree 87/2001/ND-CP, now repealed, stipulated that “[a] fine of between VND 100,000 and 500,000 shall be imposed for... marriage between persons of the same sex”: <<http://policy.mofcom.gov.cn/english/flaw/fetch.action?libcode=flaw&id=073aed7b-90b2-4450-bd55-cbd057b93f28&classcode=120>>.

³ Anna Leach, ‘Vietnam government consults on same-sex marriage’, *Gay Star News*, 20 June 2012 <<http://www.gaystarnews.com/article/vietnam-government-consults-same-sex-marriage200612>>.

⁴ ‘Vietnam removes ban on same-sex marriage’, *Tuoi Tre News*, 20 June 2014 <<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://vbqpp1.moj.gov.vn/vbq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=373>.

Consultations on recognising legal gender change for transgender persons

- 3.4 In January 2015, the National Assembly issued a public consultation on a revised Civil Code. The consultation version of the Civil Code included two options relating to the recognition of transgender persons that the public could provide their views on. The first option was that the State would not recognise “gender transition” (the status quo), while the second option was that “gender transition will be allowed by competent authorities under the provisions of the law”.⁵ This would involve allowing both sex affirmation surgery and changes of legal gender on official documentation.
- 3.5 In April 2015, after the public consultation had concluded, the head of the Ministry of Health’s Legal Department declared his preference for allowing transgender people “the right to live with their true gender”.⁶ This provides an indication that Viet Nam may recognise the right of transgender people (including transgender women) to change their legal gender within the Civil Code.

Providing a space for advocacy and discussion of issues relating to sexual orientation and gender identity

- 3.6 Viet Nam is to be commended for providing a space for civil society, including NGOs, LGBTI groups, social media and mass media, to discuss issues relating to the rights of LGBTI women (and LGBTI people more generally), to educate the public and to advocate for policy and law reform on issues relating to sexual orientation and gender identity.
- 3.7 The Vietnamese Government has also allowed the holding of public events that raise the visibility of LGBTI people, including LGBTI women. The first LGBTI “bicycle rally” took place in Hanoi in August 2012.⁷ A “Viet Pride” festival was held in 2012, 2013 and 2014, with LGBTI events held in 17 cities throughout Vietnam as part of the 2014 Viet Pride season.⁸ The 2014 Hanoi Bicycle Pride Rally attracted 600 participants.⁹

4. NON-DISCRIMINATION (ARTICLE 2)

- 4.1 Article 2 of CEDAW obligates Japan to “pursue by all appropriate means and without delay a policy of eliminating discrimination against women”. The Committee has previously stated in its General Recommendation No. 28 that:

“The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste, and sexual orientation and gender identity... States parties must legally recognize and prohibit such intersecting forms of discrimination and their compounded negative impact on the women concerned.”

⁵ Institute for Studies of Society, Economy and Environment (iSEE), ‘Consultation on Civil Code Draft (revised) on Transgenders’, 1 April 2015 <<http://isee.org.vn/en/Blog/Article/consultation-on-civil-code-draft-revised-on-transgenders>>.

⁶ ‘Transgender people may be recognised under new law’, *Viet Nam News*, 17 April 2015 <<http://vietnamnews.vn/society/269221/transgender-people-may-be-recognised-under-new-law.html>>.

⁷ ‘Vietnam holds first gay pride parade’, *ABC News*, 6 August 2012 <<http://www.abc.net.au/news/2012-08-05/vietnam-holds-first-gay-pride-parade/4178626>>.

⁸ ‘Over 2,000 people attend event for LGBT community in Vietnam hub’, *Tuoi Tre News*, 23 May 2014 <<http://tuoitrenews.vn/lifestyle/21179/over-2000-people-attend-event-for-lgbt-community-in-vietnam-hub>>.

⁹ Viet Pride, ‘Pride Rally’ <<http://www.vietpride.info/#!pride-rally/cjrx>>.

- 4.2 General Recommendation No. 28 provides a basis for the Committee to make recommendations relating to discrimination against LGBTI women in Viet Nam.
- 4.3 In February 2014, Viet Nam accepted a recommendation during its Universal Periodic Review to “enact a law to fight against discrimination which guarantees the equality of all citizens, regardless of their sexual orientation and gender identity”.¹⁰ Despite this, there remains no explicit inclusion of sexual orientation, gender identity or intersex status as protected grounds for discrimination in any law, nor are there any specific protections for LGBTI women.
- 4.4 Moreover, while Viet Nam enacted a Gender Equality Law in 2006 and Article 26 of the Constitution of 2013 prohibits “gender discrimination”, LGBTI women are not identified as a specific marginalised group within gender equality policies or efforts.
- 4.5 As outlined throughout the rest of this report, discrimination against women on the basis of their sexual orientation, gender identity and intersex status remains pervasive in education, health care and employment. LGBTI women are vulnerable to discrimination based on multiple factors, as women and as members of a sexual or gender minority. The combined stigma and discrimination resulting from the lack of understanding by their family and the lack of legal and economic empowerment and protection from society means they are frequently forced into heterosexual marriages at the cost of their happiness and emotional well-being.¹¹
- 4.6 According to iSEE, “discrimination cases [against LGBTI women] are actually very wide-ranging, including being rejected for services and goods, denied employment, discriminated in workplace, dismissed from work, and harassed in administrative procedures”.¹²
- 4.7 Sections 6, 7 and 8 of this report focus more specifically on discrimination against LGBTI women in education, health care and employment.

Recommendations

- 4.8 We urge the Committee to include within its concluding observations **recommendations** that the Government:
- 4.8.1 enact legislation that prohibits discrimination on the basis of sexual orientation, gender identity and intersex status in all areas of public life, including employment, education and health care; and
- 4.8.2 include LGBTI women as a specific marginalised group in all of its laws and policies in support of gender equality.

¹⁰ United Nations Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review: Vietnam’, 2 April 2014, UN Doc A/HRC/26/6, [143.88]; United Nations Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review: Vietnam – Addendum’, 20 June 2014, UN Doc A/HRC/26/6/Add.1.

¹¹ United Nations Development Programme and United States Agency for International Development, *Being LGBT in Asia: Viet Nam Country Report* (2014) 20.

¹² Institute for Studies of Society, Economy and Environment (iSEE), ‘Alliance for Gender Equality and Policy Advocacy with CEDAW’, 8 August 2014 <<http://isee.org.vn/en/Blog/Article/alliance-for-genderequality-and-policy-advocacy-with-cedaw>>.

5. LEGAL RECOGNITION OF GENDER IDENTITY (ARTICLES 1, 2, 3 AND 15)

- 5.1 The ability to obtain legal recognition of one's gender identity is an important aspect of the right to privacy and to equal recognition and protection before the law. Failure to recognise the gender identity of transgender women is a breach of Articles 1, 2, 3 and 15 of CEDAW.
- 5.2 In Viet Nam, transgender individuals are unable to obtain legal recognition of their gender. In 2012, a teacher in Binh Phuoc became the first Vietnamese person to have their gender changed from male to female in official identity documents. However, the decision made by the local authority was revoked, after a large number of individuals rushed to Binh Duong to apply for it, prompting the government to declare that the decision was illegal.¹³
- 5.3 As pointed out in paragraphs 3.4 and 3.5 above, Viet Nam is currently considering amendments to its Civil Code to allow changes of legal gender for transgender persons. These amendments should be implemented as soon as possible.
- 5.4 Moreover, to fully ensure that the rights of transgender women are protected, any amendments to the Civil Code and related laws should ensure that transgender persons can change their legal gender without a prerequisite of sex affirmation surgery. A requirement that a person undergo surgery in order to obtain legal gender recognition is a form of forced medical treatment and sterilisation, in breach of Articles 12 and 16 of CEDAW. It would also breach Principle 3 of the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, which states that, "No one shall be forced to undergo medical procedures, including sex reassignment surgery, sterilisation or hormonal therapy, as a requirement for legal recognition of their gender identity".¹⁴

Recommendations

- 5.5 We urge the Committee to include within its concluding observations a **recommendation** that the Government amend the Civil Code to allow transgender persons to legally change their gender, without requiring sex affirmation surgery as a prerequisite.

6. EDUCATION (ARTICLE 10)

- 6.1 Article 10(c) requires Viet Nam to eliminate "any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods".
- 6.2 Article 10(f) further provides that it shall ensure "the reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely". As part of this obligation, Viet Nam is required take steps to reduce drop-outs of female students arising from discrimination or bullying based on their sexual orientation, gender identity or intersex status.

¹³ 'Health official calls for law change to recognize transgenders', *Thanh Nien News*, 17 April 2015 <<http://www.vietnambreakingnews.com/2015/04/health-official-calls-for-law-change-to-recognize-transgenders/>>.

¹⁴ Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, Principle 3 (March 2007) <http://www.yogyakartaprinciples.org/principles_en.pdf>.

- 6.3 The Committee has noted in its list of issues that gender biases and stereotypes still exist in textbooks, teaching materials and methodologies.¹⁵ There are significant disparities that persist in educational opportunities and outcomes, with girls belonging to minorities being particularly disadvantaged in this sector.
- 6.4 Viet Nam lacks any anti-bullying and non-discrimination policies which are inclusive of sexual orientation, gender identity and intersex status. Sex education is limited and is considered a sensitive topic that teachers usually avoid. There are also no initiatives to teach respect for diversity and tolerance for LGBTI students.¹⁶
- 6.5 As a result, LGBTI girls often face prejudice and are marginalised in schools, leading them to drop out the education system early due to discrimination and bullying.¹⁷ This affects their future employment opportunities and contributes to the socio-economic disadvantage faced by LGBTI women, particularly transgender women.
- 6.6 A 2013 study found that **41%** of LGBTI persons had suffered discrimination and violence at school or university, with **19%** claiming to have been beaten and **18%** sexually harassed.¹⁸ As an illustration of this, a recent report by the United Nations Development Programme (UNDP) described how a transgender girl in Ho Chi Minh City testified that she was threatened and beaten up by her friends, while her teachers were unable and unwilling to do anything. According to the girl, “The boys formed a circle at recess, took off my pants, 'scanned' my private parts, and sexually harassed me”.¹⁹
- 6.7 Aside from discrimination by fellow students, LGBTI girls often also face discrimination from teachers and school authorities, many of which have not been trained in issues concerning sexual orientation, gender identity and intersex status. This results in teachers often insulting and discriminating against their LGBTI students.²⁰

Recommendations

- 6.8 We urge the Committee to include within its concluding observations **recommendations** that the Government:
- 6.8.1 enact legislation that prohibits discrimination on the basis of sexual orientation, gender identity and intersex status in all areas of public life, including education; and
- 6.8.2 include sexual orientation, gender identity and intersex status in the school curriculum and in teacher training materials, in order to promote understanding and cultural awareness and to reduce bullying and discrimination.

¹⁵ United Nations Committee on the Elimination of Discrimination against Women, ‘List of issues and questions in relation to the combined seventh and eighth periodic reports of Viet Nam’, 14 November 2014, UN Doc CEDAW/C/VNM/Q/7-8.

¹⁶ United Nations Development Programme and United States Agency for International Development, *Being LGBT in Asia: Viet Nam Country Report* (2014) 28.

¹⁷ Ibid.

¹⁸ ‘Homosexual teens encounter dilemma of discrimination’, *Viet Nam News*, 18 May 2012 <<http://vietnamnews.vn/print/224856/homosexual-teens-encounter-dilemma-of-discrimination.htm>>.

¹⁹ United Nations Development Programme and United States Agency for International Development, *Being LGBT in Asia: Viet Nam Country Report* (2014) 28.

²⁰ Institute for Studies of Society, Economy and Environment (iSEE), ‘Submission on the situations of lesbian, gay, bisexual and transgender (LGBT) people in Vietnam for the Eighteenth Session of the United Nations Universal Periodic Review for Vietnam (Jan-Feb 2014)’ [13] <http://www.upr-info.org/sites/default/files/document/viet_nam/session_18_-_january_2014/isee_upr18_vnm_e_main.pdf>.

7. HEALTH (ARTICLE 12)

7.1 Article 12(1) of CEDAW provides that appropriate measures must be taken to eliminate discrimination against women in the field of health care in order to ensure “access to health care services, including those related to family planning”.

Sex affirmation surgery not available for transgender women

7.2 According to Article 1 of *Decree 88/2008/ND-CP*, sex affirmation surgery is only permitted in Viet Nam for “persons with congenital sex defects or of unidentifiable sex”, which appears to include intersex women.²¹ However, sex affirmation surgery is not permitted for transgender women, who are born with male sex characteristics but identify as women.

7.3 Transgender women wishing to undergo surgery are therefore forced to travel abroad to obtain surgery. It is estimated that over 1000 people have already gone abroad to obtain surgery at a huge risk to their own health: surgery is often undertaken at unlicensed health clinics where the quality of the surgery is unknown.²²

7.4 The fact that transgender persons are not allowed to undergo surgery in Vietnamese hospitals or clinics also forces them to take unsupervised measures which place them at significant medical risk, such as self-administered hormone injections or birth control pills.²³ For example, in October 2013, a transgender woman died after a self-administered female hormone injection resulted in a fatal blood clot.²⁴

7.5 As noted in paragraphs 3.4 and 3.5 above, the Vietnamese Government is currently consulting on amendments to the Civil Code which would allow transgender persons to undergo sex affirmation surgery and have their legal gender changed. However, the Government has not yet confirmed if these proposed amendments will be put into place.

Health care discrimination and forced treatment

7.6 LGBTI women face discrimination within health care facilities, and there are few LGBTI-friendly facilities or services available to them.²⁵

7.7 Although homosexuality is no longer considered a psychological or physical illness, some clinics and practitioners still try to “cure” lesbian and bisexual women with dangerous treatments that can have lasting negative effects on their psychological and physical health.²⁶

²¹ Decree on Sex Reassignment, Decree 88/2008/ND-CP <<http://kenfoxlaw.com/resources/legal-documents/governmental-decrees/2547-vbpl.html>>.

²² ‘Law May Recognise Transgender People’, *Viet Nam News*, 18 April 2015 <<http://vietnamnews.vn/society/269246/law-may-recognise-transgender-people.html>>.

²³ ‘Transgenders seek black market sex changes amid Vietnam ban’, *Thanh Nien News*, 4 May 2014 <<http://thanhniennews.com/society/transgenders-seek-black-market-sex-changes-amid-vietnam-ban-25906.html>>.

²⁴ Ibid.

²⁵ United Nations Development Programme and United States Agency for International Development, *Being LGBT in Asia: Viet Nam Country Report* (2014) 29.

²⁶ Ibid 30.

Recommendations

- 7.8 We urge the Committee to include within its concluding observations **recommendations** that the Government:
- 7.8.1 remove the prohibition on transgender persons accessing sex affirmation surgery; and
 - 7.8.2 improve the training of health professionals to increase their understanding of and sensitivity to the specific health needs of LGBTI women.

8. EMPLOYMENT (ARTICLE 11)

- 8.1 Article 11(1) of CEDAW guarantees women an equal right to work and equality in conditions and treatment at work, on the same basis as men. Read together with Article 2 and General Recommendation No. 28 (see paragraph 4.1 above), this creates a requirement for Viet Nam to address intersectional employment discrimination experienced by LGBTI women.
- 8.2 In Viet Nam, there are currently no laws prohibiting discrimination or harassment in the workplace against women on the basis of their sexual orientation, gender identity or intersex status. Stigma and discrimination towards LGBTI women remains common within the workplace.²⁷
- 8.3 In November 2013, iSEE conducted a study into transgender people’s experiences of employment discrimination. The study, conducted among 241 transgender women throughout the country, found that **35%** of participants had been “eliminated when applying for jobs due to their transgender appearance”.²⁸ Several survey respondents reported being abused with homophobic and transphobic slurs while attempting to apply for jobs. Those respondents that succeeded in finding employment reported facing lower incomes and poorer working conditions than colleagues in equivalent positions, as well as discrimination and sexual abuse from colleagues.²⁹

Recommendations

- 8.4 We urge the Committee to include within its concluding observations a **recommendation** that the Government enact legislation that prohibits discrimination on the basis of sexual orientation, gender identity and intersex status in all areas of public life, including employment.

9. MARRIAGE AND FAMILY RELATIONS (ARTICLE 16)

- 9.1 Article 16 of CEDAW provides that appropriate measures must be taken to eliminate discrimination against women in all matters relating to marriage and family relations, including the rights to enter marriage, freely choose a spouse and to decide on the number and spacing of their children.

Non-recognition of same-sex relationships

²⁷ Hiếu Minh, ‘Homosexual intellectuals have difficulties looking for jobs’, *Vietnamnet News*, 7 September 2012 <<http://vietnamnet.vn/vn/doi-song/87676/tri-thuc-dong-tinh-chat-vat-tim-viec-lam.html>>.

²⁸ Dong Nguyen, ‘Transgender people tell lives via photo book’, *Tuoi Tre News*, 25 October 2013 <<http://tuoitrenews.vn/lifestyle/14446/transsexuals-tell-lives-via-photo-book>>.

²⁹ ‘Discriminated, insulted, but Vietnam transsexuals see signs of change’, *Thanh Nien News*, 6 November 2013 <<http://thanhniennews.com/society/discriminated-insulted-but-vietnam-transsexuals-see-signs-of-change-749.html>>.

- 9.2 Despite the removal of administrative prohibitions and fines for same-sex wedding ceremonies (as discussed in paragraphs 3.2 and 3.3), the new *Law on Marriage and Family* continues to not recognise same-sex marriage or provide any rights to same-sex couples. Article 8 of the *Law on Marriage and Family* (which sets out the conditions for marriage) continues to affirm that “the State does not recognize marriage between people of the same sex”.³⁰
- 9.3 The non-recognition of same-sex marriage or any other form of relationship recognition denies women in same-sex relationships a range of rights, including inheritance rights and parenting rights. Moreover, surrogacy is only allowed between (opposite-sex) married childless couples.³¹ Women in same-sex couples are also unable to adopt or access in-vitro fertilisation (IVF), either privately or through the public health system.

Recommendations

- 9.4 We urge the Committee to include within its concluding observations **recommendations** that the Government:
- 9.4.1 provide same-sex couples with the same legal protections and rights as opposite-sex married couples; and
- 9.4.2 broaden the scope of the universal public health care system to include access to IVF for all women, regardless of their relationship status, sexual orientation or gender identity.

10. VIOLENCE AGAINST LGBTI WOMEN (GENERAL RECOMMENDATION NO. 19)

- 10.1 As noted by the Committee in General Recommendation No. 19, violence against women is considered to be a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men.³²
- 10.2 LGBTI women in Viet Nam are often targets of violence and harassment of a physical, sexual and psychological nature. Reports indicate that LGBTI women are targeted in the workplace, at school and within their own families.³³

Sexual assault against LGBTI women

- 10.3 Sexual assault in Viet Nam is defined as an act that occurs between a male and female, as recognised by law. Because transgender women are not currently allowed to change their gender, and are therefore legally recognised as male, sexual assaults against them by men are not treated as such under the criminal law.

³⁰ Institute for Studies of Society, Economy and Environment (iSEE), ‘Explanatory information on “Unbanning same-sex marriages” from January 1st 2015’, 27 December 2014 <<http://isee.org.vn/en/Blog/Article/explanatory-information-onunbanning-same-sex-marriages-from-january-1st-2015>>.

³¹ ‘Vietnam allows surrogacy within families, denies same-sex marriage’, *Thanh Nien News*, 20 June 2014 <<http://www.thanhniennews.com/politics/vietnam-allows-surrogacy-within-families-denies-samesex-marriage-27502.html>>.

³² United Nations Committee on the Elimination of Discrimination against Women, *General Recommendation No. 19 on Violence against Women* (11th session, 1992).

³³ United Nations Development Programme and United States Agency for International Development, *Being LGBT in Asia: Viet Nam Country Report* (2014) 20, 26.

- 10.4 For example, in April 2010, a transgender woman in Quang Binh Province was raped by three men. The local court declined to find the men guilty of rape as the victim was not legally identified as a woman. According to the court, a victim of rape can only be a “naturally-born” female.³⁴

Recommendations

- 10.5 We urge the Committee to include within its concluding observations **recommendations** that the Government amend laws on sexual assault to be gender-neutral.

11. CONCLUSIONS AND RECOMMENDATIONS

- 11.1 While Viet Nam has made several positive steps in relation to the rights of LGBTI women in the past few years, there remain several areas of concern. LGBTI women and girls continue to face significant levels of discrimination in education, health care and employment, which the Government has not taken any steps to address. Women in same-sex relationships do not have any of the legal protections available to opposite-sex married couples. In addition, transgender women continue to be prohibited from accessing sex affirmation surgery and changing their legal gender to align with their gender identity, while also not being protected by the law in the case of sexual assault.

- 11.2 Accordingly, we urge the Committee to include in its concluding observations the following **recommendations**:

- 11.2.1 enact legislation that prohibits discrimination on the basis of sexual orientation, gender identity and intersex status in all areas of public life, including employment, education and health care;
- 11.2.2 amend the Civil Code to allow transgender persons to legally change their gender, without requiring sex affirmation surgery as a prerequisite;
- 11.2.3 include sexual orientation, gender identity and intersex status in the school curriculum and in teacher training materials, in order to promote understanding and cultural awareness and to reduce bullying and discrimination;
- 11.2.4 remove the prohibition on transgender persons accessing sex affirmation surgery;
- 11.2.5 improve the training of health professionals to increase their understanding of and sensitivity to the specific health needs of LGBTI women;
- 11.2.6 provide same-sex couples with the same legal protections and rights as opposite-sex married couples;
- 11.2.7 broaden the scope of the universal public health care system to include access to IVF for all women, regardless of their relationship status, sexual orientation or gender identity; and
- 11.2.8 amend laws on sexual assault to be gender-neutral.

³⁴ ‘Rape of transsexual woman stirs legal debate’, *Thanh Nien News*, 27 August 2010 <<http://www.thanhniennews.com/society/rape-of-transsexual-woman-stirs-legal-debate-15244.html>>.