

**Shadow Report to the UN Committee on
Economic, Social and Cultural Rights
regarding Thailand's Protection
of the Rights of LGBTI Persons**

**Compiled by the Kaleidoscope Human Rights Foundation
with the assistance of DLA Piper (Thailand) Limited**

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1. EXECUTIVE SUMMARY

- 1.1 Kaleidoscope 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 the assistance of DLA Piper Thailand to inform the UN Committee on Economic, Social and Cultural Rights (**Committee**) of areas where Thailand is failing to comply with its obligations under the International Covenant on Economic, Social and Cultural Rights (**ICESCR**) with respect to the human rights of LGBTI people. It concludes with suggested recommendations for inclusion in the Committee's concluding observations.
- 1.3 Thailand has, in recent years, taken some steps to advance the rights of LGBTI people in certain areas. However, there remain significant gaps in legal recognition and protection and LGBTI people continue to face barriers in the realisation of their economic, social and cultural rights. In particular, as discussed further in this report, Thailand has:
 - 1.3.1 failed to implement laws prohibiting discrimination on the basis of sexual orientation and gender identity in all areas of public life, thereby affecting LGBTI people's ability to exercise all of their rights under ICESCR without discrimination as to sexual orientation and gender identity, as required by Article 2;
 - 1.3.2 failed to protect LGBTI people against widespread discrimination in employment, thereby affecting their right to work under Article 6 and their right to enjoyment of just and favourable working conditions under Article 7;
 - 1.3.3 failed to provide any legal recognition to same-sex couples, thereby hindering their right to obtain the widest possible protection for their families under Article 10;
 - 1.3.4 failed to take measures to reduce discrimination against LGBTI people in the health care system, and to address the unique health problems faced by LGBTI people, thereby affecting their right to the highest attainable standard of physical and mental health under Article 12;
 - 1.3.5 failed to protect LGBTI students against widespread bullying and harassment in the education system, thereby affecting their right to the highest attainable standard of physical and mental health under Article 12 and their right to education under Article 13;
 - 1.3.6 failed to remove discriminatory policies in the education system, such as the inability for students to wear uniforms matching their gender identity, thereby affecting their right to education under Article 13; and
 - 1.3.7 failed to allow transgender people to change their legal gender to match their gender identity, thereby creating significant barriers to accessing employment, health care and education which affects the rights of transgender people under Articles 6, 7, 12 and 13.

- 1.4 Accordingly, to achieve compliance with regard to the economic, social and cultural rights of LGBTI people, we urge the Committee to include in its concluding observations **recommendations** that Thailand:
- 1.4.1 ensure that the new Constitution contains explicit protections from discrimination on the basis of sexual orientation and gender identity (Article 2); and
 - 1.4.2 introduce laws prohibiting discrimination on the basis of sexual orientation and gender identity in all areas of public life, including employment, health care and education (Articles 2, 6, 7, 12 and 13);
 - 1.4.3 amend the *Labour Protection Act 1998* to prohibit discrimination on the basis of sexual orientation and gender identity in employment (Articles 6 and 7); and
 - 1.4.4 allow transgender people to legally change their gender to reflect their gender identity, in order to reduce barriers to employment, health care and education and to decrease societal discrimination (Articles 6, 7, 12 and 13);
 - 1.4.5 provide the same legal rights to same-sex couples as to opposite-sex married couples, including parenting rights (Article 10);
 - 1.4.6 develop and implement a national plan to address high levels of mental illness among the LGBTI population, both by reducing societal discrimination and stigma and by introducing LGBTI sensitivity training for mental health professionals (Article 12);
 - 1.4.7 develop and implement a national plan to address discrimination, bullying and harassment on the basis of sexual orientation and gender identity in the education system (Articles 12 and 13); and
 - 1.4.8 revise educational materials that refer to homosexuality and transgender identity in discriminatory terms and instead incorporate non-discriminatory references to sexual orientation and gender identity in the school curriculum and teacher training programs (Article 13).

2. LEGAL AND SOCIAL CONTEXT IN THAILAND

Status of ICESCR under Thai Law

- 2.1 Thailand ratified ICESCR in 1999. ICESCR is, to some extent, incorporated into national law. According to Article 82 of the Constitution of the Kingdom of Thailand (**Constitution**):¹

“The State...shall comply with human rights conventions in which Thailand is a party thereto as well as international obligations concluded with other countries and international organizations.”

Constitution of the Kingdom of Thailand

- 2.2 Article 30 of the Constitution² states that:

¹ Constitution of the Kingdom of Thailand, B.E. 2550 (2007), enacted on the 24 August B.E. 2550.

² Constitution of the Kingdom of Thailand, B.E. 2550 (2007), enacted on the 24 August B.E. 2550.

“All persons are equal before the law and shall enjoy equal protection under the law. Men and women shall enjoy equal rights. Unjust discrimination against a person on the grounds of the difference in origin, race, language, sex, age, physical or health condition, personal status, economic or social standing, religious belief, education, or constitutional political views, shall not be permitted...”

Summary of the situation for LGBTI people in Thailand

- 2.3 Homosexual conduct was decriminalised in 1956. However, LGBTI persons continue to face discrimination, harassment and stigma, which impairs their ability to exercise their economic, social and cultural rights. A key reason for this is the failure of the Government to introduce any protective laws or policies which prohibit or otherwise seek to reduce discrimination. The Constitution does not explicitly protect against discrimination on the basis of sexual orientation or gender identity, nor are there any other LGBTI-inclusive anti-discrimination laws or policies that apply in the areas of employment, education or health care. Finally, a lack of marriage equality or other forms of relationship recognition has meant that same-sex couples face barriers in establishing a family and caring for any dependent children.

3. POSITIVE STEPS TAKEN BY THAILAND

- 3.1 The Constitution of Thailand is currently being redrafted. A recent draft includes the term “gender” (*phet*) rather than simply “sex” as a protected non-discrimination ground. It is unclear what the scope of the term “gender” is and whether it is broad enough to include gender identity or even sexual orientation. According to Assistant Professor Jaray Singakowinta:

“Gender could mean expressions, behaviours or characteristics associated with a person's birth gender – which may or may not be their true gender identity. The definition of masculinity, femininity and others are diversified in meaning and could be different depending on particular societies and cultures.”³

- 3.2 Finally, there has been some progress made on a bill to extend the protections, rights and benefits of marriage to same-sex couples. In 2012, a committee was formed to draft civil partnership legislation.⁴ The legislation produced by the committee would provide same-sex couples with insurance, pension, taxation and property and inheritance benefits, even though marriage (and parenting rights such as adoption) would remain restricted to opposite-sex couples.⁵ In September 2014, reports emerged that civil partnership legislation would be passed by the National Legislative Assembly soon.⁶ However, progress on the bill appears to have stalled. Moreover, as discussed in paragraph 6.6 below, this bill suffers from several shortcomings.

³ Melalin Mahavongtrakul, ‘A recent draft of the new Thai Constitution is the source of continued debate on biology versus identity’, *Bangkok Post*, 29 January 2015 <<http://www.bangkokpost.com/lifestyle/social-and-lifestyle/461482/gender-sex-and-politics>>.

⁴ Amy Sawitta Levefre, ‘Thailand, conservative but tolerant, may legalise gay marriage’, *Reuters*, 21 August 2013 <<http://uk.reuters.com/article/2013/08/21/uk-thailand-gay-marriage-idUKBRE97K04X20130821>>.

⁵ Warangkana Chomchuen, ‘Thailand May Lead Most of Asia-Pacific on Same-Sex Benefits’, *Wall Street Journal*, 19 September 2013 <<http://www.wsj.com/articles/SB10001424127887324807704579085093047702738>>.

⁶ Takato Mitsunaga, ‘Same-sex marriage may come true under Thai junta’, *Prachatai*, 9 October 2014 <<http://prachatai.org/english/node/4390>>.

4. ARTICLE 2 (GENERAL PROHIBITION AND DISCRIMINATION)

Relevant Articles of ICESCR

- 4.1 Article 2(2) of ICESCR obligates Thailand to guarantee that all of the substantive rights under ICESCR can be exercised “*without discrimination of any kind as to... sex ... or other status*”. The Committee has confirmed that this non-discrimination guarantee includes both sexual orientation and gender identity.⁷

Relevant Thai Laws and Policies

- 4.2 Thailand does not currently legislate against discrimination on the basis of sexual orientation or gender identity. While the Constitution does prohibit discrimination on the basis of sex, it does not mention sexual orientation or gender identity. During the drafting of the 2007 Constitution, several LGBTI organisations lobbied for the inclusion of the term “sexual identities” within the non-discrimination clause in Article 30 of the Constitution. However, the Constitutional Drafting Assembly rejected the proposal.⁸
- 4.3 As outlined in the sections below, LGBTI persons face discrimination, stigma and harassment in various areas of public and private life, including employment, family life, health care and education. According to the Thailand Country Report issued by the Being LGBT in Asia initiative of the United Nations Development Programme (UNDP) and United States Agency for International Development (USAID):

“Today's Thailand is contradictory. It is one where the Tourism Authority actively promotes the image of Thailand as a gay paradise but where discussion so sexuality in society as still taboo and there is limited sex education in schools. LGBTI individuals tend to be more visible in urban settings than rural. LGBTI people live within a society with strong pressure to be a good citizen and be filial to one's family. This is compounded with the notion that one's sexuality or gender must not go against accepted norms and should not bring shame to one's self and family.”⁹

Recommendations

- 4.4 We urge the Committee to include in its concluding observations a **recommendation** that Thailand:
- 4.4.1 ensure that the new Constitution contains explicit protections from discrimination on the basis of sexual orientation and gender identity; and
- 4.4.2 introduce laws prohibiting discrimination on the basis of sexual orientation and gender identity in all areas of public life, including employment, health care and education.

⁷ Committee on Economic, Social and Cultural Rights, “*General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights (Art. 2 para. 2)*”, adopted in the Committee's 42nd session, Geneva, 4-22 May 2009, UN Economic and Social Council, E/C.12/GC/20, 10 June 2009, at 10, ¶ 32.

⁸ United Nations Development Programme and United States Agency for International Development, *Being LGBT in Asia: Thailand Country Report*, p. 21–22.

⁹ United Nations Development Programme and United States Agency for International Development, *Being LGBT in Asia: Thailand Country Report*, p. 6.

5. ARTICLE 6 (RIGHT TO WORK) AND ARTICLE 7 (RIGHT TO ENJOYMENT OF JUST AND FAVOURABLE CONDITIONS OF WORK)

Relevant Articles of ICESCR

- 5.1 Article 6 of ICESCR recognises the right to work, which includes the right not to be deprived of work unfairly.¹⁰ Article 7 of ICESCR mandates just and favourable working conditions, including fair remuneration, safe and healthy working conditions and equal opportunity for promotion. These rights must be enjoyed without discrimination as to sexual orientation and gender identity.¹¹

Relevant Thai Laws and Policies

- 5.2 Neither the Constitution nor the *Labour Protection Act 1998* provide any protection against discrimination on the basis of sexual orientation or gender identity.
- 5.3 Article 5.6 of the Thai Labour Standard (TLS 8001-2010) provides that:

*“An establishment shall not engage in or support any discrimination in respect of employment, payment of wage and remuneration, providing welfare and opportunity for training and development, promotion, termination of employment or retirement and so on, due to... **personal attitude on gender or sexual orientation**”* (among other grounds).

- 5.4 However, while the Thai Labour Standard is overseen by the Ministry of Labour and companies can voluntarily be certified to comply with it, it does not have the status of law and is therefore not automatically binding on all employers in the country.¹² Instead, it is a voluntary scheme which does not allow victims to seek any remedies in the case of breach.

Thailand's Failure to Comply with Articles 6 and 7 of ICESCR

- 5.5 Given the lack of legal protection against discrimination, LGBTI people face a significant degree of discrimination in employment. As a result, many individuals choose to conceal their sexual orientation or gender identity so as to not jeopardise their career opportunities.¹³
- 5.6 A report released by the International Labour Organization (ILO) in June 2014 found that:

“Discrimination occurs at all stages of the employment process, including education and training, access to jobs, advancement opportunities, social security and partner benefits... Transgendered workers face even greater constraints, and their

¹⁰ Committee on Economic, Social and Cultural Rights, *“General Comment No. 18: Article 6 of the International Covenant on Economic, Social and Cultural Rights”*, adopted in the Committee's 35th session, Geneva, 7-25 November 2005, UN Economic and Social Council, E/C.12/GC/18, 6 February 2005, at 3, ¶ 4.

¹¹ Committee on Economic, Social and Cultural Rights, *“General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights (Art. 2 para. 2)”*, adopted in the Committee's 42nd session, Geneva, 4-22 May 2009, UN Economic and Social Council, E/C.12/GC/20, 10 June 2009, at 10, ¶ 32.

¹² Ludo Cuyvers and Tim de Meyer, ‘Market-driven promotion of international labour standards in Southeast Asia: the corporatization of social justice’ in Axel Marx, Miet Maertens, Johan Swinnen and Jan Wouters (eds), *Private Standards and Global Governance: Economic, Legal and Political Perspectives* (Edward Elgar Publishing, 2012), pp. 130–135.

¹³ United Nations Development Programme and United States Agency for International Development, *Being LGBT in Asia: Thailand Country Report*, p. 33.

participation in the workforce is often limited to very few professions such as beauticians and entertainers.”¹⁴

- 5.7 As result of stigma and systematic discrimination, transgender people face the greatest difficulty in obtaining and maintaining decent employment.¹⁵ Transgender people are often limited to working in low-level jobs in the entertainment, beauty, hospitality and sex industry, where they are highly vulnerable to HIV infection. This is a common occurrence even if they are highly educated.¹⁶
- 5.8 One of the key barriers to transgender people obtaining decent employment is the failure of the Thai Government to allow them to legally change their gender and obtain identity documents that reflect their gender expression. Accordingly, a mismatch arises between the legal (registered) sex of transgender people and their appearance. This allows them to be easily discriminated against by potential employers, who often demand that employees dress and act according to their legal sex.
- 5.9 Evidence from the ILO’s 2014 report on LGBTI employment discrimination in Thailand reveals that transgender people, as well as lesbian women who express a more masculine gender identity (called *tom* in Thai), are often asked about their sexual orientation or gender identity at the job interview stage and are then refused employment.¹⁷
- 5.10 The discriminatory barriers that LGBTI people face in obtaining employment, and the discrimination they face within the workplace itself, constitute violations of their right to work under Article 6 and their right to just and favourable work conditions under Article 7.

Recommendations

- 5.11 We urge the Committee to include in its concluding observations **recommendations** that Thailand:
- 5.11.1 amend the *Labour Protection Act 1998* to prohibit discrimination on the basis of sexual orientation and gender identity in employment; and
- 5.11.2 allow transgender people to legally change their gender to reflect their gender identity, in order to reduce barriers to employment, health care and education and to decrease societal discrimination.

6. ARTICLE 10 (PROTECTION AND ASSISTANCE TO THE FAMILY)

Relevant Articles of ICESCR

- 6.1 Article 10(1) of the ICESCR recognises that:

¹⁴ ‘ILO Report: LGBT Face Persistent Workplace Discrimination’, *UNAIDS Asia and the Pacific*, 10 June 2014

<<https://unaidsap.wordpress.com/2014/06/10/lesbians-gays-transgender-bisexuals-face-persistent-workplace-discrimination-ilo-report/>>.

¹⁵ Prayuth Chokrungravanont et al, ‘The Development of Sex Reassignment Surgery in Thailand: A Social Perspective’ (2014) *The Scientific World Journal* <<http://www.hindawi.com/journals/tswj/2014/182981/>>.

¹⁶ Prayuth Chokrungravanont et al, ‘The Development of Sex Reassignment Surgery in Thailand: A Social Perspective’ (2014) *The Scientific World Journal* <<http://www.hindawi.com/journals/tswj/2014/182981/>>.

¹⁷ International Labour Organization, *Gender Identity and Sexual Orientation: Promoting Rights, Diversity, and Equality in the World of Work (PRIDE) Project* (2014), cited in United Nations Development Programme and United States Agency for International Development, *Being LGBT in Asia: Thailand Country Report*, p. 33.

“The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children.”

- 6.2 The scope and application of Article 10(1) is informed by the non-discrimination principle in Article 2(2) of the ICESCR, which requires that protection and assistance to the family be granted without distinction as to sexual orientation and gender identity. As argued by Paula Gerber, Kristine Tay and Adiva Sifris, *“Article 10 and Article 2 read in tandem deliver a strong case for the ICESCR providing broad and overarching protection of same-sex families and children”*.¹⁸
- 6.3 Furthermore, Article 10(3) of the ICESCR stipulates that, *“Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions”*. When read together with Article 2(2), this means that the children of same-sex parents should not be subject to any discrimination due to their parentage, including discrimination that arises from non-recognition of their parents.

Thailand's Failure to Comply with Article 10 of ICESCR

(a) Lack of legal recognition of same-sex couples

- 6.4 Thai law does not currently recognise same-sex marriages or any other form of same-sex unions, such as registered partnerships or civil unions.
- 6.5 The right to establish a family is mentioned in Sections 1448-1460 of Part II (Conditions of Marriage) in Chapter V (Family) of the Civil and Commercial Code. Under this section, marriage is only discussed through the gender-specific terms “husband” and “wife” and “man” and “woman”. Further, the Ministry of Interior’s civil registration system provides guidelines for marriage registration. Pursuant to these guidelines, marriage must be a union between two persons: one biological male and one biological female.
- 6.6 A same-sex civil partnership bill is being considered by the National Legislative Assembly as of October 2014.¹⁹ However, while the bill would provide same-sex partners with certain rights, it continues to discriminate between same-sex and opposite-sex couples. For example, same-sex couples would still not be able to raise children or gain any parenting rights under the proposed bill, and the minimum age for entering into civil partnerships would be 20 years, rather than 17 years in the case of opposite-sex marriages.
- 6.7 The lack of legal recognition for same-sex partnerships is one of the main challenges preventing LGBTI persons from gaining access to a range of economic and social benefits. It therefore not only represents a violation of Article 10 of ICESCR, but also a range of other rights, such as the right to an adequate standard of living (including the right to housing) under Article 11 and the right to health under Article 12.
- 6.8 For example, without legal recognition, same-sex couples find it harder to obtain loans and housing, as well as to access health care plans and insurance from their partner’s employer. In Thailand, it is common practice for employers to provide medical insurance coverage to the

¹⁸ Paula Gerber, Kristine Tay and Adiva Sifris, ‘Marriage: A Human Right for All?’ (2014) 36 *Sydney Law Review* 643, p. 657.

¹⁹ Takato Mitsunaga, ‘Same-sex marriage may come true under Thai junta’, *Prachatai*, 9 October 2014 <<http://prachatai.org/english/node/4390>>.

employee and, in some cases, to their family members. However, because same-sex partners are not recognised as spouses or family members, they are unable to receive any employment-related health benefits.²⁰

(b) Lack of parenting rights for same-sex couples

- 6.9 Since February 2015, surrogacy is only available to opposite-sex married couples where at least one of the partners is Thai. While this legal change was introduced to prevent non-Thai couples from entering into commercial surrogacy arrangements, it has the effect of excluding same-sex couples from using surrogacy services.²¹ The effect is that same-sex couples find it significantly more difficult to establish a family in pursuance of their rights under Article 10.
- 6.10 Moreover, while it is theoretically possible for LGBTI persons to adopt children as a single parent, same-sex couples raising children are not allowed to obtain joint parenting rights as a couple.²²

Recommendations

- 6.11 We urge the Committee to include in its concluding observations a **recommendation** that Thailand provide the same legal rights to same-sex couples as to opposite-sex married couples, including parenting rights.

7. ARTICLE 12 (RIGHT TO HIGHEST ATTAINABLE STANDARD OF PHYSICAL AND MENTAL HEALTH)

Relevant Articles of ICESCR

- 7.1 Article 12(1) of ICESCR recognises the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. This right must be enjoyed without discrimination as to sexual orientation and gender identity.²³

Thailand's Failure to Comply with Article 12 of ICESCR

- 7.2 Despite improvements in Thailand's health care system in recent years, the country has failed to provide accessible and acceptable medical services specific to LGBTI needs. The health issues facing LGBTI individuals include a higher prevalence of HIV/AIDS, a lack of affordable sex reassignment surgery (SRS) and lack of legal recognition for same-sex couples, which prevents employment-related health benefits being transferred among same-sex partners, while also restricting the legal authority to make medical decisions for one's

²⁰ J Boonprasert, *Violated Lives: Narratives from LGBTIQs and International Human Rights Law* (Bangkok, 2011) p. 19, cited in United Nations Development Programme and United States Agency for International Development, *Being LGBT in Asia: Thailand Country Report*, p. 34.

²¹ 'Thailand bans commercial surrogacy', *The Guardian*, 20 February 2015 <<http://www.theguardian.com/world/2015/feb/20/thailand-bans-commercial-surrogacy>>.

²² Haris and Hawryluk Attorneys-at-Law, 'Same-Gender Adoption Law in Thailand' <<http://www.hhlegaladvisors.com/blog/same-gender-adoption-law-in-thailand/>>.

²³ Committee on Economic, Social and Cultural Rights, "General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights (Art. 2 para. 2)", adopted in the Committee's 42nd session, Geneva, 4-22 May 2009, UN Economic and Social Council, E/C.12/GC/20, 10 June 2009, at 10, ¶ 32.

same-sex partner.²⁴ Further, stigma and prejudice is still apparent within Thailand's health care system, which deters LGBTI individuals from seeking for care when required.²⁵

- 7.3 LGBTI health funding has tended to focus on the reduction of HIV rates, with funding not typically provided for other health issues faced by LGBTI communities. Accordingly, the healthcare programmes that are available for the LGBTI community are vastly underdeveloped and have not been inclusive of issues such as broader sexual and reproductive health, mental health and issues facing lesbian women, transgender people, LGBTI youth and elderly people.²⁶

(a) *Discrimination in accessing health care services*

- 7.4 LGBTI people continue to face discrimination while accessing health care services. This discrimination includes unequal standards of care, disclosure of sensitive and private health information and perceptions that LGBTI people are mentally ill simply because of their sexual orientation and gender identity.²⁷
- 7.5 Moreover, there are reports of transgender people being placed in sex-segregated wards that do not correspond to their gender identity. For example, Nada Chaiyajit, a transwoman, describes the refusal of a public hospital in Southern Thailand to place her in a women's ward, even though she had had sex reassignment surgery:

*"I was sick with an incredibly high fever of 40 degrees Celsius to the point where I needed to be admitted to the hospital. When I was admitted I was forced to be admitted to the men's ward. I pleaded with the doctor to put me in the women's ward but he said that he was just the on-call doctor and did not have the authority to make that decision. He proceeded to wheel me off to the men's ward. I told him I had already undergone sexual reassignment surgery, to please let me stay in the women's ward as I felt very uncomfortable in the men's ward. The nurse also said it was not possible – because I had a man's name, I had to be put in the men's ward, and continued wheeling me there. I tried to hold on to the doorframe so that they couldn't push me through..."*²⁸

(b) *Mental health*

- 7.6 High levels of discrimination and harassment have a negative impact on the mental health of LGBTI people in Thailand. A particular risk group for mental health issues are LGBTI youth. A study of bullying of LGBTI students in secondary schools, released in April 2014, shows significantly poorer mental health outcomes (as well as sexual health outcomes) for students victimised on the basis of their sexual orientation or gender identity. Key findings of the study include the fact that **22.6%** of respondents victimised for their actual or perceived sexual

²⁴ United Nations Development Programme and United States Agency for International Development, *Being LGBT in Asia: Thailand Country Report*, pp. 39–40.

²⁵ United Nations Development Programme and United States Agency for International Development, *Being LGBT in Asia: Thailand Country Report*, p. 40.

²⁶ United Nations Development Programme and United States Agency for International Development, *Being LGBT in Asia: Thailand Country Report*, p. 39.

²⁷ Timo Ojanen, *Mental Health Services and Sexual/Gender Minority Clients in Bangkok, Thailand: Views by Users and Service Providers* (Assumption University, Bangkok, 2010), cited in United Nations Development Programme and United States Agency for International Development, *Being LGBT in Asia: Thailand Country Report*, p. 40..

²⁸ United Nations Development Programme and United States Agency for International Development, *Being LGBT in Asia: Thailand Country Report*, p. 40.

orientation or gender identity were depressed (according to the Thai CES-D model), compared to only 6.0% of non-victimised students. Moreover, 6.7% of victimised students had attempted suicide in the year prior to the study, compared to 1.2% among non-victimised students.²⁹ These findings indicate the alarming barriers faced by LGBTI youth in achieving their right to the highest attainable standard of mental health under Article 12 of ICESCR. Other findings from the study are discussed further in paragraphs 8.3 to 8.5 below, in the context of the right to education under Article 13.

- 7.7 Thailand lacks a strategy to improve the mental health of LGBTI people. Such a strategy must focus not only on reducing societal discrimination and stigma in various areas of public and private life, but also on improving the accessibility of mental health services through sensitivity training of medical professionals.

(c) *Abuse, harassment and violence*

- 7.8 LGBTI persons are also vulnerable to abuse, harassment and violence that can be detrimental not only to their mental health, but also to their physical health and bodily integrity.
- 7.9 In February 2012, police received a report from a 14-year-old girl that her father had been repeatedly raping her for four years because she was “hanging out with *toms*”, a Thai word for lesbian women who dress and act like men.³⁰

Recommendations

- 7.10 We urge the Committee to include in its concluding observations **recommendations** that Thailand:
- 7.10.1 introduce laws prohibiting discrimination on the basis of sexual orientation and gender identity in all areas of public life, including employment, health care and education; and
- 7.10.2 develop and implement a national plan to address high levels of mental illness among the LGBTI population, both by reducing societal discrimination and stigma and by implementing LGBTI sensitivity training for mental health professionals; and

8. ARTICLE 13 (RIGHT TO EDUCATION)

Relevant Articles of ICESCR

- 8.1 Article 13(1) of ICESCR recognises “the right of everyone to education”, where education “shall be directed to the full development of the human personality and the sense of its dignity”. The Committee has confirmed that State parties are under an obligation to “avoid measures that hinder or prevent the enjoyment of the right to education.”³¹ Article 2(2)

²⁹ UNESCO Bangkok Office, Plan International Thailand and Mahidol University, ‘Bullying targeting secondary school students who are or are perceived to be transgender or same-sex attracted’ (April 2014), p. 61 <<http://unesdoc.unesco.org/images/0022/002275/227518e.pdf>>.

³⁰ International Gay and Lesbian Human Rights Commission, ‘Letter to Thai Officials: Killings of Lesbian Women and Transgender People in Thailand’, 22 March 2012 <<http://iglhrc.org/content/letter-thai-officials-killings-lesbian-women-and-transgender-people-thailand>>; Per Liljas, ‘Thailand’s Intolerance of Its Own LGBT Community Will Surprise You’, *TIME*, 5 March 2014 <<http://time.com/12603/thailands-intolerance-of-its-own-lgbt-community-will-surprise-you/>>.

³¹ Committee on Economic, Social and Cultural Rights, *General Comment No. 13, The Right to Education (art. 13)*, adopted in the Committee’s 21st session, 15 November–3 December 1999, UN Economic and Social Council, E/C.12/1999/10, 8 December 1999, at 10, ¶ 47.

guarantees that the right to education is exercised without discrimination of any kind, including on the basis of sexual orientation or gender identity.³²

Thailand's failure to comply with Article 13 of ICESCR

(a) Failure to take action against bullying and harassment in schools

8.2 Thai laws or policies do not provide any protection to LGBTI students from harassment and bullying. As a result, bullying and harassment remain very widespread in Thai schools. This results in violations of the right to education by preventing victimised students from reaching their full potential and participation in the education environment, as well as affecting their attendance.³³

8.3 A study released in April 2014 by UNESCO, in partnership with Plan International Thailand and Mahidol University, revealed the extent of bullying and violence against LGBT students in Thai schools.³⁴ The study, which was conducted on 2070 students across Thailand, found that:

- **55.7%** of self-identified LGBT students had suffered from at least one form of bullying because of their sexual orientation or gender identity within the month before the survey was taken – this included physical, verbal, social or sexual harassment;
- **30.9%** of self-identified LGBT students had been **physically harassed** because of their sexual orientation or gender identity within the month before the survey was taken (including physical violence, threats with a weapon, being locked into a confined space or theft of belongings); and
- **69.0%** of boys who identified as “less masculine than other boys” had suffered from at least one form of bullying because of their sexual orientation or gender identity within the month before the survey was taken.³⁵

8.4 The study also found that those students who had been bullied because of their sexual orientation or gender identity had significantly poorer educational outcomes, thereby significantly affecting their right to education under Article 13 of ICESCR. For example, students victimised for being LGBT (or perceived as LGBT) were over twice as likely as non-victimised students to have unauthorised absences from school in the month before the survey was taken. Victimised students also had poorer academic performances: among those students victimised for being LGBT (or perceived as LGBT), only **33.8%** had a GPA above 3.0 in the term prior to the study, compared to 45.4% of victimised students.³⁶

³² Committee on Economic, Social and Cultural Rights, "General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights (art. 2 para. 2)", adopted in the Committee's 42nd session, Geneva, 4-22 May 2009, UN Economic and Social Council, E/C.12/GC/20, 10 June 2009, at 10, ¶ 32.

³³ Pinheiro, P.S. "World Report on Violence Against Children, United Nations Secretary-General's Study on Violence Against Children" (2010) Geneva, Switzerland.

³⁴ UNESCO Bangkok Office, Plan International Thailand and Mahidol University, 'Bullying targeting secondary school students who are or are perceived to be transgender or same-sex attracted' (April 2014) <<http://unesdoc.unesco.org/images/0022/002275/227518e.pdf>>.

³⁵ UNESCO Bangkok Office, Plan International Thailand and Mahidol University, 'Bullying targeting secondary school students who are or are perceived to be transgender or same-sex attracted' (April 2014), pp. 49, 51 <<http://unesdoc.unesco.org/images/0022/002275/227518e.pdf>>.

³⁶ UNESCO Bangkok Office, Plan International Thailand and Mahidol University, 'Bullying targeting secondary school students who are or are perceived to be transgender or same-sex attracted' (April 2014), p. 61 <<http://unesdoc.unesco.org/images/0022/002275/227518e.pdf>>.

8.5 Moreover, students bullied or harassed for being LGBT have significantly poorer health outcomes, affecting their right to physical and mental health under Article 12. Among students victimised for being LGBT (or perceived as LGBT):

- **6.7%** had attempted suicide in year prior to the study, compared to 1.2% among non-victimised students;
- **9.2%** had had unprotected sex in the 3 months prior to the study, compared to 2.5% among non-victimised students; and
- **22.6%** were found to be depressed (according to the Thai CES-D model), compared to 6.0% among non-victimised students.³⁷

(b) Failure to include sexual and gender diversity in school curricula

8.6 Thailand does not currently have a mandated curriculum on sexual and gender diversity, whether within sex education programs or more broadly. Instead, sex education textbooks still label homosexual behaviour as “abnormal” and “sexually deviant”.³⁸ Furthermore, one health education textbook for 7th Grade students refers to transgender people as having “a false sense of gender consciousness”.³⁹ These descriptions contribute to an environment where the bullying and harassment of LGBTI students is legitimised, while also negatively affecting the health outcomes of LGBTI students (see paragraph 7.6 above).

(c) Uniform requirements for transgender students

8.7 A majority of Thailand's education institutions require students to wear uniforms. Students are usually obliged to wear uniforms that reflect the gender of their identification documents. This creates significant difficulty for transgender boys and girls, who will breach uniform guidelines if they dress according to their identified gender. Forcing transgender boys and girls to dress according to their legal sex prevents them from expressing their gender, causing many transgender individuals to drop out of school or higher education institutions and creating a significant degree of mental trauma for them.⁴⁰

Recommendations

8.8 We urge the Committee to include in its concluding observations **recommendations** that the Government:

- 8.8.1 develop and implement a national plan to address discrimination, bullying and harassment on the basis of sexual orientation and gender identity in the education system;
- 8.8.2 revise educational materials that refer to homosexuality and transgender identity in discriminatory terms and instead incorporate non-discriminatory references to

³⁷ UNESCO Bangkok Office, Plan International Thailand and Mahidol University, ‘Bullying targeting secondary school students who are or are perceived to be transgender or same-sex attracted’ (April 2014), p. 61 <<http://unesdoc.unesco.org/images/0022/002275/227518e.pdf>>.

³⁸ United Nations Development Programme and United States Agency for International Development, *Being LGBT in Asia: Thailand Country Report*, p. 37.

³⁹ UNESCO HIV and Health Education Clearinghouse (2014), ‘Call to revise textbooks wrongly portraying LGBT people in China’, 16 October 2014 <<http://hivhealthclearinghouse.unesco.org/news/call-revise-textbooks-wrongly-portraying-lgbt-people-china>>.

⁴⁰ United Nations Development Programme and United States Agency for International Development, *Being LGBT in Asia: Thailand Country Report*, p. 36.

sexual orientation and gender identity in the school curriculum and teacher training programs; and

- 8.8.3 allow transgender people to legally change their gender to reflect their gender identity, in order to reduce barriers to employment and education and decrease societal discrimination.

9. CONCLUSIONS AND RECOMMENDATIONS

- 9.1 We recognise that Thailand has taken several positive steps in recognising human rights and equally amongst LGBTI persons. However, failure to provide adequate protection against discrimination and the failure to legally recognise same-sex unions constitute a violation of a number of rights under ICESCR.

- 9.2 We therefore urge the Committee to include in its concluding observations **recommendations** that Thailand:

- 9.2.1 ensure that the new Constitution contains explicit protections from discrimination on the basis of sexual orientation and gender identity (Article 2); and
- 9.2.2 introduce laws prohibiting discrimination on the basis of sexual orientation and gender identity in all areas of public life, including employment, health care and education (Articles 2, 6, 7, 12 and 13);
- 9.2.3 amend the *Labour Protection Act 1998* to prohibit discrimination on the basis of sexual orientation and gender identity in employment (Articles 6 and 7); and
- 9.2.4 allow transgender people to legally change their gender to reflect their gender identity, in order to reduce barriers to employment, health care and education and decrease societal discrimination (Articles 6, 7, 12 and 13);
- 9.2.5 provide the same legal rights to same-sex couples as to opposite-sex married couples, including parenting rights (Article 10);
- 9.2.6 develop and implement a national plan to address high levels of mental illness among the LGBTI population, both by reducing societal discrimination and stigma and by introducing LGBTI sensitivity training for mental health professionals (Article 12);
- 9.2.7 develop and implement a national plan to address discrimination, bullying and harassment on the basis of sexual orientation and gender identity in the education system (Articles 12 and 13); and
- 9.2.8 revise educational materials that refer to homosexuality and transgender identity in discriminatory terms and instead incorporate non-discriminatory references to sexual orientation and gender identity in the school curriculum and teacher training programs (Article 13).