

SUBMISSION ON THE SITUATIONS OF LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX (“LGBTI”) PEOPLE IN VIET NAM

FOR THE THIRD CYCLE OF UNIVERSAL PERIODIC REVIEW (“UPR”) OF VIET NAM (JANUARY - FEBRUARY 2019)

This report is submitted to the OHCHR by:

Institute for Studies of Society, Economy and Environment (“iSEE”, “we”, “our”)

Methodology

1. iSEE is a Vietnamese non-governmental organization established in 17th July 2007 working towards the rights of minority groups, which include LGBTI people.
2. The data in this submission are collected from the following sources: the existing provisions of the Vietnamese Constitution, laws, voluntary pledges and commitments made by Viet Nam, the published reports of UN agencies, iSEE and other Vietnamese institutions, press, and individual cases who were in direct contact with iSEE and other organizations.
3. This UPR submission was consulted for the preparation with the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), Asian Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA ASIA), COC Netherlands, the Center for Research and Applied Science in Gender - Family - Women and Adolescents (CSAGA) and the Lighthouse Social Enterprise.

Background and follow-up to the Second Cycle UPR of Viet Nam

4. The Second Cycle of UPR of Viet Nam happened in June 2014. LGBTI rights issues were not included in the National Report,¹ nor in the mid-term report of the Government in 2017.²
5. During the Second Cycle, Viet Nam received one recommendation from Chile (paragraph 143.88, A/HRC/26/6) to “*enact an anti-discrimination law guaranteeing equality of all citizens, regardless of sexual orientation and gender identity.*”³ The recommendation was accepted by Viet Nam.⁴
6. According to the Government, by February 2017, 129 out of 182 recommendations had been implemented.⁵ However, no comprehensive anti-discrimination law, as recommended by Chile, has been introduced so far in Viet Nam. In the latest law-making agenda of 2018-2019, Viet Nam has not included any plans for anti-discrimination law into its legislative program.⁶

Legal situations of LGBTI people in Viet Nam after the Second Cycle UPR

7. **Criminalization and protection based on sexual orientation, gender identity and sex characteristics:** Although criminalization of same-sex relationships and cross-dressing does not exist in Vietnam, specific provisions using terms such as sexual

orientation, gender identity have never been enacted. Vietnam's Constitution of 2013, provides that "*all citizens are equal before the law.*"⁷

8. **Sexual orientation rights:** In 2014, the Law on Marriage and Family removed the ban on same-sex marriage, yet did not recognize it, and removed all fines related to same-sex weddings or ceremonies.⁸ This leaves same-sex couples without any legal protection. Adoption is limited "*for a single parent or a couple of husband and wife.*"⁹
9. **Gender identity rights:** Before 2015, the law prohibited gender affirmative surgery and gender marker change. When the Civil Code 2015 was passed, it legalized gender affirmative surgery and gender marker change.¹⁰ Although the Civil Code took effect in 2017, it will need a Law on Transgender to implement these regulations. However, this is not officially scheduled in the law-making agenda of the National Assembly as of 2018-2019.
10. **Sex characteristic rights:** The new Civil Code of 2015 reiterated the regulation in Decree 88/ND-CP/2008 on people who are born with intersex status.¹¹ A young intersex person may have to undergo sex change surgery without their consent,¹² creating a risk that their assigned gender might not match with their gender identity, as well as other short-term and long-term health problems.¹³
11. **LGBTI people in prison:** The Law on Temporary Custody and Detention of 2015 has been discussed with regards to inclusion of LGBTI people with a positive attitude.¹⁴ LGBTI people can be confined in a separate place to protect them against harassment and sexual attacks. However, there is no official record on how this law has been implemented in reality.
12. **LGBTI people and sexual violence:** In 2015, a new Penal Code was passed whereby the crime of rape and sexual attack was extended to include any forced sex activities between two people. The Penal Code took effect in first day of 2018.¹⁵
13. **LGBTI people and basic freedom:** A law on association and a law on peaceful assembly and demonstration have been in discussion for decades but never come to reality, which pose obstacles for LGBTI community in the mobilization of resources.

Situations of discrimination based on sexual orientation and gender identity

14. In our 2015 survey, one in three respondents stated that they feel they had been subject to discrimination because of their sexual orientation and/or gender identity within the last 12 months. In general, throughout the study, transgender people, both trans men and trans women, are always the ones who experience the highest degree of discrimination. Families, schools, and workplaces are the environments where discrimination most occurs against LGBTI people.¹⁶
15. Amongst those who had been discriminated within the last 12 months, 4.5% reported that they were physically assaulted, 8.4% were threatened with physical assault, 1.9% were sexually assaulted, and 2.2% were threatened with sexual assault. In particular, for cases of physical assault, there were 19 cases where LGBTI people were attacked

by someone at school, 14 cases by family members, 11 cases by perpetrators at the workplace, 1 case by a police officer, and 15 cases by unknown perpetrators.¹⁷

16. Three-fourth of respondents who identify as LGBTI persons have no knowledge about which law in Vietnam could be used to protect them from discrimination.¹⁸ Only 2% of the respondents who had been discriminated in the last 12 months expressed that they reported the incidents to the police, civil defense force, or local authorities. Amongst 98% of those who decided not to report with the authorities, the main reason given is viewing the incident as minor and frequently occurring (63.7%). The next popular reasons are that they did not believe the incident would be resolved (46.7%), embarrassment and not wishing to disclose information about themselves (26.3%) and fear of reaction from the police (17.7%).¹⁹ The government has a legal aid system for disadvantaged groups, such as the poor, children and women survivors of domestic violence, but it does not include LGBTI.²⁰
17. There are 5.1% of respondents choosing to report the incidents to LGBTI advocacy groups. Only a few respondents decided to work with counsels, press corps, friends, or relatives. Nearly one-tenth (9.4%) of the respondents decided to share about their discrimination incidents on social media sites as Facebook and YouTube.²¹
18. iSEE received and gave support for seven cases of human rights violations in first half of 2017: one on a cancelation of a same-sex wedding, four on domestic violence against LGBTI persons, and two on discrimination against LGBTI students in schools. There are four cases that LGBTI who living with HIV were disclosed their HIV statuses or forced to quit their jobs.²² The LGBT hotline of CSAGA received 280 cases on discrimination, domestic violence (from June 2017 to June 2018) with popular issues such as “gay cure” by visiting fortune teller, beating, isolation or forced marriage.²³

LGBTI people and sexual health rights in Viet Nam

19. In the National Strategic Plan on HIV/AIDS Prevention (Vision 2020, 2030), men who have sex with men are listed in the key populations for intervention.²⁴ The Intervention and Harm Reduction Program in the National Strategic Plan on HIV/AIDS Prevention mentions interventions on men who have sex with men: an increase in the percentage of MSM at high risk who are able to access HIV prevention programs from 60% in 2015 to 70% in 2020; an increase in the percentage of MSM who use condoms in the latest time with their male partner from 80% in 2015 to 90% in 2020; an increase in the percentage of MSM who receive a HIV test and know the result within the last 12 months from 50% in 2015 to 80% in 2020; a decrease in the prevalence rate of HIV infected MSM from under 10% in 2015 and continuing to restrain this rate until 2020.²⁵ While limited data exists on MSM, new efforts are underway to better understand this aspect of the epidemic.
20. Vietnam supports and pledges to do their level best to ensure successful implementation of the 2030 Agenda and the Sustainable Development Goals (SDGs)²⁶ to end AIDS by 2030. Vietnam is among first countries joining the UN 90-90-90 goal, which has targets for 90% of all people living with HIV to know their

HIV status, 90% of all people with diagnosed with HIV to receive sustained antiretroviral therapy, and 90% of all people receiving antiretroviral therapy to have viral suppression by 2020.²⁷

21. Anti-retroviral treatment for people living with HIV/AIDS has been paid for by health insurance since January 2019, instead of from international donors in the past. In the past, HIV/AIDS treatment was free, so health insurance was not required to receive treatment. The rate of people living with HIV with health insurance in 2017 was about 50%.²⁸
22. The Penal Code of 2015, which took effect in 2018, regulates the crime of spreading HIV to other people. Compared to the previous Penal Code, it has outlawed the crime in case “the victim knows about the status of the HIV carrier and agrees to have sex with them.”
23. The law does not ban blood donation from men who have sex with men. However, there are cases on media that blood donation from men who have sex with men were rejected.²⁹
24. In Viet Nam, although compulsory testing is generally prohibited, exceptions exist under the law for certain occupations for which job applicants or employees may be required to undergo tests, e.g. flight crews and special occupations in the security and defense domains.³⁰
25. Stigma, discrimination, and depression have been found to be associated with engaging in HIV-related risky behaviors such as unprotected sex, drug use, or having sex while on drugs. Most men who have sex with men in Vietnam try to keep their sexual identities and behaviors a secret.^{31 32}

Recommendations for the Government of Viet Nam for the Third Cycle of UPR

We call on the Government of Viet Nam to:

- 22.1. Implement the recommendation 143.88 made by Chile (A/HRC/26/6), which was accepted by Viet Nam in the Second Cycle of UPR, within two years, to pass a comprehensive anti-discrimination law that includes the prohibition of discrimination on the basis of sexual orientation and gender identity;
- 22.2. Enact the Law on Transgender, which is required by the Civil Code 2015 (Article 37), within two years, to ensure that transgender and non-binary people can have their gender marker changed on the basis of self-determination;
- 22.3. Review the Law on Marriage and Family to include same-sex couples and ensure they have the equal rights of founding a family and protection of marriage as opposite sex couples;
- 22.4. Immediately outlaw non-consensual and non-medically necessary medical interventions carried out on intersex children in the Civil Code (Article 36) and the Decree 88/ND-CP/2008, and guarantee intersex people their rights to bodily integrity and self-determination;

- 22.5. Enact a law on freedom of association and a law on peaceful assembly and demonstration to ensure the freedom of expression of all people;
- 22.6. Include the terms “sexual orientation” and “gender identity” in clauses on equality and non-discrimination in the Revised Labor Code and other laws;
- 22.7. Include comprehensive sexuality education, that includes sexual orientation, gender identity and gender expression; and
- 22.8. Conduct awareness raising strategies about LGBTI for the entire society, especially all civil servants, including law enforcement officers.

Endnotes

¹ Viet Nam, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21*, A/HRC/WG.6/18/VNM/1, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/185/15/PDF/G1318515.pdf?OpenElement>, accessed 11 July 2018.

² Viet Nam Mission, *New Developments in National Legislation on Human Rights and Updates on the Implementation of 2nd UPR Cycle Recommendations accepted by Viet Nam*, <https://lib.ohchr.org/HRBodies/UPR/Documents/Session18/VN/VietNam2ndCycle.pdf>, accessed 11 July 2018.

³ Human Rights Council, *Report of the Working Group on the Universal Periodic Review on Viet Nam*, A/HRC/26/6, paragraph 143.88, http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A_HRC_26_6_ENG.DOC, accessed 11 July 2018.

⁴ Human Rights Council, *Report of the Working Group on the Universal Periodic Review*, A_HRC_26_6_Add.1_VietNam_E, paragraph 1.IV., https://lib.ohchr.org/HRBodies/UPR/Documents/Session18/VN/A_HRC_26_6_Add.1_VietNam_E.doc, accessed 11 July 2018.

⁵ Supra note 2, page 13.

⁶ Viet Nam News, *National Assembly completes fifth session's working agenda*, <http://vietnamnews.vn/politics-laws/450019/national-assembly-completes-fifth-sessions-working-agenda.html#sfBWZTUgO6e5bRU3.99>, accessed 11 July 2018.

⁷ *The Constitution of 2013*. Article 16. http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=94490&p_country=VNM&p_classification=01.01, accessed 11 July 2018.

⁸ *Law on Marriage on Family 2014*. Article 8. <http://vbpl.vn/TW/Pages/vbpqen-toanvan.aspx?ItemID=11018>, accessed 11 July 2018.

⁹ *Law on Adoption*. Paragraph 3 of Article 8. http://moj.gov.vn/vbpq/en/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=10483, accessed 11 July 2018.

¹⁰ The Article 37 reads, “The sex change is performed as regulated by law. Individuals who underwent surgery have the rights and obligation to register the change of civil status according to the law on civil status; have personal rights consistent with new gender as stipulated by this Code and other relevant laws.” The 2005 Civil Code and Decree No. 88/2008/ND-CP is currently prohibits sex reassignment surgery (SRS) and not allow those who undergone SRS to change their legal status. <http://isee.org.vn/en/Blog/Article/viet-nam-allows-sex-change-and-gender-marker-change>

¹¹ *Civil Code 2015*. Article 36. <http://hethongphapluatvietnam.net/law-no-91-2015-qh13-dated-november-24-2015-the-civil-code.html>, accessed 11 July 2018.

¹² If a person is under 9 years of age, the requirement for medical intervention and changes to documents are decided by the parents and guardians without that person's consent. If that person is between the age of 9 and 18, the requirement for medical intervention and changes to documents will need to have the consent of that person. Refer to *Form number 08, TP/HT-2012-TKTĐ, CCHT* in the attached appendix of *Circular number 05/2012/TT-BTP*.

¹³ A case in direct contact with the Institute for the Studies of Society, Economy and Environment shares that as a child, this person was operated to define gender as male. However, when that he grows up, he has the sense that his gender identity is female.

¹⁴ *Law on Temporary Custody and Detention 2015*, <http://vbpl.vn/TW/Pages/vbpqen-toanvan.aspx?ItemID=11047>, accessed 11 July 2018, *Law on Military Service 2015*,

http://moj.gov.vn/vbpq/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=30514, accessed 11 July 2018.

¹⁵ Viet Nam News, *NA adopts changes to 2015 Penal Code*, Viet Nam News, 22 June 2017, <http://vietnamnews.vn/politics-laws/378677/na-adopts-changes-to-2015-penal-code.html>, accessed 11 July 2018.

In old Penal Code, transgender women or gay men or anyone who hold male gender in legal documents are not protected in crime of rape because only sex between a man and a woman are recognize as sex.

¹⁶ 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, 2015, page 14, http://thuvien.lgbt/s/iSEE_SOI-Discrimination-in-Viet-Nam.pdf, accessed 11 July 2018. (Sample size: 5,498)

¹⁷ Ibid, page 75-79. (Sample size: 5,498)

¹⁸ Ibid, page 83. (Sample size: 5,498)

¹⁹ Ibid, page 80-91. (Sample size: 5,498)

²⁰ Vietnam Legal Aid, *Who We Are*, <http://legallaid.gov.vn/who-are-we>, accessed 11 July 2018.

²¹ Supra note 17, page 81. (Sample size: 5,498)

²² In direct contact with the Lighthouse Social Enterprise, email communication, 9 July 2018.

²³ In direct contact with the Center for Research and Applied Science in Gender - Family - Women and Adolescents (CSAGA), email communication, 10 July 2018.

²⁴ Vietnam Administration of HIV/AIDS Control (VAAC), *National Strategic Plan HIV/AIDS Prevention*, page 21, http://vaac.gov.vn/Cms_Data/Contents/Vaac/Media/Documents/Sach-Chien-luoc-quoc-gia-phong-chong-HIV.doc, accessed 11 July 2018.

²⁵ Ibid, page 20.

²⁶ Tuoi Tre News, *Vietnam and the new global goals: Leave no one behind*, 10 April 2015, <http://tuoitrenews.vn/international/30785/vietnam-and-the-new-global-goals-leave-no-one-behind>, accessed 11 July 2018.

²⁷ UNAIDS, *Viet Nam is the first country in Asia to commit to new HIV treatment targets*, 27 October 2014, <http://www.unaids.org/en/resources/presscentre/featurestories/2014/october/20141027vietnamtargets>, accessed 11 July 2018.

²⁸ Viet Nam News, *How VN will control AIDS absent foreign funds*, Viet Nam News, 13 March 2017, <http://vietnamnews.vn/society/health/372704/how-vn-will-control-aids-absent-foreign-funds.html>, accessed 11 July 2018.

²⁹ Toan Nguyen, *Gay men cannot donate their blood!*, SaoStar, <https://saostar.vn/xa-hoi/dong-tinh-nam-khong-duoc-phep-hien-mau-nhan-dao-94533.html>, accessed 11 July 2018.

³⁰ *Decree No. 108/2007/ND-CP* of June 26, 2007, Detailing the Implementation of a Number of Articles of the Law On HIV/AIDS Prevention And Control, article 20. http://vaac.gov.vn/en-us/vanban_detail/Detail/Decree-no-108-2007-ND-CP-DETAILING-THE-IMPLEMENTATION-OF-A-NUMBER-OF-ARTICLES-OF-THE-LAW-ON-HIV-AIDS-PREVENTION-AND-CONTROL, accessed 11 July 2018.

³¹ Institute for Social Development Studies (ISDS), *Understanding and Reducing Stigma Related to Men Who Have Sex With Men and HIV*, Women Publishing House, Ho Chi Minh City, Vietnam, 2010.

³² L. M. Giang, V. D. Viet, and B. R. M. Hao, *Sexual health and men who have sex with men in Vietnam: an integrated approach to preventive health care*, *Advances in Preventive Medicine*, vol. 2012, Article ID 796192, 2012.