

# Report on Singapore regarding the human rights of LGBTI persons

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## Executive Summary

This report has been prepared by Kaleidoscope Australia Human Rights Foundation<sup>1</sup> and the Sexual Rights Initiative,<sup>2</sup> together with Singaporean NGOs Safe Singapore,<sup>3</sup> Sayoni,<sup>4</sup> the Bear Project and Young Out. It highlights some instances where Singapore is failing to adequately protect the human rights of lesbian, gay, bisexual, transgender and intersex (**LGTBI**) persons.

There are several areas where Singapore falls short of its obligations under international human rights law in relation to LGBTI persons. In particular, Singapore continues to criminalise sexual relations between men and there are no laws which prohibit discrimination on the basis of sexual orientation or gender identity.

**Key words:** sexual orientation, gender identity, criminalization, discrimination, freedom of expression, censorship, stigmatization, economic, cultural and civil rights.

## Discrimination against LGBTI persons

1. The continuing criminalisation of sexual activity between men, together with legislative and administrative framework of discrimination of LGBTI persons, constitute violations by Singapore of a number of rights under international human rights law, including the right to privacy and the right to equality and non-discrimination.
2. Section 377A of the Singapore Penal Code, criminalises "acts of gross indecency" between men, including sodomy, and imposes a term of up to 2 years imprisonment. The section applies specifically to men, and may be applied regardless of whether those acts are committed in public or private spaces. In 2007, the State of Singapore undertook a review of its Penal Code, including section 377A. Although the majority of the laws under review were repealed, section 377A was not.
3. This law is rarely used and generally, if LGBTI persons are arrested in a public space, they are generally prosecuted under section 354,<sup>5</sup> or under section 294(a) of the Penal Code<sup>6</sup>.

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

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

<sup>3</sup> **Safe Singapore** is an organisation of parents, families and friends of LGBTQ (Lesbian, Gay, Bisexual, Transgender and Questioning) persons who believe in a society that accepts, affirms and empowers everyone to participate fully in it, regardless of gender identity or sexual orientation.

<sup>4</sup> **Sayoni** is an organisation based in Singapore for lesbian, queer, bisexual and transgender women.

<sup>5</sup> *Penal Code*, above n 5. Section 354(1) reads: Whoever assaults or uses criminal force to any person, intending to outrage or knowing it to be likely that he will thereby outrage the modesty of that person, shall be punished with imprisonment for a term which may extend to 2 years, or with fine, or with caning, or with any combination of such punishments. (2) Whoever commits an offence under subsection (1) against any person under 14 years of age shall be

4. Recently, the issue of LGBTI rights has been under domestic and international scrutiny, following a Singaporean Court of Appeal ruling in October 2014, upholding the constitutionality of section 377A of the *Penal Code*. The Office of the High Commissioner for Human Rights, international non-governmental organisations and Singaporean LGBTI groups have expressed dissatisfaction at the Court's decision.<sup>7</sup> In the wake of this finding, the Singapore has been under pressure to reconsider repeal of section 377A. However it is considered unlikely that the State will change its position in respect of section 377A, and LGBTI persons continue to live under the threat of enforcement of this section.<sup>8</sup>
5. The State has suggested its position seeks to balance the "conservative" position of the majority with the understanding that LGBTI people are "a part of Singapore society".<sup>9</sup>
6. In addition, the public discourse surrounding this decision demonstrates that homophobia is prevalent in Singapore, and that this discriminatory prejudice is indorsed by the State.<sup>10</sup> Section 377A reinforces negative views towards LGBTI people in the Singaporean community and acts as a mechanism to limit LGBTI activism.

### Recommendations:

*The State of Singapore should:*

7. Take the necessary measures to eliminate legislation and policies that – in a direct or an indirect way – criminalize same sex relations and discriminate against LGBTI people.
8. Repeal section 377A of the *Penal Code* and decriminalise sexual relations between men.

### Lack of progress in the protection of LGBTI Human Rights

9. Singapore's Constitution prohibits discrimination on a number of bases, including race and religion,<sup>11</sup> but it does not explicitly prohibit discrimination based on sexual orientation. In the recent Court of Appeal decision regarding section 377A, the Court rejected the idea that the Constitution could be interpreted to prohibit legislation that could imply

punished with imprisonment for a term which may extend to 5 years, or with fine, or with caning, or with any combination of such punishments. See also Chua, above n6, 37-38.

<sup>6</sup> *Penal Code*, above n 5. Section 294 reads: Whoever, to the annoyance of (a) others does any obscene act in any public place; or (b) sings, recites or utters any obscene song, ballad or words in or near any public place, shall be punished with imprisonment for a term which may extend to 3 months, or with fine, or with both.

Tan Eng Hong, who instigated the recent appeal regarding the constitutionality of section 377A, was initially arrested regarding allegations of oral sex in a public bathroom under section 377A in March 2010. The charge was dropped in October 2010, but he was instead charged (for the same incident) under section 294(a) of the *Penal Code*.

<sup>7</sup> Sylvia Tan, 'UN rights office calls on Singapore's legislature to respond to court's decision, repeal anti-gay law', *Gay Star News*, 1 November 2014; accessed at [<http://www.gaystarnews.com/article/un-rights-office-calls-singapores-legislature-respond-courts-decision-repeal-anti-gay-sex-la>]; and UN News Centre, 'Singapore edict criminalizing same-sex relation 'missed opportunity' - UN rights office', available at [<http://www.un.org/apps/news/story.asp?NewsID=49219>].

<sup>8</sup> Stewart Chong, 'Gay Liberation in the Illiberal State', (January 2015) 24(1) *Washington International Law Journal* 10. This section of the Code imposes a term of imprisonment or a fine for committing an obscene act in a public place.

<sup>9</sup> *Singapore Parliamentary Debates*, Official Report (23 October 2007) vol 83 at col 2397-2407 (Speech of Prime Minister Lee Hsien Loong), accessible at [<http://sprs.parl.gov.sg/search/report.jsp?currentPubID=00004748-WA>].

<sup>10</sup> Detenber et al, above n 7, 1315-1316. See also Chong, above n 13, 11-12.

<sup>11</sup> Article 12(2) of the Constitution reads: *Except as expressly authorised by this Constitution, there shall be no discrimination against citizens of Singapore on the ground only of religion, race, descent or place of birth in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment.*

discrimination based on sexual orientation.<sup>12</sup> Up till now, the State has avoided to enact specific legislation that prohibits discrimination on the basis of sexual orientation.<sup>13</sup>

10. In 2011, at the Universal Periodic Review, Singapore affirmed *"that all individuals were free to pursue their lifestyles, and recognition and success were based on merit"*.<sup>14</sup> Despite this affirmative statement, active discrimination against LGBTI persons exists in Singapore and the State has not taken any formal steps to further the rights of LGBTI persons since its last review.
11. Singapore continues to have an LGBTI activist community.<sup>15</sup> Since 2009, an annual public LGBTI event has been held in Hong Lim Park.<sup>16</sup> 'Pink Dot' has consistently grown in popularity since its inception and in 2015, it was attended by more than 28,000 people.<sup>17</sup> However, the event has also drawn public criticisms from conservative and religious groups in Singapore.<sup>18</sup>

## Recommendations:

*The State of Singapore should:*

12. Amend Article 12(2) of the Constitution to include sexual orientation and gender identity among the grounds upon which a person cannot be discriminated against.
13. Open a dialogue on culture and human rights to guarantee that no human rights violations will be perpetrated against anyone – including LGBTI persons – under the name of culture, religion or traditional values.

## Economic, social, cultural and civil LGBT rights

14. The right of LGBTI people to adequate housing is often violated in Singapore. LGBTI couples are usually ineligible for public housing.<sup>19</sup> This has a significant impact in a country where 80% of the population live in houses built by the Government's Housing Development Board. Of those people, 95% hold a 99-year lease over their property.<sup>20</sup> In order to access one of these properties, a Singaporean citizen or permanent resident must intend to form a "nuclear" family, and consequently same-sex couples are excluded. This has a significant impact on LGBTI people, who can either wait until age 35, when singles can co-own these properties, or purchase private properties, which are considerably more expensive.
15. Most LGBTI people find obstacles to get employment in the civil service. In 2003, the State announced that LGBTI persons would not be discriminated against in the civil service.<sup>21</sup> Although LGBTI persons can apply to the civil service, they are required to declare their sexual orientation.<sup>22</sup> LGBTI employees' experiences of discrimination in the

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<sup>12</sup> See Lim Meng Suang appeal, above n 6, [41]-[75].

<sup>13</sup> United States Department of State, *Country Reports on Human Rights Practices for 2013 – Singapore*, 27. See also Chua, above n 6, 38.

<sup>14</sup> *Report of the Working group on the Universal Periodic Review Singapore*, UN Doc A/HRC/8/11, 12-13.

<sup>15</sup> Chua, above n 6.

<sup>16</sup> Chong, above n 13, 13.

<sup>17</sup> Ibid, 19. See also Pink Dot Campaign website, accessed 15 June 2015 at <http://pinkdot.sg/>.

<sup>18</sup> Howard Lee, *Christians Join Muslims in Protest against Pink Dot*, 21 June 2014, accessed at <http://www.theonlinecitizen.com/2014/06/christians-join-muslims-in-protest-against-pink-dot/>.

<sup>19</sup> United States Department of State, above n18, 27.

<sup>20</sup> Chua, above n 6, 38.

<sup>21</sup> Ibid, 40; Detenber et al, above n7, 1317; BBC News, *Singapore Eases Gay Ban*, 4 July 2003, accessible at <http://news.bbc.co.uk/2/hi/americas/3044688.stm>.

<sup>22</sup> United States Department of State, above n18, 28.

civil service varies, however, there are clear examples of active discrimination within State departments.<sup>23</sup>

16. In Singapore male adult citizens and second generation permanent residents are required to serve in the military service for two years.<sup>24</sup> In the admission process, they are classified by sexual orientation.<sup>25</sup> The impact of this requirement is significant for LGBTI persons, as they are labelled as "gay" or "transgender"; and once they are identified as LGBTI, they are requested to have a medical examination.<sup>26</sup> Frequently there are instances of active discrimination against people identified as gay or transgender, including assignment to non-combat or desk duties.<sup>27</sup> LGBTI military members' sexual orientation is permanently recorded on their dossiers and it becomes a precedent which affects the development of their careers if they choose to join the military career or move into State service after their military service.<sup>28</sup>

### **Recommendations:**

*The State of Singapore should:*

17. Eliminate all political policies that actively discriminate against LGBTI persons, in particular those which require that people declare their sexual orientation in public and private fields.
18. Enact comprehensive anti-discrimination legislation and policies that prohibits discrimination on the basis of sexual orientation and gender identity or expression, in order to guarantee the enjoyment of human rights to all persons without distinction of any kind in all the spheres of life.
19. Elaborate anti-discriminatory protective measures on the basis of sexual orientation and gender identity in the area of employment, including the implementation of the required legal instruments.
20. Ratify the International Covenant on Civil and Political Rights (ICCPR), along with the Optional Protocols and other international human rights treaties not yet ratified by Singapore and harmonize domestic legislation in accordance with international standards.

### **Freedom of Association**

21. Singaporeans cannot lawfully form associations of more than 10 people without State approval.<sup>29</sup> Provisions also operate to limit the associations' ability to partner with international non-profits for assistance and support.<sup>30</sup> The Registrar of Societies<sup>31</sup> has

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<sup>23</sup> Chua, above n 6, 41.

<sup>24</sup> Ibid, 38 -39.

<sup>25</sup> United States Department of State, above n18, 28.

<sup>26</sup> Chua, above n 6, 38-39. The policy of labelling members' sexual orientation is known as the "302 policy".

<sup>27</sup> Ibid, 39.

<sup>28</sup> Ibid, 38.

<sup>29</sup> *Societies Act* (Chap 311, Rev Ed 2014), accessible at

<http://statutes.agc.gov.sg/aol/search/display/view.w3p?page=0;query=DocId%3Ad6e38654-0cee-4c7e-bfde-18b1bad85bf8%20Depth%3A0%20Status%3Ainforce;rec=0#pr4-he->.

The *Societies Act* provides that the Registrar of Societies has discretion to deny registration if it determines that the "specified society is likely to be used for unlawful purposes or for purposes prejudicial to public peace, welfare or good order in Singapore" (section 4(2)(b)).

<sup>30</sup> Chua, above n 6, 30.

<sup>31</sup> The Registrar of Societies is the body responsible for registration of associations under the *Societies Act* (see above n 35, sections 3 and 4).

broad scope to deny registration of associations and has used this as a basis to reject applications by LGBTI associations.<sup>32</sup>

### Recommendations:

*The State of Singapore should:*

22. Enact adequate legislation to guarantee freedom of association to all Singaporean people.
23. Amend the *Societies Act* in order to remove the Registrar of Societies' discretion to reject applications for registration of associations, especially those relating to sexual orientation and gender identity.

### Censorship in the media

24. Media is regulated through licensing and content is censored by the Singaporean State.<sup>33</sup> Commonly, LGBTI content is discouraged.<sup>34</sup> While there is some depiction of diverse genders and sexualities in film and television, screenings are generally in smaller local theatres with restrictions imposed regarding location of screenings and attendance.<sup>35</sup>
25. The internet is also censored by the State and there are serious limitations regarding LGBTI content.<sup>36</sup> Whilst there is State surveillance of LGBTI internet activism, lax enforcement of censorship laws has allowed LGBTI rights activists to mobilise online.<sup>37</sup> LGBTI groups have been able to use online activism, including social networking and YouTube videos, to promote LGBTI rights in Singapore.<sup>38</sup>

### Recommendations:

*The State of Singapore should:*

26. Take all necessary measures to allow broadcasting of LGBTI content without any kind of restrictions in all media, including print media, television, film and web broadcasting.

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<sup>32</sup> Chua, above n 6, 30.

<sup>33</sup> *Broadcasting Act* (Chap 28, Rev Ed 2012), accessible at <http://statutes.agc.gov.sg/aol/search/display/view.w3p?page=0;query=DocId%3A%2211156ade-b327-43b6-a9bf-ab07bb7e2307%22%20Status%3Ainforce%20Depth%3A0;rec=0>.

<sup>34</sup> For example, the *Free to Air Television Programme Code* states: *Films that depict a homosexual lifestyle should be sensitive to community values. They should not promote or justify a homosexual lifestyle.* It also states: *Music associated with drugs, alternative lifestyles (e.g. homosexuality) or the worship of the occult or the devil should not be broadcast.* See also Chua, above n 6, 39.

<sup>35</sup> Chua, above n 6, 39.

<sup>36</sup> *Ibid*, 63-64.

<sup>37</sup> Lynette Chua, 'Pragmatic Resistance, Law and Social Movements in Authoritarian States: the Case of Gay Collective Action in Singapore', (2010) 46(4) *Law & Society Review* 718, 726.

<sup>38</sup> Detenber et al, above n 7, 1316.