

## **Submission in the UPR review of Palau**

### **Developments since last UPR Review:**

In 2011, two recommendations were made to the government of Palau concerning discrimination on the basis of sexual orientation and gender identity. They were to repeal all provisions in domestic legislation criminalizing consensual sexual activity between same sex adults and to combat discrimination against LGBT persons through political, legislative and administrative measures. We were pleased that Palau accepted both of these recommendations during the UPR review and adoption process in 2011. We have been working in cooperation with LGBT groups in Palau to monitor the implementation of these recommendations.

As was highlighted in a recent report of the Office of the High Commissioner for Human Rights (A/HRC/29/23) <sup>1</sup>, we welcome the fact that new criminal laws which came into force at the end of July 2014, no longer criminalize same-sex consensual conduct in Palau. This represents both a monumental affirmation that Palau is committed to upholding its obligations under international human rights law, and that it is committed to implementing “accepted” recommendations made during international negotiations, such as the UPR process. We commend Palau for this achievement.

While highlighting the above accomplishments, we would also like to note that we have observed very limited development in the last four years, regarding the second recommendation to combat discrimination against LGBT persons through political, legislative and administrative measures.

### **Legal and Statutory framework:**

Palau affirms its commitment to the principles of equality and non-discrimination, yet there are no anti-discrimination laws in the country that protect individuals on the basis of their sexual orientation, gender identity or intersex status.

As noted in the recent report of the Office of the High Commissioner for Human Rights:

“The protection of rights to equality before the law, equal protection of the law and freedom from discrimination is a fundamental obligation of States under international law, and requires States to prohibit and prevent discrimination in private and public spheres, and to diminish conditions and attitudes that cause or perpetuate such discrimination. To this end, States should enact comprehensive anti-discrimination legislation that includes sexual orientation and gender identity among protected grounds. States should review and repeal discriminatory laws and address

discrimination against LGBT and intersex persons, including in the enjoyment of the rights to health, education, work, water, adequate housing and social security.”

Issues such as job security, access to services, housing, etc. have been highlighted as a key concern for LGBT persons in Palau, and require immediate attention by the State.

States’ international obligations to respect the human rights of all persons, irrespective of sexual orientation and gender identity, have been articulated in the “**Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity**”. The Principles were developed and unanimously adopted by a distinguished group of human rights experts, from diverse regions and backgrounds. These experts included judges, academics, a former UN High Commissioner for Human Rights, UN Special Procedures, members of treaty bodies, members of civil society and others.

Principle 5 of the Yogyakarta Principles affirms the right of “everyone, regardless of sexual orientation or gender identity, to the right of security of the person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any other group.”<sup>2</sup> The Principles call on States to:

- a) Take all necessary policing and other measures to prevent and provide protection from all forms of violence and harassment related to sexual orientation and gender identity;
- b) Take all necessary legislative measures to impose appropriate criminal penalties for violence, threats of violence, incitement to violence and related harassment, based on the sexual orientation or gender identity of any person or group of persons, in all spheres of life, including the family;
- c) Take all necessary legislative, administrative and other measures to ensure that the sexual orientation or gender identity of the victim may not be advanced to justify, excuse or mitigate such violence;
- d) Ensure that perpetration of such violence is vigorously investigated, and that, where appropriate evidence is found, those responsible are prosecuted, tried and duly punished, and that victims are provided with appropriate remedies and redress, including compensation;
- e) Undertake campaigns of awareness-raising, directed to the general public as well as to actual and potential perpetrators of violence, in order to combat the prejudices that underlie violence related to sexual orientation and gender identity.

In 2014, a senator in Palau proposed a Bill regarding "hate crimes" which included terminology around sexual orientation. This Bill did not advance through the legislative processes and was never passed into law. The LGBTI community in Palau face security threats and require the government to ensure that these types of initiatives are supported, as part of its commitments to combat discrimination and ensure the safety of all its citizens.

**Recommendations:**

We therefore recommend that the Human Rights Council, in its upcoming UPR review, urge Palau to bring its legislation into conformity with its commitment to equality and non-discrimination, and its international human rights obligations, by developing anti-discrimination laws that prohibit discrimination on the basis of sexual orientation, gender identity and inter sex status. We also recommend that the Human Rights Council urge Palau to develop or support initiatives regarding “hate crimes”, such as legislation, which references sexual orientation and gender identity.

**This information is submitted by:**

- **ARC International**, an ECOSOC-accredited NGO with a full-time presence in Geneva which engages with the UN Human Rights Council and related mechanisms to advance respect for human rights, including on the grounds of sexual orientation, gender identity and intersex status.

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<sup>1</sup> *Discrimination and violence against individuals based on their sexual orientation and gender identity* – Report of the Office of the United Nations High Commissioner for Human Rights (A/HRC/29/23). Available at: [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/HRC/29/23&referer=/english/&Lang=E](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/HRC/29/23&referer=/english/&Lang=E).

<sup>2</sup> Available in all 6 UN languages at: [www.yogyakartaprinciples.org](http://www.yogyakartaprinciples.org).