# Submission to the Independent Expert

## Freedom of religion or belief and freedom from violence and discrimination based on sexual orientation and gender identity

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With this submission we draw the attention of the Independent Expert to a recent academic publication titled: **“The Dichotomy of Religion and Sexualities within ASEAN Member States”** published by Dr Capaldi. We have extracted selected elements from the paper in response to six of the relevant consultation questions. Please also see the full paper as an annex to the submission.

#### 1. What are the actual or perceived points of tension (if any) between the right to manifest one’s freedom of religion or belief, and freedom from violence and discrimination based on sexual orientation and gender identity? Are there any areas in which they are mutually exclusive?

For the ASEAN region, Islam is the dominant religion (being the majority religion in Indonesia, Malaysia, Brunei and Singapore)[[1]](#footnote-1) and is often associated with being particularly repressive of homosexuality.[[2]](#footnote-2) In contrast, Buddhism the second main religion found in the region (the majority spiritual faith in Cambodia, Thailand, Myanmar and Laos) appears to have placed no special stigma on same sex relations.[[3]](#footnote-3) Christianity, being the third major religion in the region (in particular, the Philippines and Timor-Leste), has traditionally denounced homosexuality because of its perceived ‘unnaturalness’ and a belief that it is condemned in the Bible.[[4]](#footnote-4) ASEAN is thus religiously diverse[[5]](#footnote-5) and as the region today grapples with far-reaching social and economic changes, it is also testing religious tolerance. The LGBTQ community is at the forefront of challenging some of the more traditional and conservative interpretations of religious doctrines and approaches to sexuality found within the ASEAN region.

As both Islam and Christianity have an inherent conflict with homosexuality, this creates particular challenges for LGBTQ persons not only in living their lives as they so wish, but in reconciling the spiritual and sexual aspects of their identities.[[6]](#footnote-6) It can inhibit or suppress their response to these forms of violence and it offers justifications for these practices that are done in the name of religion. In Southeast Asia, families traditionally are quite collectivistic and the family is seen as a close and important unit of support. In some contexts in the region, disclosing of one’s sexual orientation can come with serious personal risk and recrimination, sometimes exposing them to blackmail and extortion.[[7]](#footnote-7) And whilst more visibility is now being given to LGBTQ issues regionally, in certain countries this is creating a backlash where governments, particularly in more conservative Muslim states, are more strictly enforcing laws and policing LGBTQ activities. LGBTQ spiritual believers can feel isolated and rejected by their religion leading to low self-esteem and depression.[[8]](#footnote-8)

#### 2. Are there any ways in which the right to freedom of religion or belief, and freedom from violence and discrimination based on sexual orientation and gender identity are mutually reinforcing?

Perhaps unlike other parts of the world, the struggles for LGBTQ rights across ASEAN countries are very commonly framed within the modern human rights discourse. A key ASEAN regional milestone in LGBTQ rights is represented in the 2006 meeting of human rights experts on the campus of Gadjah Mada University in Yogyakarta, Indonesia where the “Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity” where formulated.[[9]](#footnote-9) The principles are frequently referenced as a basis for LGBTQ rights. This framing doesn’t - as directly - set up LGBTQ rights against freedom of religious expression as oppositional, but frames the two as the same side of the coin. This can take some of the sting out of the more oppositional framing used by anti-LGBTQ rights advocates in Western contexts.

The issue of sexualities in ASEAN is so often entangled with religious and political interests, meant to polarise camps and garner popular appeal. Civil society movements therefore have a key role to play in advocating on issues of sexual diversity and gender variance and in persuading religious and political hierarchies to address misperceptions and sexual negativity. Public forums, seminars, research, reports and capacity building are all strategies that can be used to highlight the links between human rights, religiosity and LGBTQ issues.

Empirical research on sexualities and religion centred within the ASEAN region also has a role to play but as yet is scarce, particularly studies focusing on processes of resolving conflict between the two. Suggestions for future research in this area include: theologies in relation to transgender populations and other gender variants; sexuality and the impact of religious upbringing; how LGBTQ persons in ASEAN navigate their religious beliefs; and LGBTQ-friendly religious institutions found in the region.

All religions are grounded in a basis of respect, diversity, tolerance and peace. These are principles also echoed within ASEAN *2025* and its promotion of being people-centred and human rights for *all* ASEAN people. As such, ASEAN Member States could be pushed using such instruments to do more to honour their international legal obligations and ensure equality before the law without discrimination and including sexual orientations.

#### 3. Are there examples where gender and sexual diversity has been used in religious, traditional, or indigenous narratives or values in a manner which promotes the acceptance of LGBT+ individuals, or protects LGBT+ individuals from violence and discrimination? Has this informed any legal interventions or public policies?

Whilst not directly promoting acceptance of LGBTQ individuals, Buddhism does not specifically single out homosexuality for attention. Whilst Buddhism teaches that ‘sensual enjoyment and desire in general, and sexual pleasure in particular, are hindrances to enlightenment’,[[10]](#footnote-10) as homosexuality is not explicitly mentioned in any of the Buddha's discourses (more than 20 volumes in the Pali Text Society's English translation), it is assumed to be neutral on the issue and is thus evaluated in the same way that heterosexuality is.[[11]](#footnote-11) In general, Buddhism does not appear to have placed any particular stigma on same-sex relations, and across Asia, the Buddhist attitude towards homosexuality is characterized as ranging from ‘neutrality to mild aversion’.[[12]](#footnote-12)

Another example is the Philippines, where despite a strong Christian base, the Philippines is reported to be one of the most ‘gay-friendly’ nations in Asia.[[13]](#footnote-13) A key reason for LGBTQ acceptance in the Philippines may involve historic portrayal of gender-shifting and non-binary gender amongst some indigenous cultures that pre-dates the 12th century and the spread of Islamization and Christianization.[[14]](#footnote-14) However, during Spanish colonization, Roman Catholicism spread among the archipelagic people and the deep Catholic roots in the country now influence how the LGBTQ community is treated today.

#### 4. What are the key trends or significant instances of discriminatory or abusive practices by individual providers of goods or services in the public sphere against LGBT+ and gender-diverse persons that rely on religious narratives?

The ASEAN SOGIE Caucus has extensively documented through reports and campaigns the violence and discrimination that persons of different sexualities face in the region. Concrete examples are given of abuse and denial of access to basic services. Rallying behind the slogan ‘I am ASEAN too’, LGBTQ persons have called for: the recognition of the discrimination they face; the repealing of laws that directly or indirectly criminalise same sex relations; the banning of laws that see lesbianism, homosexuality and cross-dressing as deviant acts; and equal access to health, social services and other civil rights.[[15]](#footnote-15) The sticking point it seems remains the ASEAN interpretation of ‘traditional values’ and the centrality of religion for maintaining morality in society.

#### 5. Has the State adopted, in public policy, legislation or jurisprudence, norms purportedly based on protecting freedom of religion or belief that promote, enable and/or condone violence and discrimination against individuals based on sexual orientation or gender identity? If so, please give examples, with commentary as needed to explain context, scope, and application.

The rise of political Islam has seen the re-emergence of advocating for ‘Sharia Law’ as the essence of justice. Whilst Sharia Law varies across regions and different countries, *fatwas* (a juridical opinion given by an expert in Islamic law) on the issue have become common and localised and have further fed into the belief that homosexuality is against innate nature, is a grave sin and deserves the most serious punishment. The ASEAN region has seen various pushes for the formal codification of Sharia law. Sometimes Sharia is applicable only to citizens practicing Islam, as in Malaysia. However, in some instances, Sharia extends to all people, beyond those who practice Islam – Brunei and the independent province of Aceh in Indonesia being primary examples. Whether universally applicable or not, the influence on the broader community exists anyway, with significant social and community ‘policing’ of behaviour.

In the ASEAN region, religion is a very significant factor that contributes to states’ structural approach, understanding and acceptance of sexual orientation and gender diversity. This is particularly true in the majority Muslim countries (Brunei, Indonesia and Malaysia) and to a certain extent in the strongly Catholic country of The Philippines. Whilst Buddhism appears not to contribute to negative responses to differing sexualities, cultural and social attitudes in nearly all the Buddhist majority countries, homosexuality is still not well accepted, and where it is, there is an expectation of certain stereotypes and behaviours. Few, if any laws and policies exist within the region that promote the rights of LGBTQ people.

***Please see the annexed paper for detailed analysis of legislative frameworks where LGBTQ rights and religiosity intersect in: Brunei, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Singapore, Thailand, Philippines and Vietnam.***

#### 7. Are there any examples of State restrictions based on preventing violence and/or discrimination against LGBT+ persons that prohibit or limit practices undertaken in the name of the religion or spirituality, such as public accommodation non-discrimination protections? If so, have they been legally challenged on the basis of freedom of religion or belief? If yes, explain the outcome and rationale of the case(s).

The 2015 Thailand Gender Equality Act aimed to protect people from discrimination and provide legal recourse regardless of whether the person is male, female or a member of a “sexual diversity group”.[[16]](#footnote-16) Section 3 of the Act explicitly defines “gender discrimination” and states that it also applies to persons who have “a different appearance from his/her own sex by birth.”[[17]](#footnote-17) However, the legislation contains exceptions to protection from discrimination on grounds of "education, religion and the public interest."[[18]](#footnote-18) These exceptions were vigorously opposed by advocates at the time. The inclusion of such broad language in these exceptions significantly undermines the protective value of the law for LGBTQ people.

***End of submission.***

1. With an estimated 240 million adherents (See: <https://guides.library.cornell.edu/IslamAsiaExhibit/IslamSEAsia>). [↑](#footnote-ref-1)
2. Rehman, J. and Polymenopoulou, E (2013), ‘Is Green a Part of the Rainbow? Sharia, Homosexuality and LGBT Rights in the Muslim World’ *in Fordham International Law Journal*, Vol.37, Issue1, Article 7, pp.4, Berkeley Electronic Press (bepress). [↑](#footnote-ref-2)
3. Sila, A.L.De (2012), ‘Homosexuality and Theravada Buddhism’, in *BuddhaNet’s Magazine article,* Buddha Dharma Education Association 1996-2012, viewed 30 September 2019, <http://www.buddhanet.net/homosexu.htm> [↑](#footnote-ref-3)
4. Subhi, N and Geelan, D (2012), ‘When Christianity and Homosexuality Collide: Understanding the Potential Intrapersonal Conflict,’ Published online: 15 Nov 2012, *Journal of Homosexuality*, Volume 59, 2012 - [Issue 10](https://www.tandfonline.com/toc/wjhm20/59/10)] [↑](#footnote-ref-4)
5. Note: There is also the presence of a small number of believers in Hinduism found in Thailand and some small islands in the Andaman Sea. [↑](#footnote-ref-5)
6. Scull, N and Mousa, K. (2017), A Phenomenological Study of Identifying as Lesbian, Gay and Bisexual in an Islamic Country. *Sexuality and Culture*, 21, pp. 1215-1233. [↑](#footnote-ref-6)
7. Sida (2014), The Rights of LGBTI people in the ASEAN Countries. See: <https://www.sida.se/globalassets/sida/eng/partners/human-rights-based-approach/lgbti/rights-of-lgbt-persons-south-east-asia.pdf> [↑](#footnote-ref-7)
8. Siraj, A. (2012), “I don’t want to taint the name of Islam”: The influence of Religion on the Lives of Muslim Lesbians. *Journal of Lesbian Studies,* 16:4 pp. 449-467. [↑](#footnote-ref-8)
9. Cviklova, L. (2012). "Advancement of human rights standards for LGBT people through the perspective of international human rights law", in Journal of Comparative Research in Anthropolgy and Sociology, Volume 3,Number 2,Winter 2012,p.48 [↑](#footnote-ref-9)
10. Colemn J.M., (2002), The New Buddhism: The Western Transformation of an Ancient Tradition, Oxford  
    University Press, the United States of America, pp.164. [↑](#footnote-ref-10)
11. Kusala Bhikshu (n.d.), The Problem with Sex in Buddhism (a talk given at a High School in Los Angeles), viewed on 4 October 2019, <http://www.urbandharma.org/udharma5/sex.html> [↑](#footnote-ref-11)
12. Colemn J.M., (2002), The New Buddhism: The Western Transformation of an Ancient Tradition, Oxford  
    University Press, the United States of America, pp.164 [↑](#footnote-ref-12)
13. [*"The Global Divide on Homosexuality"*](http://www.pewglobal.org/2013/06/04/the-global-divide-on-homosexuality/)*. Pew Research Center's Global Attitudes Project. 4 June 2013*. [↑](#footnote-ref-13)
14. [*"LGBT Culture in Ancient Philippine Beliefs"*](https://www.aswangproject.com/lgbt-culture-ancient-philippines/)*. aswangproject.com.*  [↑](#footnote-ref-14)
15. Langlois, A., Wilkinson, Cl, Gerber, P. and Offord B. (2017). Community, identity, orientation: sexuality, gender and rights in ASEAN. *The Pacific Review*, Vol. 30, No. 5, pp. 710-728. [↑](#footnote-ref-15)
16. <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/100442/120478/F764760666/THA100442%20Eng.pdf> [↑](#footnote-ref-16)
17. United Nations Development Programme Thailand (UNDP) and Ministry of Social Development and Human Security (MSDHS) (2018), ‘Chapter 3: Anti-discrimination and transgender people in Thailand’, in Legal Gender Recognition in Thailand: A Legal and Policy Review, pp.28-29] [↑](#footnote-ref-17)
18. <file:///C:/Users/ASUS/Downloads/JS12_UPR39_THA_E_Main.pdf> [↑](#footnote-ref-18)