



Policy Brief on the Convention on the Elimination of
All Forms of Discrimination Against Women (**CEDAW**)
and Sexual Orientation, Gender Identity
and Expression, and Sex Characteristics (**SOGIESC**)
in Southeast Asia

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ASEAN SOGIE Caucus is a regional network of human rights defenders advocating for the protection, promotion and fulfilment of the rights of all persons regardless of sexual orientation, gender identity, gender expression and sex characteristics (SOGIESC). The organization envisions a SOGIESC-inclusive ASEAN community.

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Introduction

ASEAN SOGIE Caucus (ASC) has actively advocated within the Southeast Asian region to ensure that issues related to sexual orientation, gender identity and expression, and sex characteristics (SOGIESC) are integrated into broader human rights demands, particularly at the ASEAN Intergovernmental Commission on Human Rights (AICHR) and the ASEAN Commission on the Rights of Women and Children (ACWC). ASC recognizes that influencing ASEAN requires engagement of both domestic and instrumental mechanisms. This policy brief on the use of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was drafted to catalogue how SOGIESC has been addressed within United Nations human rights mechanisms. **ASEAN SOGIE Caucus hopes to provide baseline information on CEDAW for activists based in ASEAN member-states, and offer guidance on its application to SOGIESC in human rights advocacy.**

In this policy brief, we define the term “women” inclusively: according to sex assigned at birth, meaning those whose legal sex marker is female; and according to gender identity, meaning those who identify as women regardless of whether this identity is reflected in their legal or medical documents.¹ As such, we affirm that international laws which cover the right of women should naturally cover the human rights of both cisgender women (i.e. those whose sex assigned at birth is female and who identify as women) and transgender women (i.e. those whose sex assigned at birth is male and who identify as woman), and that any such law that claims to address the rights of women must take these into account.² Likewise, laws on violence and discrimination against women must address these issues comprehensively, acknowledging the fact that the phenomenon of violence and discrimination is rooted in patriarchal and heteronormative ideas which has been perpetuated in human societies.³

It is also critical, in understanding the information in this policy brief, that we recognize the historical and contemporary experiences of marginalization against all women, and that our analyses of these experiences as they relate to the CEDAW should not be limited to the relationships or dynamics between cisgender and heterosexual men and women. Recognizing the powerful intersectional dynamics at work here and how the lack pluralistic views on gender and sexual diversity blind advocates and policy makers to the natural pluralistic nature of gender and sexuality. This consequently contributes to the restrictions on women’s human rights.⁴

This policy brief is based on a desk review of pertinent documents, including state submissions and shadow reports from ASEAN member-states and Timor-Leste. It includes the most recent periodic reports submitted by these countries, as well as the Concluding Observations from the CEDAW Committee, which were published between 2012 and 2017. All documents were official texts submitted by concerned parties and accessed from the database of the United Nations Office of the High Commissioner on Human Rights.⁵

1 Overview

The Convention on the Elimination on all Forms of Discrimination Against Women (CEDAW) is an international bill of rights for woman, adopted by the United Nations General Assembly in 1979 and ratified by 187 states.⁶ The Convention outlines what constitutes discrimination against women and provides an agenda for state parties towards achieving its goals. It defines discrimination as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”⁷ All ASEAN member-states and Timor-Leste have ratified the CEDAW.

In 1999, the CEDAW added an Optional Protocol on a communications procedure which enables enabling individuals or groups who have experienced violations of their rights to complain directly to the Committee on the Elimination of Discrimination Against Women.⁸ As of this writing, Cambodia, the Philippines, Thailand, and Timor-Leste have ratified the Optional Protocol, while Indonesia is a signatory.

All countries that have ratified CEDAW are legally bound to translate its provisions into practice. Ratifying CEDAW means that member-states commit to undertake measures to end all forms of discrimination against women.^{8,9} This may include, but is not limited to, incorporating principles of gender equality into their legal systems, abolishing discriminatory laws, and enacting policies prohibiting discrimination. States likewise commit to establish tribunals and other public institutions tasked to ensure women are protected against discrimination, and that steps are taken to eliminate discrimination committed by persons, organizations, or enterprises. They are required to submit national reports every four years detailing steps taken to comply with these obligations and outline progress in its implementation.¹⁰

The convention also outlines different thematic areas in relation to women’s rights, and offers a series of General Recommendations to aid in the interpretation of the convention’s provisions and their implications to the obligations of states. To date, there are a total of thirty-three General Recommendations.¹¹ Of these, General Recommendations 27 (concerning the rights of older women), General Recommendation 28 (on the core obligations of state parties under article 2), General Recommendation 32 (on the gender-based dimensions of refugee status, asylum, nationality and statelessness of women), General Recommendation 33 (on women’s access to justice), and General Recommendation 35 (on gender-based violence against women, updating general recommendation No. 19) explicitly refer to SOGIESC. These General Recommendations reaffirm that the scope of the convention’s standards must necessarily include issues related to SOGIESC. (See Annex 1 for the relevant provisions of these General Recommendations.)

2 CEDAW, SOGIESC, and State Implementation in Southeast Asia

All ten ASEAN member-states and Timor-Leste, have ratified CEDAW. However, CEDAW implementation in Southeast Asia has faced considerable barriers, with women continuously confronted with obstacles to the advancement of their fundamental freedoms.¹² While recent years have seen considerable appreciation of CEDAW and its importance to national development – and more importantly, an increase in political will among member-states to implement the convention – much work remains in terms of addressing women’s issues as it relates to SOGIESC. This is readily apparent from the way SOGIESC issues, specifically the experiences of lesbian, bisexual, and transgender (LBT) women, are given little to no attention in the period reports of ASEAN member-states and Timor-Leste.

Only the state submissions of Lao PDR, Thailand, Viet Nam, and the Philippines made references to SOGIESC. However, with the exception of Thailand, these references were trivial. For the Philippines, the reference to SOGIESC was made in relation to “emerging forms of violence against women”, writing only that “cyber pornography (ICT-related electronic or E-VAW), violence in armed conflict and during disasters and calamities, and against lesbians, bisexuals and transgender persons are now being recognized and publicly discussed.”¹³ The references in the reports of Lao PDR and Viet Nam were made in relation to HIV/AIDS, either as “man homosexual intercourse” or “same-sex prostitution”.^{14,15} In the later report of Lao PDR, the government writes that their national action plan to address HIV and sexually transmitted illnesses “specify that there should be no discrimination on the basis of gender, disease status, sexual behavior or sexual orientation.”¹⁶

Thailand cited the 2004-2010 report of the National Human Rights Commission on “violations concerning children, youth, women, and people of all sexual orientations and gender identities.”¹⁷ Of the violations against people of diverse SOGIESC, the NHRC writes that, for example, “persons with [diverse] sexual orientation and gender identity who are detained in detention centres are not treated appropriately and are at risk of being sexually violated, physically assaulted or even murdered in prisons.” They noted further that, in the case of transgender people who are undergoing medical transitioning at the time of incarceration, “they are not able to take their medicine to adjust their hormone levels due to the prison regulation forbidding bringing any medicine into the prisons.”¹⁸

3 SOGIESC Inclusion in Civil Society Reports to CEDAW Committee

The absence or lack of substantive references to SOGIESC in official government reports contrasts with submissions from civil society organizations. In the most recent submissions to the CEDAW Committee, civil society groups raised a number of concerns regarding CEDAW implementation and SOGIESC. Highlighted were the lack of a comprehensive definition of discrimination against women; the absence of domestic legislation addressing discrimination against women who are lesbian, bisexual, transgender, queer, or intersex; and the existence of laws or policies that disproportionately harm women on the basis of SOGIESC, including laws criminalizing homosexuality and transgender people on the basis of gender identity. These gaps have translated to the continuing perpetuation of discrimination in the social, political, economic, and family lives of women of diverse SOGIESC.

3.1 Criminalization of homosexuality and transgender persons

The criminalization of homosexuality and transgender persons on the basis of gender identity is a persistent reality in the region. In Brunei for example, the submission of the International Gay and Lesbian Human Rights Commission highlights the 2013 Syariah Penal Code, which penalizes offenses considered illicit or against Islamic practices, among them cohabitation outside marriage, abortion, “lesbianism”, and “gender impersonation”. The code criminalizes *mushaqah*, defined as “any physical activities between a woman and another woman which would amount to sexual acts between a man and woman other than penetration”, and applies to both Muslim and non-Muslim women. The same law also penalizes transgender persons, stating that “any man who dresses or poses as a woman or any woman who dresses or poses as man in any public place without reasonable excuse” will be subject to a fine of USD780.00 or 3 months in prison. These

penalties also apply to non-citizens, including migrant workers, compounding on already pressing challenges as “most of the LBT migrant workers are from the Philippines, Indonesia and Thailand ... who have lived and worked in Brunei Darussalam for many years.”¹⁹

Other countries in the region have similar laws. In Malaysia, the submission of Human Rights Watch reports that “Under state Sharia (Islamic law) enactments, all 13 states and the Federal Territory prohibit “a man posing as a woman,”²⁰ while three states prohibit “a woman posing as a man.” Further compounding Malaysia’s situation are ongoing state-sponsored “conversion therapy” practices, which is described by one submission as “a discredited approach to “changing” a person’s sexual orientation or gender identity through psychological treatment, faith-based methods, or counseling.”²¹

While other countries do not directly criminalize same-sex relations or gender-non-conforming

behavior, existing legislation and state policies disproportionately affect women of diverse SOGIESC. One example is the use of dress codes. In the Philippines, a joint submission by EnGendeRights and OutRight Action International reported the circulation of a memorandum by the House of Representatives, which prescribed dresses for women (as defined by their sex assigned at birth) on certain days of the week and that “failure to comply with the dress code results in sanctions, including being fired.”²² A particularly intense case – which highlights what is possible when such a policy is paired with culturally-ingrained stigma – was reported by the Philippine Commission on Human Rights, who wrote that “in Cagayan de Oro, a lower court dismissed the case of child abuse committed by a School Principal against a young girl who refused to wear skirts and was made to parade in school grounds wearing a curtain.”²³

“In February 2017, Sameera, a transgender woman, was murdered in Kuantan, the capital city of Pahang state. Police arrested five men for the crime in early April. They were released on bail and have not yet been tried. Police and transgender groups believe Sameera’s murder is connected to an ongoing court case against two men who were accused of kidnapping, raping, and torturing her in February 2015. In September 2015, two men wielding iron bars brutally beat transgender activist Nisha Ayub outside her apartment building. Police have not identified any suspects.

Reported cases of violence against transgender people, in Malaysia (2017)²⁴

3.2 Absence of legal redress mechanisms

The absence of legal redress mechanisms for discrimination on the basis of SOGIESC compound or exacerbate circumstances when violations occur. In relation to Malaysia, the joint submission coordinated by Women's Aid Organization and the Joint Action Group for Gender Equality reported that state forces "do not have adequate knowledge on the right to equality and non-discrimination so that the human rights of trans people and women in same-sex partnerships are respected, protected and promoted." Put simply: "there is no avenue for redress for victims of discrimination and violence on the basis of sexual orientation and gender identity."²⁵ In Indonesia, the Indonesian National Commission on Violence against Women reported that women of diverse SOGIESC "are prevented from being able to access sexual reproductive health services because they face widespread discrimination in the community"²⁶ and are forcibly evicted "in the name of public interest, urban planning and public order."²⁷

3.3 Non-recognition of same-sex unions

Also highlighted was the non-recognition of same-sex unions, barring same-sex couples from accessing support available to married couples. In Singapore, Article 12(1) Women's Charter declares that "a marriage solemnized in Singapore or elsewhere between two persons, who at the date of marriage, are not respectively male and female shall be void." As a result, women in same-sex relationships cannot avail of relevant sexual and reproductive health care, share legal custody of children, apply for joint public housing purchases, and many more.²⁹ Other consequences of this non-recognition are the exclusion of women in same-sex relationships from tax breaks and benefits such as maternity leave, childcare leave, and joint access to children's school records. Children of same-sex parents are also denied property ownership and inheritance, wherein when a woman in a same-sex partnership dies and does not leave a will, her properties and assets are automatically transferred to her parents or next of kin. Women in same-sex partnerships are often not granted adoption privileges because it is deemed to not be in "the best interest of the child."

Women are still pressured to conform to stereotyped gender roles and expression. For example, women who do not look "feminine" are harassed more frequently in church. Some churches promote psychologically damaging "reparative therapy" and typically target women who appear 'masculine' in apparel or behaviour. For example, during a public talk hosted by a local church on 10th May 2007, testimony by an "ex-gay" woman focused on how she transformed from being a tomboy to a "feminine" heterosexual.

Excerpt from a report by Sayoni, in Singapore (2011)²⁸

3.4 Absence of legal gender recognition

Another issue raised was the absence of legal gender recognition for transgender people. Reports highlighting this issue refer specifically to the non-recognition of the gender identity of transgender people under the law, which compromises their ability to exercise their rights and seek legal redress when needed. But even in countries where changing of one's legal gender marker is allowed, the relevant laws are extremely problematic. In Viet Nam, while transgender people can change their legal gender marker, they are required to undergo surgical procedures to remove their sexual and reproductive organs (e.g. ovaries, breasts, testes) in order to qualify, effectively sterilizing them. This requirement constitutes a gross violation of their bodily integrity, and that such requirements constitute "a form of forced medical treatment and sterilization, in breach of Articles 12 and 16 of CEDAW."³⁰ One informative example of the existing hurdles in legal gender recognition comes from Malaysia, where the National Registration Department successfully appealed a ruling that instructing them to change the gender marker of a transgender man to male in accordance with the plaintiff's "right to live with dignity as a male and be legally accorded judicial recognition as a male."³¹

3.5 Lack of comprehensive legislation defining discrimination

The lack of comprehensive legislation defining discrimination against women is critical, as an absence of such legal definitions prevents women of diverse SOGIESC from fully engaging in social, political, and economic life. For example, in the Philippines, while a law on sexual and reproductive health is in place, provisions for LBT women's needs were "absent in the overall comprehensive reproductive health program."³³

The lack of a comprehensive legal definition also has also allowed discrimination to proliferate in other areas of social and cultural life. In Cambodia, for example, one report refers to "LGBT youth locked up at home to prevent them from entering into same-sex relationships".³⁴ In various countries, this proliferation of negative stereotypes also extends to the censorship of films, television shows, and other mainstream media depicting LBT women or SOGIESC issues in general. In Singapore, LBT women are grouped together with pedophilia and incest, typecast as dysfunctional, and that "negative portrayals of queer women turning straight or demonstrating mental illnesses, such as depression, are permitted for broadcast."³⁵

Although homosexuality is no longer considered a psychological or physical illness, some clinics and practitioners still try to "cure" lesbian and bisexual women with dangerous treatments that can have lasting negative effects on their psychological and physical health.

Excerpt from a report by Kaleidoscope and iSEE, in Viet Nam (2015)³²

“...information, themes or subplots on lifestyles such as homosexuality, lesbianism, bisexuality, transsexualism, transvestism, paedophilia and incest should be treated with utmost caution. Their treatment should not, in any way, promote, justify or glamorise such lifestyles. Explicit depictions of the above should not be broadcast.”

From the Guidelines on Promotional Materials for Films and Videos, quoted by Sayoni, in Singapore (2011)³⁶

3.6 Harmful cultural norms and practices

Article 5 of CEDAW requires that states parties “modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of inferiority or superiority of either sexes or on stereotyped roles for men and women.” All reports point to the persistence of cultural practices that perpetuate and justify harm towards women of diverse SOGIESC, specifically those practices which perpetuate patriarchal and heteronormative ideologies. Various submissions report that LBT women are frequently ostracized by their families and communities, and are offered very limited avenues to seek legal redress when they find themselves at the receiving end of these discriminatory practices. Cases of abuse and exploitation go unreported because of norms that shame women of diverse SOGIESC, and women in general, into silence.³⁷ Victims are subjected to maltreatment by law enforcers who, instead of providing appropriate services, extort from or blackmail them. Secondary victimization also occurs when assistance provided by the state aggravates their situation or fails to stop the criminal behavior.

Worse still, fear of reprisal from families and communities also results in the underreporting of these cases was also raised in the reports. This lack of data on the frequency and intensity of violence based on SOGIESC remains a major problem in these countries.

3.7 General Recommendation 19 and Violence Against Women

General Recommendation 19 of CEDAW elaborates on the definition of discrimination against women to include Violence Against Women (VAW), defined here as violence directed towards a woman “because she is a woman, or that affects women disproportionately.” This includes acts that inflict “physical, mental or sexual harm, threats of such acts, coercion, and other deprivations of liberty,” committed by the state or by private actors. It requires states parties to take appropriate measures to overcome all forms of VAW, as well as to ensure adequate protection and respect for women. These measures include appropriate protective and support services to victims, providing gender-sensitive training to judicial and law enforcement officers and other public officials, and so on.³⁸

The reports also submitted emphasized VAW experienced by women on the basis of SOGIESC. In the Philippines, the LBT Coalition reported the murder of lesbian women by “who felt justified to kill them because they posed a threat, believing that lesbians have no right to steal their women, and that some of them lead female relatives to live immoral and sinful lives.”⁴⁰

Case studies collected by Colors Rainbow, an LGBT rights organisation in Myanmar, documents violence against transgender persons and lesbians at the hands of family members, law enforcement officials, and those in positions of authority. These human rights abuses include: arbitrary arrest and detention, intimidation, threats, physical and sexual assault, and denial of health services. Conservative cultural norms, including heteronormativity, and religious beliefs coupled with a culture of impunity towards violence against these marginalised population groups further exacerbates the discrimination against them.

Excerpt from a submission by Global Justice Center, Myanmar (2016)³⁹

Women of diverse SOGIESC in Viet Nam are increasingly vulnerable to this type of violence because local legislation defines sexual assault, extremely problematically, as an act that occurs between male and female persons. Because of this definition, sexual assaults against transgender women, who are still legally recognized as male, is not punishable as a criminal offense.⁴¹ The same problem arises when violence is perpetuated by same-sex partners.

The narrow definition of VAW and the lack of legal protection limit victims' access to justice. The submission from the Philippines referred to the murder of transgender woman Jennifer Laude, writing: "In December 2015, the Court meted out a low penalty to the killer of Jennifer Laude, a transgender woman, allowing for the mitigating circumstance that the perpetrator's actions were motivated by his realization that Laude was a transgender woman. ... Such a ruling sends a message that hate crimes, including murder, carry little or low consequences if the victims are LBT persons."⁴²

Anecdotal information from lesbians, bisexual women and transgender individuals in environments similar to Brunei Darussalam indicates that State actors such as police officers and religious enforcement officers, or private individuals such as employers and community leaders abuse their authority, even break the law themselves while carrying out their duties in an environment where people are stigmatized and criminalized for their sexual orientation, gender identity and gender expression. Some examples of this include police extorting LBT persons, and military or other security forces officers demanding sexual favors in exchange for not arresting LBT individuals. Abusive behaviors by State violators usually signal an acceptance and normalization of human rights violations against LBT people by the state. 8 LBT victims then get the message that they have to silently bear the abuses "against a backdrop of 'punitive and discriminatory legal frameworks' with only themselves and their friends for solace."

Excerpt from a report by IGLHRC, in Brunei Darussalam (2014)⁴³

4 SOGIESC in the Concluding Observations of the CEDAW Committee

Of all the Concluding Observations released by the Committee, only those of Thailand, the Philippines, and Singapore had direct references to SOGIESC. The Committee expressed concerns over the persistence of multiple and intersecting forms of discrimination against women and girls, including LBT persons, in these three countries.

Thailand

“The Committee expresses serious concern that women human rights defenders advocating in particular for land rights, protection of the environment, and the rights of indigenous, rural, lesbian, bisexual and transgender women and Muslim women in the Southern Border Provinces, have increasingly become targets of lawsuits, harassment, violence and intimidation by authorities and business enterprises due to their work.”⁴⁴

Philippines

“The Committee notes with concern: That discriminatory gender stereotypes, stigmatization and the lack of adequate support systems all pose barriers to justice and to effective remedies for women, in particular those facing multiple forms of discrimination, such as women in poverty, women with disabilities, indigenous and Muslim women, women living in geographically inaccessible areas, and lesbian, bisexual and transgender women.”⁴⁵

“The Committee is concerned: That Muslim women, indigenous women, women with disabilities, women migrant workers working and returning from abroad, internally displaced persons and lesbian,

bisexual and transgender women face a heightened risk of violence, exploitation and abuse, as well as discrimination in political and public life, marriage and family relations, employment, education, access to justice and health care.”⁴⁶

Singapore

“The Committee reiterates its concern about the persistence of patriarchal attitudes and deep-rooted stereotypes regarding the roles and responsibilities of women and men within the family and society at large. ... The Committee further notes that despite the fact that the State party recognizes the principle of equality of all persons before the law, as enshrined in the Constitution, regardless of gender, sexual orientation and gender identity (CEDAW/C/SGP/Q/4/Add.1, para. 113), there is still negative stereotyping of women belonging to this group.”⁴⁷

Another concern is the general lack of awareness about CEDAW, particularly in Brunei, Indonesia, and Myanmar. The Committee attributes this to the convention’s low visibility, and urges concerned member-states to take proactive measures to communicate and increase appreciation for CEDAW. In addition to this, ASC believes that it is also necessary to include in these proactive measures an emphasis that the norms set by CEDAW necessarily apply to all women and call on the various social positions women occupy to be addressed. The CEDAW Committee’s General Recommendation 28 affirms this, writing that “States parties must legally recognize such intersecting forms of discrimination and their compounded negative impact on the women concerned and prohibit them”, including sexual orientation and gender identity.

The Committee has also repeatedly raised the need to incorporate a comprehensive definition of discrimination against women in the constitution of most countries. Such laws must encompass direct and indirect forms of discrimination, discrimination perpetuated by state and private actors, and discrimination occurring in both public and private domains. In Timor-Leste, Indonesia, and Singapore, the Committee noted the need to adopt legislation to serve as an overarching guide for the implementation of CEDAW; in countries where similar legislation is in place, the Committee noted the need for strong coordination between government agencies for the convention's effective implementation and harmonization with other state policies. But to be comprehensive, such legislation must also recognize the factors which motivate acts of discrimination, such as the various social categories women inhabit, of which SOGIESC is one. ASC reiterates that discrimination on the basis of SOGIESC musts naturally be included.

Also in the Concluding Observations was concern regarding the existence of discriminatory laws that have neither been amended nor repealed. These include Brunei's Syariah Penal Code; Viet Nam's Marriage and Family Law and Labor Code; and Myanmar's Buddhist Women Special Law, Population and Healthcare Law, Religious Conversion Law, Anti-Discrimination Bill, Prevention and Protection of Violence Against Women Bill, the Penal Code, the Electoral Code, and 1982 Citizenship Law. The CEDAW Committee also reiterated the persistence of gender stereotypes in school and teaching materials, and recommends their immediate revision. Though SOGIESC were not explicitly mentioned in these documents, ASC understands that these same laws which perpetuate the unfair treatment of women in general also prevent LBT women from engaging meaningfully in social, economic, political, and family life. The CEDAW Committee's General Recommendation 33 also recognizes this, speaking in the context of criminalization, that "women are disproportionately criminalized owing to their situation or status", including their "identity as a lesbian, bisexual or transgender woman or intersex person."

The prevalence of VAW was also repeatedly raised, as well as the lack of disaggregated data on gender-based violence and other discriminatory practices perpetuated in various areas of life, including education, health and employment, among others. The CEDAW Committee urged member-states to take the necessary steps to enact laws and policies to address it. It is ASC's position that such actions must also address VAW on the basis of SOGIESC, ensure gender-sensitive and timely treatment and services for victims, and provide affordable access to legal remedies. This is in line with the position already taken by the CEDAW Committee, under General Recommendation 35, which affirms that "gender-based violence may affect some women to different degrees, or in different ways, so appropriate legal and policy responses are needed." Among the factors that influences the kind and intensity of VAW noted in the General Recommendation is "being lesbian, bisexual, transgender, or intersex".

Other issues pertinent to VAW among women of diverse SOGIESC were not documented in civil society submissions but were articulated in many statements and other reports outside of the convention's procedures. While the following reference to a CEDAW submission for China is not within the geographical scope of this report, it would be useful to highlight one issue reported her, i.e. conversion therapy, as an example of a serious concern that is yet to be comprehensively taken up in the CEDAW submissions of ASEAN member-states. The China LBT Initiative report cited a survey indicating that LBT women experience various forms of violence perpetrated by their families, and that among these were experiences of conversion therapy. They reported that "some psychologists and psychiatrists continue to claim that homosexuality may be "cured," and will often attempt to conduct "sexual orientation conversion therapy" on LBT women, who are often committed to psychiatric institutions advertising such services after being coerced by their families."⁴⁸ Such experiences are also prevalent in Southeast Asian countries, and ASC calls on civil society to report actively on this and other similar concerns.

ANNEX 1

Provisions from General Recommendations of the Committee on the Elimination of Discrimination Against Women, with references to SOGIESC

General recommendation No. 27 on older women and protection of their human rights (CEDAW/C/GC/27)⁴⁹

13. The discrimination experienced by older women is often multidimensional, with the age factor compounding other forms of discrimination based on gender, ethnic origin, disability, poverty levels, sexual orientation and gender identity, migrant status, marital and family status, literacy and other grounds. Older women who are members of minority, ethnic or indigenous groups, internally displaced or stateless often experience a disproportionate degree of discrimination.

General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW/C/GC/28)⁵⁰

18. Intersectionality is a basic concept for understanding the scope of the general obligations of States parties contained in article 2. The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity. Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways to men. States parties must legally recognize such intersecting forms of discrimination and their compounded negative impact on the women concerned and prohibit them. They also need to adopt and pursue policies and programmes designed to eliminate such occurrences, including, where appropriate, temporary special measures in accordance with article 4, paragraph 1, of the Convention and general recommendation No. 25.

General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women (CEDAW/C/GC/32)⁵¹

6. The Committee has, in previous general recommendations, clarified that articles 1, 2 (f) and 5 (a) of the Convention read together indicate that the Convention covers sex- and gender-based discrimination against women. The Committee has explained that application of the Convention to gender-based discrimination falls under the definition of discrimination contained in article 1, which points out that any distinction, exclusion or restriction which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women of human rights and fundamental freedoms is discrimination. Discrimination against women based on sex and/or gender is often inextricably linked with and compounded by other factors that affect women, such as race, ethnicity, religion or belief, health, age, class, caste, being lesbian, bisexual or transgender and other status. Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways to men. States parties must legally recognize such intersecting forms of discrimination and their compounded negative impact on the women concerned and prohibit them.

16. Gender-related claims to asylum may intersect with other proscribed grounds of discrimination, including age, race, ethnicity/nationality, religion, health, class, caste, being lesbian, bisexual or transgender and other status. The Committee is concerned that many asylum systems continue to treat the claims of women through the lens of male experiences, which can result in their claims to refugee status not being properly assessed or being rejected. Even though gender is not specifically referenced in the definition of a refugee given in the 1951 Convention relating to the Status of Refugees, it can influence or dictate the type of persecution or harm suffered by women and the reasons for such treatment. The definition in the 1951 Convention, properly interpreted, covers gender-related claims to refugee status. It must be emphasized that asylum procedures that do not take into account the special situation or needs of women can impede a comprehensive determination of their claims. For example, asylum authorities may interview only the male “head of household”, may not provide same-sex interviewers and interpreters to allow women to present their claims in a safe and gender-sensitive environment or may interview women asylum seekers in the presence of their husbands or male family members who may in fact be the source or sources of their complaints.

38. States parties should interpret the definition of a refugee in the 1951 Convention relating to the Status of Refugees in line with obligations of non-discrimination and equality; fully integrate a gender-sensitive approach while interpreting all legally recognized grounds; classify gender-related claims under the ground of membership of a particular social group, where necessary; and consider adding sex and/or gender, as well as the reason of being lesbian, bisexual or transgender, and other status to the list of grounds for refugee status in their national asylum legislation.

General Recommendation No. 33 on women’s access to justice (CEDAW/C/GC/33)⁵²

8. Discrimination against women, based on gender stereotypes, stigma, harmful and patriarchal cultural norms and gender-based violence, which affects women in particular, has an adverse impact on the ability of women to gain access to justice on an equal basis with men. In addition, discrimination against women is compounded by intersecting factors that affect some women to degrees or in ways that differ from those affecting men or other women. Grounds for intersecting or compounded discrimination may include ethnicity/race, indigenous or minority status, colour, socioeconomic status and/or caste, language, religion or belief, political opinion, national origin, marital and/or maternal status, age, urban/rural location, health status, disability, property ownership and identity as a lesbian, bisexual or transgender woman or intersex person. These intersecting factors make it more difficult for women from those groups to gain access to justice.

49. Women are also disproportionately criminalized owing to their situation or status, such as being involved in prostitution, being a migrant, having been accused of adultery, identity as a lesbian, bisexual or transgender woman or intersex person, having undergone an abortion or belonging to other groups that face discrimination.

General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19 (CEDAW/CG/GC/35)⁵³

12. General recommendation No. 28 on the core obligation of States parties under article 2 of the Convention as well as general recommendation No. 33 on women's access to justice confirms that discrimination against women is inextricably linked to other factors that affect their lives. The Committee's jurisprudence highlights that these may include ethnicity/race, indigenous or minority status, colour, socioeconomic status and/or caste, language, religion or belief, political opinion, national origin, marital and/or maternal status, age, urban/rural location, health status, disability, property ownership, being lesbian, bisexual, transgender or intersex, illiteracy, trafficking of women, armed conflict, seeking asylum, being a refugee, internal displacement, statelessness, migration, heading households, widowhood, living with HIV/AIDS, deprivation of liberty, being in prostitution, geographical remoteness and stigmatisation of women fighting for their rights, including human rights defenders. Accordingly, because women experience varying and intersecting forms of discrimination, which have an aggravating negative impact, the Committee acknowledges that gender-based violence may affect some women to different degrees, or in different ways, so appropriate legal and policy responses are needed.

31. Repeal all legal provisions that discriminate against women, and thereby enshrine, encourage, facilitate, justify or tolerate any form of gender-based violence against them; including in customary, religious and indigenous laws. In particular, repeal:

- a) Provisions that allow, tolerate or condone forms of gender-based violence against women, including child or forced marriage and other harmful practices, provisions allowing medical procedures on women with disabilities without their informed consent, as well as legislation that criminalises abortion, being lesbian, bisexual, or transgender, women in prostitution, adultery or any other criminal provisions that affects women disproportionately including those resulting in the discriminatory application of the death penalty to women.

NOTES

- 1 “Sex assigned at birth” is the more appropriate terminology because it is specific. A person’s sex or gender marker, often reflected in their birth certificates, are determined solely by the presence of either a penis or a vagina – in other words, their genital sex. As is the case for all people (though most especially for intersex persons, whose sex characteristics may be ambiguous or do not reflect what is typical of male or female physiology), genital sex is not the only way the human body expresses sex: others include hormonal sex, chromosomal sex, and so on.
- 2 ASEAN SOGIESC Caucus recognizes that gender identity is a complex subject, and that there are many other social categories besides “transgender” which capture the person’s unique social and cultural contexts. But for the purposes of this paper, we will opt to use the term “transgender” to refer to people whose identities do not match their legal sex or gender markers, as this is also the terminology used in most of the documents cited in this policy brief.
- 3 “Patriarchy” refers broadly to social, cultural, and political systems which privileges and asserts the superiority of men and masculinity over and above women and femininity. “Heteronormativity”, which is closely theoretically linked to patriarchy, refers to social, cultural, and political systems which assert and perpetuate ideas and practices that claims heterosexuality as the only true, lawful, and good arrangement. This includes assertions that marriage and family life are institutions solely for heterosexual partnerships, natural excluding same-sex partnerships and other family types.
- 4 Broadly, “intersectionality” is a theoretical handle that recognizes the various social categories that make up an individual’s general position in a given context (e.g. age, socioeconomic class, HIV status, etc.) and sees these categories interacting with one-another in significant ways. Using intersectionality as a lens would, for example, allow us to recognize the important differences in the way discrimination on the basis of SOGIESC is experienced by a person if that person is also at the same time a child, a migrant worker, an elderly person, a person lives with a disability, or a combination thereof.
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- 6 For more information, see: <http://cedaw2015.org/index.php/about-cedaw/cedaw-by-the-numbers>
- 7 For more information, see: <https://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>
- 8 UN General Assembly, 1999. Resolution 54/4: Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, A/RES/54/4.
- 9 For more information on the optional protocol on communication procedures, see: <http://www.un.org/womenwatch/daw/cedaw/protocol/>.
- 10 For guidelines on engaging the optional protocol, see: http://www.ohchr.org/documents/HRBodies/CEDAW/InfoNote_OP_en.doc.
- 11 For more information, see: <http://www.iwraw-ap.org/cedaw/what-is-cedaw/general-recommendation/>
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