



METHODOLOGY AND CONSULTATION PROCESS

People Like Us (www.plu.sg) is an advocacy group interested in equality for gay, lesbian, bisexual and transgendered (LGBT) persons. We consulted internally with our members and with other activists concerned with LGBT communities and their issues; with lawyers who have researched relevant cases; and with a leader in the field of HIV prevention.

This submission focusses on the human rights shortcomings faced by LGBT persons in Singapore in six areas: criminal law, censorship, barriers to association, sex notation on identity card, discrimination in employment, and inequality resulting from lack of legal recognition for same-sex relationships.

NORMATIVE AND INSTITUTIONAL FRAMEWORK

Subheading: Constitution

Article 12(1) of the Constitution of the Republic of Singapore¹ says explicitly "All persons are equal before the law and entitled to the equal protection of the law."

Article 12(2) reinforces this, saying "there shall be no discrimination against citizens of Singapore on the ground only of religion, race, descent or place of birth in any law". It however does not mention gender or sexual orientation, though the foregoing list of characteristics is neither exclusive, nor does it qualify the right to equality in law.

Article 14(1) guarantees the right to freedom of speech and expression, and the right to form associations. These are qualified in Article 14(2) with reference to "public order and morality". To the best of our knowledge, the Singapore government has not labelled homosexuality and transgenderism as issues of morality from the point of view of a secular state, and even if it did, it would be highly contestable from a logical and a public opinion standpoint.

The Constitution does not have any article guaranteeing the right to privacy.

Subheading: Legislation and administrative policies

Issue: Criminal law

Section 377A of the Penal Code says: "Any male person who, in public or private, commits, or abets the commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person, shall be punished with imprisonment for a term which may extend to 2 years." This criminalises sexual contact between two male persons even if they are consenting adults and even intimacy occurs in private. It impacts and is intended to impact gay men. There is no equivalent law criminalising sexual contact between two women, nor any legislation of similar nature criminalising sexual contact between persons of opposite sex. In its discriminatory effect, this is a violation of UDHR Article 7. For its invasion of privacy, this is a violation of UDHR Article 12.

In 2007, a Parliamentary Petition was laid before the legislature, in accordance with legislative rules, to repeal Section 377A. The government and its majority in parliament rejected the appeal. By that act, the government refreshed the validity of this section of the Penal Code.

During the parliamentary debate surrounding the abovementioned Petition, the Prime Minister said "we do not proactively enforce section 377A", though what is meant by "pro-actively enforce" has not been spelled out.

Whilst, during the four years under review, 2006 - 2009, there has been no known prosecution of consenting adults engaged in private sexual relations under Section 377A, men caught in intimate situations with each other in public places, e.g. secluded parks and shopping centre toilets, have been prosecuted under this law.

Those prosecutorial decisions are themselves discriminatory because opposite-sex couples caught in similar situations would not face the same law. In fact, there has been no known case in the four years under review, of opposite-sex couples charged at all. It is unclear whether this is due to enforcement agencies ignoring instances of opposite-sex couples engaged in intimacy in public spaces, or whether it is media that is ignoring these prosecutions in their reporting. There was however one case in January 2009 of an opposite-sex couple who stripped and paraded nude down a busy street, with the clear intention of attracting attention. They were charged under a different law from Section 377A (which couldn't have applied to them since they were an opposite-sex couple) and only fined the maximum fine of S\$2,000 each in April 2009.

By comparison, men caught in intimate situations behind bushes or behind a locked toilet door have faced Section 377A, which does not give the judge the option of fining them since the law mandates a prison term of up to two years. Hence the prosecutorial decision to use Section 377A instead of other gender-neutral laws compels a discriminatory judicial outcome.

This is in addition to the threat of arrest and prosecution that this law creates even for adult consensual relations in private.

Issue: Censorship

The Media Development Authority Act, the Films Act and the Broadcasting Act empower the Media Development Authority (MDA) to ban, classify and, through licensing, restrict the content of various media. The MDA effectuates these powers through conditions attached to licences that it issues, and through published "guidelines" which include prohibitions and restrictions on material with LGBT characters and themes.

For example, film classification guidelines² say: "Films should not promote or normalise a homosexual lifestyle. However, nonexploitative and non-explicit depictions of sexual activity between two persons of the same gender may be considered for R21."

Free-to-air television guidelines³ say: "Information, themes or subplots on lifestyles such as homosexuality, lesbianism, bisexuality, transsexualism, transvestism . . . 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."

In practice, these guidelines are treated as binding rather than as advisory and are interpreted in risk-averse ways, with films and television programs containing LGBT themes and characters censored or restricted even when no sex is involved, either by the MDA itself or by producers and editors required to abide by the MDA's licence conditions.

With few exceptions (mostly films that are rated R21 and accessible only to those aged 21 and older in selected cinemas) anything that depicts LGBT characters in normal or positive light, or any speech that advocates for their dignity and rights are routinely cut out or barred (violation of UDHR Article 19). What is left is depiction that tends to be stereotypical and/or negative, and is generally, if subtly degrading. The result of this skewed depiction is a perpetuation of prejudice and stigma upon which discrimination by public and private actors is grounded. This censorship policy also means that LGBT persons are deprived of positive role models in the media, which reinforces low self-esteem throughout their adult lives, in turn rendering them accepting of discrimination and rights abuses.

Taking its cue from legislation and censorship policies, the Education Ministry (MOE) established "guidelines" for sexuality education⁴ that say: "MOE does not condone promiscuity, sexual experimentation by teenagers or promote homosexuality. MOE teaches students what homosexuality is, and that homosexual acts are illegal."

A tone of disapproval and exclusion is adopted. Not only does it damage the psycho-social health of LGBT teenagers and thereby fail their educational needs (violation of UDHR Article 26(2)), it provides justification for prejudice, intolerance and marginalisation in the minds of their heterosexual peers.

Taken together, the censorship and education policies create attitudes and conditions that violate the "economic, social and cultural rights indispensable for his dignity and the free development of his personality" (vide UDHR Article 22) by government bodies and private citizens.

Issue: Barriers to association

The Societies Act gives discretionary power to the Registrar of Societies to approve or disapprove a society (defined as any group with ten or more persons), with appeals against his decision directed to the minister in charge. The Societies Act does not require the Registrar or the minister to give reasons for whatever decision they make.

Section 14 of this Act defines any unregistered society as an "unlawful society" whose leaders and members are liable to criminal prosecution.

On two separate occasions, People Like Us was denied registration by the Registrar of Societies. The reason given by the Registrar on both occasions was that it would be "contrary to the national interest" to legally register the group (violation of UDHR Article 20(1)). How LGBT interests could be contrary to the national interest was not explained.

People Like Us, and by this precedent, all LGBT advocacy groups, operate under an ever-present threat of arrest and prosecution (violation of UDHR Article 20(1)). Even without such clampdowns, the lack of legal status means an inability to raise funds in any organised way, and denial of access to mainstream media wary of giving legitimacy to illegal groups (violation of UDHR Article 19)

Issue: Sex notation on identity card

The National Registration Act requires each citizen to be issued with an identity card and to have recorded such details as the Commissioner of National Registration requires. This includes one's sex.

The administrative practice is that a transgendered person shall have his sex at birth recorded on the identity card even when the person clearly identifies with and presents as someone of the opposite gender. The "sex" entry on the identity card, and by extension the passport, is not changed unless the individual can prove that he or she has undergone the full scope of sex-reassignment surgery. For the majority of transgendered persons, this is neither affordable, practicable, nor something they might want. The result is a life lived in limbo, with a contradiction between the documented sex and their lived gender. Consequently, the state-issued identity card becomes an instrument by the state and others to inflict social humiliation against them (violation of UDHR Article 5).

Issue: Discrimination in employment

There is no legislation against discriminatory practices in employment. The state-perpetuated prejudice against LGBT persons manifests in discrimination against LGBT employees by many organisations in the private sector, at both at hiring and promotion points (violation of UDHR Article 23 (1), (2) and (3)). This is particularly serious for male-to-female transgendered persons which few organisations would consider hiring in the first place.

Without anti-discrimination or equal opportunity legislation, affected persons have no recourse.

Former Prime Minister Goh Chok Tong in 2003 declared that the public sector should no longer discriminate against gay persons, but as far as is known, this announcement has not been codified in any way. In any case, it is not clear if transgendered persons are included or excluded from this pronouncement.

Yet, anecdotal reports surface repeatedly of gay teachers being shunted out of classrooms into dead-end administrative jobs, or have their contracts terminated. Typically, no reason is given and therefore it is not possible to determine if their sexual orientation was the factor in the decision, but the pattern over several cases and the lack of other discernible reasons in each case lend weight to suspicion that discrimination is at work.

Issue: Inequality resulting from lack of legal recognition for same-sex relationships

Neither the law nor the state recognises same-sex relationships. Even marriages contracted in other jurisdictions between same-sex partners are specifically derecognised in Singapore under Section 12(1) of the Women's Charter, which says: "A marriage solemnized in Singapore or elsewhere between persons who, at the date of the marriage, are not respectively male and female shall be void."

Consequently, many benefits and rights enjoyed by married opposite-sex couples are denied to same-sex couples because the latter do not have the route to marriage open to them. These include employee benefits whose scope extend to spouses, medical visitation and next-of-kin rights, rights to purchase subsidised public housing from the Housing and Development Board and tax allowances for married couples. This is a violation of UDHR Article 7.

Subheading: National jurisprudence

With respect to sexual orientation and gender identity, there have been no cases or court decisions that has significantly altered interpretation of law or administrative policies during the four years under review.

Subheading: Human rights infrastructure

There is no human rights infrastructure tasked to look into or defend the rights of LGBT persons.

IMPLEMENTATION AND EFFICIENCY OF THE NORMATIVE AND INSTITUTIONAL FRAMEWORK FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

During the period under review, the State has made no effort to implement the provisions of the UDHR with respect to the rights of LGBT persons. On the contrary, where it had the opportunity to do so, in 2007, when a Parliamentary Petition for repeal of Section 377A was moved, it expressly refused to do so.

CO-OPERATION OF THE COUNTRY UNDER REVIEW WITH HUMAN RIGHTS MECHANISMS AND WITH HUMAN RIGHTS INSTITUTIONS, NGOS, RIGHTS HOLDERS, HUMAN RIGHTS DEFENDERS AND OTHER RELEVANT HUMAN RIGHTS STAKEHOLDERS

Ever since registration under the Societies Act was denied to People Like Us in 1997 and 2004 under the Societies Act, there has been no known instance when the government has indicated its willingness to reconsider its refusal or to dialogue with rights defenders from the

affected communities, with the exception of occasional closed-door dialogues strictly confined to HIV issues and excluding any discussion of rights violations.

While the government itself does not, in its public communication, speak of LGBT persons in dehumanising ways, it turns a blind eye to those who do, even when such demonising speech makes headlines in news media. Persons engaging in such speech include its own parliamentarians, as seen in the 2007 debate over Section 377A of the Penal Code.

ACHIEVEMENTS MADE BY THE COUNTRY UNDER REVIEW, BEST PRACTICES WHICH HAVE EMERGED, AND CHALLENGES AND CONSTRAINTS FACED BY THE COUNTRY UNDER REVIEW

Subheading: Achievements and best practices

None.

Subheading: Challenges and constraints:

To an extent, the government has been conscious of the rise of religious fundamentalism, which tends to be a constituency opposed to the realisation of human rights for LGBT persons, and may feel politically constrained by these small but vocal groups. Yet, by its own inaction over Section 377A of the Penal Code in 2007, let alone the signals it has sent by its own discriminatory policies and silence when others incite human rights violations, the government has emboldened and encouraged these private groups.

KEY NATIONAL PRIORITIES

The state should

- Repeal Section 377A of the Penal Code;
- Review its censorship policies and sexuality education guidelines with a view to removing discriminatory treatment of LGBT-related material and viewpoints;
- Register LGBT-related groups under the Societies Act without onerous conditions;
- Be more flexible about coding sex on identity cards, taking into account the preferred gender presentation of the person involved;
- Enact an anti-discrimination law with scope that includes sexual orientation and gender identity;
- Repeal Section 12(1) of the Women's Charter and permit registration of same-sex marriages.

1. The constitution and legislation referred to in this submission can be found at <http://statutes.agc.gov.sg/>

2. http://www.mda.gov.sg/Documents/PDF/FilmClassificationGuidelines_Final2010.pdf, accessed 27 October 2010.

3. http://www.mda.gov.sg/Documents/PDF/industry/Industry_TV_ContentGuidelines_FTATVPr ogCode.pdf, accessed 27 October 2010.

4. <http://www.moe.gov.sg/education/programmes/social-emotional-learning/sexuality-education/policies/>, accessed 27 October 2010.