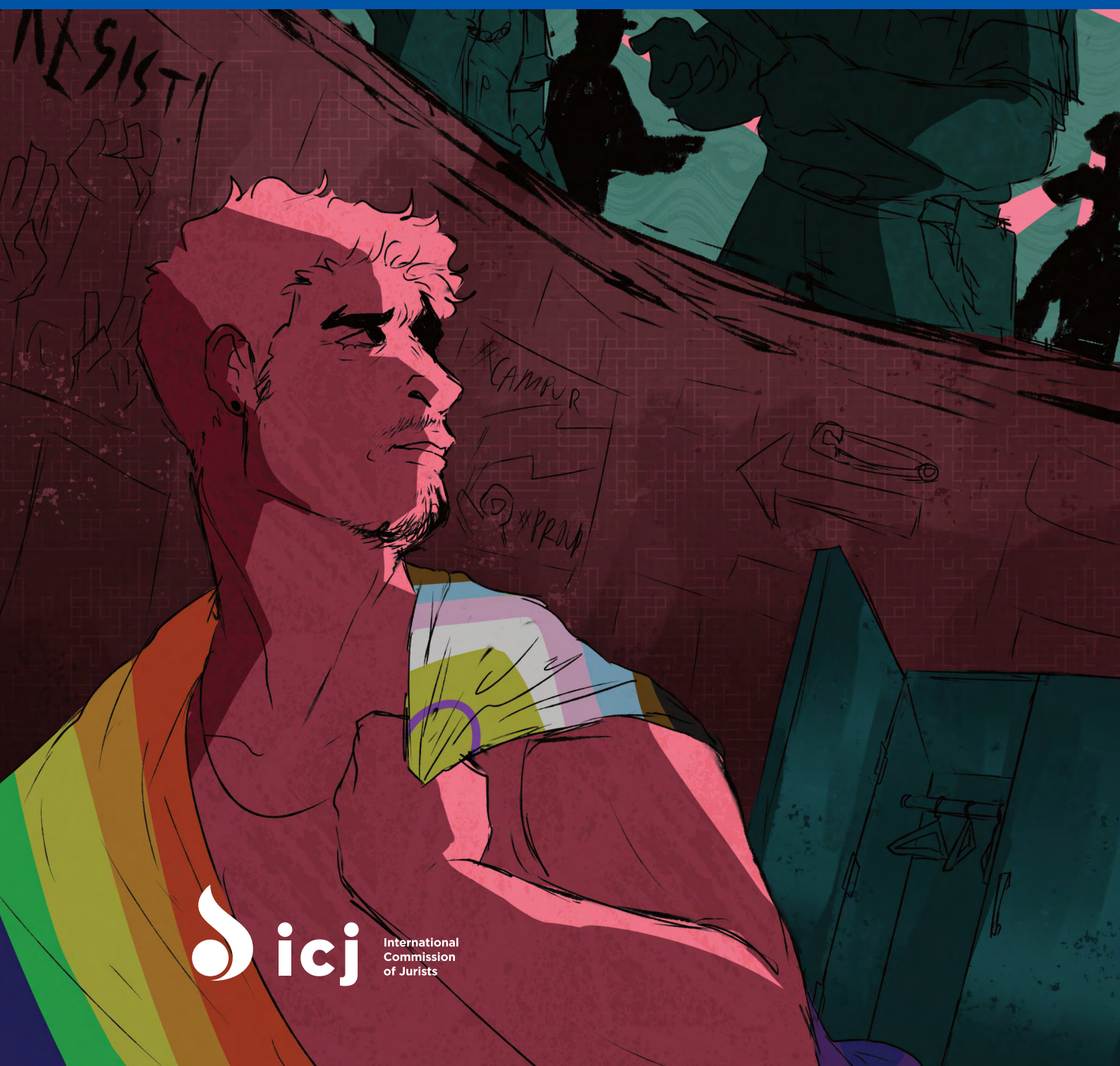


# Silenced But Not Silent: Lesbian, Gay, Bisexual and Transgender Persons' Freedom of Expression and Information Online in Southeast Asia

*A Baseline Study of Five Countries  
in Southeast Asia: Indonesia, Malaysia, Philippines,  
Singapore and Thailand*



Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists (ICJ) promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952 and active on the five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.

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**International Commission of Jurists**

P.O. Box 1740

Rue des Buis 3

CH 1211 Geneva 1

Switzerland

t: +41 22 979 38 00

f: +41 22 979 38 01

[www.icj.org](http://www.icj.org)

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## Chapter 1: Introduction

For lesbian, gay, bisexual and transgender (LGBT) individuals, online spaces are absolutely critical for expressing themselves freely,<sup>1</sup> engaging in human rights advocacy and movement-building, establishing social connections, and safely accessing information and resources.<sup>2</sup> Such access was especially important during the COVID-19 pandemic, when LGBT human rights defenders increasingly turned to virtual spaces to carry out their activism, and make and maintain social connections.

However, the ability of LGBT people to access virtual spaces safely and freely is increasingly coming under threat. In particular, due to State restrictions on LGBT-related expression and information, LGBT individuals face unique challenges when trying to express themselves and access information in online spaces.

Moreover, the unabated prevalence of online violence,<sup>3</sup> abuse<sup>4</sup> and hate speech<sup>5</sup> targeted at LGBT individuals makes it unsafe for them to express themselves online or to access online spaces as a result of the fear of being identified, outed, or subjected to violence. In particularly serious cases, online violence may also lead to physical violence against LGBT individuals offline. These homophobic and transphobic attacks, whether offline or online, undermine the ability of LGBT individuals to express themselves and access information online freely, and violate their human rights, including, in particular, their right to freedom of expression and information, right to live a life free from violence and discrimination, the right to security of person and the right to privacy, guaranteed by international human rights law.

This report consists of a baseline study<sup>6</sup> of the extent to which LGBT people in five countries in Southeast Asia face barriers arising in connection with their real or imputed sexual orientation, gender identity and gender expression (SOGIE) when exercising their right to freedom of expression and information online.<sup>7</sup> The countries surveyed in this report are **Indonesia, Malaysia, Philippines, Singapore** and **Thailand**. Information from this report has been drawn from extensive desk research, as well as semi-structured interviews<sup>8</sup> with 22 LGBT activists from the five countries.

This report's key finding is that, in Indonesia, Malaysia, Philippines, Singapore and Thailand, the restrictions and barriers LGBT individuals face to safely and freely express themselves and access information online are symptomatic of broader patterns of discrimination, stigmatization and marginalization they experienced in these countries online as well as offline.

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<sup>1</sup> As noted by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, "the Internet has become the new battleground in the struggle for women's rights, amplifying opportunities for women to express themselves but also multiplying possibilities for repression." This is also the case for LGBT people; see, Human Rights Council, "Promotion and protection of the right to freedom of opinion and expression", UN Doc. A/76/258, 30 July 2021, para. 4 ("UNSR on FOE Report on Gender Justice and Freedom of Expression").

<sup>2</sup> See, for instance, UK Safer Internet Centre, "LGBT+ History Month: Why is the internet important for LGBT+ young people and what can parents and carers do to help them stay safe?", 24 February 2021, available at: <https://saferinternet.org.uk/blog/lgbt-history-month-why-is-the-internet-important-for-lgbt-young-people-and-what-can-parents-and-carers-do-to-help-them-stay-safe>.

<sup>3</sup> Online violence is violence that is committed, assisted or aggravated in part or fully by the use of information and communications technology. This violence is also often gender-based, i.e. constitutes online gender-based violence (OGBV), to the extent that they are driven by a desire to punish those seen as defying gender norms. This will be discussed in greater detail in Chapter 2. See also, ICJ, "OGBV Law Checklist", available at: <https://icj2.wpenginepowered.com/wp-content/uploads/2023/05/ICJ-OGBV-Law-Checklist.pdf> ("ICJ OGBV Law Checklist").

<sup>4</sup> Online abuse refers to conduct and behaviours that causes harm or distress to another person, even if it does not rise to the level of violence. This will be discussed in greater detail in Chapter 2.

<sup>5</sup> There is no international legal definition of "hate speech". The UN Strategy and Plan for Action on Hate Speech defines "hate speech" as "any kind of communication in speech, writing or behaviour, that attacks or uses pejorative or discriminatory language with reference to a person or a group on the basis of who they are, in other words, based on their religion, ethnicity, nationality, race, colour, descent, gender or identity factor". See, United Nations Strategy and Plan of Action on Hate Speech, p. 2, available at: [https://www.un.org/en/genocideprevention/documents/advising-and-mobilizing/Action\\_plan\\_on\\_hate\\_speech\\_EN.pdf](https://www.un.org/en/genocideprevention/documents/advising-and-mobilizing/Action_plan_on_hate_speech_EN.pdf). This will be discussed in greater detail in Chapter 2.

<sup>6</sup> A baseline study is an initial assessment of the situation. The ICJ hopes that the initial findings of this study, together with the gaps it identifies in the existing literature, can serve as a springboard for further research and advocacy in this understudied area.

<sup>7</sup> This report does not purport to be exhaustive about the range of concerns that may arise for LGBT people when exercising their freedom of expression and information online. Other concerns that may arise in connection with LGBT people's access to online spaces, and that may detrimentally affect their human rights, include surveillance and the queer digital divide, topics which the ICJ hopes to conduct further research and analysis on in the near future.

<sup>8</sup> These interviews were conducted with a set of open-ended questions, with follow-up probe questions to dig deeper into the responses provided by the interviewees.

These five countries' socio-legal contexts for LGBT individuals vary greatly, which will be discussed in detail in Chapter 3:

- Indonesia and Malaysia continue to criminalize, in some form, consensual same-sex sexual relations and gender diversity and expression;
- Singapore recently decriminalized consensual same-sex male sexual activity; and
- Thailand and the Philippines do not criminalize consensual same-sex sexual relations or gender diversity and expression; albeit both countries still fail to guarantee full legal gender recognition.

In light of this, it is thus unsurprising that, out of the five countries mentioned above, Indonesia and Malaysia – which continue to criminalize consensual same-sex sexual relations and gender diversity and expression in some form – are the ones endowed with a greater number of laws, policies and regulations enabling the authorities to clamp down on LGBT-related expression through “legal” sanctions and website and content-blocking. Such clampdown has been pursued under an overly expansive purported justification of curtailing content that is “indecent”, “improper”, “obscene” or “pornographic”. In Singapore, the authorities have adopted a “lighter touch” regarding censorship of LGBT online content, mostly through resort to age restrictions instead of the outright banning LGBT content. The ICJ’s research did not indicate any such blocking or restrictions on online LGBT-related expression and information in Thailand and the Philippines.

Nonetheless, regardless of whether there are laws effectively criminalizing LGBT people, in all five countries surveyed LGBT individuals have reported facing online violence, abuse and hate speech based on animus or prejudice against their real or imputed SOGIE. Instances of online violence, which often constitute online gender-based violence (OGBV), and abuse documented include: doxing;<sup>9</sup> outing; online harassment, including sexual harassment; cyber bullying; non-consensual recording and distribution of intimate content, including “revenge porn”; incitement to violence; and death threats.<sup>10</sup>

The severity of these online attacks against LGBT individuals in the five countries is exacerbated by the substantive and procedural barriers that, contrary to international human rights law and standards, unlawfully obstruct LGBT individuals’ access to justice and effective remedies for human rights violations and abuses in online and offline spaces. All five countries have failed to adopt comprehensive anti-discrimination laws or protective mechanisms for LGBT individuals. Even for the countries that have piecemeal legal protections against certain forms of violence, the implementation and enforcement of such laws are inconsistent, and have been marred by a trust deficit on the part of LGBT persons in law enforcement agencies, due to reports of violence, discrimination and harmful stereotyping by these agencies against LGBT individuals.

As a result, LGBT individuals choose to self-censor, hide their identities, and limit or cease expressing themselves online to avoid reprisals. Such a response is even greater when the persons concerned not only identify as LGBT, but also hail from other marginalized communities or groups of individuals already facing exclusion and subjugation resulting from discrimination on one or multiple, intersecting grounds of discrimination prohibited by international human rights law.

Each taken alone and in combination, the above-mentioned restrictions and abuses constitute violations of the human rights of LGBT people in the five countries, particularly their rights to: freedom of expression and information; freedom from discrimination; equality before the law and equal protection of the law without discrimination; privacy; and to a life free from violence.

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<sup>9</sup> That is, the non-consensual publication of private information, such as contact details, on the Internet with malicious intent, such as exposing the victim to harassment.

<sup>10</sup> This list is not exhaustive of the forms of online violence and abuse experienced by LGBT people, but are the ones that the ICJ has documented, and will be discussed in Chapter 5. Other forms of online violence can include online stalking, sextortion (i.e. threatening to release intimate pictures of the victim to extort additional intimate content or sexual acts from the victim), and threats to share intimate contents; see, ICJ OGBV Law Checklist.

This report also maps out how tech companies have contributed to the online marginalization faced by LGBT persons, including through the arbitrary removal of LGBT-related content; their failure to sufficiently respond to anti-LGBT content; and the algorithmic amplification of harmful content.

The report concludes by providing concrete recommendations to States and tech companies in order to ensure that they fulfill their obligations and responsibilities under international human rights law vis-à-vis LGBT individuals in online spaces and beyond.

**Chapter 2: International Law and Standards**

The analysis of the impermissible barriers faced by LGBT persons in expressing themselves and/or accessing information online presented in this report is anchored in international human rights law and standards. This chapter sets out States’ obligations under international human rights law and standards regarding the rights to: freedom from discrimination; equality before the law and equal protection of the law without discrimination; freedom of opinion; freedom of expression and information; and privacy.<sup>11</sup>

Under international human rights law, States undertake to respect, protect and fulfill human rights. The obligation to respect human rights means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect human rights requires States to protect individuals and groups against human rights abuses by third parties, including private entities, such as businesses, security contractors and corporations. Finally, the obligation to fulfill human rights means that States must take positive action to facilitate their exercise and enjoyment.

In light of this, under international human rights law, States are required to respect, protect and fulfill the human rights of LGBT persons, including their right to freedom of expression and information online. The human rights of LGBT persons are not “new” rights, but rights that inhere to any human being by virtue of their humanity, such as, for example, the right to equality before the law and equal protection of the law without discrimination, the right to freedom from discrimination, the right to privacy and the right to freedom of expression, including to freely access information.<sup>12</sup> Various international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), guarantee these rights.

The five countries in this study are State parties to different treaties. All five countries are State parties to the Convention on the Rights of the Child (CRC) and CEDAW. Notably, however, Malaysia and Singapore are not party to the ICCPR and ICESCR. The status of ratification of relevant international human rights instruments for each of the five countries is summarized in the following table.

	<b>Indonesia</b>	<b>Malaysia</b>	<b>Philippines</b>	<b>Singapore</b>	<b>Thailand</b>
<b>ICCPR</b>	X		X		X
<b>ICESCR</b>	X		X		X
<b>CRC</b>	X	X	X	X	X
<b>CEDAW</b>	X	X	X	X	X
<b>Convention on the Elimination of all forms of Racial Discrimination (ICERD)</b>	X		X	X	X
<b>Convention on the Rights of Persons with Disabilities (CRPD)</b>	X	X	X	X	X

<sup>11</sup> This list of human rights is not exhaustive of the human rights of LGBT persons impacted by or interrelated with the barriers they face in exercising their rights online. Other human rights that may be detrimentally affected include the right to freedom of association and peaceful assembly, right to health, right to political participation, right to life, and right to freedom from torture and cruel, inhuman or degrading treatment or punishment.

<sup>12</sup> ICJ, “Invisible, Isolated, and Ignored: Human Rights Abuses Based on Sexual Orientation and Gender Identity/Expression in Colombia, South Africa and Malaysia”, 2021, p. 7, available at: <https://icj2.wpenginepowered.com/wp-content/uploads/2021/03/Colombia-SouthAfrica-Malaysia-SOGIE-Publications-Reports-Thematic-reports-2021-ENG.pdf>.



## **The Right to Freedom from Discrimination and the Right to Equality Before The Law and Equal Protection of the Law Without Discrimination**

The principle of non-discrimination is a general principle of international law enshrined in international human rights law, for example, in article 2 of the Universal Declaration of Human Rights, which guarantees the right to freedom from discrimination. The non-discrimination principle is guaranteed as a right in the ICCPR (article 2(1)) and the ICESCR (article 2(2)). The right to freedom from discrimination entails, among other things, a prohibition on discrimination based on SOGIE.

In addition, international human rights law guarantees the right to equality before the law and equal protection of the law without discrimination, which includes the prohibition on discrimination based on SOGIE.

A number of international human rights treaties by which the five countries in this research are bound, as State parties, guarantee both the right to freedom from discrimination and the right to equality before the law and equal protection of the law without discrimination. These covenants and treaties contain open-ended provisions against discrimination, including discrimination on the basis of real or imputed SOGIE.<sup>13</sup>

The Human Rights Committee has ruled that article 26 of the ICCPR<sup>14</sup> prohibits discrimination based on sexual orientation.<sup>15</sup> States therefore have a legal obligation to guarantee the human rights enshrined in the ICCPR, including the right to freedom of expression and information, without discrimination on the basis of sexual orientation.<sup>16</sup>

Other UN human rights treaty bodies – including the Committee on Economic, Social and Cultural Rights;<sup>17</sup> the Committee on the Elimination of Discrimination against Women;<sup>18</sup> the Committee on the Rights of the Child;<sup>19</sup> the Committee against Torture;<sup>20</sup> the Committee on the Rights of Persons with Disabilities;<sup>21</sup> and the Committee on the Elimination of Racial Discrimination – have similarly affirmed that sexual orientation, gender identity and gender expression are prohibited grounds of discrimination.<sup>22</sup> In particular, the Committee on the Elimination of Discrimination against Women (CEDAW Committee) has urged State parties to recognize intersecting forms of discrimination, as discrimination against women based on sex and gender is “inextricably linked with other factors that affect women, such as ... sexual orientation and gender identity”.<sup>23</sup>

The Yogyakarta Principles and the Yogyakarta Principles plus 10 (YP+10), which provide further detail on States’ obligations on the application of international human rights law in relation to SOGIE and sex characteristics to complement the YP,<sup>24</sup> further emphasize that:

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<sup>13</sup> See, for instance, article 2(1) of the International Covenant on Civil and Political Rights; article 2 of the International Covenant on Economic, Social and Cultural Rights; article 2 of the Convention on the Rights of the Child.

<sup>14</sup> Article 26 of the ICCPR provides: “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

<sup>15</sup> Human Rights Committee, *Toonen v. Australia*, Communication No. 488/1992, UN Doc. CCPR/C/50/D/488/1992, 31 March 1994.

<sup>16</sup> Human Rights Committee, “Consideration of reports submitted by states parties under Article 40 of the Covenant, United States of America”, UN Doc. CCPR/C/USA/CO/3/Rev.1, 18 December 2006, para 25; Human Rights Committee, “Consideration of reports submitted by states parties under Article 40 of the Covenant, Chile”, UN Doc CCPR/C/CHL/CO/5, 17 April 2007, para 16.

<sup>17</sup> Committee on Economic, Social and Cultural Rights, “General Comment No. 20”, UN Doc. E/C.12/GC/20, 2009, para. 27.

<sup>18</sup> Committee on the Elimination of Discrimination Against Women, “General recommendation No. 27 on older women and protection of their human rights”, UN Doc. CEDAW/C/GC/27, 16 December 2010, para 13.

<sup>19</sup> Committee on the Rights of the Child, “General Comment No. 4”, UN Doc. CRC/GC/2003/4, 2003, para. 6; and Committee on the Rights of the Child, “General Comment No. 9”, UN Doc. CRC/C/GC/9, 2007, para 8.

<sup>20</sup> Committee Against Torture, “General Comment No. 2: Implementation of article 2 by State parties”, UN Doc. CAT/C/GC/2, 24 January 2008, para. 21.

<sup>21</sup> See, for instance, Committee on the Rights of Persons with Disabilities, “Concluding Observations on Canada”, UN Doc. CRPD/C/CAN/CO/1, para. 19.

<sup>22</sup> See, for instance, Committee on the Elimination of Racial Discrimination, “Concluding Observations on Germany”, UN Doc. CERD/C/DEU/CO/19-22, 2015, para. 16.

<sup>23</sup> Committee on the Elimination of Discrimination against Women, “General recommendation No. 28 on the core obligations of State parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women”, UN Doc. CEDAW/C/GC/28, 16 December 2010, para. 18.

<sup>24</sup> The Yogyakarta Principles are an international set of legal principles on the application of international law to human rights violations based on sexual orientation and gender identity. They are a universal guide to human rights which affirm binding international legal standards with which all State must comply. The ICJ, together with the International Service for Human Rights and a distinguished group of human rights experts, developed the Principles: see, ICJ, “Yogyakarta Principles”, 1 March 2007, available at: <https://www.icj.org/yogyakarta-principles/>.

“Everyone is entitled to enjoy all human rights without discrimination on the basis of sexual orientation or gender identity. Everyone is entitled to equality before the law and the equal protection of the law without any such discrimination whether or not the enjoyment of another human right is also affected. The law shall prohibit any such discrimination and guarantee to all persons equal and effective protection against any such discrimination.”<sup>25</sup>

The rights to equality and freedom from discrimination, and the right to freedom of expression should be fully reflected in law, policy and practice as mutually supportive human rights, as has been affirmed by the UN Committee on the Elimination of Racial Discrimination<sup>26</sup> and the UN Working Group on discrimination against women and girls.<sup>27</sup> Eliminating structural discrimination against LGBT persons – such as that which arises from discriminatory laws, policies and practices – is thus crucial to States’ obligations to respect, protect and fulfill the right to freedom of expression and information of LGBT persons.

UN human rights treaty bodies and Special Procedures of the UN Human Rights Council have emphasized the obligations of States to “repeal laws that criminalize consensual same-sex sexual conduct, transgender people based on their gender expression, and other laws that are used to criminalize, prosecute, harass and otherwise discriminate against people based on their actual or perceived sexual orientation and gender identity”.<sup>28</sup> As noted by the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (Independent Expert on SOGI), such laws “contribute to a social environment that explicitly permits and tolerates violence and discrimination based on sexual orientation or gender identity”.<sup>29</sup> Consequently, the mere existence and, *a fortiori*, the enforcement of these laws, have a detrimental impact on the ability of LGBT persons to express themselves in digital spaces without fear of intimidation or harassment.

## Right to Freedom of Opinion, Expression and Information

Article 19 of the ICCPR guarantees the right of each individual to freedom of expression and opinion. This includes the freedom to seek, receive and impart information and ideas through any media and regardless of frontiers, without discrimination.<sup>30</sup> Both treaty and non-treaty-based standards have affirmed that these rights apply online.<sup>31</sup> In addition, the UN Human Rights Council has repeatedly emphasized the universal applicability of this right in consensus resolutions, including in 2020 when it reaffirmed that “the right to freedom of opinion and expression, both online and offline, is a human right guaranteed to all [...] that it constitutes one of the essential foundations of democratic societies and development”.<sup>32</sup>

<sup>25</sup> Principle 2, Yogyakarta Principles, available at: <http://yogyakartaprinciples.org/principle-2/>.

<sup>26</sup> Committee on the Elimination of Racial Discrimination, “General recommendation No. 35: Combating racist hate speech”, UN Doc. CERD/C/GC/35, 26 September 2013, para. 45.

<sup>27</sup> Human Rights Council, “Report of the Working Group on the issue of discrimination against women in law and in practice”, UN Doc. A/HRC/23/50, 19 April 2013, para. 34.

<sup>28</sup> OHCHR, “Born Free and Equal: Sexual Orientation, Gender Identity and Sex Characteristics in International Human Rights Law, Second Edition”, 2019, p. 41 – 42. See also, ICJ, “The 8 March Principles for a Human Rights-Based Approach to Criminal Law Proscribing Conduct Associated with Sex, Reproduction, Drug Use, HIV, Homelessness and Poverty”, Principle 16, available at: [https://icj2.wpenginepowered.com/wp-content/uploads/2023/03/8-March-Principles-Report\\_final\\_print-version.pdf](https://icj2.wpenginepowered.com/wp-content/uploads/2023/03/8-March-Principles-Report_final_print-version.pdf) (“ICJ 8 March Principles”).

<sup>29</sup> Human Rights Council, “Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity”, UN Doc. A/HRC/38/43, 11 May 2018, para. 52 (“UN Independent Expert on SOGI Report on Violence and Discrimination Based on SOGI”).

<sup>30</sup> Article 19 of the ICCPR provides: “1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (*ordre public*), or of public health or morals.”

<sup>31</sup> UN Human Rights Committee, General Comment No. 34, UN Doc. CCPR/C/GC/34, 2011, para. 26 (“Human Rights Committee, General Comment No. 34”); UN Human Rights Council, *The promotion, protection and enjoyment of human rights on the Internet*, UN Doc. A/HRC/38/L.10/Rev.1, 4 July 2018, p. 3. This was similarly affirmed in a Joint Declaration on Freedom of Expression and the Internet issued by four independent experts from the UN and regional systems covering questions of freedom of expression in June 2011: United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information, *Joint Declaration on Freedom of Expression and the Internet*, 1 June 2011, para. 1a. available at: <https://www.osce.org/fom/78309?download=true>.

<sup>32</sup> Human Rights Council, “Resolution adopted by the Human Rights Council on 16 July 2020: 44/12. Freedom of opinion and expression”, UN Doc. A/HRC/RES/44/12, 24 July 2020, p. 1.

Notably, while Malaysia and Singapore are not parties to the ICCPR, the right to freedom of expression is generally considered as a norm of customary international law. As such, whether or not States are bound by treaties guaranteeing the right to freedom of expression, such as the ICCPR, they remain bound by norms recognized under customary international law norms, unless they have explicitly and consistently objected to them. In fact, both Malaysia and Singapore have affirmed the importance of the right to freedom of expression in their endorsements<sup>33</sup> of the Vienna Declaration and Programme of Action.<sup>34</sup> In light of the above, Malaysia and Singapore are obligated under customary international law to guarantee the right to freedom of expression.<sup>35</sup>

#### *Legal bases for restricting or limiting the right to freedom of expression and information*

As a general matter, the right to freedom of expression may only be subject to restriction under strict and narrow circumstances provided under international human rights law and standards, such as those set out in article 19(3) of the ICCPR which, as mentioned above, guarantees the right to freedom of expression and information both online and offline.

International human rights law and standards provide that that any restrictions may not limit the exercise of the right to freedom of expression unless such a limitation is:<sup>36</sup>

- a) in accordance with the law – the principle of legality;
- b) in pursuit of one of the limited and narrowly defined, legitimate fundamental public interests allowed under international human rights law, namely, for the protection of the fundamental rights and freedoms of others, national security, public safety, public order, public health or public morals;
- c) strictly necessary to achieve these legitimate interests;
- d) proportionate to the legitimate interest(s) it pursues, meaning that it must be the least intrusive or restrictive means to achieve the desired result;
- e) appropriate to the legitimate interest(s) to be protected, including by being rationally and reasonably connected to it;
- f) not arbitrary;
- g) non-discriminatory; and
- h) consistent with other rights recognized under international human rights law.

In addition, any restriction on the right to freedom of expression may not, even in times of “an emergency threatening the life of the nation”, contravene the State’s non-derogable human rights obligations under international human rights law.

Article 19(3) of the ICCPR specifically provides that the right to freedom of expression may only be “subject to certain restrictions” as provided by law and necessary for the purpose of ensuring respect of the rights or reputations of others; or protecting national security, public order or public health or morals. These are exhaustive of the legitimate purposes for which expression may be restricted. As a result, any restriction imposed on the exercise of the right to freedom of expression must meet the tests of legality, legitimate purpose, necessity and proportionality.

Also, crucially, any restriction may not, on its face or as applied, in substance or in form, directly or indirectly discriminate on any, including multiple and intersecting, grounds prohibited by international human rights

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<sup>33</sup> See, for example: Ministry of Foreign Affairs, “40th HRC – Joint Statement on New and Emerging Technologies and Human Rights, 8 March 2019”, 8 March 2019, available at: [https://www.mfa.gov.sg/Overseas-Mission/Geneva/Speeches-and-Statements-Permanent-Mission-to-the-UN/2019/03/press\\_20190308-1](https://www.mfa.gov.sg/Overseas-Mission/Geneva/Speeches-and-Statements-Permanent-Mission-to-the-UN/2019/03/press_20190308-1); and Malaysia Permanent Mission to the United Nations, “Statement by H.E. Ambassador Hussein Haniff, Chair of the Third Committee”, 8 November 2011, available at: [https://www.un.int/malaysia/sites/www.un.int/files/Malaysia/66th\\_session/66unga25\\_declarationondev.pdf](https://www.un.int/malaysia/sites/www.un.int/files/Malaysia/66th_session/66unga25_declarationondev.pdf).

<sup>34</sup> Vienna Declaration and Programme of Action: Adopted by the World Conference on Human Rights in Vienna on 25 June 1993, paras. B(1)(22) and C(67).

<sup>35</sup> Chen Siyuan and Chia Chen Wei, “Singapore’s latest efforts at regulating online hate speech”, *Research Collection School Of Law*, June 2019, para. 34.

<sup>36</sup> ICJ 8 March Principles, Principle 7.

law, such as SOGIE.<sup>37</sup>

In particular, SOGIE may not be used as legitimate grounds to justify restricting the right to freedom of expression and information. With respect to this, the Human Rights Committee, for example, has made clear that any limitations based on protecting morals “must be understood in the light of ... the principle of non-discrimination”.<sup>38</sup> Furthermore, the Human Rights Committee, among others, has rejected attempts by States to invoke “public morals”, “protecting the rights of children” and “public order” to justify imposing limitations on the right of freedom of expression of those protecting the human rights of LGBT persons.<sup>39</sup>

That a restriction be “provided by law” carries with it the requirement that it complies with the principle of legality. The principle dictates that laws imposing restrictions on the right to freedom of expression must be formulated with enough precision to: (i) enable individuals to ascertain and adjust their conduct; (ii) provide guidance to those charged with implementing the laws to ensure they can clearly identify which types of expression fall under restrictions and not exercise “unfettered discretion” in restricting freedom of expression.<sup>40</sup>

Additionally, any restriction must, in the express terms of article 19(3), meet the principles of necessity and proportionality, even where the restriction is pursued for a legitimate purpose. The Human Rights Committee has clarified that the test of necessity entails that limitations must not be imposed where protection “for respect of the rights or reputations of others” or “of national security” or “of public order”, or “of public health or morals”, can be provided through less restrictive measures, while the test of proportionality ensures that limitations are proportionate to their function, not overbroad and are the “least intrusive instrument amongst others to achieve their protective function”.<sup>41</sup>

The State’s obligation to respect, protect and fulfill the rights to free expression, opinion and information online and offline must be upheld by all branches of the State – executive, legislative and judicial – and other public or governmental bodies.<sup>42</sup> This obligation further entails that these rights are protected under domestic law, including by ensuring the availability and accessibility of effective remedies when these rights are violated.<sup>43</sup>

These obligations are also reaffirmed in Principle 19 of the Yogyakarta Principles, which makes clear that States must ensure that “notions of public order, public morality, public health and public security are not employed to restrict, in a discriminatory manner, any exercise of freedom of opinion and expression that affirms diverse sexual orientations or gender identities”; and ensure that “all persons, regardless of sexual orientation or gender identity, enjoy equal access to information and ideas, as well as to participation in public debate.”<sup>44</sup>

*Obligations to restrict expression, including expression inciting discrimination, hostility or violence*<sup>45</sup>

Article 20 of the ICCPR, on the other hand, not only permits, but also expressly requires States to prohibit by law “any propaganda for war” and “any advocacy of national, racial or religious hatred that constitutes

<sup>37</sup> Human Rights Committee, General Comment No. 34, para. 26; UN Human Rights Committee, “CCPR General Comment No. 18: Non-discrimination”, 10 November 1989, available at: <https://www.refworld.org/docid/453883fa8.html>. As noted previously, this has been interpreted by the Human Rights Committee as including sexual orientation; see, Human Rights Committee, *Toonen v. Australia*, Communication No. 488/1992, UN Doc. CCPR/C/50/D/488/1992, 31 March 1994.

<sup>38</sup> Human Rights Committee, General Comment No. 34, para. 32.

<sup>39</sup> OHCHR, “Born Free and Equal: Sexual Orientation, Gender Identity and Sex Characteristics in International Human Rights Law, Second Edition”, 2019, p. 81 – 83.

<sup>40</sup> Human Rights Committee, General Comment No. 34, paras. 25; ICJ 8 March Principles, Principle 1.

<sup>41</sup> Human Rights Committee, General Comment No. 34, paras. 33 to 35.

<sup>42</sup> UN Human Rights Committee, “General Comment No. 31 [80]: The Nature of the General Legal Obligation Imposed on State Parties to the Covenant”, UN Doc. CCPR/C/21/Rev.1/Add.13, 29 March 2004 (‘UN Doc. CCPR/C/21/Rev.1/Add.13’), para. 4, available at: <https://www.refworld.org/docid/478b26ae2.html>.

<sup>43</sup> Human Rights Committee, General Comment No. 34, para. 8.

<sup>44</sup> Principle 19, Yogyakarta Principles, available at: <http://yogyakartaprinciples.org/principle-19/>.

<sup>45</sup> For a more detailed explanation of the obligations of States vis-à-vis hate speech, including incitement to discrimination, hostility or violence, see, Daron Tan, “Avoiding Overreach: Shaping State Responses to Anti-LGBTI Online Hate Speech in Southeast Asia”, *Opinio Juris*, 18 June 2022, available at: <https://opiniojuris.org/2022/06/18/avoiding-overreach-shaping-state-responses-to-anti-lgbti-online-hate-speech-in-southeast-asia/>.

incitement to discrimination, hostility or violence".<sup>46</sup> This includes the advocacy of hatred against LGBT people, or so-called "hate speech",<sup>47</sup> but only in circumstances when hate speech constitutes incitement to discrimination, hostility or violence.<sup>48</sup>

The Human Rights Committee has made clear that articles 19 and 20 of the ICCPR are "compatible with and complement each other" and limitations provided for under article 20 must comply with and be justified "in strict conformity" with article 19.<sup>49</sup> The former UN Special Rapporteur on freedom of expression has emphasized that domestic laws to combat hate speech or incitement to violence online and offline must adhere to the "requirements of legality, necessity and proportionality, and legitimacy", taking guidance from articles 19 and 20 of the ICCPR, the ICERD and the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.<sup>50</sup> The UN Independent Expert on SOGI has stressed that:

"... there is a need to protect vulnerable groups against hate speech and to be cautious of overly broad legislation that risks pitting "various groups – including the very marginalized groups that it purports to benefit – against each other in a free-speech race to the bottom".<sup>51</sup>

States' obligation under article 20(2) of the ICCPR to prohibit by law "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence" does not require the criminalization of any form of incitement. Indeed, criminalization should be reserved only for the most severe forms of incitement to violence. Its severity, in turn, should be assessed under the six-part test identified in the Rabat Plan of Action, which specifically considers:

- (i) the social and political context;
- (ii) the status of the speaker;
- (iii) the intent to incite the audience against a target group;
- (iv) the content and form of the speech;
- (v) the extent of its dissemination; and
- (vi) the likelihood of harm.<sup>52</sup>

This is in line with Principle 5 of the Yogyakarta Principles, which requires States 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."<sup>53</sup>

Other less severe forms of incitement may be prohibited through administrative or civil sanctions,<sup>54</sup> in line with the requirement under article 19(3) for State restrictions to be the "least intrusive instrument" and "proportionate to the interest to be protected".<sup>55</sup> For instance, States should enact comprehensive anti-discrimination frameworks that explicitly include SOGIE as protected characteristics, and provide for the right to an effective remedy for LGBT persons who have suffered actual harm as a result of online incitement,

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<sup>46</sup> Article 20 provides: "1. Any propaganda for war shall be prohibited by law. 2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law."

<sup>47</sup> For a definition of "hate speech", see: United Nations Strategy and Plan of Action on Hate Speech, p. 2, available at: [https://www.un.org/en/genocideprevention/documents/advising-and-mobilizing/Action\\_plan\\_on\\_hate\\_speech\\_EN.pdf](https://www.un.org/en/genocideprevention/documents/advising-and-mobilizing/Action_plan_on_hate_speech_EN.pdf).

<sup>48</sup> It must be emphasized that the terms "hate speech" and "incitement to discrimination, hostility or violence" cannot be used interchangeably. The obligation to prohibit by law, under article 20 is only engaged when the "hate speech" constitutes incitement to discrimination, hostility or violence. See, Human Rights Council, "Freedom of religion or belief, and freedom from violence and discrimination based on sexual orientation and gender identity", UN Doc. A/HRC/53/37, 7 June 2023, para. 27.

<sup>49</sup> Human Rights Committee, General Comment No. 34, paras. 50, 52.

<sup>50</sup> Human Rights Council, "Report of the Special Rapporteur on the promotion and protection of the freedom of opinion and expression", UN Doc. A/74/486, 9 October 2019 ('UN Doc. A/74/486'), para. 57(b); Human Rights Council, *Annual report of the United Nations High Commissioner for Human Rights: Addendum*, UN Doc. A/HRC/22/17/Add.4 ('Rabat Plan of Action'), 11 January 2013, available at: [https://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat\\_draft\\_outcome.pdf](https://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat_draft_outcome.pdf).

<sup>51</sup> Human Rights Council, "Freedom of religion or belief, and freedom from violence and discrimination based on sexual orientation and gender identity", UN Doc. A/HRC/53/37, 7 June 2023, para. 27.

<sup>52</sup> Rabat Plan of Action, para. 29.

<sup>53</sup> Principle 5, Yogyakarta Principles, available at: <https://yogyakartaprinciples.org/principle-5/>.

<sup>54</sup> Rabat Plan of Action, paras. 20 and 34.

<sup>55</sup> Human Rights Committee, General Comment No. 34, para. 34.

including a civil remedy for damages.<sup>56</sup>

States should also adopt positive policy measures, in line with the Rabat Plan of Action, to address the prejudice underlying online incitement and other forms of hate speech targeting LGBT persons. As recommended by the UN Independent Expert on SOGI, such public policy measures to “end the spiral of discrimination, marginalization and exclusion” of LGBT persons can include, inter alia, public education campaigns; education policies addressing harmful social and cultural bias, misconceptions and prejudice; and addressing negative or stereotypical portrayals of LGBT persons in the media.<sup>57</sup>

### **Right to be Free from Violence**

States have the obligation to protect LGBT persons from violence perpetrated by State and non-State actors. The failure to adequately prevent, investigate, bring to justice, adequately sanction and provide an effective remedy for hate-motivated, homophobic or transphobic violence, including online, is a breach of States’ obligation to protect human rights. As mentioned earlier, the obligation to protect human rights requires States to protect individuals and groups against human rights abuses by third parties, including of the rights to life, liberty and security of person, private life, and equal protection before the law and equal protection of the law without discrimination.

The Human Rights Committee has explicitly underscored that States are required to protect individuals from foreseeable threats to life or bodily integrity from State and non-State actors, including violence against persons based on sexual orientation or gender identity.<sup>58</sup> This obligation to protect extends to violence perpetrated in online settings and facilitated by technology. Technology-mediated environments are settings where contemporary forms of violence are being committed,<sup>59</sup> and people are entitled to protection of their human rights online as much as offline.<sup>60</sup>

#### *Obligation to prohibit gender-based violence*

This obligation to eliminate violence against LGBT persons is concomitant and coterminous with States’ obligations to prohibit gender-based violence, including OGBV. Indeed, violence against LGBT persons “constitute[s] a form of gender-based violence, driven by a desire to punish those seen as defying gender norms”.<sup>61</sup> Furthermore, as highlighted by the UN High Commissioner for Human Rights, lesbian, bisexual and transgender women are particularly susceptible to “particularly severe forms of online violence”.<sup>62</sup>

The CEDAW Committee has recommended that States should take measures in the areas of “prevention, protection, prosecution and punishment, redress, data collection and monitoring and international cooperation in order to accelerate the elimination of gender-based violence”.<sup>63</sup> Accordingly, States are also required to repeal discriminatory laws that: “enshrine, encourage, facilitate, justify or tolerate any form of gender-based violence”, including provisions that criminalize “being lesbian, bisexual or transgender”.<sup>64</sup>

<sup>56</sup> See, for instance, ARTICLE 19, “The Camden Principles on Freedom of Expression and Equality”, April 2009, available at: <https://www.article19.org/data/files/pdfs/standards/the-camden-principles-on-freedom-of-expression-and-equality.pdf>.

<sup>57</sup> UN Independent Expert on SOGI Report on Violence and Discrimination Based on SOGI, para. 97.

<sup>58</sup> Human Rights Committee, “General comment No. 35: Article 9 (Liberty and security of person)”, UN Doc. CCPR/C/GC/35, 16 December 2014, para. 9.

<sup>59</sup> Committee on the Elimination of All Forms of Discrimination against Women, “General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19”, UN Doc. CEDAW/C/GC/35, 26 July 2017, para. 20; Human Rights Council, “Report of the Special Rapporteur on violence against women, its causes and consequences on online violence against women and girls from a human rights perspective”, UN Doc. A/HRC/38/47, 14 June 2018, para. 50; UNSR on FOE Report on Gender Justice and Freedom of Expression, paras 62 – 67.

<sup>60</sup> UN Human Rights Council, “The promotion, protection and enjoyment of human rights on the Internet”, UN Doc. A/HRC/38/L.10/Rev.1, 4 July 2018, para. 1.

<sup>61</sup> OHCHR, “Born Free and Equal: Sexual Orientation, Gender Identity and Sex Characteristics in International Human Rights Law, Second Edition”, 2019, p. 13.

<sup>62</sup> Human Rights Council, “Promotion, protection and enjoyment of human rights on the Internet: ways to bridge the gender digital divide from a human rights perspective”, UN Doc. A/HRC/35/9, 5 May 2017, para. 36.

<sup>63</sup> For a detailed list of the measures that States should take, Committee on the Elimination of All Forms of Discrimination against Women, “General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19”, UN Doc. CEDAW/C/GC/35, 26 July 2017, para. 27 – 35.

<sup>64</sup> *Ibid.*, para. 29 (c)(i)

Similarly, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has recommended that States should adopt specific legislation to “prohibit, investigate and prosecute online gender-based violence”,<sup>65</sup> and these prohibitions “should be drafted restrictively and should take into account specific digital traits, such as amplification by secondary perpetrators”.<sup>66</sup>

Criminal law should only prohibit forms of OGBV that inflict substantial harm to the human rights of victims, and amount to a violation of their physical, sexual or psychological integrity.<sup>67</sup> Forms of OGBV that should be criminalized include online threats of physical and/or sexual violence; severe harassment online, including sexual harassment; doxing; sextortion; online stalking; non-consensual distribution of intimate contents; and threats to share intimate contents.<sup>68</sup> For less severe forms of online abuse or harmful conduct, civil or administrative measures, rather than criminal law, will generally be more appropriate.

## Right to Privacy

Article 17 of the ICCPR protects the right of every individual against arbitrary or unlawful interference with their privacy.<sup>69</sup> The UN General Assembly has affirmed that everyone’s right to privacy and the free and independent exercise of the rights to expression and opinion are interdependent.<sup>70</sup> In its 2013 Resolution on Human Rights in the digital age, the UN General Assembly also stressed that technological advancement had expanded the capacity of States and non-State actors, including business enterprises, to collate, surveil and intercept data in ways that violated the right to privacy, and affirmed that States were obliged under international human rights law to prevent these violations in the context of digital communications.<sup>71</sup>

As the UN Human Rights Council and the UN Office of the High Commissioner for Human Rights have affirmed, any restriction on the right to privacy must comply with the principles of legality, legitimate purpose, necessity and proportionality, in the same manner as they do to freedom of expression and other fundamental freedoms.<sup>72</sup> These principles are relevant and enforceable both offline and online, particularly with regard to communications surveillance technologies and techniques.<sup>73</sup>

The Human Rights Committee has affirmed that the right to privacy requires States to take effective measures to “ensure that information concerning a person’s private life does not reach the hands of persons who are not authorized by law to receive, possess and use it, and is never used for purposes incompatible with the [ICCPR]”.<sup>74</sup> Such information includes details of one’s sexual orientation and gender identity, as emphasized by the Jurisprudential Annotations to the Yogyakarta Principles<sup>75</sup> and the UN Independent Expert on SOGI.<sup>76</sup>

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<sup>65</sup> This can include: online threats of physical and/or sexual violence, severe harassment online, doxing, sextortion, online stalking, non-consensual distribution of intimate contents, and threats to share intimate contents. See, ICJ OGBV Law Checklist.

<sup>66</sup> UNSR on FOE Report on Gender Justice and Freedom of Expression, para. 107. This requires, for instance, legal mechanisms to prevent and remove harmful online content, or protection orders to prevent perpetrators from posting or sharing intimate images without consent: see, ICJ OGBV Law Checklist.

<sup>67</sup> ICJ 8 March Principles, Principle 2 and 13; ICJ OGBV Law Checklist.

<sup>68</sup> ICJ OGBV Law Checklist.

<sup>69</sup> Article 17 of the ICCPR provides: “1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. 2. Everyone has the right to the protection of the law against such interference or attacks”.

<sup>70</sup> UN General Assembly, “The right to privacy in the digital age”, UN Doc. A/RES/68/167, 18 December 2013.

<sup>71</sup> *Ibid.*

<sup>72</sup> Human Rights Council, “Report of the High Commissioner for Human Rights on the Right to Privacy in the Digital Age”, UN Doc. A/HRC/39/29, 3 August 2018, para 10; Human Rights Council, “The right to privacy in the digital age”, UN Doc. A/HRC/RES/34/7, 7 April 2017, para. 2.

<sup>73</sup> *Necessary and Proportionate International Principles on the Application of Human Rights to Communications Surveillance*, May 2014, available at: <https://necessaryandproportionate.org/principles>. The ICJ is also a signatory to these Principles. In his 2014 report following on from resolution 68/167, the UN Office of the High Commissioner for Human Rights referred to the Necessary and Proportionate Principles, reiterating that the “overarching principles of legality, necessity and proportionality” apply to limitations on the right to privacy online. See Human Rights Council, “Report of the Office of the United Nations High Commissioner for Human Rights”, UN Doc. A/HRC/27/37, 30 June 2014, para. 23.

<sup>74</sup> Human Rights Committee, “General Comment No. 16: Article 17 (Right to Privacy)”, 8 April 1988, para. 10.

<sup>75</sup> Principle 6, *Jurisprudential Annotations to the Yogyakarta Principles*, p. 18, available at: <http://yogyakartapinciples.org/wp-content/uploads/2017/11/Jurisprudential-Annotations.pdf>.

<sup>76</sup> Human Rights Council, “Data collection and management as a means to create heightened awareness of violence and discrimination based on sexual orientation and gender identity”, UN Doc. A/HRC/41/45, 14 May 2019, para. 51.

The UN Independent Expert on SOGI has noted that doxing and the public exposure of an individual's sexual orientation and/or gender identity (i.e. outing) are concerns faced by LGBT persons.<sup>77</sup> The UN High Commissioner for Human Rights has also expressed concern that lesbian, bisexual and transgender women "may be at greater risk and may particularly experience particularly severe forms of online violence",<sup>78</sup> including through the "targeted attacks on women's privacy through the publication of personal data and information on the Internet ("doxing")".<sup>79</sup>

## **Business and Human Rights**

States' obligations to protect human rights, such as the right to freedom of expression and information and the other rights highlighted above, include the obligation by the State to protect from the conduct of private entities, including companies, whenever their conduct risks impairing the enjoyment of human rights.<sup>80</sup> States, therefore, are under an obligation to undertake a certain degree of regulation of companies. The aim of such regulation must be protection, and not curtailment of human rights.

This obligation is reflected in the jurisprudence of UN treaty bodies, as well as the UN Guiding Principles on Business and Human Rights (UNGPs), endorsed by the UN Human Rights Council. The UNGPs reaffirm States' obligations to protect individuals from human rights abuses at the hands of businesses. In addition, they provide for the direct and concurrent responsibility for business enterprises themselves to respect human rights in the context of business operations.<sup>81</sup>

The UNGPs contain a framework for business and human rights that rests on three pillars: (i) the State's duty to protect against human rights violations; (ii) the corporate responsibility to respect human rights; and (iii) greater access to an effective remedy – judicial and non-judicial – by victims of abuses.<sup>82</sup>

In this context, while tech companies have the responsibility to respect human rights in the course of their business operations and to provide effective and adequate remedies for any abuses, States are obliged to exercise an overarching oversight and regulatory role to ensure that companies comply with these responsibilities.<sup>83</sup>

States retain a primary duty to bring into effect appropriate and effective laws, policies and regulations to ensure protection against human rights violations and abuses online, even with respect to the exercise of human rights, such as the rights to freedom of expression and information, peaceful assembly and association, on and through platforms regulated entirely by private tech companies.<sup>84</sup> This duty extends to States having to take necessary and appropriate measures to ensure that where violations and abuses occur, victims have access to effective and adequate remedies through judicial mechanisms or other administrative, legislative or regulatory means.<sup>85</sup>

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<sup>77</sup> *Ibid.*, paras. 21 – 22.

<sup>78</sup> Human Rights Council, "Promotion, protection and enjoyment of human rights on the Internet: ways to bridge the gender digital divide from a human rights perspective", UN Doc. A/HRC/35/9, 5 May 2017, para. 36.

<sup>79</sup> *Ibid.*, para. 19.

<sup>80</sup> Human Rights Committee, "General Comment No. 31 [80], The Nature of the General Legal Obligation Imposed on State Parties to the Covenant", UN Doc. CCPR/C/21/Rev.1/Add.13, 26 May 2004, para. 8; Human Rights Committee, General Comment No. 34, para. 7; UN Committee on the Rights of the Child, "General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights", UN Doc. CRC/C/GC/16, 17 April 2013, para. 28; UN Committee on Economic, Social and Cultural Rights, "General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities", 10 August 2017, UN Doc. E/C.12/GC/24, paras. 14 – 22.

<sup>81</sup> The Guiding Principles were endorsed by the UN Human Rights Council in 2011 in Resolution 17/4: UN Human Rights Council, "Resolution adopted by the Human Rights Council 17/4: Human rights and transnational corporations and other business enterprises", UN Doc. A/HRC/RES/17/4, 6 July 2011.

<sup>82</sup> OHCHR, *UN Guiding Principles on Business and Human Rights*, HR/PUB/11/04, 2011 ('UNGPs'), available at: [https://www.ohchr.org/documents/publications/GuidingprinciplesBusinesshr\\_eN.pdf](https://www.ohchr.org/documents/publications/GuidingprinciplesBusinesshr_eN.pdf)

<sup>83</sup> *Ibid.*, pp. 4 – 6.

<sup>84</sup> *Ibid.*, pp. 3 – 10.

<sup>85</sup> *Ibid.*, pp. 27 – 35.



### Chapter 3: Socio-Legal Context for LGBT People

The ability of LGBT people to express themselves and access information freely and safely online is directly correlated with the socio-legal contexts pertaining to LGBT people in any particular country. Factors contributing to this landscape include the level of social inclusion of LGBT people and State attitudes towards them. In this context, the country's legal landscape with respect to SOGIE includes whether LGBT people face criminal sanctions in connection with their real or imputed SOGIE; and/or whether they endure discriminatory restrictions on LGBT-related expression and information; and/or whether they are unable to access justice and effective remedies for violations of their human rights because of a lack of a protective legal framework.

The online barriers faced by LGBT people in exercising their human rights are emblematic of the wider patterns of criminalization, discrimination and marginalization based on their SOGIE:

- On one end of the spectrum, in Thailand and the Philippines, the legal environment for LGBT people is less restrictive, with some pockets of positive legal reforms taking place. As such, they generally face fewer barriers in navigating the internet freely and safely.
- At the other end of the spectrum, the criminalization and pathologization of LGBT persons in Indonesia and Malaysia have exacerbated the demonization and discrimination of, and fostered violence against LGBT persons with impunity. This has had a chilling effect on the online LGBT persons' exercise of their rights to freedom of expression, self-determination and privacy, among others. This chilling effect on LGBT persons' exercise of their human rights is also the result of State restrictions on LGBT-related online expression and information in both countries.
- Singapore, which recently decriminalized consensual same-sex sexual conduct between men by repealing section 377A of the Penal Code,<sup>86</sup> is the middle of the spectrum. Nonetheless, the State still restricts online expression and information through discriminatory content codes and guidelines.

#### Indonesia

##### *Criminalization of sex outside marriage and cohabitation*

Indonesia's new **Criminal Code**, passed on 6 December 2022 by Indonesia's House of Representatives, introduced, among other problematic provisions, the criminalization of sex outside marriage and cohabitation, which are discriminatory towards LGBT people. The law will come into force in three years.<sup>87</sup>

Article 411 of the Criminal Code criminalizes sex outside marriage, making people convicted of the "offence" liable to a prison sentence of up to one year. Members of the public, including persons who are related to the purported "perpetrators" of the "offence", will be able to report unmarried couples to the police if they suspect them of having sex, which could be used to target LGBT persons.<sup>88</sup> Moreover, article 412 provides that couples who live together without being legally married may face up to six months' imprisonment or a fine of Rp 10 million (approx. USD 640) upon conviction. The complaint can be lodged by either the husband or wife of the offending party, or their parents or child.<sup>89</sup>

These provisions do not explicitly refer to same-sex activity. However, as Indonesian law only allows people of the opposite sex (i.e. a man and a woman) to lawfully marry one another, and articles 411 and 412 criminalize consensual sexual relations and cohabitation outside of marriage, respectively, this means that consensual same-sex sexual activity and cohabitation by people of the same sex are effectively criminalized.

<sup>86</sup> ICJ, "Singapore: Long overdue decriminalization of consensual same-sex relations between men overshadowed by discriminatory constitutional amendment purporting to "protect" definition of marriage", 28 November 2022, available at: <https://www.icj.org/singapore-long-overdue-decriminalization-of-consensual-same-sex-relations-between-men-overshadowed-by-discriminatory-constitutional-amendment-purporting-to-protect-definition-of-mar/>.

<sup>87</sup> ICJ, "Indonesia: New Penal Code is a major human rights setback and must be repealed or substantially amended", 9 December 2022, available at: <https://www.icj.org/indonesia-new-penal-code-is-a-major-human-rights-setback-and-must-be-repealed-or-substantially-amended/>.

<sup>88</sup> *Ibid.*

<sup>89</sup> *Ibid.*

This is in breach of the rights to equality and non-discrimination, privacy and freedom from arbitrary arrest and detention.

Several articles of the **Law No. 44 of 2008 on Pornography** ("Pornography Law") have been applied to criminalize LGBT persons. Article 4(1)(a) of the Pornography Law prohibits the production, distribution and broadcast of "pornography"<sup>90</sup> containing "intercourse, including deviant intercourse".<sup>91</sup> Under the explanation of the Pornography Law, "deviant intercourse" explicitly includes "oral sex, anal sex, lesbian and homosexual".<sup>92</sup> Articles 32, 33, and 34 criminalize individuals for the possession, funding or facilitating, and becoming the object of pornography.<sup>93</sup> Article 36 prohibits anyone from "exhibiting themselves or others in a public performance which depicts nudity, sexual exploitation, intercourse or other pornographic materials." "Offenders" risk criminal sanctions of imprisonment and/or fines: those convicted risk a sentence of maximum 10 years' imprisonment and/or a maximum fine of Rp 5 billion (approx. USD 330,000).<sup>94</sup>

The authorities have weaponized the Pornography Law to target individuals based on their SOGIE,<sup>95</sup> through an impermissible conflation of sexual and gender diversity with "pornography", and the blurred distinction between what constitutes public or private conduct. For example, in September 2020 the Jakarta Metropolitan Police raided a private party and arrested 56 people, naming nine as suspects and the other 47 as witnesses.<sup>96</sup> The suspects were charged under article 36 of the Pornography Law.<sup>97</sup>

#### *Criminalization and pathologization of gender and sexual diversity under Sharia law and local regulations at the sub-national level*

Consensual same-sex sexual activity is explicitly criminalized in several provinces, cities and districts through local ordinances. These include long-standing laws in the Aceh Province, South Sumatra Province, and West Sumatra enacted by the local authorities.<sup>98</sup> For instance, in September 2014, the Aceh provincial parliament approved the **Qanun Jinayah**, which criminalizes *liwath* (sodomy) and *musahaqah* (lesbianism), and permits as punishment up to 100 lashes and up to 100 months in prison for both crimes.<sup>99</sup>

LGBT identities have also been pathologized through local regulations that associate being LGBT with "sexual deviancy". For instance, the **Local Regulation of the Cianjur Regency No. 1 of 2020 on the Prevention and Control of Sexual Deviant Behaviour**<sup>100</sup> authorizes the local government to establish programmes to prevent and control "sexual deviant behaviour"<sup>101</sup> through: (1) communication and education (article 5); (2) socialisation programs on sexual education, gender and sexually transmitted infections (article 6); and (3) counselling (article 7). Although the regulation does not explicitly target the LGBT community, the Cianjur

<sup>90</sup> "Pornography" is defined in the law as "sexual material that is made by humans by form of picture, sketch, illustration, photo, writings, vocalizations, sounds, moving picture, animations, cartoon, rhymes/poems/prose/verse, lewd sexual gestures (straddling, blowing kisses, miming oral sex), eurhythmic or lewdness deliberately disguised as double entendre communications – communicated or transmitted via media communications and/or public shows/exhibits/performance that arouses sexual propensities/desires/longings and/or contravenes community ethics/decency/morality", see, unofficial translation of the law at: <https://cyrilla.org/en/document/1mizkmo9hzw?page=1>.

<sup>91</sup> Article 4(1)(a), Law No. 44 of 2008 on Pornography, available at: [https://www.dpr.go.id/dokjidi/document/uu/UU\\_2008\\_44.pdf](https://www.dpr.go.id/dokjidi/document/uu/UU_2008_44.pdf).

<sup>92</sup> *Ibid.*

<sup>93</sup> *Ibid.*

<sup>94</sup> *Ibid.*, articles 32, 33, 34 and 36.

<sup>95</sup> Patresia Kirmandita, "UU Pornografi yang Kerap Dipakai untuk Menjerat Gay", *Tirto.id*, 17 January 2018, available at: <https://tirto.id/uu-pornografi-yang-kerap-dipakai-untuk-menjerat-gay-cDnZ>. More broadly, the Pornography Law's blanket criminalization of all forms of pornography, including those created or distributed with consent, and without coercion, force, abuse of authority or fraud, also runs contrary to international human rights law.

<sup>96</sup> BBC News Indonesia, "'Pesta gay': Polisi kenakan pasal muncikari dan pornografi ke kelompok LGBT, pakar dan aktivis sebut 'diskriminatif' dan 'keliru'", 4 September 2020, available at: <https://www.bbc.com/indonesia/indonesia-54014777>.

<sup>97</sup> As of the time of publishing this report, the ICJ was unable to locate publicly available information on the result of these charges being filed against the nine suspects.

<sup>98</sup> ILGA World: Lucas Ramon Mendos, Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, Ilia Savelev and Daron Tan, "State-Sponsored Homophobia 2020: Global Legislation Overview Update", December 2020, p. 131 – 132 ("ILGA World, State-Sponsored Homophobia 2020"), available at: [https://ilga.org/downloads/ILGA\\_World\\_State\\_Sponsored\\_Homophobia\\_report\\_global\\_legislation\\_overview\\_update\\_December\\_2020.pdf](https://ilga.org/downloads/ILGA_World_State_Sponsored_Homophobia_report_global_legislation_overview_update_December_2020.pdf).

<sup>99</sup> Articles 63 and 64, Aceh Qanun No. 6 of 2014 on Jinayat Law, available at: <https://dsi.acehprov.go.id/wp-content/uploads/2017/02/Qanun-Aceh-Nomor-6-Tahun-2014-Tentang-Hukum-Jinayat.pdf>.

<sup>100</sup> Local Regulation of the Cianjur Regency No. 1 of 2020 on the Prevention and Control of Sexual Deviant Behaviour, available at: <https://peraturan.bpk.go.id/Home/Details/139108/perda-kab-cianjur-no-1-tahun-2020>.

<sup>101</sup> Articles 1(4) and 1(5) of the Regulation define "deviant behaviour" as behaviour that contravenes societal norms and existing laws, abnormal and improper behaviour, and sexual crimes.

Regent has stated that “the phenomenon of LGBT cannot be left with”, describing the LGBT community as a “disease” and declaring that he would work with the Indonesian Ulama Council to conduct socialization programmes to “prevent LGBT”, strongly indicating that the Local Regulation is targeted at LGBT persons.<sup>102</sup>

In contrast to the above-mentioned Cianjur Regency regulation, the **Local Regulation of Bogor City No. 10 of 2021 on Prevention and Control of Sexual Deviant Acts** explicitly includes “homosexuality, lesbianism, bisexuality, transvestism” as manifestations of “sexual deviant behaviour” (article 6). In addition to authorizing counselling (article 12(2)) and enacting rehabilitation programmes (article 18, paragraph 4),<sup>103</sup> the Regulation also empowers the local government to receive and investigate complaints lodged by the members of the public for acts that “disturb the public order” (article 18). Moreover, article 25 imposes sanctions for “sexual deviant behaviour”, referring to sanctions, among others, under the Criminal Code and the Pornography Law.<sup>104</sup>

#### *Discriminatory exclusions of LGBT families in local “family resilience” regulations*

There has also been a recent surge in anti-LGBT “family resilience” laws,<sup>105</sup> with at least 11 local regulations being passed in areas such as Tangerang City,<sup>106</sup> West Kalimantan Province,<sup>107</sup> Tasikmalaya City,<sup>108</sup> West Nusa Tenggara Province,<sup>109</sup> Bangka Belitung Province,<sup>110</sup> and Banda Aceh City.<sup>111</sup> While these “family resilience” laws do not explicitly mention SOGIE, the terms “family resilience”, “prosperous family” or “quality family” are commonly used exclusively to refer to families formed by a married couple conforming to religious norms. For instance, the regulation on family resilience enacted in Banda Aceh City in 2021 discriminates against the LGBT people by limiting the definition of “family” to “societal units composed of husband and wife, or husband, wife and child, or the father and his child, or the mother and her child”.<sup>112</sup> These family resilience laws authorize the local government to facilitate the maintenance of family resiliency, which is aimed at improving families’ religious, economic, and social-cultural resilience, through education, socialization and guidance programmes.<sup>113</sup>

#### *Legal restrictions on LGBT-related expression and information*

Article 27(1) of the **Law No. 11 of 2008 on Electronic Information and Transactions (ITE Law)** is routinely invoked against LGBT-related online content to charge users, issue takedown demands to social

<sup>102</sup> The Regent is the head of a regency (*kabupaten*), which is an administrative division of Indonesia, directly under a province and on the same level as a city (*kota*). detikNews, “Bupati Geram Ada Pasangan Gay di Cianjur: Tak Bisa Dibiarkan”, 29 May 2022, available at: <https://news.detik.com/berita/d-6100812/bupati-geram-ada-pasangan-gay-di-cianjur-tak-bisa-dibiarkan>.

<sup>103</sup> The ICJ has not been able to find any publicly available information on how these provisions on “counselling” and “rehabilitation programmes” have been exercised.

<sup>104</sup> This reference is to the existing Criminal Code, as the new Criminal Code will only come into force in three years. Local Regulation of Bogor City No. 10 of 2021 on Prevention and Control of Sexual Deviant Acts, available at: <https://peraturan.bpk.go.id/Home/Details/207080/perda-kota-bogor-no-10-tahun-2021>. The definition also includes “any sexual acts or activities that are considered sexual deviant acts according to religion, culture, social norms, psychology and/or the medical field”.

<sup>105</sup> “Joint Submission on LGBTIQ Right for Indonesia’s Fourth UPR Cycle By the Indonesia National Coalition of the Marginalised Group against Discrimination on the basis of Sexual Orientation Gender Identity (SOGI)”, March 2022, available at: [https://aseansogiecaucus.org/images/2022/20220329\\_Indonesia\\_LGBTIQ\\_UPR\\_Report.pdf](https://aseansogiecaucus.org/images/2022/20220329_Indonesia_LGBTIQ_UPR_Report.pdf).

<sup>106</sup> Local Regulation of Tangerang City No. 1 of 2019 on Maintenance and Development of Family Resilience, available at: <https://peraturan.bpk.go.id/Home/Details/105434/perda-kota-tangerang-no-1-tahun-2019>.

<sup>107</sup> Local Regulation of West Kalimantan Province No. 10 of 2019 on Maintenance and Development of Family Resilience, available at: <https://peraturan.bpk.go.id/Home/Details/131784/perda-prov-kalimantan-barat-no-10-tahun-2019>.

<sup>108</sup> Local Regulation of Tasikmalaya City No. 6 of 2019 on Family Resilience, available at: [https://jdih.tasikmalayakota.go.id/house/dokumen/lihat\\_perda/1276](https://jdih.tasikmalayakota.go.id/house/dokumen/lihat_perda/1276).

<sup>109</sup> Governor of West Nusa Tenggara Regulation No. 24 of 2019 on Implementing Regulation on Local Regulation No. 4 of 2018 on Family Resilience and Prosperity, available at: <https://peraturan.bpk.go.id/Home/Details/124465/pergub-prov-nusa-tenggara-barat-no-24-tahun-2>.

<sup>110</sup> Local Regulation of Bangka Belitung Province No. 12 of 2019 on Development of Family Resilience and Prosperity, available at: <https://peraturan.bpk.go.id/Home/Details/139883/perda-prov-bangka-belitung-no-12-tahun-2019>.

<sup>111</sup> Article 1(9), Banda Aceh City Qanun No. 5 of 2021 on Maintenance of Family Resilience, available at: <https://peraturan.bpk.go.id/Home/Details/181911/qanun-kota-banda-aceh-no-5-tahun-2021>.

<sup>112</sup> Article 1(9), Banda Aceh City Qanun No. 5 of 2021 on Maintenance of Family Resilience, available at: <https://peraturan.bpk.go.id/Home/Details/181911/qanun-kota-banda-aceh-no-5-tahun-2021>.

<sup>113</sup> For example, Article 14, Banda Aceh City Qanun No. 5 of 2021 on Maintenance of Family Resilience, available at: <https://peraturan.bpk.go.id/Home/Details/181911/qanun-kota-banda-aceh-no-5-tahun-2021>. Article 26 of East Kalimantan’s Family Resilience Law provides that the local government may establish a “family resilience Motivator”, who is tasked with identifying, motivating, mediating, educating, planning and advocating on family resiliency; see Article 26, Local regulation of East Kalimantan Province No. 2 of 2022 on Development of Family Resilience, available at: <https://peraturan.bpk.go.id/Home/Details/212893/perda-prov-kalimantan-timur-no-2-tahun-2022>.

media companies, and block websites.<sup>114</sup>

Article 27(1) criminally proscribes, with prison sentences of up to six years and/or fines of up to Rp 1 billion (approx. USD 66,000), anyone who “knowingly and without authority distributes and/or transmits and/or causes to be accessible Electronic Information and/or Electronic Records with contents against propriety.”<sup>115</sup> Notably, “contents against propriety” is a very ambiguous term and the legislation fails to define it. In addition, “propriety” is not part of the closed list of permissible purposes for which freedom of expression can be lawfully restricted under article 19(3) of the ICCPR.

Pursuant to its powers to directly instruct platforms to restrict prohibited content under the Changes to Law No. 11 of 2008 on Electronic Information and Transactions, the Ministry of Communication and Information Technology (Kominfo) has labelled LGBT content as “pornographic” (and therefore constituting “contents against propriety”) in order to justify directly demanding social media companies to take down LGBT content on their platforms.<sup>116</sup> This is in breach of the requirement under international human rights law that content takedowns be issued by an independent and impartial judicial authority.<sup>117</sup>

These measures by Kominfo to restrict LGBT-related content online, including with respect to gender non-conformity, are part of a larger trend of LGBT-related content being restricted on broadcasting platforms. Two **Circular Letters** issued by the Indonesian Broadcasting Commission (IBC) in 2016 called on platforms to prohibit the broadcast of “anything depicting the practice, conduct and promotion of LGBT”,<sup>118</sup> and banned “all male hosts, talent, and main and supporting performers from wearing feminine attire, feminine make-up, and using feminine gestures and speaking style”.<sup>119</sup> These restrictions have been issued pursuant to **Law No. 32 of 2002 on Broadcasting** and the **2012 Broadcasting Guidelines and Standards**,<sup>120</sup> and were still in force as of January 2023.<sup>121</sup> Sanctions have been issued against channels for broadcasting LGBT-related content,<sup>122</sup> including in April 2018 when a written warning was issued for the programme “Brownis Tonight”, which discussed “transgender issues”.<sup>123</sup>

<sup>114</sup> Specific instances will be discussed in greater detail in Chapter 4.

<sup>115</sup> Article 27(1), Law No. 11 of 2008 on Electronic Information and Transactions, available at: <https://peraturan.bpk.go.id/Home/Details/37589/uu-no-11-tahun-2008>.

<sup>116</sup> Kominfo, “Siaran Pers No. 38/HM/KOMINFO/02/2019 Rabu, 13 Februari 2019 tentang IG Penuhi Permintaan Kominfo Tutup Akun Komik Muslim Gay”, 13 February 2019, available at: [https://www.kominfo.go.id/content/detail/16358/siaran-pers-no-38hmkominfo022019-tentang-ig-penuhi-permintaan-kominfo-tutup-akun-komik-muslim-gay/0/siaran\\_pers](https://www.kominfo.go.id/content/detail/16358/siaran-pers-no-38hmkominfo022019-tentang-ig-penuhi-permintaan-kominfo-tutup-akun-komik-muslim-gay/0/siaran_pers). Under article 40(2a) and 40(2b) of Law No. 19 of 2016 on Changes to Law No. 11 of 2008 on Electronic Information and Transactions, the government is obligated to prevent the distribution and utilization of Electronic Information and/or Electronic Documents containing prohibited content in accordance with applicable regulations, and is authorized to restrict access and/or instruct Electronic Platforms to restrict access to such prohibited content.

<sup>117</sup> Human Rights Council, “Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression”, UN Doc. A/HRC/38/35, 6 April 2018, para. 66.

<sup>118</sup> The Circular Letter defines “promotion” to cover any “titles/themes, narratives, hosts, source persons, and duration that contains opinions and findings which conclude that LGBT constitutes a normal part of life” (emphasis added); Komisi Penyiaran Indonesia, “Edaran Kepada Seluruh Lembaga Penyiaran Untuk Program yang mengangkat tema Lesbian, Gay, Biseksual dan Transgender (LGBT)”, 18 February 2016, available at: <https://www.kpi.go.id/index.php/id/edaran-dan-sanksi/33258-edaran-kepada-seluruh-lembaga-penyiaran-untuk-program-yang-mengangkat-tema-lesbian-gay-biseksual-dan-transgender-lgbt>.

<sup>119</sup> This has been justified as necessary to “guard the morality, culture, and ethics of the nation from the negative impacts of television broadcasts”. Komisi Penyiaran Indonesia, “KPI: Penjaga Moral Televisi”, 8 April 2016, available at: <https://www.kpi.go.id/index.php/id/component/content/article?id=33342:kpi-penjaga-moral-televisi&detail5=5357&detail3=5894>.

<sup>120</sup> Articles 3 and 5(2) of the Broadcasting Law provides that broadcasting shall be conducted with the purpose to “to foster the character and identity of a faithful and devout nation” and directed to “maintain and enhance the morality and religious values and national identity”. Article 9 of the Broadcasting Guidelines and Standards obligates all broadcasting institutions to respect the norms of decency and respect that exist within society. See, Law No. 32 of 2002 on Broadcasting, available at: <https://peraturan.bpk.go.id/Home/Details/44500/uu-no-32-tahun-2002>; Indonesian Broadcasting Commission, “Pedoman Perilaku Penyiaran (P3) dan Standar Program Penyiaran (SPS)”, 2012, available at: [https://www.kpi.go.id/download/regulasi/P3SPS\\_2012\\_Final.pdf](https://www.kpi.go.id/download/regulasi/P3SPS_2012_Final.pdf); CNN Indonesia, “KPI Larang TV dan Radio Kampanye LGBT”, 14 February 2016, available at: <https://www.cnnindonesia.com/teknologi/20160213123910-213-110694/kpi-larang-tv-dan-radio-kampanyekan-lgbt/>.

<sup>121</sup> A Commissioner of the IBC referred to the 2016 Circular Letters in January 2023 as the legal basis to provide guidance, issue clarifications and impose sanctions with the aim of preventing the alleged promotion and campaigning related to SOGIESC; see, Ronggo Astunggoro, “KPI Punya Instrumen untuk Cegah Promosi LGBT”, 23 January 2023, available at: <https://iqra.republika.co.id/berita/roxnwq396/kpi-punya-instrumen-untuk-cegah-promosi-lgbt>.

<sup>122</sup> Ilham Bachtar, “KPI, LGBT, dan Rutinitas Basa-Basi”, Remotivi, 21 February 2020, available at: <https://www.remotivi.or.id/amanat/573/kpi-lgbt-dan-rutinitas-basa-basi>.

<sup>123</sup> In its Press Release, the IBC states that the program violated provisions under the 2012 Broadcasting Guidelines and Standards on respect for the right to privacy, child protection, and protection of individuals with a specific gender identity; Indonesian Broadcasting Commission, “Tampilkan Muatan Transgender, KPI Pusat Beri Sanksi “Brownis Tonight” Trans TV”, 9 April 2018, available at: <https://www.kpi.go.id/index.php/id/umum/38-dalam-negeri/34439-tampilkan-muatan-transgender-kpi-pusat-beri-sanksi-brownis-tonight-trans-tv>.

These restrictions on LGBT-related content in online and offline spaces in Indonesia, and also Malaysia and Singapore (as will be discussed), are inconsistent with the right to freedom of expression and information, and right to equality before the law and equal protection of the law. Furthermore, the Human Rights Committee has also made clear that laws restricting expression “must not violate the non-discrimination provisions of the [ICCPR]”,<sup>124</sup> which has been interpreted to include discrimination on the basis of sexual orientation.<sup>125</sup>

### *Social stigma and acts of discrimination against LGBT persons*

Socially, LGBT people are perceived as embodying a form of “perversion”.<sup>126</sup> A 2018 survey found 87 percent of the Indonesian population considered LGBT people as a “deviant group”.<sup>127</sup>

Government officials and politicians in Indonesia often spread anti-LGBT rhetoric, often as a “political weapon in efforts to seize voters’ support in local elections”, with some dubbing the wave of anti-LGBT sentiment from 2016 onwards as the era of a “proxy war against LGBT people”.<sup>128</sup> In 2018, the former Indonesian Vice President, Jusuf Kalla, reportedly called on the United Nations Development Programme (UNDP) not to fund LGBT programmes in Indonesia.<sup>129</sup>

Some of this anti-LGBT conduct from government officials constituted threats of violence or incitement to violence. For instance, in 2016, the Minister of Defence reportedly labeled the influence of the LGBT community as “a threat” that required fighting, like “a kind of modern warfare”.<sup>130</sup> In 2018, it was reported that the Depok City administration formed an anti-LGBT special force, which included officials from the Depok Social Agency and the police, to “limit the presence of the LGBT community in the city”.<sup>131</sup>

Public anti-LGBT comments and actions by government officials have been amplified and exacerbated by non-State actors, including psychiatrists and religious groups. For instance, the religious group Angkatan Muda Forum Akhuwah Islamiyah issued a statement called on the government to “eradicate the LGBT disease”, in response to a peaceful rally that was planned by pro-democracy and human rights groups to demonstrate solidarity with LGBT Indonesians.<sup>132</sup> In February 2016, the Indonesian Psychiatrists Association issued a notice stating that “people who are homosexual and bisexual are categorized as a person with a mental disorder”, and “a person who is transsexual is categorized as a person with a mental disorder.”<sup>133</sup> This chorus of anti-LGBT sentiments has had adverse impacts on the human rights of LGBT persons, with reports of protests that forced the closure of an Islamic school for transgender person in Yogyakarta, and raids of the private homes of LGBT people by so-called “vigilante moral groups” in Aceh, Surabaya and West Java.<sup>134</sup>

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<sup>124</sup> Human Rights Committee, “General comment No. 34, Article 19: Freedoms of opinion and expression”, 12 September 2011, UN Doc. CCPR/C/GC/34, para. 26.

<sup>125</sup> Human Rights Committee, *Toonen v. Australia*, Communication No. 488/1992, 31 March 1994, UN Doc. CCPR/C/50/D/488/1992, para. 8.7.

<sup>126</sup> Human Rights Watch, “‘These Political Games Ruin Our Lives’: Indonesia’s LGBT Community Under Threat”, 2016, p. 43 available at: [https://www.hrw.org/sites/default/files/report\\_pdf/indonesia0816\\_web\\_2.pdf](https://www.hrw.org/sites/default/files/report_pdf/indonesia0816_web_2.pdf).

<sup>127</sup> Jakarta Post, “Editorial: The politics of gay-bashing”, 26 January 2018, available at: <https://www.thejakartapost.com/academia/2018/01/26/editorial-the-politics-of-gay-bashing.html>.

<sup>128</sup> In January 2016, the Support Group and Resource Center on Sexuality Studies of the University of Indonesia was accused of being a community “group shelter” for LGBT individuals. Anti-LGBT comments then came from government officials, which erupted into a broader campaign against LGBT Indonesians: see, Lowy Institute, “Indonesia’s LGBT crackdown”, 8 June 2018, available at: <https://www.lowyinstitute.org/the-interpreter/indonesia-s-lgbt-crackdown>.

<sup>129</sup> Jakarta Post, “Editorial: The politics of gay-bashing”, 26 January 2018, available at: <https://www.thejakartapost.com/academia/2018/01/26/editorial-the-politics-of-gay-bashing.html>.

<sup>130</sup> ABC News, “Indonesia’s Defence Minister threatens ‘warfare’ against ‘threatening’ gay community”, 25 February 2016, available at: <https://www.abc.net.au/news/2016-02-25/gay-community-a-threat-indonesia-defence-minister/7200618>.

<sup>131</sup> The Jakarta Post, “Anti-LGBT team established in Depok”, 19 February 2018, available at: <https://www.thejakartapost.com/news/2018/02/19/anti-lgbt-team-established-in-depok.html>; Lowy Institute, “Indonesia’s LGBT crackdown”, 8 June 2018, available at: <https://www.lowyinstitute.org/the-interpreter/indonesia-s-lgbt-crackdown>.

<sup>132</sup> Human Rights Watch, “‘These Political Games Ruin Our Lives’: Indonesia’s LGBT Community Under Threat”, 2016, p. 27 and 28, available at: [https://www.hrw.org/sites/default/files/report\\_pdf/indonesia0816\\_web\\_2.pdf](https://www.hrw.org/sites/default/files/report_pdf/indonesia0816_web_2.pdf).

<sup>133</sup> *Ibid.*, p. 39.

<sup>134</sup> Lowy Institute, “Indonesia’s LGBT crackdown”, 8 June 2018, available at: <https://www.lowyinstitute.org/the-interpreter/indonesia-s-lgbt-crackdown>.

### *Lack of a comprehensive protective legislative framework*

Indonesia lacks a comprehensive legislative framework that protects LGBT people against discrimination on the basis of their real or imputed SOGIE.

Furthermore, there are significant barriers faced by LGBT people in accessing justice to seek redress for human rights violations and abuses. Broadly, the criminalization of consensual same-sex relations and other discriminatory criminal laws deter LGBT people from seeking protection from law enforcement, as LGBT people may be afraid of being prosecuted under these laws when reporting violations and abuses. In addition, as a class of people who are effectively “criminalized” for who they are as opposed to what they do, LGBT people risk exposing themselves blackmail and extortion.

As has been noted by the Indonesia National Coalition of the Marginalised Group against Discrimination on the basis of Sexual Orientation Gender Identity, LGBT victims of violence “are reluctant to report their case or seek legal remedy due to a lack of trust towards law enforcement agencies and personnel”. While legitimate and understandable, such reluctance is especially concerning given the numerous reports of arbitrary arrests and unlawful searches against LGBT individuals.<sup>135</sup> It has also been reported that transgender women are the “most frequent victims of police violence in Indonesia”, with such incidents of violence being denied by the government.<sup>136</sup>

### **Malaysia**

#### *Criminalization of consensual same-sex sexual conduct and gender non-conformity*

In Malaysia, consensual same-sex sexual conduct is criminalized at both the federal and state level. At the federal level, **section 377A of the Penal Code** criminalizes “carnal intercourse against the order of nature”, defined as “the introduction of the penis into the anus or mouth of the other person”, with a maximum imprisonment of twenty years and whipping on conviction, pursuant to section 377B. **Section 377D** criminalizes acts of “gross indecency” committed in public or private with imprisonment of up to two years.<sup>137</sup>

Sections 377A and 377B were infamously used to convict then-opposition leader Anwar Ibrahim for political reasons. The ICJ has previously highlighted that Malaysia’s criminalization of consensual same-sex relations “violates a range of international law and standards, including on the rights to privacy, non-discrimination and equal protection” of the law without discrimination.<sup>138</sup>

At the state level, all 13 states and the Federal Territory criminalize consensual same-sex relations and gender non-conformity through state Syariah laws,<sup>139</sup> which are only applicable to Muslims.<sup>140</sup> All 13 states and the Federal Territory prohibit “a man posing as a woman”; 10 states and the Federal Territory criminalize *liwat* (anal sex); and 12 states and the Federal Territory criminalize *musahaqah* (sexual relations between

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<sup>135</sup> “Joint Submission on LGBTIQ Right for Indonesia’s Fourth UPR Cycle By the Indonesia National Coalition of the Marginalised Group against Discrimination on the basis of Sexual Orientation Gender Identity (SOGI)”, March 2022, paras. 27 – 28, available at: [https://aseansogiecaucus.org/images/2022/20220329\\_Indonesia\\_LGBTIQ\\_UPR\\_Report.pdf](https://aseansogiecaucus.org/images/2022/20220329_Indonesia_LGBTIQ_UPR_Report.pdf).

<sup>136</sup> Firmansyah Sarbini and Naila Rizqi Zakiah, “Epidemic of Violence against Transgender Women in Indonesia: When the Government Fails to Protect its Vulnerable Citizens”, UNSW, available at: <https://www.humanrights.unsw.edu.au/news/epidemic-violence-against-transgender-women-indonesia-when-government-fails-protect-its-vulnerable-citizens>.

<sup>137</sup> Sections 377A, 377B, and 377D, Penal Code. The term “gross indecency” is not defined in the Penal Code.

<sup>138</sup> ICJ, “Federal Court judgment on Anwar Ibrahim’s ‘sodomy II’ appeal a blow to human rights in Malaysia”, 10 February 2015, available at: <https://www.icj.org/federal-court-judgment-on-anwar-ibrahims-sodomy-ii-appeal-a-blow-to-human-rights-in-malaysia/>.

<sup>139</sup> A full list of these laws can be found here: Human Rights Watch and Justice for Sisters, “Annex I: Laws Criminalizing Sexual Orientation and Gender Identity in Malaysia”, available at: [https://www.hrw.org/sites/default/files/media\\_2022/08/malaysia0822\\_annexI.pdf](https://www.hrw.org/sites/default/files/media_2022/08/malaysia0822_annexI.pdf).

<sup>140</sup> Section 2, Syariah Courts (Criminal Jurisdiction) Act 1965 (Revised – 1988) provides that the Syariah Courts have criminal jurisdiction over “persons professing the religion of Islam”. Thus, they will not have criminal jurisdiction over two non-Muslims engaging in consensual same-sex relations. For a Muslim person engaging in consensual same-sex relations with a non-Muslim person, the Syariah Courts can exercise their criminal jurisdiction only over the Muslim person. However, according to ILGA World, “non-Muslims have also been subjected to “moral policing”, and are “subjected to arrests during police raids in entertainment outlets” and for “roaming around on the street as cross-dressers which may be accused of disorderly behaviour in public places”; see, ILGA World, “Our Identities Under Arrest”, December 2021, p. 164.

women).<sup>141</sup>

The status of state Syariah laws criminalizing “sexual intercourse against the order of nature”<sup>142</sup> is unclear at the moment, in light of the Malaysian Federal Court judgment in February 2021 that nullified Selangor’s section 28 of the Syariah Criminal Offences (Selangor) Enactment 1995. Section 28 made “sexual intercourse against the order of nature” a Syariah offence, and the Federal Court held that such offences are under Parliament’s powers to make laws, not under state legislatures’ law-making powers.<sup>143</sup> As has been noted by an academic commentator, this judgment “sets an important precedent, opening up the avenue for further challenges to state Syariah laws pertaining to ‘unnatural sex’.”<sup>144</sup>

#### *Enforcement of vague Syariah law provisions against LGBT individuals*

LGBT individuals have also been targeted through the enforcement of vaguely worded legal provisions under Syariah laws, including provisions on “encouraging vice”<sup>145</sup> or “indecent acts”.<sup>146</sup> Most recently, on 29 October 2022, the Royal Malaysia Police (PDRM), the Federal Territories Islamic Religious Department (JAWI) and the Kuala Lumpur City Hall (DBKL) conducted a joint raid of a social gathering attended by LGBT people, which resulted in the arrests and interrogation of at least 24 gender diverse persons. Those arrested were alleged to have committed vaguely defined offences, such as “encouraging vice” and “indecent acts”, and for “cross-dressing”.<sup>147</sup>

Furthermore, state Syariah laws on “insulting Islam” have also been used to target gender non-conforming persons. For example, in the notable case of Nur Sajat, a transgender social media personality, the entrepreneur fled Malaysia after being charged for allegedly “insulting Islam” for wearing typically feminine attire at a religious event.<sup>148</sup>

#### *Legal restrictions on LGBT-related expression and information*

LGBT-related expression and information is restricted both online and offline spaces in Malaysia.

For films, the Ministry of Home Affairs’ **Guidelines on Film Censorship** explicitly prohibit portraying “homosexual and unnatural sex” and “transgender behaviour and lifestyle”.<sup>149</sup> However, these restrictions do not extend to online streaming services based outside of Malaysia, including Netflix, as noted by the Deputy Communications and Multimedia Minister in response to his Ministry’s decision to ban the movies “Thor: Love and Thunder” and “Lightyear” from being released in local theatres for their purported LGBT content.<sup>150</sup>

<sup>141</sup> For a comprehensive overview of past instances of enforcement of these laws, see, ILGA World, “Our Identities Under Arrest”, December 2021, p. 165 – 169.

<sup>142</sup> Besides Selangor, this is also criminalized in Malacca and Sabah. The term “sexual intercourse against the order of nature” is not defined in these laws; see, Human Rights Watch and Justice for Sisters, “Annex I: Laws Criminalizing Sexual Orientation and Gender Identity in Malaysia”, p. 73, available at: [https://www.hrw.org/sites/default/files/media\\_2022/08/malaysia0822\\_annexI.pdf](https://www.hrw.org/sites/default/files/media_2022/08/malaysia0822_annexI.pdf).

<sup>143</sup> Malay Mail, “Federal Court unanimously declares Selangor Shariah law criminalising ‘unnatural sex’ void, unconstitutional”, 25 February 2021, available at: <https://www.malaymail.com/news/malaysia/2021/02/25/federal-court-unanimously-declares-selangor-shariah-law-criminalising-unnat/1952701>.

<sup>144</sup> Zheng Hong See, “The Federal Court of Malaysia held state Syariah law criminalising ‘unnatural sex’ void and unconstitutional”, 3 April 2021, available at: <https://ohrh.law.ox.ac.uk/the-federal-court-of-malaysia-held-state-syariah-law-criminalising-unnatural-sex-void-and-unconstitutional/>.

<sup>145</sup> For instance, section 35 of the Syariah Criminal Offences (Federal Territories) Act 1997 provides: “Any person who promotes, Any person who promotes, induces or encourages another person to indulge in any vice shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both.” The term “vice” is not defined expressly.

<sup>146</sup> For instance, section 29 of the Syariah Criminal Offences (Federal Territories) Act 1997 provides: “Any person who, contrary to Islamic Law, acts or behaves in an indecent manner in any public place shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding six months or to both.” The term “indecent manner” is not defined expressly.

<sup>147</sup> ILGA Asia, “Malaysia: Civic spaces shrinking at an alarming rate for LGBTQ persons in Malaysia”, 4 November 2022, available at: <https://www.ilgaasia.org/news/raid-malaysia-shrinking-civic-spaces-2022>.

<sup>148</sup> Straits Times, “Malaysian transgender entrepreneur arrested in Thailand”, 20 September 2021, available at: <https://www.straitstimes.com/asia/se-asia/malaysian-transgender-entrepreneur-arrested-in-thailand>.

<sup>149</sup> Ministry of Home Affairs, “Garis Panduan Penapisan Film”, 2010, available at: [https://lpf.moha.gov.my/lpf/images/Perundangan/GARIS\\_PANDUAN\\_PENAPISAN\\_FILEM\(1\).pdf](https://lpf.moha.gov.my/lpf/images/Perundangan/GARIS_PANDUAN_PENAPISAN_FILEM(1).pdf).

<sup>150</sup> Variety, “After ‘Thor’ and ‘Lightyear,’ Malaysia Government Commits to Banning More LGBT Films”, 11 August 2022, available at: <https://variety.com/2022/film/news/malaysia-ban-lgbt-films-thor-lightyear-1235338721/>.

Vague and overbroad federal laws are used to target LGBT-related content in offline and online spaces, including provisions under the **Communication and Multimedia Act 1998 (CMA)** and section 7(1) of the **Printing Presses and Publications Act 1984**, even if they do not explicitly reference SOGIE. These laws form part of the Malaysian authorities' broad range of laws that can and have been used to arbitrarily curtail online freedom of expression.<sup>151</sup>

The CMA is particularly conducive to restricting online LGBT-related expression and information. Section 37(e) of the CMA permits the Minister charged with the responsibility for communications and multimedia to suspend or cancel licences granted under the Act if it is "in the public interest",<sup>152</sup> which has allegedly "included depictions of LGBT people and issues".<sup>153</sup> Section 233 criminalizes the making, creating, soliciting, and transmitting of content that is "obscene, indecent, false, menacing or offensive in character with intent to annoy, abuse, threaten or harass another person".<sup>154</sup> The Act fails to define the words "obscene", "indecent", "false", "menacing" and "offensive",<sup>155</sup> giving rise to concern that it may therefore be contrary to the principle of legality. The Malaysian Communications and Multimedia Commission (MCMC) has used section 233 to justify blocking LGBT-related websites.<sup>156</sup> Section 233 has also formed the legal basis for the MCMC to investigate individuals for online music videos allegedly featuring LGBT persons, and for charges to later be filed against them.<sup>157</sup>

Blocking orders can be issued by the government under section 263(2), which provides that, upon a written request by the government, a licensee shall assist the government "as far as reasonably necessary in preventing the commission or attempted commission of an offence under any written law of Malaysia or otherwise in enforcing the laws of Malaysia, including, but not limited to, the protection of the public revenue and preservation of national security".<sup>158</sup>

Any blocking orders issued under section 263(2) is extrajudicial in nature. However, under international human rights law and standards, States should only seek to impose content restrictions pursuant to an order from an independent and impartial judicial authority, guaranteeing respect for due process and standards of legality, necessity and legitimacy. In light of this, any blocking orders issued extrajudicially under section 263(2) are inconsistent with international human rights law and standards.

Given its formulation, section 263(2) of the CMA is likely the basis of government's demands to internet intermediaries to block content. However, the ICJ notes with concern that there is a lack of transparency from the government on whether section 263(2) is the legal basis empowering them to directly order internet intermediaries to restrict online content.

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<sup>151</sup> These laws include, but are not limited to: Section 505 of the Penal Code, Section 4 of the Sedition Act 1948, Section 3(1) of the Common Gaming Houses Act 1953, Section 41 of the Copyright Act 1987, Film Censorship Act, Section 114A of the Evidence Act, and several state Syariah criminal offences enactments: see, Sinar Project, "Laws cited for Internet Censorship in Malaysia", available at: <https://sinarproject.org/digital-rights/updates/laws-cited-for-internet-censorship-in-malaysia>; Sinar Project, "Freedom of Expression in the Digital Space", available at: <https://sinarproject.org/updates/freedom-of-expression-in-the-digital-space>.

<sup>152</sup> Section 37(e), Communications and Multimedia Act (1998), available at: [https://www.mcmc.gov.my/skmmgovmy/media/General/pdf/Act588bi\\_3.pdf](https://www.mcmc.gov.my/skmmgovmy/media/General/pdf/Act588bi_3.pdf).

<sup>153</sup> Stonewall, "Stonewall Global Workplace Briefings 2018: Malaysia", 2018, available at: [https://www.stonewall.org.uk/system/files/malaysia\\_global\\_workplace\\_briefing\\_2018.pdf](https://www.stonewall.org.uk/system/files/malaysia_global_workplace_briefing_2018.pdf).

<sup>154</sup> Section 233, Communications and Multimedia Act (1998), available at: [https://www.mcmc.gov.my/skmmgovmy/media/General/pdf/Act588bi\\_3.pdf](https://www.mcmc.gov.my/skmmgovmy/media/General/pdf/Act588bi_3.pdf).

<sup>155</sup> Pelangi Campaign, "Internet and Sexuality: LGBTQ Experience in Malaysia", 13 June 2018, available at: <https://medium.com/@pelangicampaign/internet-and-sexuality-lgbtq-experience-in-malaysia-a895497f3a35>.

<sup>156</sup> Specific instances of these blockings will be discussed in greater detail in Chapter 4. See also, OutRight Action International, The Citizen Lab, OONI, "No Access: LGBTIQ Website Censorship in Six Countries", 2021, p. 48 ("OutRight Action International et al, LGBTIQ Website Censorship Report"), available at: <https://citizenlab.ca/wp-content/uploads/2021/08/LGBTIQ-censorship-Final.pdf>.

<sup>157</sup> Specific instances of such investigations and charges will be discussed in greater detail in Chapter 4; see, The Star, "Vida pleads not guilty to uploading offensive video", 8 November 2022, available at: <https://www.thestar.com.my/news/nation/2022/11/08/vida-pleads-not-guilty-to-uploading-offensive-video>; The Rakyat Post, "Aliff Syukri Investigated For Controversial Raya Music Video, MCMC Calls in Entrepreneur For Questioning", 26 April 2022, available at: <https://www.therakyatpost.com/news/2022/04/26/aliff-syukri-investigated-for-controversial-raya-music-video-mcmc-calls-in-entrepreneur-for-questioning/>; New Straits Times, "#Showbiz: Vida called up by MCMC in connection with music video", 13 May 2022, available at: <https://www.nst.com.my/lifestyle/groove/2022/05/795910/showbiz-vida-called-mcmc-connection-music-video>.

<sup>158</sup> Section 263(2), Communications and Multimedia Act (1998), available at: [https://www.mcmc.gov.my/skmmgovmy/media/General/pdf/Act588bi\\_3.pdf](https://www.mcmc.gov.my/skmmgovmy/media/General/pdf/Act588bi_3.pdf).



Section 7(1) of the Printing Presses and Publications Act 1984 has been invoked to ban at least three books with LGBT-related content, including two books in February 2023.<sup>159</sup> Section 7(1) provides that the Minister of Home Affairs can prohibit “undesirable publications” if the Minister is satisfied that they contain content “prejudicial to or likely to be prejudicial to public order, morality, security, or which is likely to alarm public opinion, or which is or is likely to be contrary to any law or is otherwise prejudicial to or is likely to be prejudicial to public interest or national interest”.<sup>160</sup> Notably, vague and overbroad terms, such as “public interest”, “national interest” and “likely to alarm public opinion” are left undefined in the Act. With respect to the term “public order”, in February 2022, the High Court revoked the government’s ban against the book “Gay is OK! A Christian Perspective”, on the basis that the authorities had “failed to show evidence of actual prejudice to public order that had occurred”.<sup>161</sup>

Moreover, section 7(1) empowers the Minister of Home Affairs to prohibit publications for reasons that extend beyond the list of legitimate purposes for which expression may be lawfully restricted under international human rights law.<sup>162</sup>

### *Social stigma and acts of discrimination against LGBT people*

The repressive legal regime described in the above sections reflects the wider social stigma and exclusion of LGBT people within Malaysian society, which has been fuelled by anti-LGBT rhetoric from government officials. In May 2022, Google removed from its Google Play store an application produced by the Malaysian government that claimed to enable “LGBTI people to return to a state of nature or purity”.<sup>163</sup> In January 2023, Prime Minister Anwar Ibrahim reportedly stated that “liberalism, LGBT and secularism will never be recognized by the unity government”.<sup>164</sup>

The government has also funded retreats, known as *mukhayyam*, aimed at “rehabilitating” or “changing” LGBT people, with at least 1,769 people having attended these programmes as of June 2021.<sup>165</sup> With respect to this, the UN Independent Expert on SOGI has concluded that “conversion therapy” practices can amount to torture, cruel, inhuman or degrading treatment, and has recommended that States ban the practice of so-called “conversion therapy”.<sup>166</sup>

### *Lack of a comprehensive protective legislative framework*

Malaysia lacks a comprehensive protective legislative framework that protects LGBT people against discrimination on the basis of their SOGIE. Concomitantly, and partly because of such a framework’s absence, LGBT people in Malaysia also face significant barriers in accessing justice and effective remedies when their human rights are violated or abused; the ICJ is aware of several reports of instances of violence and harassment not being investigated or addressed by the authorities. This has resulted in access to justice being “tenuous” for LGBT people.<sup>167</sup> The criminalization of consensual same-sex sexual conduct and

<sup>159</sup> FMT, “3 publications banned for hurting morals, LGBT content”, 14 February 2023, available at: <https://www.freemalaysiatoday.com/category/nation/2023/02/14/3-publications-banned-for-hurting-morals-lgbt-content/>; Free Malaysia Today, “Publisher, author win bid to quash ban on ‘Gay is OK’ book”, 22 February 2022, available at: <https://www.freemalaysiatoday.com/category/nation/2022/02/22/publisher-author-win-bid-to-quash-ban-on-gay-is-ok-book/>.

<sup>160</sup> Section 7(1), Printing Presses and Publications Act 1984, available at: [https://www.moha.gov.my/images/maklumat\\_bahagian/PQ/Act301.pdf](https://www.moha.gov.my/images/maklumat_bahagian/PQ/Act301.pdf).

<sup>161</sup> Free Malaysia Today, “Publisher, author win bid to quash ban on ‘Gay is OK’ book”, 22 February 2022, available at: <https://www.freemalaysiatoday.com/category/nation/2022/02/22/publisher-author-win-bid-to-quash-ban-on-gay-is-ok-book/>.

<sup>162</sup> Under article 19(3) of the ICCPR, freedom of expression may only be restricted when provided by law and are necessary for respect of the rights or reputations of others; or for the protection of national security or of public order, or of public health or morals.

<sup>163</sup> The Guardian, “Malaysian government’s ‘gay conversion’ app pulled by Google Play”, 17 March 2022, available at: <https://www.theguardian.com/world/2022/mar/17/malaysian-governments-gay-conversion-app-pulled-by-google-play>.

<sup>164</sup> Thilaga Sulathireh, “Anwar Ibrahim is Perpetuating the Weaponization of LGBTPhobia in Malaysia, Putting Lives in Danger”, Coconuts KL, 9 January 2023, available at: <https://coconuts.co/kl/features/anwar-ibrahim-is-perpetuating-the-weaponization-of-lgbtphobia-in-malaysia-putting-lives-in-danger-opinion/>.

<sup>165</sup> Human Rights Watch and Justice for Sisters, “‘I Don’t Want to Change Myself’: Anti-LGBT Conversion Practices, Discrimination, and Violence in Malaysia”, August 2022, p. 17, available at: [https://www.hrw.org/sites/default/files/media\\_2022/08/malaysia0822web\\_0.pdf](https://www.hrw.org/sites/default/files/media_2022/08/malaysia0822web_0.pdf).

<sup>166</sup> Human Rights Council, “Practices of so-called ‘conversion therapy’”, UN Doc. A/HRC/44/53, 1 May 2020, paras. 62, 86.

<sup>167</sup> Human Rights Watch and Justice for Sisters, “‘I Don’t Want to Change Myself’: Anti-LGBT Conversion Practices, Discrimination, and Violence in Malaysia”, August 2022, p. 48 – 52, available at: [https://www.hrw.org/sites/default/files/media\\_2022/08/malaysia0822web\\_0.pdf](https://www.hrw.org/sites/default/files/media_2022/08/malaysia0822web_0.pdf).

gender non-conformity also negatively impacts the ability of LGBT individuals to access justice and effective remedies, similar to the case of Indonesia.

Although the **Personal Data Protection Act 2010 (PDPA)** is intended to regulate the processing of personal data, its ambit is limited with respect to the protection of LGBT people's right to privacy. It only applies to "commercial transactions", and section 3 is explicit that the Act "shall not apply to the Federal Government and State governments".<sup>168</sup> As a result, in the case of Nur Sajat, a transgender woman, who posted pictures of herself in a female prayer garment while performing a pilgrimage, the Federal Territory Mufti's Office obtained details of her birth certificate from the National Registration Department, and proceeded to release this publicly.<sup>169</sup> With respect to instances of non-State actors maliciously outing the sexual orientation and/or gender identity of LGBT people, it is also unclear if "sensitive personal data", under section 4,<sup>170</sup> may be interpreted to include data on a person's SOGIE.

In May 2022, the Communications and Multimedia Content Forum of Malaysia, an industry body registered under the MCMC, produced the **Malaysian Communications and Multimedia Content Code 2022 (Content Code)**.<sup>171</sup> The Content Code "outline[s] procedures of self-regulation" in compliance with the CMA, and promisingly contains provisions that explicitly reference sexual orientation. "Gender" is also explicitly referenced, but the Content Code does not state whether this is understood to mean gender identity or expression. Notably, sections 2.8 and 3.5 state that "Code Subjects"<sup>172</sup> and "broadcasters" shall ensure that their content "contains no abusive or discriminatory material or comment" on gender and sexual orientation. Section 6.1 defines "hate speech" as "the denigration", "defamation" or "devaluation" based on, among other things, "sexual orientation".<sup>173</sup> However, the Content Code is self-regulatory, and it is not backed by a complaint and investigative mechanism. In addition, it appears that sections 2.8, 3.5 and 6 are contradicted by the MCMC's repeated invocation of section 233 of the CMA to target LGBT-related content.

## Philippines

Consensual same-sex sexual conduct and gender non-conformity are not criminalized in the Philippines. Moreover, in contrast to Indonesia, Malaysia and Singapore, there are no specific laws or policies that restrict online or offline LGBT-related expression in the Philippines.

The right to "expressions concerning one's homosexuality" is constitutionally protected, following the Supreme Court's judgment in *Ang Ladlad LGBT Party (Ladlad) v Commission of Elections (COMELEC)* where the Court held that the constitutional right to freedom of expression includes "both expressions concerning one's homosexuality and the activity of forming a political association that supports LGBT individuals". The Supreme Court also ruled that the principle of non-discrimination requires that laws of general application be applied equally to all persons regardless of sexual orientation, in line with article 26 of the ICCPR.<sup>174</sup>

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<sup>168</sup> Sections 2 and 3, Personal Data Protection Act 2010, available at: <https://www.pdp.gov.my/jpdpv2/assets/2019/09/Personal-Data-Protection-Act-2010.pdf>.

<sup>169</sup> For instance, in Nur Sajat's case, it was reported that the Federal Territory Mufti's Office released details on her birth certificate to the mainstream media, which they had allegedly obtained from the National Registration Department. See, Coconuts KL, "Doxxing is a crime in Malaysia, except for when it targets the LGBTQ community", 16 August 2022, available at: <https://malaysia.news.yahoo.com/doxing-crime-malaysia-except-targets-103747812.html>.

<sup>170</sup> "Personal sensitive data" is defined as "information as to the physical or mental health or condition of a data subject, his political opinions, his religious beliefs or other beliefs or a similar nature": Section 4, Personal Data Protection Act 2010, available at: <https://www.pdp.gov.my/jpdpv2/assets/2019/09/Personal-Data-Protection-Act-2010.pdf>. The Act is silent on whether this may include data on one's SOGIE.

<sup>171</sup> Christopher & Lee Ong, "Content Code 2022 | Part 1: The Content Forum Publishes the Revamped Communications and Multimedia Content Code", June 2022, available at: [https://www.christopherleeong.com/media/4914/2022-06\\_clo\\_content-code-2022-part-1.pdf](https://www.christopherleeong.com/media/4914/2022-06_clo_content-code-2022-part-1.pdf).

<sup>172</sup> "Code Subjects" means persons who are subject to the Code.

<sup>173</sup> Content Forum, "The Malaysian Communications and Multimedia Content Code 2022", May 2022, sections 2.8, 3.5, 3.8, 4.3, and 6.1, available at: <https://www.mcmc.gov.my/skmmgovmy/media/General/pdf/Content-Code-2022.pdf>.

<sup>174</sup> IBA, "LGBTI rights in the Philippines are in limbo", available at: <https://www.ibanet.org/article/50D981FE-A36B-4A37-85D5-8432F6C7AB56>.

### *Lack of a comprehensive protective legislative framework*

While there is a “growing but uncoordinated recognition of LGBTI rights within the Philippine legal system”,<sup>175</sup> there is no comprehensive anti-discrimination legislative framework protecting the human rights of LGBT persons at the national level. Notably, there is no legal gender recognition for transgender and gender diverse people in the Philippines.<sup>176</sup>

In the face of opposition from conservative legislators, at the national level, the Sexual Orientation and Gender Identity and Expression (SOGIE) Equality Bill has been stalled for years in Congress since being first introduced in 2000.<sup>177</sup>

There have been several iterations of the SOGIE Equality Bill. A recent version of the Bill, **Senate Bill 1934**, prepared by the Committee on Women, Children, Family Relations and Gender Equality (entitled “SOGIESC-based Anti-Discrimination Act”) seeks to address “all forms of discrimination, marginalization and violence on the basis of sexual orientation, gender identity, gender expression and sex characteristics”. The Bill, if adopted as formulated in this version, would prohibit, *inter alia*, “inciting violence and sexual abuse against any person or group on the basis of SOGIESC” (section 5(a)), publishing information intended to “out” or revealing the sex or SOGIESC of persons without their consent” (section 5(k)), and would provide for sanctions of between P500,000 – 1,000,000 (approx. USD 9,150 – 18,300) and/or the rendition of community service.<sup>178</sup>

However, in November 2022, during the Philippines’ fourth Universal Periodic Review, the Philippine government rejected recommendations to pass the SOGIE Equality Bill on the grounds of its being “not acceptable” in the Philippines “as a pre-dominantly Catholic country”.<sup>179</sup>

While, as described above, the SOGIE Equality Bill has faced considerable delays, there have been legal reforms protecting LGBT people in national legislation, as well as at the sub-national level.

At the national level, **Republic Act 11313**, or the “**Safe Spaces Act**” criminalizes various forms of gender-based sexual harassment in offline and online spaces.<sup>180</sup> This includes the criminalization of “acts that use information and communications technology in terrorizing victims” through:

- Physical, psychological, and emotional threats, unwanted sexual misogynistic, **transphobic**, **homophobic** and sexist remarks and comments online whether publicly or through direct and private messages (emphasis added);
- Invasion of the victim’s privacy through cyberstalking and incessant messaging;
- Uploading and sharing without the consent of the victim any form of media that contains photos, voice, or video with sexual content;
- Any unauthorized recording and sharing of any of the victim’s photos, videos or any information online;
- Impersonating identities of victims online or posting lies about victims to harm their reputation; or
- Filing false abuse reports to online platforms to silence victims.<sup>181</sup>

<sup>175</sup> *Ibid.*

<sup>176</sup> ICJ, “Philippines: Immediately repeal SIM Card Registration Act that undermines online freedoms”, 9 March 2022, available at: <https://www.icj.org/philippines-immediately-repeal-sim-card-registration-act-that-undermines-online-freedoms/>; UNDP, “Legal Gender Recognition in the Philippines: A Legal and Policy Review”, 22 June 2018, available at: <https://www.undp.org/philippines/publications/legal-gender-recognition-philippines-legal-and-policy-review>.

<sup>177</sup> The Philippine Star, “SOGIE Bill: Where is it now and is it moving forward?”, 25 January 2023, available at: <https://philstarlife.com/news-and-views/817472-sogie-bill-update?page=2>; The Fuller Project, “‘I’m scared every damn day’: In the Philippines, violence shadows trans lives”, 7 January 2021, available at: <https://fullerproject.org/story/im-scared-every-damn-day-in-the-philippines-violence-shadows-trans-lives/>.

<sup>178</sup> Sections 5 and 6, Senate Bill No. 1934, 20 December 2022, available at: <https://legacy.senate.gov.ph/lisdata/3408830843!.pdf>.

<sup>179</sup> Commission on Human Rights, “Statement of the Commission on Human Rights on the rejection of the Philippine delegation of the recommendation during the Universal Periodic Review to pass the SOGIE Equality Bill”, 22 November 2022, available at: <https://chr.gov.ph/statement-of-the-commission-on-human-rights-on-the-rejection-of-the-philippine-delegation-of-the-recommendation-during-the-universal-periodic-review-to-pass-the-sogie-equality-bill/>.

<sup>180</sup> Republic of the Philippines, Public-Private Partnership Center, “Republic Act No. 11313 or The Safe Spaces Act (Bawal Bastos Law)”, available at: [https://ppp.gov.ph/press\\_releases/republic-act-no-11313-or-the-safe-spaces-act-bawal-bastos-law/](https://ppp.gov.ph/press_releases/republic-act-no-11313-or-the-safe-spaces-act-bawal-bastos-law/).

<sup>181</sup> Section 13, The Implementing Rules and Regulations of Republic Act No. 11313, available at: <https://www.ombudsman.gov.ph/GAD/Laws%20and%20Mandates/IRR-of-RA-11313-Safe-Spaces-Act.pdf>.

Conviction may result in a maximum prison sentence of six years or a fine between P100,000 (approx. USD 1,840) to P500,000 (approx. USD 9,200).<sup>182</sup> While the ICJ welcomes the spirit of the law in prohibiting gender-based sexual harassment against women and LGBT people, the law may include forms of online abuse that, while harmful, may not rise to the threshold required to warrant a criminal law response.<sup>183</sup> For instance, “posting lies about victims to harm their reputation” is better dealt with civil defamation laws, in line with the Human Rights Committee’s affirmation that “State parties should consider the decriminalization of defamation and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty”.<sup>184</sup>

The **Republic Act 10627, or the Anti-Bullying Law of 2013** requires elementary and secondary schools to adopt policies to address bullying. This includes “cyber-bullying or any bullying done through the use of technology or any electronic means”.<sup>185</sup> The implementing rules and regulations of the Act make clear that bullying includes “gender-based bullying”, which refers to “any act that humiliates or excludes a person on the basis of perceived or actual sexual orientation and gender identity”.<sup>186</sup>

At the sub-national level, several regions have enacted ordinances against discrimination based on SOGIE, including in Albay, Agusan del Norte, Bataan, Batangas, Cavite, Cebu City, Davao City, Dinagat Islands, Ilocos Sur, Iloilo City, Manila, Quezon City, and Zamboanga City.<sup>187</sup>

#### *Persistence of discrimination and violence against LGBT people*

Despite some of the legal reforms protecting LGBT people in national legislation and at the sub-national level described above, a comprehensive legislative framework to protect LGBT people against discrimination on the basis of their SOGIE is absent. In parallel, violence and discrimination against LGBT people persist in the Philippines, contributing, in turn, to a culture of fear and self-censorship among LGBT people. Trans and gender diverse people face an increased risk of human rights abuses, with at least “50 transgender or gender nonbinary individuals [having] been murdered” between 2010 and 2021.<sup>188</sup> This includes the high-profile killing of Jennifer Laude, a trans woman who was brutally attacked and killed by a US military officer upon learning her gender identity. The officer was convicted of homicide and sentenced to 10 years of imprisonment and ordered to pay a compensation of 4.5 million pesos (approx. USD 82,300) to Jennifer Laude’s family in 2015, but former President Duterte granted him an absolute pardon in 2020.<sup>189</sup>

The police’s record in protecting LGBT people against abuses appears to be mixed. On the one hand, following criticism against the police and an increase in the killings of trans people, the Philippine National Police introduced “LGBT desks” in its district offices in 2018 to provide targeted support to LGBT persons facing violence and abuse.<sup>190</sup> On the other hand, reports indicate that the police have also been perpetrators of human rights violations against LGBT people, including through violence, and have reportedly used heavy-handed and degrading and humiliating methods against LGBT people.<sup>191-</sup>

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<sup>182</sup> *Ibid.*, Section 16.

<sup>183</sup> See discussion in Chapter 2 on how different forms of harmful expression warrants different forms of State responses, particularly when legal prohibitions are involved. See also, ICJ OGBV Law Checklist; and ICJ 8 March Principles.

<sup>184</sup> Human Rights Committee, General Comment No. 34, para. 47.

<sup>185</sup> Section 2(d), Republic Act No. 10627, available at: [https://lawphil.net/statutes/repacts/ra2013/ra\\_10627\\_2013.html](https://lawphil.net/statutes/repacts/ra2013/ra_10627_2013.html).

<sup>186</sup> Section 3, Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 10627 Otherwise Known as the Anti-Bullying Act of 2013, available at: [https://www.deped.gov.ph/wp-content/uploads/2013/12/DO\\_s2013\\_55.pdf](https://www.deped.gov.ph/wp-content/uploads/2013/12/DO_s2013_55.pdf).

<sup>187</sup> ILGA World, State-Sponsored Homophobia 2020, p. 205 – 206; Rappler, “List: Philippine local governments with anti-discrimination ordinances”, 3 July 2022, available at: <https://www.rappler.com/newsbreak/iq/list-local-governments-philippines-anti-discrimination-ordinances/>.

<sup>188</sup> The Fuller Project, “‘I’m scared every damn day’: In the Philippines, violence shadows trans lives”, 7 January 2021, available at: <https://fullerproject.org/story/im-scared-every-damn-day-in-the-philippines-violence-shadows-trans-lives/>.

<sup>189</sup> Rappler, “Timeline: The killing of Jennifer Laude and release of Joseph Scott Pemberton”, 9 September 2020, available at: <https://www.rappler.com/newsbreak/iq/timeline-jennifer-laude-killing-joseph-scott-pemberton-release/>.

<sup>190</sup> The Fuller Project, “‘I’m scared every damn day’: In the Philippines, violence shadows trans lives”, 7 January 2021, available at: <https://fullerproject.org/story/im-scared-every-damn-day-in-the-philippines-violence-shadows-trans-lives/>.

<sup>191</sup> For example, in April 2021, it was reported that a police barangay captain subjected three LGBT people to humiliating and degrading treatment for flouting COVID-19 curfew measures. The Fuller Project, “‘I’m scared every damn day’: In the Philippines, violence shadows trans lives”, 7 January 2021, available at: <https://fullerproject.org/story/im-scared-every-damn-day-in-the-philippines-violence-shadows-trans-lives/>.

## Singapore

### *Repealed criminalization of consensual same-sex sexual conduct between men*

In Singapore, **section 377A of the Penal Code** criminalized consensual same-sex sexual conduct between men,<sup>192</sup> before being repealed on 27 December 2022 after Singapore's President assented to the repeal.<sup>193</sup>

### *Legal restrictions on LGBT-related expression and information*

Despite a prosecutorial non-enforcement policy when section 377A was still in force, the law had cascading effects on the State's policies towards LGBT persons,<sup>194</sup> including discriminatory policies on the dissemination of LGBT-related content in online and offline spaces.

Such effects transpired in content codes and guidelines issued by the Infocomm Media Development Authority (IMDA) and expressly restricting the dissemination of LGBT-related expression and information online, especially with regard to positive portrayals of LGBT persons and issues. Pursuant to section 6 of the **Broadcasting Act 1994**, the IMDA has issued several Codes of Practice that contain discriminatory restrictions on LGBT-related content.<sup>195</sup> The IMDA has the power to impose sanctions, including fines, on licensees who contravene these Codes of Practice.<sup>196</sup>

In particular, the **Internet Code of Practice (1997)** requires Internet Service Providers and Internet Content Providers to ensure that "prohibited material is not broadcast via the Internet to users in Singapore".<sup>197</sup> Prohibited material is material that is "objectionable on the grounds of public interest, public morality, public order, public security, national harmony, or is otherwise prohibited by applicable Singapore laws", and whether the "material advocates homosexuality or lesbianism" should be taken into account.<sup>198</sup> It is worth noting that "public interest" and "national harmony", by themselves, are not legitimate purposes to restrict expression and information.

The **Content Code for Over-the-Top, Video-on-Demand and Niche Services (2018)** is applicable to online streaming services, such as Netflix, and contains restrictions on LGBT-related content.<sup>199</sup> For instance, films that "centre on alternative sexualities may be classified at highest rating of R21" (i.e. only those 21 years old and above may watch them).<sup>200</sup> Also of concern is that films that contain the "promotion of homosexuality" may be refused classification entirely,<sup>201</sup> making it a criminal offence to distribute or publicly exhibit.<sup>202</sup> Similar restrictions and classification ratings<sup>203</sup> are also contained in the **Content Code**

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<sup>192</sup> Section 377A reads: "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."

<sup>193</sup> Straits Times, "S377A officially repealed after President Halimah gives assent to Bill", 4 January 2023, available at: <https://www.straitstimes.com/singapore/s377a-officially-repealed-as-president-assents-to-changes-to-legislation>.

<sup>194</sup> ICJ, "Singapore: Repeal section 377A of the penal code and uphold LGBTQ+ individuals' human rights", 28 March 2022, available at: <https://www.icj.org/singapore-repeal-section-377a-of-the-penal-code-and-uphold-lgbtq-individuals-human-rights/>.

<sup>195</sup> Section 6, Broadcasting Act 1994, available at: <https://sso.agc.gov.sg/Act/BA1994?ProvIds=P13-#pr6->.

<sup>196</sup> See, for instance, Section 1(2) of the Internet Code of Practice: IMDA, "Internet Code of Practice", para. 1(2), available at: <https://www.imda.gov.sg/-/media/Imda/Files/Regulations-and-Licensing/Regulations/Codes-of-Practice/Codes-of-Practice-Media/PoliciesandContentGuidelinesInternetInterneCodeOfPractice.pdf>.

<sup>197</sup> *Ibid.*, para. 2.

<sup>198</sup> *Ibid.*, para. 4(1), 4(2)(e).

<sup>199</sup> IMDA, "Content Code for Over-the-Top, Video-on-Demand and Niche Services", p. 11, 16, and 23, available at: <https://www.imda.gov.sg/-/media/Imda/Files/Regulations-and-Licensing/Regulations/Codes-of-Practice/Codes-of-Practice-Media/OTT-VOD-Niche-Services-Content-Code-updated-29-April-2019.pdf>.

<sup>200</sup> *Ibid.*, p. 11. See also, IMDA, "Content Code for Nationwide Managed Transmission Linear Television Services", p. 16, available at: <https://www.imda.gov.sg/-/media/Imda/Files/Regulations-and-Licensing/Regulations/Codes-of-Practice/Codes-of-Practice-Media/Managed-Linear-TV-Services-Content-Code-updated-29-April-2019.pdf>.

<sup>201</sup> IMDA, "Content Code for Over-the-Top, Video-on-Demand and Niche Services", p. 23, available at: <https://www.imda.gov.sg/-/media/Imda/Files/Regulations-and-Licensing/Regulations/Codes-of-Practice/Codes-of-Practice-Media/OTT-VOD-Niche-Services-Content-Code-updated-29-April-2019.pdf>. See also, IMDA, "Content Code for Nationwide Managed Transmission Linear Television Services", p. 28, available at: <https://www.imda.gov.sg/-/media/Imda/Files/Regulations-and-Licensing/Regulations/Codes-of-Practice/Codes-of-Practice-Media/Managed-Linear-TV-Services-Content-Code-updated-29-April-2019.pdf>.

<sup>202</sup> Section 21, Films Act 1981, available at: <https://sso.agc.gov.sg/Act/FA1981#pr21->.

<sup>203</sup> See also, Heckin' Unicorn, "This is why we don't get LGBTQ+ representation in Singapore // LGBT Rights in Singapore", 16 September 2021, available at: <https://heckinunicorn.com/blogs/heckin-unicorn-blog/this-is-why-we-dont-get-lgbtq-representation-in-singapore-lgbt-rights-in-singapore?currency=THB>; and ILGA World, State-Sponsored Homophobia 2020, p. 153.

for Radio Services (2020);<sup>204</sup> Video Game Classification Guidelines (2019);<sup>205</sup> and the Content Guideline for Local Lifestyle Magazines (2013).<sup>206</sup>

As noted by Oogachaga and Pink Dot SG, two Singaporean LGBT groups, these restrictions:

“... serve to prevent public discussion and constructive dialogue on LGBT+ issues, reinforce negative LGBT+ stereotypes, restrict LGBT+ persons from receiving important public health information relevant to their needs, limit LGBT+ community service-providers from publicising their services, and impose institutional discrimination on the LGBT+ community.”<sup>207</sup>

There is no indication that the government intends to review, let alone repeal or reform, these discriminatory policies in the near future, notwithstanding the repeal of section 377A. The government has stated that there will be “no change to content regulation policies”, and the government will “strongly discourage campaigning for pro- or anti-LGBT viewpoints” in order to “avoid [...] culture wars”.<sup>208</sup> Regrettably, the government’s self-anointed “neutrality” fails to acknowledge that the existing content regulation policies, as detailed above, are directly discriminatory against LGBT persons.

On the contrary, it is likely that these discriminatory policies will be harder to challenge, in light of the ouster clauses contained in the **Constitution of the Republic of Singapore (Amendment No. 3) Bill**, purportedly seeking to “protect” the existing definition of marriage. The amendment was adopted in tandem with the repeal of section 377A. The Amendment’s ouster clauses prevent independent judicial review on constitutional rights grounds of the abovementioned policies to the extent that these policies are premised on purportedly promoting and safeguarding the institution of marriage as being between a man and a woman. The ICJ has previously underscored that such a stance would entrench discrimination against LGBT persons and prevent them from being able to access justice and effective remedies when their human rights have been violated.<sup>209</sup>

#### *Lack of a comprehensive protective legislative framework*

Singapore lacks a comprehensive anti-discrimination legal framework that protects LGBT individuals against discrimination on the basis of their SOGIE.

Nonetheless, LGBT persons in Singapore are explicitly protected from incitement to violence on religious grounds in the Maintenance of Religious Harmony Act 1990, and generally from other forms of online violence through ordinary criminal laws.<sup>210</sup>

<sup>204</sup> IMDA, “Content Code for Radio Services”, para. 2.7 – 2.8, available at: <https://www.imda.gov.sg/-/media/Imda/Files/Regulation-Licensing-and-Consultations/Codes-of-Practice-and-Guidelines/Acts-Codes/Content-Code-for-Radio-Services22072020.pdf>.

<sup>205</sup> IMDA, “Video Game Classification Guidelines”, paras. 15, 17, available at: [https://www.imda.gov.sg/-/media/Imda/Files/Regulations-and-Licensing/Regulations/Codes-of-Practice/Codes-of-Practice-Media/Video-Game-Classification-Guidelines-29\\_Apr\\_2019.pdf](https://www.imda.gov.sg/-/media/Imda/Files/Regulations-and-Licensing/Regulations/Codes-of-Practice/Codes-of-Practice-Media/Video-Game-Classification-Guidelines-29_Apr_2019.pdf).

<sup>206</sup> IMDA, “Content Guidelines for Local Lifestyle Magazines”, paras. 1.1(i), 2.9, 3.3, 4.2, available at: <https://www.imda.gov.sg/-/media/Imda/Files/Regulations-and-Licensing/Regulations/Codes-of-Practice/Codes-of-Practice-Media/ContentGuidelinesForLocalLifeStyleMagazines.pdf>.

<sup>207</sup> Oogachaga and Pink Dot SG, “United Nations Human Rights Council Universal Periodic Review on Singapore, 38<sup>th</sup> Session (May 2021), Joint stakeholder submission”, 15 October 2020, para. 4.10, available at: [https://static1.squarespace.com/static/5a65ffdbf9a61e45b684f769/t/5f869295bd9ccc647c1e7dbf/1602654872360/Singapore\\_OCPD\\_submission\\_14.10.2020+PDF.pdf](https://static1.squarespace.com/static/5a65ffdbf9a61e45b684f769/t/5f869295bd9ccc647c1e7dbf/1602654872360/Singapore_OCPD_submission_14.10.2020+PDF.pdf).

<sup>208</sup> Josephine Teo, “No Change to Content Regulation Policies with S377A Repeal”, Facebook, 27 August 2022, available at: <https://www.facebook.com/Josephine.LM.Teo/posts/pfbid0299ZFGVtVsBzNEwDduSiexWLokAutpnk2j12LhLy4FpveSDTPVevCKZqcWU5osoSpl>.

<sup>209</sup> ICJ, “Singapore: Long overdue decriminalization of consensual same-sex relations between men overshadowed by discriminatory constitutional amendment purporting to “protect” definition of marriage”, 28 November 2022, available at: <https://www.icj.org/singapore-long-overdue-decriminalization-of-consensual-same-sex-relations-between-men-overshadowed-by-discriminatory-constitutional-amendment-purporting-to-protect-definition-of-mar/>.

<sup>210</sup> For instance, for cases of incitement to violence on non-religious grounds, section 267C of the Penal Code may apply, which criminalizes “uttering words, making documents, etc., containing incitement to violence”. This provision is however silent on whether this specifically protects LGBT people, and the ICJ is unaware of any specific instances of this law being used to protect LGBT people.

Section 17E(1) and (2) of the **Maintenance of Religious Harmony Act 1990** criminalizes “urging violence on religious grounds” against a group or individual distinguished by any characteristic.<sup>211</sup> The Explanatory Statement makes clear that sexual orientation is a protected characteristic.<sup>212</sup> The ICJ presumes that such reasoning extends to online incitement to violence on religious grounds.<sup>213</sup>

The authorities have also displayed a willingness to apply ordinary criminal laws to target online expression threatening violence against the LGBT community. During Singapore’s most recent Universal Periodic Review in 2021, the Ministry of Foreign Affairs assured that LGBT persons were “protected from violence and harassment”, and that “the law protects LGBT individuals the same as everyone else.”<sup>214</sup> Notably, sections 3 and 4 of the **Protection from Harassment Act 2014** have been used to protect LGBT persons against the causing of “harassment, alarm or distress”,<sup>215</sup> including through electronic means.<sup>216</sup>

However, the abovementioned laws of general application do not constitute a comprehensive legislative framework protecting LGBT people against discrimination on SOGIE grounds, and do not reference “homophobia, biphobia and transphobia as aggravating factors for the purposes of sentencing” in connection with the commission of criminal offences, as recommended by the UN Independent Expert on SOGI.<sup>217</sup>

## Thailand

### *No criminalization or legal restrictions based on SOGIE*

Consensual same-sex sexual conduct and gender non-conformity are not criminalized in Thailand. Moreover, in contrast to Indonesia, Malaysia and Singapore, there are no specific laws or policies that explicitly restrict online or offline LGBT-related expression in the country.

### *Disproportionate impact of general legal restrictions on free expression and assembly on LGBT people*

LGBT people have been disproportionately impacted by the Thai authorities’ arbitrary crackdown on the rights to freedom of expression and peaceful assembly, especially in response to the pro-democracy movement. Since February 2020, Thailand has seen the rise of a youth-led, pro-democracy movement, in direct response to a decision by the Constitutional Court to dissolve a major political opposition party, the Future Forward Party.<sup>218</sup> LGBT human rights defenders and persons are often amongst those at the forefront of the protests and pro-democracy movement.<sup>219</sup> With respect to this, their involvement is attested to by the high visibility of rainbow flags in pro-democracy protests and calls for gender equality within the pro-democracy movement.<sup>220</sup>

<sup>211</sup> Section 17E(1) and (2), Maintenance of Religious Harmony Act 1990, available at: <https://sso.agc.gov.sg/Act/MRHA1990>. This section was inserted into the Act through the Maintenance of Religious Harmony (Amendment) Act 2019.

<sup>212</sup> Explanatory Statement, Maintenance of Religious Harmony (Amendment) Bill, available at: <https://sso.agc.gov.sg/Bills-Supp/25-2019/Published/20190902?DocDate=20190902&ProvIds=xn-#xn->. The ICJ notes that gender identity and gender expression are not explicitly included as a protected characteristic, but is likely to still fall in the catch-all category of “any other characteristic” under Section 17E(1) and (2). This is especially in light of the Minister of Law’s Facebook statement that “urging force or violence against the LGBTQ community on the basis of religion is an offence”, which appears to also include gender diverse persons; see, K Shanmugam SC, “LGBTQ and MRHA”, 12 October 2019, available at: <https://www.facebook.com/k.shanmugam.page/posts/2510564118990103>.

<sup>213</sup> This is based on how the general offence of incitement to violence, under Section 267C of the Penal Code, has been used to convict online incitement to violence. See, for instance, CNA, “19-year-old arrested for inciting violence, posting racist comments online”, 9 June 2020, available at: <https://www.channelnewsasia.com/singapore/youth-arrested-for-inciting-violence-posting-racist-comments-720076>.

<sup>214</sup> Ministry of Foreign Affairs, “Adoption of the Outcome of Singapore’s Third Universal Periodic Review, 1 October 2021”, 1 October 2021, available at: <https://www.mfa.gov.sg/Newsroom/Press-Statements-Transcripts-and-Photos/2021/10/20211001-UPR-adoption>.

<sup>215</sup> Sections 3 and 4, Protection from Harassment Act 2014. Section 3 concerns the intentional causing of harassment, alarm or distress, while section 4 concerns merely the causing of harassment, alarm or distress.

<sup>216</sup> Goh Yihan and Yip Man, “The Protection from Harassment Act 2014: Legislative Comment” (2014) 26 SAclJ, para. 16.

<sup>217</sup> UN Independent Expert on SOGI Report on Violence and Discrimination Based on SOGI, para. 93.

<sup>218</sup> Reuters, “Hundreds join protest against ban of opposition party in Thailand”, 22 February 2020, available at: <https://www.reuters.com/article/us-thailand-politics-idUSKCN20G0EW>.

<sup>219</sup> ICJ Interview with Isaan Gender Diversity Network, November 2022.

<sup>220</sup> Reuters, “Thai LGBT activists raise pride flag in anti-government rally”, 26 July 2022, available at: <https://www.reuters.com/article/us-thailand-protests-idUSKCN24Q0NV>; OBS, “Standing Tall: Women human rights defenders at the forefront of Thailand’s pro-democracy protests”, February 2021, p. 6, available at: [https://www.fidh.org/IMG/pdf/rapport-tailhande2021\\_1\\_-3.pdf](https://www.fidh.org/IMG/pdf/rapport-tailhande2021_1_-3.pdf).

As a result, LGBT human rights defenders have faced arbitrary arrests, detention, and criminal charges pursuant to non-human rights compliant laws, even if they were not being targeted specifically for their SOGIE.<sup>221</sup> These laws are vague and overbroad, wrongly and unlawfully criminalize free expression, prescribe disproportionately harsh penalties, and are applied without sufficient independent judicial oversight.<sup>222</sup> Between July 2020 and February 2023, Thai Lawyers for Human Rights recorded that at least 61 LGBT individuals faced criminal charges due to their participation in protests and/or the exercise of their right to freedom of expression.<sup>223</sup> Pro-democracy adolescent activists, who identify as LGBT, have also reported facing gender-insensitive, intrusive and irrelevant questions during their background check in the criminal justice system, such as questions about “whether they have had sexual relations with another individual of the same sex and how often they have sex”.<sup>224</sup>

As part of this crackdown, the online expression of openly LGBT activists has also been arbitrarily restricted, including under the Computer-related Crimes Act B.E. 2560.<sup>225</sup> Furthermore, when these LGBT human rights defenders face criminal charges and/or investigations, they are also more likely to face online abuse and hate speech as a result of the publicity associated with these legal sanctions.

#### *Lack of a comprehensive protective legislative framework*

Despite Thailand’s relatively open and tolerant attitudes towards LGBT people, the country lacks a comprehensive anti-discrimination framework to protect against discrimination based on SOGIE. There is also a lack of legal gender recognition in Thailand, which has negatively affected the ability of transgender people to “secure employment and their right to be treated with dignity and respect”.<sup>226</sup>

Thailand’s **Gender Equality Act B.E. 2558 (2015)** specifically protects against discrimination on the grounds of gender expression. Section 3 of the Act provides that “unfair gender discrimination” includes those who “express themselves differently from their inborn gender”.<sup>227</sup> It appears that sexual orientation is not covered under this ground.<sup>228</sup> According to UNDP, most of the cases brought to the committee enforcing the Act have been brought by transgender people facing discrimination in education, employment, and access to public spaces.<sup>229</sup>

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<sup>221</sup> Financial Times, “Inside Thailand’s youth revolution”, 6 November 2020, available at: <https://www.ft.com/content/c2a530ba-a343-4007-a324-c2d276b95883>. These arrests, detentions and criminal charges are typically carried out pursuant to sections 112 and 116 of the Criminal Code (criminalizing royal defamation and sedition respectively). For more details of these non-human rights compliant laws, see, ICJ, “Thailand: New ICJ report highlights intensified online restrictions”, 22 June 2021, available at: <https://www.icj.org/thailand-new-icj-report-highlights-intensified-online-restrictions/>.

<sup>222</sup> ICJ, “Thailand: New ICJ report highlights intensified online restrictions”, 22 June 2021, available at: <https://www.icj.org/thailand-new-icj-report-highlights-intensified-online-restrictions/>.

<sup>223</sup> ICJ communication with Thai Lawyers for Human Rights.

<sup>224</sup> Amnesty International, “We Are Reclaiming Our Future”: Children’s Right to Peaceful Assembly in Thailand”, 2023, p. 22 – 23, available at: <https://www.amnesty.org/en/documents/asa39/6336/2023/en/>.

<sup>225</sup> The specific identities of the targeted individuals have not been listed here out of respect to their privacy; see, ICJ, “Dictating the Internet: Curtailing Free Expression and Information Online in Thailand”, April 2021, p. 33, 35, and 66 – 67, available at: <https://icj2.wpenginepowered.com/wp-content/uploads/2021/06/Thailand-Dictating-the-Internet-FoE-Publication-2021-ENG.pdf>.

<sup>226</sup> Human Rights Watch, “People Can’t Be Fit into Boxes”: Thailand’s Need for Legal Gender Recognition”, 15 December 2021, available at: <https://www.hrw.org/report/2021/12/15/people-cant-be-fit-boxes/thailands-need-legal-gender-recognition>. As noted by an academic study, while Thailand “does not conduct active legal repression of sexual/gender minorities”, the law tends to “ignore their existence”, which “creates numerous participatory barriers, two of the most significant examples being the inability to change one’s legal gender and the absence of generalized antidiscrimination legislation for LGBT+ individuals”: see, Peter A. Newman, Luke Reid, Suchon Tepjan & Pakorn Akkakanjanasupar, “LGBT+ inclusion and human rights in Thailand: a scoping review of the literature”, BMC Public Health, 2021, available at: <https://bmcpublihealth.biomedcentral.com/articles/10.1186/s12889-021-11798-2>.

<sup>227</sup> Section 3, Gender Equality Act B.E. 2558 (2015), available at: <http://law.m-society.go.th/law2016/uploads/lawfile/594cc091ca739.pdf> (Unofficial Translation).

<sup>228</sup> UNDP and MSDHS, “Legal Gender Recognition in Thailand: A Legal and Policy Review”, May 2018, p. 29, available at: [https://www.undp.org/sites/g/files/zskgke326/files/migration/asia\\_pacific\\_rbp/legat-gender-recognition-in-thailand-2018.pdf](https://www.undp.org/sites/g/files/zskgke326/files/migration/asia_pacific_rbp/legat-gender-recognition-in-thailand-2018.pdf).

<sup>229</sup> UNDP, “Assessment Report: Implementation of the Gender Equality Act B.E 2558 (2015)”, 3 May 2020, available at: <https://www.undp.org/thailand/publications/assessment-report-implementation-gender-equality-act-be-2558-2015>; Human Rights Watch, “Thailand: Submission to the UN Committee on the Elimination of Discrimination against Women”, 3 October 2022, available at: [https://www.hrw.org/news/2022/10/03/thailand-submission-un-committee-elimination-discrimination-against-women#\\_ftnref43](https://www.hrw.org/news/2022/10/03/thailand-submission-un-committee-elimination-discrimination-against-women#_ftnref43).



**Summary of laws and regulations directly affecting LGBT people’s human rights**

	<b>Criminalization based on SOGIE</b>	<b>Legal restrictions on LGBT-related online and offline content</b>	<b>Comprehensive protective framework</b>
<b>Indonesia</b>	<p><i>De facto</i> criminalization at the national level through criminalization of “sex outside marriage” and “cohabitation” under the new <b>Criminal Code</b> (not yet in force), and through enforcement of the <b>Law No. 44 of 2008 on Pornography</b></p> <p>Criminalization in law and practice at the sub-national level, including Aceh Province, South Sumatra Province and West Sumatra</p> <p>Pathologization and exclusion at the sub-national level through local regulations on “family-resilience” and “sexual deviancy”</p>	<p>Explicitly restricted on broadcasting platforms through <b>Circular Letters</b> issued by the Indonesian Broadcasting Commission, pursuant to <b>Law No. 32 of 2002 on Broadcasting</b> and the <b>2012 Broadcasting Guidelines and Standards</b></p> <p>Restricted as “content against propriety” under article 27(1) of <b>Law No. 11 of 2008 on Electronic Information and Transactions</b> through criminal sanctions, website blocking, and content takedowns</p>	<p>No anti-discrimination law protecting against SOGIE-based discrimination</p>
<b>Malaysia</b>	<p>Criminalization of consensual same-sex sexual conduct between men at the federal level through <b>sections 377A, 377B and 377D of the Penal Code</b></p> <p>Criminalization at the state Syariah level of consensual same-sex sexual conduct and gender non-conformity in all 13 states and the Federal Territory</p>	<p>Explicitly restricted through the <b>Guidelines on Film Censorship</b></p> <p>Restricted under vague and overbroad legal provisions, including sections 37(e), 233 and 263 of the <b>Communications and Multimedia Act 1998</b> and section 7(1) of the <b>Printing Presses and Publications Act 1984</b></p>	<p>No anti-discrimination law protecting against SOGIE-based discrimination</p> <p><b>Communications and Multimedia Content Code (May 2022)</b> contains some protections against content abusive or discriminatory on sexual orientation and gender grounds, but Content Code is self-regulatory and non-enforceable</p>

	<b>Criminalization based on SOGIE</b>	<b>Legal restrictions on LGBT-related online and offline content</b>	<b>Comprehensive protective framework</b>
<b>Philippines</b>	No criminalization based on SOGIE	No legal restrictions on LGBT-related content  The right to “expressions concerning one’s homosexuality” is constitutionally protected, following the Supreme Court’s judgment in <i>Ang Ladlad LGBT Party (Ladlad) v Commission of Elections (COMELEC)</i>	No anti-discrimination law protecting against SOGIE-based discrimination at the national level  Anti-discrimination ordinances in several regions based protecting against SOGIE-based discrimination  Explicit prohibition of gender-based sexual harassment, including “misogynistic, transphobic, homophobic, and sexist slurs” in the <b>Republic Act 11313 (Safe Spaces Act)</b>  Explicit prohibition of cyber bullying in elementary and secondary schools, including based on sexual orientation and gender identity in the <b>Republic Act 10627 (Anti-Bullying Act of 2013)</b>
<b>Singapore</b>	No criminalization based on SOGIE  Note: <b>Section 377A of the Penal Code</b> (criminalizing consensual sexual conduct between men) repealed in Dec 2022	Explicitly restricted through Codes of Practice issued pursuant to section 6 of the <b>Broadcasting Act 1994</b> , including the <b>Internet Code of Practice</b> , which prohibits “the advocacy of homosexuality or lesbianism”, and the <b>Content Code for Over-the-Top, Video-on-Demand and Niche Services (2018)</b> , which classifies films that “centre on alternative sexualities” at “highest rating of R21”	No anti-discrimination law protecting against SOGIE-based discrimination  Section 17E(1) and (2) of the <b>Maintenance of Religious Harmony Act (1990)</b> criminalizes incitement to violence on religious grounds against individuals or groups distinguished by any characteristic, including sexual orientation
<b>Thailand</b>	No criminalization based on SOGIE	No legal restrictions on LGBT-related content	No anti-discrimination law protecting against SOGIE-based discrimination  Anti-discrimination law based on gender expression under the <b>Gender Equality Act B.E. 2558 (2015)</b>

## Chapter 4: State Censorship of LGBT-Related Content and People

State censorship of LGBT-related content online is prevalent in Indonesia and Malaysia through the blocking of websites and content, and the imposition of sanctions against people posting LGBT-related content online. LGBT-related content is often labeled as “indecent”, “improper”, “obscene” or “pornographic” in these countries, which echoes their continued discrimination, criminalization and stigmatization of LGBT people based on their real or imputed SOGIE. Singapore maintains a lighter touch to censorship of LGBT-related content by choosing to age-restrict shows and movies on online streaming platforms, with no indication that this practice will change in spite of the recent repeal of section 377A.

In Indonesia, Malaysia and Singapore, these arbitrary and discriminatory State restrictions on LGBT-related content through laws, policies and regulations are not subject to independent judicial oversight and due process requirements. Restrictions on LGBT-related content are all issued by an executive body, as opposed to by an independent, impartial judicial body,<sup>230</sup> and there are no express appeal mechanisms to challenge these content restrictions<sup>231</sup> in breach of international human rights law and the separation of powers.<sup>232</sup>

State restrictions on LGBT-related content contribute to a chilling effect on the free expression of LGBT people online where LGBT people end up self-censoring in order to avoid facing legal restrictions and sanctions. They also limit the availability of information online for LGBT individuals, such as when the websites of international non-governmental organizations advocating for the human rights of LGBT people are censored.<sup>233</sup>

In Thailand and the Philippines, there have been no recent reported instances of censorship of LGBT-related content, consistent with their general absence of laws restricting LGBT-related expression. Nonetheless, even in these countries, unsafe online environments due to homophobic and transphobic online violence and abuse cause LGBT people to self-censor,<sup>234</sup> which will be discussed in further detail in Chapter 5.

### Indonesia

Online LGBT-related content is routinely censored in Indonesia. Censorship is enforced through the blocking and removal of websites, applications and social media content depicting LGBT-related content, which are labeled as “pornographic” and “improper”. There have also been reports of social media users facing criminal sanctions in connection with their LGBT-related expression online.

#### *Website blocking*

Several LGBT-related websites are blocked in Indonesia. Sinar Project’s Internet Monitoring Action Project (iMAP) confirmed that 25 LGBT-related websites were blocked in Indonesia during the testing period from 1 January 2022 until 30 June 2022. These include websites of LGBT human rights organizations, online forums, magazines, travel bookings and others.<sup>235</sup> In a 2021 report by OutRight Action International, The Citizen Lab and OONI found at least 38 unique URLs with LGBT-related content were blocked.<sup>236</sup> These websites are on Kominfo’s database of blocked sites, which are blocked through TrustPositif, a filtering application operation pursuant to Ministerial Regulation No. 19 of 2014.<sup>237</sup>

<sup>230</sup> Human Rights Council, “Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression”, UN Doc. A/HRC/38/35, 6 April 2018, para. 66.

<sup>231</sup> Article 2(3), ICCPR; UN Human Rights Council, “Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression: Addendum, Communications to and from Governments”, UN Doc. A/HRC/17/27, 16 May 2011, para. 47.

<sup>232</sup> Human Rights Council, “Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression”, UN Doc. A/HRC/38/35, 6 April 2018, para. 66.

<sup>233</sup> For instance, in Indonesia, the websites of ILGA World and ILGA Europe are blocked; Sinar Project, “iMAP State of Internet Censorship Report 2022, Country: Indonesia”, 2022, p. 22 – 23, available at: <https://imap.sinarproject.org/reports/2022/the-state-of-internet-censorship-in-indonesia-2022/2022-indonesia>.

<sup>234</sup> This can include, for instance, online threats of physical and/or sexual violence, severe harassment online, cyberstalking, among others, and can constitute OGBV when motivated by gender norms; see, ICJ OGBV Law Checklist.

<sup>235</sup> Sinar Project, “iMAP State of Internet Censorship Report 2022, Country: Indonesia”, 2022, p. 22 – 23, available at: <https://imap.sinarproject.org/reports/2022/the-state-of-internet-censorship-in-indonesia-2022/2022-indonesia>.

<sup>236</sup> OutRight Action International et al, LGBTIQ Website Censorship Report, p. 32 – 33.

<sup>237</sup> Sinar Project, “iMAP State of Internet Censorship Report 2022, Country: Indonesia”, 2022, p. 4, 12 – 14, 30 – 31, available at: <https://imap.sinarproject.org/reports/2022/the-state-of-internet-censorship-in-indonesia-2022/2022-indonesia>.

Those websites that remain blocked are not in Bahasa Indonesian and do not seem to be intended for an Indonesia-specific audience.<sup>238</sup> Activists interviewed by the ICJ noted that in 2017, several local and foreign websites featuring LGBT-related content were blocked, but the ban on five local websites, which had featured LGBT-related content, was lifted after months of engagement with the government by LGBT groups.<sup>239</sup> The website of Support Group and Resource Center on Sexuality Studies (SGRC), an organization providing support and resources to Indonesian LGBT people, also had the blocking of their website reversed after SGRC requested a meeting to discuss the blocking decision.<sup>240</sup>

### *Content and applications removals and legal sanctions*

LGBT-related content and applications are also frequently blocked in Indonesia following direct content removal demands from Kominfo. These extrajudicial takedown demands appear to have been issued pursuant to the prohibition of “contents against propriety” under article 27(1) of the ITE Law,<sup>241</sup> but activists interviewed by the ICJ reported a lack of transparency and clarity about why LGBT-related content was sometimes removed on social media platforms.<sup>242</sup>

Some notable examples of content and applications takedown include:

- In February 2016, it was reported that the Indonesian government had demanded that applications and social networks remove all stickers and emojis depicting LGBT-related themes as they would “cause unrest, especially in relation to the religious and cultural norms in Indonesia”.<sup>243</sup>
- In January 2018, it was reported that Google removed 73 LGBT-related applications from its Play Store, including Blued, a dating application aimed at gay men, following demands by Kominfo to do so.<sup>244</sup>
- In February 2019, Kominfo issued a takedown request to Instagram to shut down the account of Alpentuni,<sup>245</sup> which posted comics depicting the life of a gay Muslim man in Indonesia and the discrimination he faces.<sup>246</sup> In a press release, Kominfo stated that the content depicted on the Instagram account violated article 27(1) of the ITE Law, specifically stating that the account distributed “pornographic content”.<sup>247</sup>
- In June 2020, it was reported that the SBF group in Karawang, West Java, had their Facebook page removed for “indecent because of their lesbian community content”.<sup>248</sup>

LGBT social media users have faced being investigated and even criminal charges in connection with their online activity. In October 2018, the West Java Police arrested two men for administering a Facebook group called “Facebook Gay Bandung Indonesia”, which has a total of 4,093 members.<sup>249</sup> They were later charged

<sup>238</sup> OutRight Action International et al, LGBTIQ Website Censorship Report, p. 32 – 33.

<sup>239</sup> ICJ Interview with Lini Zurlia, September 2022.

<sup>240</sup> While Kominfo reportedly did not respond to the request from SGRC, it did lift the blocking of the website; see, OutRight Action International et al, LGBTIQ Website Censorship Report, p. 32 – 33.

<sup>241</sup> As previously noted in Chapter 3, the government has the power to directly issue takedown demands to Electronic Platforms under article 40(2a) and 40(2b) of Law No. 19 of 2016 on Changes to Law No. 11 of 2008 on Electronic Information and Transactions.

<sup>242</sup> ICJ Interviews with SAFEnet and Lini Zurlia, September 2022.

<sup>243</sup> The Verge, “LGBT stickers are being outlawed in Indonesia because they cause ‘unrest’”, 12 February 2016, available at: <https://www.theverge.com/2016/2/12/10977592/indonesia-gay-lgbt-stickers-emoji>.

<sup>244</sup> Reuters, “New Indonesia web system blocks more than 70,000 ‘negative’ sites”, 19 February 2018, available at: <https://www.reuters.com/article/us-indonesia-communications-idUSKCN1G30KA>; Sinar Project, “iMAP State of Internet Censorship Report 2022, Country: Indonesia”, 2022, p. 14, available at: <https://imap.sinarproject.org/reports/2022/the-state-of-internet-censorship-in-indonesia-2022-indonesia>.

<sup>245</sup> Kominfo, ‘Siaran Pers No. 38/HM/KOMINFO/02/2019 Rabu, 13 Februari 2019 tentang IG Penuhi Permintaan Kominfo Tutup Akun Komik Muslim Gay’, 13 February 2019, available at: [https://www.kominfo.go.id/content/detail/16358/siaran-pers-no-38hmkominfo022019-tentang-ig-penuhi-permintaan-kominfo-tutup-akun-komik-muslim-gay/0/siaran\\_pers](https://www.kominfo.go.id/content/detail/16358/siaran-pers-no-38hmkominfo022019-tentang-ig-penuhi-permintaan-kominfo-tutup-akun-komik-muslim-gay/0/siaran_pers).

<sup>246</sup> Adi Renaldi, “Pembuat Komik Gay Muslim di Instagram Buka Suara: Aku Tak Berusaha Menghina Agama”, VICE, 25 February 2019, available at: <https://www.vice.com/id/article/vbwykd/pembuat-komik-gay-muslim-di-instagram-buka-suara-aku-tak-berusaha-menghina-agama>.

<sup>247</sup> Kominfo, ‘Siaran Pers No. 38/HM/KOMINFO/02/2019 Rabu, 13 Februari 2019 tentang IG Penuhi Permintaan Kominfo Tutup Akun Komik Muslim Gay’, 13 February 2019, available at: [https://www.kominfo.go.id/content/detail/16358/siaran-pers-no-38hmkominfo022019-tentang-ig-penuhi-permintaan-kominfo-tutup-akun-komik-muslim-gay/0/siaran\\_pers](https://www.kominfo.go.id/content/detail/16358/siaran-pers-no-38hmkominfo022019-tentang-ig-penuhi-permintaan-kominfo-tutup-akun-komik-muslim-gay/0/siaran_pers).

<sup>248</sup> SAFEnet, “Indonesia Digital Rights Situation Report 2020: Digital Repression Amid the Pandemic”, 2020, p. 64, available at: [https://safenet.or.id/wp-content/uploads/2021/05/2020\\_Digital-Situation-Report-2020.pdf](https://safenet.or.id/wp-content/uploads/2021/05/2020_Digital-Situation-Report-2020.pdf).

<sup>249</sup> Amnesty International, ‘Indonesia: Crackdowns on LGBTI people hit alarming level’, 6 November 2018, available at: <https://www.amnesty.org/en/latest/news/2018/11/indonesia-crackdowns-lgbti-people-hit-alarming-level/>.

under article 27(1) of the ITE Law.<sup>250</sup> In June 2020, the account owner of the Facebook group for the SBF group, which had their page removed because of their “lesbian community content”, was summoned by the Karawang local police.<sup>251</sup> In June 2020, a person living in Serpong, Banten was also reportedly summoned by the local police “for circulating an invitation to a gay party on Facebook”.<sup>252</sup> The ICJ is also concerned by reports that online groups monitor and report individuals deemed to be “propagating LGBT values” to the authorities.<sup>253</sup>

## Malaysia

Similarly to Indonesia, online LGBT-related content is sometimes blocked in Malaysia through the blocking of websites and imposition of legal sanctions on individuals posting LGBT-related content, pursuant to the over-expansive provisions of the CMA.

### *Website blocking*

Several LGBT-related websites are blocked in Malaysia, albeit inconsistently across different networks on the basis of sections 211 and 233 of the CMA.<sup>254</sup> Sinar Project’s iMAP documented the blocking of at least six websites featuring LGBT-related content within a six-month testing period from 1 January 2022 to 30 June 2022. Websites that were blocked included news sites featuring LGBT-related content, dating sites and websites of LGBT non-governmental organizations. Notably, the website of Justice for Sisters, a Malaysian LGBT non-governmental organization, was blocked for a period of two days at the time of the government’s announcement that the movie *Buzz Lightyear* would not be screened in Malaysia due to its LGBT-related elements.<sup>255</sup>

### *Legal sanctions against LGBT-related expression*

There have been two recent reports of individuals facing criminal investigations and charges, pursuant to section 233 of the CMA, in connection with posting music videos online featuring LGBT persons. In April 2022, it was reported that Aliff Syukri, an entrepreneur was summoned by the MCMC as a result of an investigation into a music video, posted during Hari Raya Aidilfitri,<sup>256</sup> allegedly featuring “several male dancers putting on makeup and acting effeminately”. The people featured in the music video were also summoned by the MCMC.<sup>257</sup> In November 2022, it was reported that Datuk Seri Dr Masmiza Othman, also an entrepreneur, was facing criminal charges for uploading a music video in April 2022 allegedly featuring LGBT dancers, to which she had pleaded not guilty.<sup>258</sup> Furthermore, activists advocating for the human rights of LGBT people risk facing reprisals from State authorities for criticizing the government’s anti-LGBT policies.<sup>259</sup>

<sup>250</sup> *Ibid.*

<sup>251</sup> SAFEnet, “Indonesia Digital Rights Situation Report 2020: Digital Repression Amid the Pandemic”, 2020, p. 64, available at: [https://safenet.or.id/wp-content/uploads/2021/05/2020\\_Digital-Situation-Report-2020.pdf](https://safenet.or.id/wp-content/uploads/2021/05/2020_Digital-Situation-Report-2020.pdf).

<sup>252</sup> *Ibid.*

<sup>253</sup> For example, it has been reported that one such a group had more than 60,000 members who reported at least three LGBT people in 2020 to the authorities. *Ibid.*, p. 65.

<sup>254</sup> OutRight Action International et al, LGBTIQ Website Censorship Report, p. 48. Section 233 of the CMA, which prohibits the “improper use of network facilities or network service”, has been discussed in detail in Chapter 3 of this report. Section 211 similarly prohibits the provision of offensive content, which is defined as “indecent, obscene, false, menacing, or offensive in character with intent to annoy, abuse, threaten or harass any person.”

<sup>255</sup> Sinar Project, “iMAP State of Internet Censorship Report 2022, Country: Malaysia”, 2022, p. 14 – 15, available at: <https://imap.sinarproject.org/reports/2022/imap-state-of-internet-censorship-country-report-2022-malaysia/2022-malaysia.pdf>.

<sup>256</sup> Hari Raya Aidilfitri is the Islamic holiday celebrated by Muslims, associated with the end of the month-long fasting of Ramadan.

<sup>257</sup> The Rakyat Post, “Aliff Syukri Investigated For Controversial Raya Music Video, MCMC Calls In Entrepreneur For Questioning”, 26 April 2022, available at: <https://www.therakyatpost.com/news/2022/04/26/aliff-syukri-investigated-for-controversial-raya-music-video-mcmc-calls-in-entrepreneur-for-questioning/>. As of the time of publication, the ICJ was not able to locate publicly available information on the outcome of the investigations.

<sup>258</sup> The Star, “Vida pleads not guilty to uploading offensive video”, 8 November 2022, available at: <https://www.thestar.com.my/news/nation/2022/11/08/vida-pleads-not-guilty-to-uploading-offensive-video>. As of the time of publication, the ICJ was not able to locate publicly available information on the progress of her criminal trial.

<sup>259</sup> For example, in July 2020, the Islamic Development Department filed a complaint with the police against Nicole Fong, a human rights activist, for defamation, in relation to her Twitter posts criticizing the Religious Affairs Minister’s anti-LGBT statements and conversion practices. However, the police did not investigate the complaint. The Sun Daily, “Jakim lodges police report against Twitter account owner regarding Mukhayyam programme”, 3 August 2020, available at: <https://www.thesundaily.my/local/jakim-lodges-police-report-against-twitter-account-owner-regarding-mukhayyam-programme-BK3286715>; Human Rights Watch and Justice for Sisters, ““I Don’t Want to Change Myself”: Anti-LGBT Conversion Practices, Discrimination, and Violence in Malaysia”, August 2022, p. 33 – 34, available at: [https://www.hrw.org/sites/default/files/media\\_2022/08/malaysia0822web\\_0.pdf](https://www.hrw.org/sites/default/files/media_2022/08/malaysia0822web_0.pdf).

## Singapore

While Singapore has a myriad of discriminatory content codes and guidelines that target LGBT-related content in offline and online spaces, the uneven enforcement of these codes and guidelines, especially online, has allowed LGBT people to express themselves and access information online.<sup>260</sup> Nonetheless, the routine enforcement of restrictions on LGBT-related content in traditional media and the performing arts<sup>261</sup> have contributed to the limitation of LGBT-related content available online.

### *Age restrictions on LGBT media on streaming services*

Pursuant to the Content Code for Over-the-Top, Video-on-Demand and Niche Services (2018), streaming services, such as Netflix, may feature restricted LGBT-related shows and films “strictly for adults” above the age of 21 years old.<sup>262</sup> For instance, it has been reported that shows like “Queer Eye” and “Modern Family” are rated as R21, likely due to the positive or normalized portrayals of LGBT people and relationships. The report noted that Singapore was the strictest in its maturity ratings regarding LGBT-related content across Asia.<sup>263</sup>

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<sup>260</sup> See, for instance, “Report on Singapore regarding the human rights of LGBTI persons: 24<sup>th</sup> session of the Universal Periodic Review”, January – February 2016, para. 25, available at: <https://tinyurl.com/w23zt4ru>.

<sup>261</sup> See, for instance, Oogachaga and Pink Dot SG, “United Nations Human Rights Council Universal Periodic Review on Singapore”, May 2021, para. 4.5 – 4.10, available at: [https://pinkdot.sg/pinkie/wp-content/uploads/2021/06/Singapore\\_OCPD\\_submission\\_14.10.2020PDF-1.pdf](https://pinkdot.sg/pinkie/wp-content/uploads/2021/06/Singapore_OCPD_submission_14.10.2020PDF-1.pdf).

<sup>262</sup> IMDA, “Content Code for Over-The-Top, Video-On-Demand and Niche Services”, p. 11, 16, available at: <https://www.imda.gov.sg/-/media/Imda/Files/Regulations-and-Licensing/Regulations/Codes-of-Practice/Codes-of-Practice-Media/OTT-VOD-Niche-Services-Content-Code-updated-29-April-2019.pdf>.

<sup>263</sup> Vice, “In Singapore, Netflix Shows With LGBTQ Themes Are Rated Strictly for Adults”, 17 July 2020, available at: <https://www.vice.com/en/article/bv8d44/singapore-netflix-lgbtq-themes-rated-strictly-adults>.

## Chapter 5: Online SOGIE-Based Violence, Abuse and Hate Speech

Common forms of online SOGIE-based violence and abuse faced by LGBT people in the countries surveyed include online harassment, incitement to violence, death threats, doxing, outing, non-consensual recording and sharing of intimate content, and cyberbullying, among others.

Although instances of online violence and abuse are particularly widespread in countries with rampant discrimination against LGBT people, such as Indonesia and Malaysia, LGBT individuals across all five countries have reported facing online SOGIE-based violence and abuse, in breach of their rights to privacy and non-discrimination, and right to live free from violence. Those with intersecting marginalized identities are particularly at risk of online SOGIE-based violence and abuse. As a result, LGBT individuals often self-censor or hide their identities online in order to avoid being targeted, detrimentally impacting their right to online freedom of expression.

Furthermore, online SOGIE-based violence frequently occurs with impunity, especially in Indonesia and Malaysia where State actors themselves perpetuate anti-LGBT narratives. Factors contributing to this impunity include SOGIE-based criminalization; inadequate legal protections; a lack of trust in law enforcement; and fears of reprisals for reporting such acts of violence. Thus, the right of LGBT people to access to justice and effective remedies often remain elusive when they are victims of online violence and abuse.

The following reports of online SOGIE-based violence, abuse and hate speech against LGBT people are in no way comprehensive in covering every incident of violence against LGBT people in the five countries. Rather, this chapter identifies key trends in the various countries through the information interviewees shared with the ICJ and publicly available information, with a view to mapping out how violence and hate against LGBT people manifest. The prevalence of online harmful content against LGBT people is likely to be severely underreported, especially when in local languages, such that more needs to be done to diagnose and map out the landscape of hateful narratives against LGBT people.

It must also be emphasized that there is a range of harmful expression documented<sup>264</sup> in this chapter of varying severities, which would therefore warrant different State responses in line with international human rights law, as has been discussed in greater detail in Chapter 2.

### Indonesia

LGBT people have experienced SOGIE-based online violence, abuse and hate speech on social media platforms. These online attacks often carry religious overtones and references to gender and sexual diversity as a form of “deviance” or “disease”. Interviews conducted by the ICJ described the normalization of online hate speech often becoming viral.<sup>265</sup>

State authorities in Indonesia are responsible for spreading and fueling online homophobic and transphobic narratives, which can also rise to the level of online SOGIE-based violence. In 2018, the Indonesian Air Force’s Twitter administrator posted that LGBT people could not join the Air Force and that “such sexual preferences were a mental disorder”.<sup>266</sup> In 2016, former Communications and Information Minister tweeted a quote that justified the killing of homosexual people based on religion,<sup>267</sup> which constituted an act of online violence against LGBT people.

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<sup>264</sup> While every attempt has been made to be as precise as possible about the anti-LGBT expression being discussed, some of these have already been labelled as “violence”, “abuse”, or “hate speech” etc. in the sources consulted by the ICJ, particularly for secondary sources. The ICJ notes the challenge of independently ascertaining the severity of each example cited of anti-LGBT expression, without further information of the context and intent of the speaker, among other factors.

<sup>265</sup> Interview with Lini Zurlia, September 2022.

<sup>266</sup> The Jakarta Post, “Air Force Twitter admin sparks LGBT debate”, 10 January 2018, available at: <https://www.thejakartapost.com/news/2018/01/10/air-force-twitter-admin-sparks-lgbt-debate.html>.

<sup>267</sup> Coconuts Jakarta, “Former IT Minister Accused of Hate Speech for Trying to Justify Killing Gay People in Tweets”, 26 February 2016, available at: <https://coconuts.co/jakarta/news/former-it-minister-accused-hate-speech-trying-justify-killing-gay-people-tweets/>.

Media outlets have used stigmatizing and derogatory language against LGBT people, with a 2020 report finding that online news outlets have framed discussions on LGBT people with accusations of “immorality” and derogatory language, and claimed that LGBT people are the cause of natural disasters.<sup>268</sup> A report in 2017 by the Community Legal Aid Institute found 182 news stories containing stigmatizing language against LGBT people between January and December 2016, including language describing sexual and gender diversity as “immoral”, “deviant” and “against religion”; “a mental illness” that is contagious and will contribute to spread HIV; and the commission of paedophilia and other sexual crimes.<sup>269</sup>

Several studies on the prevalence of online SOGIE-based violence, abuse and hate speech against LGBT people in Indonesia have found the following:

- An independent human rights impact assessment by Article One on Facebook in 2018 found that LGBT Facebook users have experienced “harassment and bullying, as well as being “outed” on the platform”.<sup>270</sup>
- A research study conducted in 2021 on the Facebook pages of three LGBT groups in Indonesia found that the pages had all attracted hateful comments, including: religious-based hate speech comments, such as “the gays go to hell” or how they should be punished for acting against God’s will; threats of physical violence against LGBT people, such as stoning to death and beheading; and suggestions that being homosexual constitutes deviant behaviour, reflecting a narrative perpetuated by Indonesia political and religious elites.<sup>271</sup>
- OutRight Action International, the Citizen Lab and OONI reported in a 2021 report that LGBT people face harassment on Twitter and Line, a popular instant messaging application.<sup>272</sup>
- In 2021, SAFEnet reported three complaints from the LGBT individuals who had faced online SOGIE-based violence: one was outed and impersonated through a fake account; one was threatened with the non-consensual distribution of intimate images; and one was threatened with non-consensual distribution of intimate images with sextortion.<sup>273</sup>
- Another study conducted by SAFEnet in 2022 found that hate speech based on gender and sexual orientation, ethnicity, religion, race and social class, and disabilities constituted 62 percent of hate speech online, and religious narratives were frequently associated with denigration of LGBT people.<sup>274</sup> The report noted that online harms against LGBT people would often lead to offline harms, as online threats resulted in “direct persecution in places” where LGBT people gather.<sup>275</sup>

As previously noted in Chapter 3, LGBT people face significant barriers in accessing justice and effective remedies for instances of online SOGIE-based violence and abuse, including as a result of LGBT people’s lack of trust in law enforcement agencies and personnel. While there are legal provisions in Indonesia that may protect against online violence and abuse against LGBT persons, including articles 156 and 157 of the Penal Code (expression and dissemination of hostility, hatred or contempt) and article 28(2) of the ITE Law (spreading information intended to result in hatred or enmity based on ethnicity, religion, race or group),<sup>276</sup>

<sup>268</sup> Inside Indonesia, “Online hate speech”, 26 January 2020, available at: <https://www.insideindonesia.org/online-hate-speech>.

<sup>269</sup> Community Legal Aid Institute, “LGBT = Nuclear? Indonesia’s Phobia Emergency”, March 2017, available at: <https://lbhmasyarakat.org/wp-content/uploads/2017/08/LGBT-Nuclear-Indonesias-Phobia-Emergency.pdf>.

<sup>270</sup> Article One, “Assessing the Human Rights Impact of Facebook’s Platforms in Indonesia”, 2018, p. 5, available at: <https://about.fb.com/wp-content/uploads/2020/05/Indonesia-HRIA-Executive-Summary-v82.pdf>.

<sup>271</sup> Aim Sinpeng, Fiona Martin, Katharine Gelber and Kirril Shields, “Facebook: Regulating Hate Speech in the Asia Pacific”, 5 July 2021, p. 24 (“Aim Sinpeng et al, Facebook Hate Speech Report”), available at: [https://r2pasiapacific.org/files/7099/2021\\_Facebook\\_hate\\_speech\\_Asia\\_report.pdf](https://r2pasiapacific.org/files/7099/2021_Facebook_hate_speech_Asia_report.pdf).

<sup>272</sup> OutRight Action International et al, LGBTIQ Website Censorship Report, p. 28.

<sup>273</sup> SAFEnet, “2021 Digital Rights in Indonesia Situation Report: The Pandemic Might Be Under Control, but Digital Repression Continues”, February 2022, p. 55, available at: <https://safenet.or.id/id/2022/03/represi-digital-di-indonesia-masih-terus-berlanjut-sepanjang-2021/>.

<sup>274</sup> The report did not break down the specific percentage of hate speech related to gender and sexual orientation; SAFEnet, “Hate Speech in the Digital Space: Victims, Perpetrators and Methods for Handling”, 2022, p. 9, 17 available at: <https://safenet.or.id/2022/01/research-summary-hate-speech-in-the-digital-space/>.

<sup>275</sup> The report did not clarify how the “direct persecution” against LGBTI people manifests; see SAFEnet, “Hate Speech in the Digital Space: Victims, Perpetrators and Methods for Handling”, 2022, p. 16, available at: <https://safenet.or.id/2022/01/research-summary-hate-speech-in-the-digital-space/>.

<sup>276</sup> Tim Mann, “Attempts to revise draconian ITE Law stumble”, University of Melbourne, 1 April 2021, available at: <https://indonesiatmelbourne.unimelb.edu.au/attempts-to-revise-draconian-ite-law-stumble/>; Aim Sinpeng et al, Facebook Hate Speech Report, p. 15; Institute for Criminal Justice Reform, “Indonesia’s Legal Framework on Hate Speech”, 2018, p. 7 – 8, available at: [https://icjr.or.id/wp-content/uploads/2018/03/ICLU\\_1\\_2018\\_Hate\\_Speech.pdf](https://icjr.or.id/wp-content/uploads/2018/03/ICLU_1_2018_Hate_Speech.pdf).



these provisions do not explicitly provide protection for LGBT people, and are, in any case, vaguely worded, and enforced in a discriminatory manner.<sup>277</sup> The recently promulgated Sexual Violence Crime Law, or Law 12/2022, protects individuals from certain forms of sexual violence, including “electronic-based sexual violence”, but is silent on its applicability to LGBT individuals. In any case, the ICJ is unaware of any instances of these provisions being used to protect LGBT people against online violence and abuse.

## Malaysia

SOGIE-based online violence, abuse and hate speech are similarly commonplace against LGBT people in Malaysia, where they have been compounded by anti-LGBT sentiments by State actors and society. These sentiments usually carry religious and sexual overtones, and are expressed through the use of pejorative terms, and resort to body shaming of transgender and gender diverse individuals, and sexualization of LGBT individuals. As a result, a study released in December 2021 found that 84.1 percent of LGBT respondents to a survey reported being negatively affected by anti-LGBT sentiments, causing them to reduce their social media postings (44.1 percent) and an increased fear of being outed (41.4 percent).<sup>278</sup>

Civil society organizations have sought to document the extent of homophobic and transphobic content being posted on social media. One such initiative is #TrackerBenci, which tracks and categorizes “online hateful speech” on Twitter in Malaysia. The tracker reported 6,846 hateful tweets against LGBT people between July 2021 and September 2022, which formed a significant proportion of the total number of hateful tweets recorded over that period.<sup>279</sup> Such negative sentiments have been amplified in the context of political elections: during Malaysia’s November 2022 general election, the Centre for Independent Journalism (CIJ) monitored posts on social media and gathered 7,405 posts with keywords relevant to gender and LGBT individuals between 20 October and 30 November 2022. Of these posts, 48 percent were categorized as offensive or discriminatory. CIJ also observed that political parties and politicians are responsible for, spread and attract hateful content online, with their posts gaining traction and attracting more hateful content than other online users.<sup>280</sup>

LGBT people or allies posting LGBT-related content frequently experience significant backlash and harassment online, including death threats and incitement to violence in particularly serious cases. In April 2022, for example, two individuals who had uploaded music videos featuring LGBT persons allegedly faced online harassment.<sup>281</sup> In 2021, it was reported that Nur Sajat, a transgender woman, received death threats after posting a video on Facebook renouncing her religion.<sup>282</sup> It was reported in June 2019 that a smear campaign was launched against Numan Afifi, a human rights defender, by pro-government groups on social media, following a speech he made at the UN Human Rights Council highlighting the human rights situation for LGBT people in Malaysia. He had previously received online harassment and death threats in June 2017 after organizing a “gay breaking fast” event during the month of Ramadan to show solidarity with other LGBT people.<sup>283</sup> It was reported that in 2019, organizers and participants of the Women’s March, which featured pride flags, faced misogynistic, transphobic and homophobic attacks on social and mainstream media; had their photos and private information doxed and circulated online; and received death threats.<sup>284</sup>

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<sup>277</sup> Global Action Against Mass Atrocity Crimes, “Preventing Hate Speech, Incitement, and Discrimination”, August 2021, p. 101, available at: [https://gaamac.org/wp-content/uploads/2022/07/APSG-REPORT\\_FINAL.pdf](https://gaamac.org/wp-content/uploads/2022/07/APSG-REPORT_FINAL.pdf).

<sup>278</sup> Justice for Sisters, Diversity Malaysia, PLUHO, and Queer Lapis, “Survey findings: Impact of Covid-19 & anti-LGBT narratives on LGBTQ+ persons in Malaysia”, December 2021, available at: [https://www.queerlapis.com/wp-content/uploads/2021/12/311221-Survey-findings\\_Impact-of-Covid-19-and-anti-LGBT-narratives-on-LGBT-persons-in-Malaysia.pdf](https://www.queerlapis.com/wp-content/uploads/2021/12/311221-Survey-findings_Impact-of-Covid-19-and-anti-LGBT-narratives-on-LGBT-persons-in-Malaysia.pdf).

<sup>279</sup> #TrackerBenci, available at: <https://www.centre.my/trackerbenci>.

<sup>280</sup> Centre for Independent Journalism, “15<sup>th</sup> General Elections Social Media Monitoring”, available at: <https://cijmalaysia.net/election-monitoring/>. See also, Justice for Sisters, “Preliminary Analysis: LGBTPhobia in Malaysia 15<sup>th</sup> General Elections (GE15)”, 19 November 2022, available at: <https://justiceforsisters.wordpress.com/2022/11/19/preliminary-analysis-lgbtphobia-in-malaysia-15th-general-elections-ge15/>.

<sup>281</sup> Freedom House, “Freedom on the Net 2022: Malaysia”, available at: <https://freedomhouse.org/country/malaysia/freedom-net/2022>.

<sup>282</sup> SCMP, “Transgender Malaysian Nur Sajat gets death threats, disappears after Facebook video appears to show her renouncing Islam”, 5 May 2021, available at: <https://www.scmp.com/week-asia/people/article/3124318/transgender-malaysian-nur-sajat-gets-death-threats-disappears>.

<sup>283</sup> Front Line Defenders, “Numan Afifi Summoned for Questioning by Police over Speech Delivered at UN”, 17 April 2019, available at: <https://www.frontlinedefenders.org/en/case/numan-afifi-summoned-questioning-police-over-speech-delivered-un>.

<sup>284</sup> Serene Lim, “Queering Malay Identity Politics in the Malaysian Digital Space”, Heinrich Böll Stiftung, 14 May 2021, available at: <https://th.boell.org/en/2021/05/14/queering-malaysian-digital-space>.

In light of the above, it is common for LGBT individuals to self-censor and remain anonymous.<sup>285</sup>

One pernicious form of online SOGIE-based violence and abuse against LGBT individuals in Malaysia is doxing. For example, in August 2022, it was reported that a Malaysian transgender man had his personal details shared on a viral Twitter thread without his consent, including his picture and a photo of his driving licence with his officially registered name.<sup>286</sup> Justice for Sisters reported that Harian Metro, a news outlet, exposed details of this individual's self-determined name and employment history.<sup>287</sup> Of note is also how the Federal Territory Mufti's Office released details of the birth certificate of Nur Sajat, an entrepreneur, to the mainstream media, which they had allegedly obtained from the National Registration Department.<sup>288</sup>

The ICJ is not aware of perpetrators of these incidents of doxing being investigated, let alone prosecuted, either under the Personal Data Protection Act 2010 or other legal provisions, suggesting that access to justice for human rights violations and abuses remain elusive for LGBT victims. In addition, activists interviewed by the ICJ noted that LGBT individuals often choose not to pursue cases due to fear of reprisal, including in cases of doxing of transgender individuals.<sup>289</sup> There have also been reports of violence faced by LGBT individuals going unpunished: for instance, in 2018, it was reported that a group filed a police complaint in 2018 over social media posts suggesting LGBT should be killed, but to no avail, as it did not result in any investigation.<sup>290</sup> Activists interviewed by the ICJ also noted that LGBT individuals lack knowledge on what to do if they encounter online harassment or violence; the situation for LGBT individuals living outside urban areas is likely to be even worse.<sup>291</sup>

## Philippines

LGBT individuals in the Philippines have reported experiencing online violence, abuse and hate speech on the basis of their SOGIE, including through online harassment, outing and incitement to violence.<sup>292</sup> For instance, 30 percent of LGBT individuals in the Philippines have experienced people sharing homophobic, transphobic or anti-LGBT stories or messages at work, either online or face-to-face.<sup>293</sup> Transgender women have also reported facing higher rates of online abuse, especially in relation to their work advocating for the human rights of transgender people.<sup>294</sup>

LGBT human rights activists may face reprisals for their activism, including through the deadly practice of "red-tagging", which refers to the branding human rights defenders as "terrorists" and "communists" without proof of any unlawful conduct.<sup>295</sup> For instance, Irish Inoceto, chairperson of the Iloilo Pride Team, was labeled as a member of the Communist Part of the Philippines by news anchors, who claimed that Inoceto was "using LGBTQI issues to recruit students of the Iloilo City National High School".<sup>296</sup>

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<sup>285</sup> SCMP, "Two gay men forced to hide our identities to make our voices heard": Malaysian LGBT podcast hosts on being queer in a conservative society", 26 March 2020, available at: <https://www.scmp.com/lifestyle/entertainment/article/3076897/two-gay-men-forced-hide-our-identities-make-our-voices>.

<sup>286</sup> Coconuts KL, "Doxxing is a crime in Malaysia, except for when it targets the LGBTQ community", 16 August 2022, available at: <https://coconuts.co/kl/news/doxxing-is-a-crime-in-malaysia-except-for-when-it-targets-the-lgtbg-community/>.

<sup>287</sup> Justice for Sisters, "Brief Media Analysis – Transmasculine Person Performing Umrah in Mecca", 19 August 2022, available at: <https://justiceforsisters.wordpress.com/2022/08/19/brief-media-analysis-transmasculine-person-performing-umrah-in-mecca/>.

<sup>288</sup> Coconuts KL, "Doxxing is a crime in Malaysia, except for when it targets the LGBTQ community", 16 August 2022, available at: <https://coconuts.co/kl/news/doxxing-is-a-crime-in-malaysia-except-for-when-it-targets-the-lgtbg-community/>.

<sup>289</sup> ICJ Interview with SEED Foundation, August 2022.

<sup>290</sup> Human Rights Watch and Justice for Sisters, "'I Don't Want to Change Myself': Anti-LGBT Conversion Practices, Discrimination, and Violence in Malaysia", August 2022, p. 52, available at: [https://www.hrw.org/sites/default/files/media\\_2022/08/malaysia0822web\\_0.pdf](https://www.hrw.org/sites/default/files/media_2022/08/malaysia0822web_0.pdf).

<sup>291</sup> ICJ Interview with SEED Foundation, August 2022.

<sup>292</sup> ICJ Interview with Ging Cristobal, March 2023.

<sup>293</sup> UNDP and ILO, "LGBTI People and Employment: Discrimination Based on Sexual Orientation, Gender Identity and Expression, and Sex Characteristics in China, the Philippines and Thailand", 2018, p. 48, available at: <https://www.undp.org/asia-pacific/publications/lgbti-people-and-employment-discrimination-based-sexual-orientation-gender-identity-and-expression-and-sex-characteristics>.

<sup>294</sup> Corinne Redfern, "'I'm scared every damn day': In the Philippines, violence shadows trans lives", *The Fuller Project*, 7 January 2021, available at: <https://fullerproject.org/story/im-scared-every-damn-day-in-the-philippines-violence-shadows-trans-lives/>.

<sup>295</sup> For a detailed analysis of the practice of red-tagging and how the Anti-Terrorism Act of 2020 furthers this practice, see, ICJ, "Philippines: Cease dangerous practice of red-tagging human rights defenders", 31 January 2022, available at: <https://www.icj.org/philippines-cease-dangerous-practice-of-red-tagging-human-rights-defenders/>.

<sup>296</sup> Commission on Human Rights, "Statement of the Commission on Human Rights on the red-tagging of an LGBTQI leader on SMNI news program", 28 October 2022, available at: <https://chr.gov.ph/statement-of-the-commission-on-human-rights-on-the-red-tagging-of-an-lgbtqi-leader-on-smni-news-program/>; ICJ Interview with Iloilo Pride Team, March 2023.

Activists interviewed by the ICJ revealed that Muslim queer individuals face increased risks of SOGIE-based online violence, resulting in self-censorship and hiding of one's SOGIE.<sup>297</sup> A study found that Mindanao Pride, an organization based in the Muslim-majority region of the Philippines, recorded the highest number of hateful comments on their Facebook page, with 27 percent of comments being classified as hate speech by the researchers.<sup>298</sup>

LGBT children are vulnerable to SOGIE-based cyber bullying. A 2017 report by Human Rights Watch found that LGBT children often face cyber bullying based on stereotypes, with students being unwilling to report such incidents due to negative messages about LGBT people from their teachers and the failure of teachers to intervene when they witness bullying or harassment, despite the passage of the Anti-Bullying Law of 2013.<sup>299</sup>

There are significant barriers faced by LGBT individuals in accessing justice and effective remedies in relation to being attacked online, despite the presence of laws that provide a patchwork of protection to LGBT individuals, such as the Safe Spaces Act and sub-national local ordinances prohibiting discrimination on the basis of SOGIE.<sup>300</sup> Activists interviewed by the ICJ reported that many of the local anti-discrimination ordinances lack implementing rules and regulations. Furthermore, activists noted that they were not aware of any case of online queerphobic harassment being prosecuted under the Safe Spaces Act, which they attributed to a lack of knowledge by victims and law enforcement officers of the law; evidentiary challenges when the abuse is perpetrated by anonymous accounts; and biases by law enforcement agencies against LGBT people.<sup>301</sup>

## Singapore

The general stigma and discrimination against the LGBT individuals in Singapore<sup>302</sup> find echoes in anti-LGBT narratives propagated online.<sup>303</sup> Interviews conducted by the ICJ revealed that LGBT individuals in Singapore frequently experience online attacks including online harassment, non-consensual sharing of intimate content, doxing and outing. Transgender individuals, Muslim queer individuals and sex workers seem to be particularly vulnerable to such online violence, and often have to make their social media accounts private and practise other digital security measures.<sup>304</sup>

The abovementioned homophobic and transphobic narratives often have religious overtones: for instance, in 2020, a Singaporean influencer appeared in an Instagram video linking gay people to Satan, something which she later apologized for after facing strong backlash.<sup>305</sup> An anti-LGBT Facebook group, titled "We are against Pinkdot in Singapore", has approximately 7,700 members. The group "stands against the normalization of homosexuality within Singaporean society", and frequently posts content describing being LGBT as having "mental disorders", and posts suggesting that religious groups are being discriminated against for their anti-LGBT views.<sup>306</sup> Notably, the group was removed but later reinstated by Facebook in 2018, even after LGBT individuals filed reports that the platform violated the platform's community standards.<sup>307</sup>

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<sup>297</sup> ICJ Interview with Iloilo Pride Team, March 2023.

<sup>298</sup> Aim Sinpeng et al, Facebook Hate Speech Report, p. 26 – 27.

<sup>299</sup> Human Rights Watch, "'Just Let Us Be': Discrimination Against LGBT Students in the Philippines", 21 June 2017, available at: <https://www.hrw.org/report/2017/06/21/just-let-us-be/discrimination-against-lgbt-students-philippines>.

<sup>300</sup> For a detailed analysis of these laws, see Chapter 3 of this report.

<sup>301</sup> ICJ Interviews with Iloilo Pride Team and Ging Cristobal, March 2023.

<sup>302</sup> See, for instance, Today, "Stigma among factors why some find it hard to accept LGBTQ family members: TODAY webinar panellists", 20 November 2021, available at: <https://www.todayonline.com/singapore/stigma-among-factors-why-some-find-it-hard-to-accept-lgbtq-family-members-today-webinar>.

<sup>303</sup> A search on HardwareZone, an online forum popular in Singapore, will throw up plenty of posts and comments that are queerphobic: see, for instance, Hardware Zone, "Do you believe a straight man will choose a gay as lifelong partner?", available at: <https://forums.hardwarezone.com.sg/threads/do-you-believe-a-straight-man-will-choose-a-gay-as-lifelong-partner.6820582/>.

<sup>304</sup> ICJ Interviews with Project X, IndigNation SG and Reetaza Chatterjee, November 2022.

<sup>305</sup> Yahoo, "Christian influencer Joanna Theng apologises for homophobic video before withdrawing from social media", 26 July 2020, available at: <https://sg.style.yahoo.com/christian-influencer-joanna-theng-apologises-for-homophobic-video-before-withdrawing-from-social-media-073534974.html>.

<sup>306</sup> Facebook, "We are against Pinkdot in Singapore", available at: <https://web.facebook.com/groups/waapd>.

<sup>307</sup> Yahoo, "Facebook removes, then reinstates 'We are against Pinkdot in Singapore's group", 10 May 2018, available at: <https://sg.news.yahoo.com/facebook-removes-reinstates-pinkdot-singapore-group-094058315.html>.

The Singaporean authorities have displayed a willingness to investigate and prosecute online posts inciting and threatening violence against LGBT people, although inconsistent enforcement has resulted in mixed results.<sup>308</sup> However, the protection of LGBT individuals from online comments threatening or inciting violence appears to be uneven, especially when it concerns anonymous comments on online forums. For instance, in 2019, it was reported that there were violent comments in response to a student who posted a photo of himself kissing his male partner on Instagram, with one comment on HardwareZone, a popular forum in Singapore, using a slur against the couple and asking for them to be placed in gas chambers.<sup>309</sup> In 2019, there were comments left by anonymous users on a news article on the constitutional challenges against section 377A, including comments saying that LGBT people should “burn in hell”, and be gassed like cockroaches.<sup>310</sup>

Uneven protection against SOGIE-based online violence combines with barriers faced by LGBT people in accessing justice and effective remedies for acts of violence committed against them. For instance, it has been reported that LGBT people may face ignorant and queerphobic comments when reporting cases of sexual violence, and may also fear being outed in the process of reporting acts of violence.<sup>311</sup> A report by Sayoni in 2018 detailed how LGBTQ persons faced various forms of online violence and abuse, ranging from non-consensual recording of intimate videos, outing, and online harassment, and such incidents of violence and discrimination went unreported “for fear of further stigma”, as individuals “said they blamed themselves and believed that reporting would not help them or change the situation”.<sup>312</sup>

## Thailand

While societal acceptance of LGBT people is higher in Thailand as compared to Indonesia, Malaysia and Singapore, LGBT individuals still frequently face online attacks based on their identities. For instance, a study conducted in 2022 found that the perpetration of cyber violence in Thailand is mostly gendered, with men targeting women and LGBT people. In particular, LGBT individuals are frequently mocked or “misgendered” online, and they are less likely to feel comfortable in seeking support due to their marginalization.<sup>313</sup> Another study conducted in 2018 found that 28 percent of LGBT individuals in Thailand have experienced people sharing homophobic, transphobic or anti-LGBT stories or messages at work, either online or face-to-face.<sup>314</sup>

LGBT youth and queer Muslim individuals appear to be particularly at risk. A coalition of civil society groups has reported that online “hate speech and cyberbullying” against LGBT youth are “increasingly common”, and that “not much [is] being done to tackle the hate speech in online space”.<sup>315</sup> A study conducted in 2014 on secondary school students in five provinces in Thailand found that 55.7 percent of self-identified LGBT students reported having been bullied within the past month for being LGBT, with bullying manifesting in

<sup>308</sup> For instance, in 2021, it was reported that the police were investigating a man who had threatened violence against the LGBT community in an Instagram live broadcast, saying that he would be “the reason why LGBT would no longer exist in Singapore”. The ICJ was unable to locate publicly available information on the outcome of the investigation; see, Today, “Police investigating 23-year-old man for threatening LGBTQ community in Instagram video”, 3 July 2021, available at: <https://www.todayonline.com/singapore/police-investigating-23-year-old-man-threatening-lgbtq-community-instagram-video>.

<sup>309</sup> In 2016, it was reported that a man was fined SGD 3,500 (approx. USD 2,600) for making a threatening, abusive or insulting communication under the Protection from Harassment Act, for his online comment asking for “permission to open fire” on the LGBTI community. The Straits Times, “Man fined \$3,500 over ‘open fire’ online comment”, 4 November 2016, available at: <https://www.straitstimes.com/singapore/courts-crime/man-fined-3500-over-open-fire-comment-online>.

<sup>309</sup> Coconuts Singapore, “Violent comments against student who kissed his male partner are ‘worrying’: Inter-University LGBT Network”, 3 February 2019, available at: <https://coconuts.co/singapore/news/violent-comments-student-kissed-male-partner-worrying-inter-university-lgbt-network/>.

<sup>310</sup> The Singapore LGBT encyclopaedia Wiki, “Hate speech against LGBT people in Singapore”, available at: [https://the-singapore-lgbt-encyclopaedia.fandom.com/wiki/Hate\\_speech\\_against\\_LGBT\\_people\\_in\\_Singapore#Ambuj\\_Pandey's\\_death\\_threats\\_against\\_LGBT\\_people](https://the-singapore-lgbt-encyclopaedia.fandom.com/wiki/Hate_speech_against_LGBT_people_in_Singapore#Ambuj_Pandey's_death_threats_against_LGBT_people).

<sup>311</sup> AWARE, “A Recap: Queer Violence, Queer Silence: LGBTQ persons’ experiences of sexual assault”, 20 August 2022, available at: <https://www.aware.org.sg/2022/08/a-recap-queer-violence-queer-silence-lgbtq-persons-experiences-of-sexual-assault/>.

<sup>312</sup> Sayoni, “Sayoni releases first, groundbreaking report into violence and discrimination facing lesbian, bisexual, trans and queer (LBTQ) persons in Singapore”, 28 May 2019, available at: <https://www.sayoni.com/community/blog/202-latest-news-advocacy/2306-sayoni-releases-first-groundbreaking-report-into-violence-and-discrimination-facing-lbtq-persons-in-singapore>.

<sup>313</sup> USAID, “Technology-Facilitated Gender-Based Violence in Asia: Thailand”, 2022, p. 2, available at: <https://www.icrw.org/wp-content/uploads/2021/09/USAID-TFGBV-Thailand.pdf>.

<sup>314</sup> UNDP and ILO, “LGBTI People and Employment: Discrimination Based on Sexual Orientation, Gender Identity and Expression, and Sex Characteristics in China, the Philippines and Thailand”, 2018, p. 48, available at: <https://www.undp.org/asia-pacific/publications/lgbti-people-and-employment-discrimination-based-sexual-orientation-gender-identity-and-expression-and-sex-characteristics>.

<sup>315</sup> Young Pride Club, BUKU Classroom, IDGN, Deaf Thai Rainbow Club, The Volunteer House for Children and Youth, CITY, Manushya Foundation, “The Rights of LGBTIQ+ Youth and Children in Thailand: Thailand UPR III 2021 (3<sup>rd</sup> UPR Cycle)”, 2021, p. 5, available at: [https://www.manushyafoundation.org/files/ugd/a0db76\\_a8e5e3cd30da4179814df87ae3887f48.pdf](https://www.manushyafoundation.org/files/ugd/a0db76_a8e5e3cd30da4179814df87ae3887f48.pdf).

the form of online name calling, online social exclusion, and the creation of anti-LGBT hate groups, among others.<sup>316</sup> Interviews conducted by the ICJ also highlighted how Muslim queer individuals are particularly vulnerable to facing online attacks, and have to self-censor and hide their identities online in order to avoid facing repercussions from their families and communities.<sup>317</sup>

Online attacks against LGBT human rights activists are amplified if they are publicly visible, including through public involvement in the pro-democracy movement. One of the interviewees told the ICJ how an LGBT sex worker, who regularly participated in protests, faced online attacks calling him slurs, which negatively impacted his mental health.<sup>318</sup> A February 2021 report by FIDH on women human rights defenders in Thailand's pro-democracy movement noted that "LGBTIQ and gender non-conforming activists face another layer of attacks because of their sexual orientation, gender identity or expression, as well as for defending rights related to gender and sexuality". For instance, they have "regularly endured hateful and derogatory insults directly aimed not just at their work, but also at their gender identity and their appearance", such as "alien", "freak" and "maniac".<sup>319</sup>

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<sup>316</sup> Mahidol University, Plan International Thailand, UNESCO Bangkok Office, "Bullying targeting secondary school students who are or are perceived to be transgender or same-sex attracted: Types, prevalence, impact, motivation and preventive measures in 5 provinces of Thailand", 2014, p. 13 – 14, 42, available at: [https://plan-international.org/uploads/2022/01/research\\_into\\_homophobic\\_and\\_transphobic\\_bullying\\_in\\_schools.pdf](https://plan-international.org/uploads/2022/01/research_into_homophobic_and_transphobic_bullying_in_schools.pdf).

<sup>317</sup> ICJ Interview with Isaan Gender Diversity Network, November 2022.

<sup>318</sup> ICJ Interview with Isaan Gender Diversity Network, November 2022.

<sup>319</sup> The Observatory of the Protection of Human Rights Defenders, "Thailand: Standing Tall, Women human rights defenders at the forefront of Thailand's pro-democracy protests", February 2021, p. 40, available at: [https://www.fidh.org/IMG/pdf/rapport-tailhande2021\\_1\\_-3.pdf](https://www.fidh.org/IMG/pdf/rapport-tailhande2021_1_-3.pdf).

## Chapter 6: Role of Tech Companies

Companies, including social media platforms, have the responsibility under international human rights law to respect human rights, including the right to equality before the law and equal protection of the law, and the right to freedom of expression and information in digital spaces. This entails a responsibility to ensure that LGBT persons are able to use their services and products free from discrimination, harassment and violence.

While many studies have been conducted on the human rights concerns of LGBT users on social media platforms, more needs to be done to address these concerns in Southeast Asia.

### Human Rights Responsibilities of Social Media Companies

The UNGPs provide that all companies, including social media companies, have a responsibility to “respect human rights”, which “exists independently of States’ abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations”.<sup>320</sup>

This includes the responsibility to “avoid infringing on human rights”, including the rights to online freedom of expression and information; to “avoid causing or contributing to adverse human rights impacts through their own activities”; and to “take adequate measures” to “prevent, mitigate or remediate” such impacts, including putting in place “policies and due diligence processes” to ensure rights are respected.<sup>321</sup>

Additionally, businesses should also report formally on how they are addressing the risks of severe human rights impacts of their operations, in order to provide “a measure of transparency and accountability to individuals or groups who may be impacted and to other relevant stakeholders”.<sup>322</sup>

The Global Network Initiative Principles (GNI Principles), a set of principles providing direction and guidance to the ICT industry on freedom of expression and privacy, further provide that participating companies will respect and work to protect the freedom of expression of their users by “seeking to avoid or minimize the impact of government restrictions on freedom of expression”, and when “confronted with government demands, laws and regulations to suppress freedom of expression”.<sup>323</sup>

### Removal of LGBT-Related Content

Social media companies have disproportionately suppressed LGBT expression on their platforms, either through AI or human content moderators,<sup>324</sup> in spite of their human rights responsibility to avoid causing or contributing to adverse impacts on the right to freedom of expression and information online. This censorship of LGBT voices on social media reflects anti-LGBT biases in the design and enforcement of the companies’ content moderation policies and systems.

While the extent of this problem is still relatively underdiagnosed in Southeast Asia, there have been reports of companies censoring LGBT expression, especially in Indonesia. In May 2022, it was reported that Ragil Mahardika, an LGBT Indonesian TikTok influencer had his TikTok account suspended “after thousands of Indonesians reported his account over the perception that he had attempted to promote marriage equality” in Indonesia.<sup>325</sup> In February 2016, it was reported that the Indonesian government had demanded that applications and social networks remove all stickers and emojis depicting LGBT themes as they would “cause

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<sup>320</sup> UNGPs, pp. 13 – 18.

<sup>321</sup> *Ibid.*

<sup>322</sup> *Ibid.*, pp. 23 – 24.

<sup>323</sup> Global Network Initiative, “The GNI Principles”, available at: <https://globalnetworkinitiative.org/gni-principles/>.

<sup>324</sup> GLAAD, “Social Media Safety Index”, 2022, p. 16, available at: <https://indd.adobe.com/view/a86ca4f0-727c-46fb-8fb0-b4df3c15c603>.

<sup>325</sup> South China Morning Post, “Will a YouTube video about ‘being gay in Indonesia’ lead to an anti-LGBT law?”, 30 May 2022, available at: <https://www.scmp.com/week-asia/people/article/3179739/has-video-featuring-married-gay-couple-put-indonesias-lgbt-people>. This phenomenon is known as “brigading”, which refers to the practice of coordinated abusive engagement behaviour online, including mass reporting, downvoting, and quote retweeting, amongst others: see, Tony Blair Institute for Global Change, “Social Media Futures: What Is Brigading”, 10 March 2021, available at: <https://institute.global/policy/social-media-futures-what-brigading>.

unrest, especially in relation to the religious and cultural norms in Indonesia”, which Line agreed to do.<sup>326</sup>

The design and enforcement biases of social media platforms have resulted in LGBT individuals and expression being targeted on their platforms, even if conducted inadvertently. In Indonesia, in June 2020, a live webinar on YouTube titled “Exploring Non-Homophobic Religions”, organized by the Association of Journalists for Diversity (Sejuk), was abruptly interrupted for allegedly breaching community guidelines, reportedly by YouTube’s automated content moderation system.<sup>327</sup> SAFEnet later facilitated a meeting between LGBT groups and YouTube to discuss how to prevent a recurrence of automated censorship of LGBT content, but SAFEnet noted that it was unclear whether YouTube implemented the recommendations made by the LGBT groups during this meeting.<sup>328</sup>

For Indonesia in particular, interviews conducted by the ICJ reflected concerns over the removal of LGBT content on Meta’s platforms, especially when it features international organizations working on the rights of LGBT people. Two activists interviewed by the ICJ noted that their posts on Meta’s social media platforms were removed when they tagged or included international groups like ILGA World, ASEAN SOGIE Caucus, and OutRight International.<sup>329</sup> It is worth noting that ILGA World’s website is blocked in Indonesia.<sup>330</sup> It is unclear if these reports are isolated incidents, or part of a broader pattern of Meta blocking all content from international LGBT organizations.

This mirrors the concerns raised in other contexts about the disproportionate removal of LGBT content on platforms. For instance, it has been reported that transgender social media users experienced content and account removals more than others, including for content specifically related to transgender or queer issues.<sup>331</sup> When LGBT people also belong to other minority groups, they are reportedly more likely to have their content on Instagram taken down, profiles or pages disabled, or advertisements rejected, reflecting algorithmic biases.<sup>332</sup> A lawsuit was filed in 2019 against YouTube in California alleging that “videos containing keywords such as “transgender”, “lesbian”, “gay”, or “bisexual” are often hidden or demonetized after being falsely flagged as adult content by the platform’s “restricted mode”.”<sup>333</sup>

Specifically for TikTok, it has been reported that the platform’s moderation algorithm classifies LGBT content as “risky”, which is then geotagged and suppressed in so-called “Islamic countries”.<sup>334</sup> TikTok also reportedly shadow banned<sup>335</sup> several LGBT-related hashtags in Russian, Arabic, Bosnian and other languages,<sup>336</sup> which they acknowledged and apologized for, claiming that the “actions were intended to comply with requests for local law enforcement officials”, likely from Eastern Europe and the Middle East.<sup>337</sup>

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<sup>326</sup> The Verge, “LGBT stickers are being outlawed in Indonesia because they cause ‘unrest’”, 12 February 2016, available at: <https://www.theverge.com/2016/2/12/10977592/indonesia-gay-lgbt-stickers-emoji>.

<sup>327</sup> ICJ Interview with SAFEnet, September 2022; IFJ, “Indonesia: YouTube censors live stream on homophobia and religion”, 26 June 2020, available at: <https://www.ifj.org/media-centre/news/detail/category/press-releases/article/indonesia-youtube-censors-live-stream-on-homophobia-and-religion.html>.

<sup>328</sup> ICJ Interview with SAFEnet, September 2022.

<sup>329</sup> ICJ Interviews with Lini Zurlia and Yuli Rustinawati, September 2022.

<sup>330</sup> Sinar Project, “iMAP State of Internet Censorship Report 2022, Country: Indonesia”, 2022, p. 22 – 23, available at: <https://imap.sinarproject.org/reports/2022/the-state-of-internet-censorship-in-indonesia-2022/2022-indonesia>.

<sup>331</sup> Oliver L. Haimson et al, “Disproportionate Removals and Differing Content Moderation Experiences for Conservative, Transgender, and Black Social Media Users: Marginalization and Moderation Gray Areas”, *Proc. ACM Hum.-Comput. Interact.*, October 2021, p. 466.

<sup>332</sup> Salty, “An Investigation into Algorithmic Bias in Content Policing on Instagram”, October 2019, available at: <https://saltyworld.net/algorithmicbiasreport-2/>.

<sup>333</sup> While the lawsuit was eventually tossed out, the Magistrate Judge did not rule on the validity of the claims by the LGBTI content creators, focusing instead on the fact that tech companies “are not state actors subject to judicial scrutiny under the First Amendment”; see, Them, “This Lawsuit Alleging YouTube Discriminates Against LGBTQ+ Users Was Just Tossed Out”, 8 January 2021, available at: <https://www.them.us/story/lawsuit-alleging-youtube-discriminates-against-lgbtq-users-tossed-out>.

<sup>334</sup> Netzpolitik.org, “TikTok: Cheerfulness and censorship”, 23 November 2019, available at: <https://netzpolitik.org/2019/cheerfulness-and-censorship/>.

<sup>335</sup> “Shadow banning” is the practice of blocking or partially blocking access to content in a way that is not readily apparent to the affected user. For instance, the content may not be accessible through a public search, or will be limited in reach on other people’s feeds.

<sup>336</sup> Australian Strategic Policy Institute, “TikTok and WeChat: Curating and controlling global information flows”, 8 September 2020, available at:

<sup>337</sup> Them, “TikTok Apologizes After Reportedly Censoring LGBTQ+ Users”, 8 September 2020, available at: <https://www.them.us/story/lgbtq-users-reportedly-being-censored-by-tiktok>.

## *Censorship of self-referential slurs*

LGBT content is at times removed from social media platforms when self-referential slurs are used by LGBT users, in order to reclaim the power of these derogatory terms. These slurs are often censored because “Facebook’s algorithmic and human reviewers seem unable to accurately parse the context and intent of their usage”.<sup>338</sup> For instance, it was reported in August 2020 that an Indonesian gay activist had his account suspended for using an Indonesian slur for “queer”, which for the activist was “reclaiming the word from its pejorative beginnings”.<sup>339</sup>

The suspension of the Indonesian activist’s account is likely to be an incorrect enforcement of Meta’s Hate Speech policy, based on the Oversight Board’s decision in June 2022 to overturn Meta’s decision to remove an Instagram post containing derogatory words in Arabic which could be used in a derogatory way toward men with “effeminate mannerisms”. The Board decided that the content was covered by an exception for speech “used self-referentially or in an empowering way” and an exception that allowed the quoting of hate speech to “condemn it or raise awareness”.<sup>340</sup>

## **Failure to Sufficiently Respond to Anti-LGBT Content**

### *Community guidelines and policies addressing anti-LGBT content*

Most, if not all of the popular social media platforms have community guidelines and policies addressing anti-LGBT harmful content on their platforms. GLAAD’s Social Media Safety Index 2022 noted that Facebook, Instagram, Twitter, YouTube and TikTok all had comprehensive policies protecting users from attacks or threats based on protected characteristics, including sexual orientation and gender identity,<sup>341</sup> even if gaps persisted in terms of policies protecting users from targeted deadnaming and misgendering, amongst other concerns of transparency.

The ICJ’s desk research on the community guidelines and human rights commitments by these popular social media platforms found examples of policies relevant to protecting LGBT people from online violence, abuse and hate speech, including the following:<sup>342</sup>

- **Meta:** “Hate speech” is prohibited, which is defined as a “direct attack against people” on the basis of sexual orientation and gender identity, including “violent or dehumanising speech, harmful stereotypes, statements of inferiority, expressions of contempt, disgust or dismissal, cursing and calls for exclusion or segregation”.<sup>343</sup>
- **Twitter:** Users may not “directly attack other people” on the basis of sexual orientation and gender identity, and behaviour that targets individual or groups with “abuse based on their perceived membership in a protected category” is prohibited.<sup>344</sup>
- **TikTok:** “Hate speech” is not permitted, which is defined as content that “attacks, threatens, incites violence against, or otherwise dehumanizes an individual or a group” based on sexual orientation and gender identity.<sup>345</sup>

<sup>338</sup> Wired, “Facebook’s Hate Speech Policies Censor Marginalized Users”, 14 August 2017, available at: <https://www.wired.com/story/facebook-hate-speech-policies-censor-marginalized-users/>. See also, Internet Lab, “Drag queens and Artificial Intelligence: should computers decide what is ‘toxic’ on the internet”, 28 June 2019, available at: <https://internetlab.org.br/en/news/drag-queens-and-artificial-intelligence-should-computers-decide-what-is-toxic-on-the-internet/>.

<sup>339</sup> The Jakarta Post, “In conservative Indonesia, this gay activist braves social curbs to help the marginalized”, 25 August 2020, available at: <https://www.thejakartapost.com/news/2020/08/25/in-conservative-indonesia-this-gay-activist-braves-social-curbs-to-help-the-marginalized.html>.

<sup>340</sup> Oversight Board, “Oversight Board overturns Meta’s original decision in ‘Reclaiming Arabic words’ case (2022-003-IG-UA)”, June 2022, available at: <https://www.oversightboard.com/news/428883115451736-oversight-board-overturns-meta-s-original-decision-in-reclaiming-arabic-words-case-2022-003-ig-ua/>.

<sup>341</sup> GLAAD, “Social Media Safety Index”, 2022, available at: <https://sites.google.com/glaad.org/smsi/platform-scores>.

<sup>342</sup> Only the policies related to “hate speech” and “hateful conduct” have been highlighted here, in part due to the fact that they contain explicit protections based on SOGIESC, but other policies related, for instance, to violent content and cyber-harassment are also relevant to the online safety of LGBTI users, even if they have not been cited here.

<sup>343</sup> Meta, “Hate speech”, available at: <https://transparency.fb.com/en-gb/policies/community-standards/hate-speech/>.

<sup>344</sup> Twitter, “Hateful Conduct”, available at: <https://help.twitter.com/en/rules-and-policies/hateful-conduct-policy>.

<sup>345</sup> TikTok, “Community Guidelines”, available at: <https://www.tiktok.com/community-guidelines?lang=en#38>.



- YouTube: “Hate speech” is not allowed, and YouTube removes content promoting violence or hatred against individuals or groups based on sexual orientation and gender identity and expression.<sup>346</sup>

#### *Gaps in enforcement of policies and guidelines*

However, there appears to be a gap between policy and practice, in light of the persistent reports of social media companies failing to adequately respond to anti-LGBT hate speech, threats of violence, harassment, and breaches of privacy on their platforms. This is likely to also be exacerbated by content reviewers and AI developers not being sufficiently well-versed in local languages.

For instance, independent human rights impact assessments (HRIAs) conducted by Article One on Meta’s platforms in the Philippines and Indonesia found that LGBT individuals routinely face online harassment and violence, with Meta not having responded quickly and sufficiently to address these adverse human rights impacts:

- In the Philippines, the HRIA found that LGBT survey respondents “reported the highest incidence of attacks on Facebook, including doxing and threats of arrest, death, and rape”, with 14 percent reporting “experiencing offline harm due to engagements on Facebook”.<sup>347</sup> Notably, the HRIA also found that Meta’s efforts to address online harassment and incitement to violence raise both policy and operational concerns, and are largely a “band-aid solution” as “real change needed to occur at the level of the business model”.<sup>348</sup>
- The HRIA in Indonesia made similar findings: LGBT Facebook users have experienced “harassment and bullying, as well as being “outed” on the platform”; and “Facebook’s response was slow and, at times, insufficient – potentially exacerbating [human rights] impacts”.<sup>349</sup>

Following Elon Musk’s takeover of the Twitter, it has been reported that slurs against gay men increased by 39 percent, and slurs against trans people increased by 62 percent during the first week of Musk’s takeover.<sup>350</sup>

The content moderation systems used by platforms have also been slow in picking up on new, “creative” forms of content inciting discrimination, hostility or violence. For instance, it has been reported in Indonesia that Instagram posts by an organization that advocates against the protection of minority groups remained on the platform, “presumably because the uploader typed ‘violence’ as ‘v10l3nc3’ (‘k3k3r454n’ in the Indonesian language) in the content”.<sup>351</sup>

There have also been reports of the reporting mechanisms of platforms for online abuse and hate speech being ineffective or unresponsive. It was reported that in Indonesia, when LGBT groups contacted Facebook to report on hate speech content on their pages, they “received automatic responses and no follow-up”, and thus “felt deterred from contacting Facebook further”.<sup>352</sup> In Malaysia, it was reported that transgender individuals who reported harassment, threats, and hate speech to social media platforms felt that the platforms failed to take sufficient action against such content.<sup>353</sup> This undermines the ability of LGBT persons to seek effective remedies and redress when faced with online harassment, abuse and violence. It has also been suggested that users may experience “reporting fatigue”, where individuals are disinclined from reporting harmful content “as a result of their perceived lack of impact on Facebook’s moderation practices”.<sup>354</sup>

<sup>346</sup> YouTube, “Hate speech policy”, available at: [https://support.google.com/youtube/answer/2801939?hl=en&ref\\_topic=9282436](https://support.google.com/youtube/answer/2801939?hl=en&ref_topic=9282436).

<sup>347</sup> Article One, “Assessing the Human Rights Impact of Meta’s Platforms in the Philippines”, 2020, p. 6, available at: [https://about.fb.com/wp-content/uploads/2021/12/Meta-Philippines\\_HRIA\\_Executive-Summary\\_Dec-2021.pdf](https://about.fb.com/wp-content/uploads/2021/12/Meta-Philippines_HRIA_Executive-Summary_Dec-2021.pdf).

<sup>348</sup> *Ibid.*, p. 10.

<sup>349</sup> Article One, “Assessing the Human Rights Impact of Facebook’s Platforms in Indonesia”, 2018, p. 5, available at: <https://about.fb.com/wp-content/uploads/2020/05/Indonesia-HRIA-Executive-Summary-v82.pdf>.

<sup>350</sup> NowThis News, “Hate Speech on Twitter has Skyrocketed Under Musk’s Takeover: new Study”, 7 December 2022, available at: <https://nowthisnews.com/news/hate-speech-on-twitter-has-skyrocketed-under-musks-takover-new-study>.

<sup>351</sup> ARTICLE 19, “Content Moderation and Local Stakeholders in Indonesia”, June 2022, p. 35, available at: <https://www.article19.org/wp-content/uploads/2022/06/Indonesia-country-report.pdf>.

<sup>352</sup> Aim Sinpeng et al, Facebook Hate Speech Report, p. 23.

<sup>353</sup> EMPOWER Malaysia and Justice for Sisters, “Freedom of Expression and Transgender Women in Malaysia”, July 2021, p. 118 – 119, available at: [https://static1.squarespace.com/static/5e2fb70868966a1c84c7e258/t/6156fb9848b86e3bf6013ad3/1633090508281/Empower\\_JFS\\_FOEGI\\_Report.pdf](https://static1.squarespace.com/static/5e2fb70868966a1c84c7e258/t/6156fb9848b86e3bf6013ad3/1633090508281/Empower_JFS_FOEGI_Report.pdf).

<sup>354</sup> Aim Sinpeng et al, Facebook Hate Speech Report, p. 1, 4 and 38.

This problem is likely to be exacerbated further if social media companies lack sufficient staff members who are trained in local languages, including languages spoken by minority groups, both to review content as well as to train algorithms that automatically detect problematic content. Although Meta has underscored their attempts to hire more local language speaking content reviewers in Indonesia and the Philippines,<sup>355</sup> it is unclear the extent to which similar attempts have been made in the other countries in this study, and how the recent mass layoffs at Meta have impacted the content moderation teams.<sup>356</sup> It is also unclear if Meta and other companies have sufficiently accommodated languages spoken by minority groups – for instance, in the Philippines, it has been reported that there are higher instances of hate speech comments in sub-national languages, as “existing algorithms used on social media platforms are primarily focused on majority languages”.<sup>357</sup>

### **Algorithmic Amplification of Harmful Content**

The spread of anti-LGBT hate speech and other harmful content on social media has also been fuelled by “harmful and polarizing algorithms” on social media platforms that “circulate and amplify harmful content, extremism and hate”.<sup>358</sup> The algorithms used by social media companies have also unintentionally outed LGBT individuals who have multiple accounts on their platforms.

A Meta employee, in a leaked internal company document, stated that there is “compelling evidence that [Facebook’s] core product mechanics, such as virality, recommendations, and optimizing for engagement, are a significant part of why [hate speech] flourish on the platform”.<sup>359</sup> As noted by the UN Special Rapporteur on freedom of expression, the proliferation of harmful content on social media is caused, in part, by the “platform business model that seeks to maximize user engagement by promoting inflammatory and controversial content”.<sup>360</sup>

These algorithms can lead to the creation of echo chambers that perpetuate hatred against LGBT persons. Facebook’s Civil Rights Audit assessed in July 2020 that Facebook’s algorithms “inadvertently fuel extreme and polarizing content [...] driving people toward self-reinforcing echo chambers of extremism”, which can have “dangerous (and life-threatening) real-world consequences”.<sup>361</sup>

More needs to be done to document and analyze the extent to which social media algorithms have amplified harmful content against LGBT persons and other marginalized groups in the region. The role of Meta’s content-shaping algorithms in proactively amplifying and promoting content that incited violence, hatred and discrimination against the Rohingya<sup>362</sup> is a grim reminder of the real-life harms that can be caused by online incitement. Social media companies must do more to systematically conduct human rights due diligence and comprehensive human rights impact assessments of the use of AI in their products, in line with recommendations from the UN High Commissioner for Human Rights on addressing the human rights risks related to the use of AI.<sup>363</sup>

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<sup>355</sup> Facebook, “Facebook Response: Indonesia Human Rights Impact Assessment”, 12 May 2020, p. 6, available at: <https://about.fb.com/wp-content/uploads/2021/03/FB-Response-Indonesia-HRIA.pdf>; Meta, “Meta Response: Philippines Human Rights Impact Assessment”, December 2021, p. 40, available at: [https://about.fb.com/wp-content/uploads/2021/12/Meta-Response\\_Philippines-Human-Rights-Impact-Assessment.pdf](https://about.fb.com/wp-content/uploads/2021/12/Meta-Response_Philippines-Human-Rights-Impact-Assessment.pdf).

<sup>356</sup> CNBC, “Meta laying off more than 11,000 employees: Read Zuckerberg’s letter announcing the cuts”, 9 November 2022, available at: <https://www.cnbc.com/2022/11/09/meta-to-lay-off-more-than-11000-thousand-employees.html>.

<sup>357</sup> Aim Sinpeng et al, Facebook Hate Speech Report, p. 27.

<sup>358</sup> GLAAD, “Social Media Safety Index”, 2022, p. 6, available at: <https://indd.adobe.com/view/a86ca4f0-727c-46fb-8fb0-b4df3c15c603>.

<sup>359</sup> This was derived from the cache of internal Meta documents were disclosed by whistleblower Frances Haugen to the US Congress in October 2021; see, The Guardian, “Facebook admits site appears hardwired for misinformation, memo reveals”, 25 October 2021, available at: <https://www.theguardian.com/technology/2021/oct/25/facebook-admits-site-appears-hardwired-misinformation-memo-reveals>.

<sup>360</sup> UNSR on FOE Report on Gender Justice and Freedom of Expression, para. 85.

<sup>361</sup> Facebook’s Civil Rights Audit – Final Report, 8 July 2020, p. 56, available at: <https://about.fb.com/wp-content/uploads/2020/07/Civil-Rights-Audit-Final-Report.pdf>.

<sup>362</sup> See, for instance, Amnesty International, “Myanmar: The social atrocity: Meta and the right to remedy for the Rohingya”, 29 September 2022, available at: <https://www.amnesty.org/en/documents/ASA16/5933/2022/en/>.

<sup>363</sup> Human Rights Council, “The right to privacy in the digital age: Report of the United Nations High Commissioner for Human Rights”, UN Doc. A/HRC/48/31, 13 September 2021, paras. 48 – 50.

Additionally, Facebook's "Suggested Friends" feature and similar features in other social media platforms may inadvertently disclose the sexual orientation and/or gender identity of LGBT individuals who are not out to everyone in their lives, in breach of their right to privacy. Research has shown that Facebook's "Suggested Friends" feature have outed transgender persons by recommending their alternate profile to people in their public network.<sup>364</sup>

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<sup>364</sup> Dell Technologies, "A history of AI bias: achieving algorithmic justice for the LGBTQ community", 30 June 2021, available at: <https://www.dell.com/en-us/perspectives/history-ai-bias-lgbtq-community/>.

## Chapter 7: Conclusion

LGBT people in Indonesia, Malaysia, Philippines, Singapore and Thailand face significant challenges in exercising their right to freedom of expression and information online. The severity of these challenges correlates with the existence and enforcement of discriminatory laws that criminalize or place restrictions on LGBT identities and expression, as is the case in Indonesia, Malaysia and, to a lesser extent, in Singapore. Repressive laws, in turn, echo broader patterns of stigmatization, marginalization and pathologization faced by LGBT individuals in these countries.

Nonetheless, LGBT individuals in all five countries have reported facing online violence, abuse and hate speech, with access to justice and effective remedies being rare due to the substantive and procedural barriers they face. Common forms of violence and abuse reported include doxing, outing, online harassment, cyberbullying, non-consensual recording and distribution of intimate content, and in serious cases, incitement to violence and death threats. LGBT individuals with other intersecting marginalized identities are particularly at risk of such online attacks. These human rights violations and abuses are continuing in these five countries with relatively little accountability, in the absence of comprehensive anti-discrimination laws or protective legal frameworks for LGBT individuals.

State restrictions on LGBT-related expression and information, and the prevalence of queerphobic online violence, abuse and hate speech have cumulatively contributed to a chilling effect on the free expression of LGBT individuals in online spaces, where LGBT people self-censor themselves and choose to conceal their identities in online spaces out of fear of facing reprisals or repercussions. In light of this, the authorities in these five countries must do more to ensure that LGBT individuals are able to live freely and safely in online spaces, and more generally, in society.

### Recommendations for States

In light of the above-mentioned concerns, the ICJ recommends that the authorities in the five countries:

*Generally:*

- Repeal or substantially amend all laws, policies and regulations that are discriminatory or have been applied in a discriminatory manner towards LGBT people, including laws criminalizing sexual and gender diversity, and laws that can be and have been applied to restrict LGBT-related expression;
- Adopt all measures necessary to eliminate the social stigma associated with sexual and gender diversity, including taking steps to dismantle notions of pathologization in relation to SOGIE;
- Provide access to legal recognition of gender identity in a manner consistent with the right to freedom from discrimination, equal protection of the law, privacy, identity and freedom of expression;
- Enact comprehensive anti-discrimination laws that recognize SOGIE as protected characteristics and prohibit discrimination on such grounds; and
- Take steps to eliminate the barriers to access to justice for LGBT individuals who have faced violations and abuses of their human rights, including through capacity-building programmes for all justice system personnel to eliminate LGBT stereotyping and incorporating an LGBT perspective into all aspects of the justice system.

*In relation to State censorship of LGBT-related expression:*

- Refrain from restricting or blocking online content, especially LGBT-related content, unless the decision to block has been undertaken following:
  - o A full analysis that applies international standards of legitimate purpose, legality, necessity, proportionality and non-discrimination; and
  - o Has been authorized pursuant to an order by an independent and impartial judicial authority, in accordance with due process with the express guarantee of the right to appeal; and
- Cease the harassment, investigation, or prosecution of all individuals solely for exercising their rights to free expression and information online, particularly when it pertains to SOGIE issues or LGBT persons; and
- Ensure and facilitate equal access to adequate, effective and prompt remedy and reparation for all individuals who have had their rights impaired by legal sanctions for exercising their rights to free expression and information online.

*In relation to online violence, abuse and hate speech against LGBT people:*

- Refrain from using messages of intolerance or expressions that may incite violence, hostility or discrimination against LGBT people, and speak out firmly and promptly against intolerance, discriminatory stereotyping and instances of hate speech;
- Adopt specific legislation to prohibit, investigate and prosecute online violence against LGBT people, in line with international human rights law and standards on freedom of expression, with such legislation defining homophobia, misogyny, biphobia and transphobia as aggravating factors for the purposes of sentencing;
- Review existing laws and develop legislation to expressly prohibit the advocacy of hatred that constitutes incitement to discrimination, hostility or violence, including on the basis of SOGIE, with definitions clearly and strictly in line with article 20(2) of the ICCPR, and the principles of legitimate purpose, legality, necessity, proportionality and non-discrimination;
- Provide for the right to an effective remedy for LGBT persons who have suffered actual harm as a result of online violence and hate speech, including a civil remedy for damages; and
- Adopt positive policy measures to end the spiral of discrimination, marginalization and exclusion of LGBT people, including public education campaigns, education policies addressing harmful social and cultural bias, misconceptions and prejudice, and addressing negative or stereotypical portrayals of LGBT persons in the media.

## **Recommendations for Tech Companies**

In light of the above-mentioned concerns, the ICJ recommends that tech companies:

- Ensure that content moderation policies and decisions are:
  - o Guided by international human rights law and standards, such as the principles of legitimate purpose, legality, necessity, proportionality and non-discrimination;
  - o Undertaken involving human-in-the-loop for any use of automation or artificial intelligence tools; and
  - o Involve contextual analysis of local languages and contexts, and informed by local LGBT communities.
- Carry out regular human rights impact assessments to identify and mitigate systemic risks affecting LGBT individuals on their platforms;
- Develop and make available policies on safety from online violence and hate speech as they pertain to LGBT individuals, with full transparency in relation to algorithms, practices and decision-making processes, in an accessible, non-technical manner in local languages; and
- Ensure that users affected by human rights violations and abuses on their platforms, such as online violence, abuse and hate speech, have access to reporting mechanisms and effective remedies.

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International  
Commission  
of Jurists

P.O. Box 1740  
Rue des Bains 3  
CH 1211 Geneva 1  
Switzerland

**t** +41 22 979 38 00  
**f** +41 22 979 38 01  
[www.icj.org](http://www.icj.org)