

SITUATION OF LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX (“LGBTI”) PEOPLE IN VIET NAM - UPR 3RD CYCLE

Key issues from the previous cycle

During the Second Cycle of Vietnam (June 2014), Viet Nam received only one SOGI recommendation from Chile (paragraph 143.88, A/HRC/26/6)¹ to “enact an anti-discrimination law guaranteeing equality of all citizens, regardless of sexual orientation and gender identity.” The recommendation was accepted by Viet Nam.

Situation of discrimination based on sexual orientation, gender identity, gender expression and sex characteristics

1. Protection against discrimination based on sexual orientation, gender identity and expression.

- Although Viet Nam accepted Chile’s recommendation (paragraph 143.88, A/HRC/26/6), no comprehensive anti-discrimination law has been enacted since the previous UPR cycle or included in the latest law-making agenda of the National Assembly.
- In fact, sexual orientation and gender identity are not explicitly provided as a forbidden ground of discrimination in any of Vietnamese laws or policies.
- From a study “Is it because I am LGBT?” by iSEE, one third of the respondents had been subjected to SOGIE-based discrimination in the last 12 months².
- Amongst them, 4.5% reported they were physically assaulted, 1.9% sexually assaulted. 8.4% were threatened with physical assault and 2.2% with sexual assault³. Only 2% reported discriminatory incidents to the police or local authorities.

In education

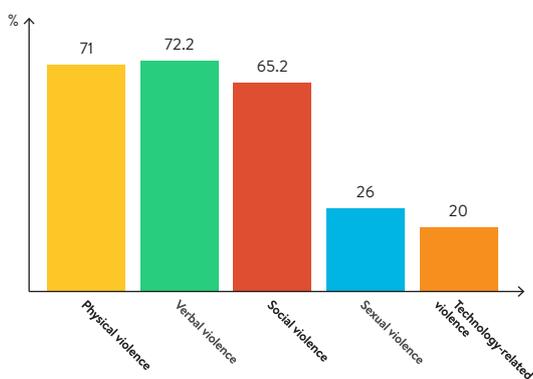


Chart: Experience of violence of LGBT students⁴
Sources: UNESCO, Reaching out - Preventing and Addressing SOGIE-related School Violence in Vietnam (2016)

In workplaces

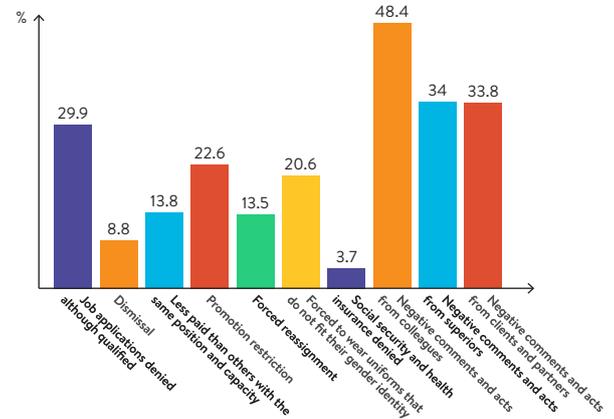


Chart: Discrimination against LGBT people in workplaces⁵
Sources: iSEE, Is it because I am LGBT (2015)

- Notably, transgender people face the highest rate of discrimination in almost all categories, especially limited access to work (59.7%) and negative comments & acts (65.8%).
- In the Labor Code and other laws, discrimination based on sexual orientation and gender identity is currently not included in the list of prohibited acts.

In healthcare

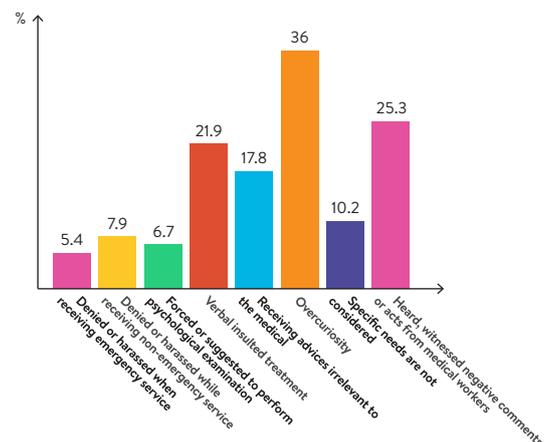


Chart: Discrimination against LGBT people in healthcare⁶
Sources: iSEE, Is it because I am LGBT (2015)

Proposed recommendations:

- Implement the recommendation made by Chile, within 2 years, to pass a comprehensive anti-discrimination law that prohibits discrimination on the basis of sexual orientation and gender identity in all areas of public life, including employment, education and healthcare.
- Explicitly provide “sexual orientation” and “gender identity” as a forbidden ground of discrimination in the Revised Labour Code and other laws.
- Include sexual and gender minorities in the compulsory curriculum of comprehensive sexuality education.

2. Access to gender affirmation treatment and legal gender recognition.

- In 2015, Viet Nam passed the Amended Civil Code, including Article 37⁷ which was the first step to allowing transgender persons the right to undergo gender affirmation treatment, as well as having their gender recognised on official documents.
- Although the Civil Code took effect in 2017, an additional Law on Transgender persons must be enacted to give effect to Article 37. This is not officially scheduled in the law-making agenda of the National Assembly as of 2018-2019, and therefore this right cannot practically be realised.

Proposed recommendation: Enact a legal instruction, as required by the Civil Code, within 2 years, to ensure that all people can access gender affirmation treatment and legal gender recognition on the basis of self-determination.

3. Recognition of same-sex couples.

- In 2014, the Law on Marriage and Family removed the ban on same-sex marriage⁸, along with all fines related to same-sex weddings or ceremonies. However, the Government does not formally recognize same-sex marriages, including those conducted in other countries.
- The absence of recognition of same-sex marriage or any other form of relationship denies same-sex couples all legal protections, including inheritance rights, social security and adoption.

Proposed recommendation: Legalize same-sex marriage to ensure same-sex couples have the equal rights to founding a family and other civil protection before the law.

4. Right to bodily autonomy of intersex people.

- Article 36 of the new Civil Code (2015) reiterated the regulation in Decree 88/ND-CP/2008 on people who are born with intersex status, allowing “medical intervention to clearly identify the gender” in cases where “the gender of [a] person is subject to a congenital defect or has not yet been accurately formed.”⁹
- Article 36 may provide a legal basis for non-consensual medical intervention on intersex infants and children, in violation of their right to bodily autonomy and may create medical problems or severe, lifelong physical and mental suffering.

Proposed recommendation: Immediately outlaw non-consensual and non-medically-necessary medical interventions performed on intersex infants and children in the Civil Code and in other laws, and guarantee intersex people their rights to bodily integrity and self-determination.

5. Freedom of association and peaceful assembly.

- A law on association and a law on peaceful assembly have been in discussion for decades and postponed several times. This poses challenges for the LGBTI community in the mobilization of resources, such as registration, project approval and funding access.
- During the Second Cycle of UPR of Vietnam (June 2014), Viet Nam accepted 10 recommendations on freedom of association. In 2016, the draft Law on Associations was publicly discussed and heavily criticised by civil society, leading to its postpone.

Proposed recommendation: Immediately develop and promulgate a law on freedom of association and a law of peaceful assembly to improve the legal framework for rights to association in Viet Nam in line with the ICCPR as well as in consultation with civil society.

¹ Human Rights Council, Report of the Working Group on the Universal Periodic Review on Viet Nam, A/HRC/26/6, paragraph 143.88, http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A_HRC_26_6_ENG.DOC

² Luong The Huy and Pham Quynh Phuong, Is it because I am LGBT?: Discriminations on Sexual Orientation and Gender Identity in Vietnam, The Institute for Studies of Society, Economy and Environment, 2015, page 14, http://www.thuvien.lgbt/s/iSEE_SOGI-Discrimination-in-Viet-Nam.pdf

³ Ibid, page 75.

⁴ UNESCO, Reaching Out: Preventing and Addressing SOGIE-related School Violence in Viet Nam, 2017, page 30, http://www.thuvien.lgbt/s/UNESCO_Reaching-out_Preventing-and-Addressing-SOGIE-related-School-Violence-in-Vietnam.pdf, accessed 30 October 2018.

⁵ Luong The Huy and Pham Quynh Phuong, Is it because I am LGBT?: Discriminations on Sexual Orientation and Gender Identity in Vietnam, The Institute for Studies of Society, Economy and

Environment, 2015, page 61, http://www.thuvien.lgbt/s/iSEE_SOGI-Discrimination-in-Viet-Nam.pdf, accessed 30 October 2018

⁶ Ibid, page 61.

⁷ The Article 37 reads, “The sex change is performed as regulated by law. Individuals who underwent surgery have the rights and obligation to register the change of civil status according to the law on civil status; have personal rights consistent with new gender as stipulated by this Code and other relevant laws.”

⁸ Law on Marriage on Family 2014. Article 8. <http://vbpl.vn/TW/Pages/vbqpqn-toanvan.aspx?ItemID=11018>, accessed 11 July 2018.

⁹ Civil Code 2015. Article 36. <http://hethongphapluatvietnam.net/law-no-91-2015-gh13-dated-november-24-2015-the-civil-code.html>, accessed 11 July 2018.