During the 2nd UPR Cycle, Thailand did not receive any specific recommendations on SOGIESC rights but did receive one recommendation from Mexico to tackle gender-based violence against women, including women with diverse sexuality, which it accepted. As none of the UPR recommendations explicitly addressed the LGBTIQ+ community’s human rights and equality, it shows a lack of understanding of the challenges faced by LGBTIQ+ individuals in Thailand. Even though Thailand hosts one of the larger LGBTIQ+ community in Asia and is seen as a ‘LGBTIQ+ Paradise’, it has way to go in terms of embracing this community, both on a societal and normative level. Until now, the Thai government has failed to put in place a comprehensive approach to recognize non-standardized and non-binary sexual relations, gender identities and expressions, as well as to protect the rights of the LGBTIQ+ community, including LGBTIQ+ Youth and Children. Although Thailand made the voluntary pledge to pass a civil partnership legislation, it is inconsistent with the principle of equality before the law and the current draft is still pending. The 2015 Gender Equality Act and its committees have assisted marginalized individuals’ access to justice, but the Act is currently underutilized, and does not explicitly protect from discrimination based on sexual orientation and gender identity. As a result, weak legal framework, stigma, and prejudices are key obstacles for LGBTIQ+ inclusion, hindering the individuals from reaching their full legal and social recognition.

### National Legal Framework

- Constitution of the Kingdom of Thailand (2017)

### The rights most commonly violated

<table>
<thead>
<tr>
<th>Rights</th>
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<tbody>
<tr>
<td>Right to Access to Education for LGBTIQ+ Youth</td>
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<tr>
<td>Right to Equal Protection</td>
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<tr>
<td>Right to Freedom from Discrimination</td>
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<tr>
<td>Right to Family Rights</td>
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<td>Right to Access to Public spaces</td>
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### Challenges

#### Challenge 1: The absence of legislation recognizing the rights to family establishment of LGBTIQ+ people cause significant social exclusion and human rights violations

- **Section 1448 of The Civil and Commercial Code** stipulates that a marriage is between a man and a woman, implicitly outlawing same-sex-marriage and directly infringing upon people’s right to equality and non-discrimination.

- The Draft Civil Partnership Bill developed since 2014 and approved by the Cabinet in July 2008 is still pending and only allows same-sex couples to register a civil partnership, which does not equal marriage. Therefore, if this Bill is passed, same-sex couples registered will not enjoy the same rights and protection as heterosexual married couples. Instead, the Draft Bill focuses on aspects such as adoption, acting on behalf of their partner in legal proceedings if the partner is injured or passed away, inheritance matters, alimony, and property. As this Draft Bill does not provide marriage equality, it is highly criticized by LGBTIQ+ rights activists, who note that through this Draft Bill, LGBTIQ+ couples are treated as second-class citizens.

- The absence of legislation recognizing same-sex marriage critically undermines same-sex couples from enjoying equal rights regarding family rights, adoption of children, property rights among others.

- **LGBTIQ+ couples demand EQUAL RIGHTS, not less.**

- **Challenging the Constitutionality of Section 1448 of the Civil & Commercial Code to recognize same-sex marriage**

  The Foundation for SOGI Rights and Justice (For-SOGI) in collaboration with a lesbian couple filed a complaint to the Constitutional Court, questioning the constitutionality of Section 1448, as it breaches the equal protection provisions (Sections 4 and 27) of the 2017 Constitution. Since its initial schedule in December 2020, the Constitutional Court has repeatedly postponed its ruling, due to COVID-19. On September 28, 2021, the Court postponed its ruling for the third time to December 14, 2021, for no apparent reason.

- **The unequal treatment of same-sex couples**

  In November 2020, Dolayawat Chaichompoo, a transgender government employee, who had been married for five years, was unable to receive the same health benefits as other legal spouses in order to rescue her husband from cancer. As a civil servant, her overall income was insufficient to cover the cost of a specialized cancer treatment exceeding 120,000 THB, that a general governmental health care scheme covers for heterosexual spouses.
The 2015 Gender Equality Act defines unfair gender discrimination and creates protection for people who identify themselves as male, female or of a different appearance from sex assigned at birth, in line with sections 4 and 27 of the 2017 Constitution of Thailand, stipulating that all persons are equal before the law and shall enjoy equal protection under the law. However, the 2015 Gender Equality Act does not explicitly protect from discrimination based on sexual orientation and gender identity, resulting in numerous cases of discrimination faced by the LGBTIQ+ community, including LGBTIQ+ Youth and Children.

The 2015 Gender Equality Act also fails to protect LGBTIQ+ persons from gender-harassment, gender-based hate speech and hate crimes, arbitrary arrests, and judicial harassment.

LGBTIQ+ Youth who are also Pro-democracy Student Leaders face judicial harassment for fighting for true democracy. Mass pro-democracy protests have taken place since July 2020 in Thailand, led by student activists demanding true democracy and an end to dictatorship. The largest Pro-democracy Youth-led movement ‘Free Youth’ is led by Secretary-General Tattep Ruangprapaikitseree or ‘Ford’, an openly gay youth pro-democracy activist and his partner. Free Youth has created space for LGBTIQ+ Youth to join the fight for democracy for their present and future. The movement has been calling for a new Constitution, a new Parliament, and the end of intimidation, judicial harassment, killings and enforced disappearances of activists perpetrated by the authoritarian government. The movement also aims to curb the monarchy’s power to ensure Thailand is governed by the people and for the people. However, LGBTIQ+ Youth activists are facing judicial harassment as Thai authorities try to silence them and stop their fight for democracy.

In Thailand, transgender identity is not legally recognized. The Person Name Act (1962), prohibits making changes to one’s legal title, sex, and gender in official documents for transgender people; and allows it for intersex people under strict conditions (upon showing of medical proof of intersexuality at birth and after a gender confirmation surgery). The law is therefore inherently discriminatory as it denies transgender persons their right to identity and self-determination.

LGBTQI+ Youth face widespread discrimination in schools

Although the Thai government ratified the UN Convention on the Rights of the Child (CRC) in 1992 and enacted the Child Protection Act in 2003 to ensure domestic implementation of the CRC, LGBTQI+ Youth are still subject to high levels of discrimination and violence in schools, and within their families. As a result, LGBTQI+ Youth fall under emotional and physical abuses.

LGBTIQ+ individuals endure discrimination and threats, including death threats and hate speech, both online and offline, due to their gender identity and sexual orientation. Such threats pose a serious risk to their right to life, as outlined in Article 6 of the ICCPR. In January and February 2021, 21-years-old transgender woman Phetcharin, from Loei province, faced gender-based hate crimes. The hate crime against her occurred in the form of threatening messages and phone calls from a man who claimed to be a journalist from Thairath TV. Nada Chaiyajit, a transgender woman and leading transgender rights activist, who assisted Petcharin seeking justice also received threats, including death threats, through messages and phone calls in which he warned her to ‘stay out of his business’. The threats severely affected the mental health of both transgender women, who have sought justice against the perpetrator.

In 2020, Chanya Rattanathada “Panan”, a Thai transgender woman, LGBTIQ+ rights defender, also faced transphobic hate speech while fighting for true democracy. When joining pro-democracy protests, Panan proudly and bravely held a banner which wrote, ‘I will become the first transgender prime minister of Thailand’. Her demonstration became the headline of news throughout social media and online platforms. However, she was faced with transphobic harassment and cyber-bullying against her vision. Internet trolls tried to discourage her by claiming that “transgender people cannot govern a country because they are psychotic freaks”.

Due to his leadership, calls for true democracy and monarchy reforms, Tattep Ruangprapaikitseree “Ford” was arrested and charged under sedition (section 116 of the criminal code) and royal defamation – ‘lèse majesté’ (section 112 of the criminal code) charges, in late 2020. His cases are still pending.

Chanya Rattanathada “Panan”, Thai transgender woman and LGBTIQ+ rights defender, was also charged for joining pro-democracy protests. Panan is the co-founder of Young Pride Club, a Youth Club fighting for gender equality, gender and sexuality diversity and inclusion. On 29 July 2020, she joined the youth-led pro-democracy protest in Chiang Mai to call for equality, justice, and true democracy. As a result, she was charged for violating the COVID-19 Emergency Decree, weaponized by the military-backed government to crackdown on protesters. On 16 February 2021, Panan along with another LGBTIQ+ Activist, Sirjak Chaited “Ton”, and 32 people who were also charged for joining the protest acknowledged their charges at the Chiang Mai police station. Their cases are still pending.

A 2018 UNDP study on Legal Gender Recognition in Thailand indicates the absence of a law allowing transgender people to change their title, sex, or gender on official documentation creates substantial barriers to social inclusion, health and social services, and enjoyment of human rights.

In January 2021, an investigating officer at the general consulate of the Ministry of Foreign Affairs accused a transgender person of being a criminal during her passport renewal procedure, because her gender identity and expression did not match her given sex at birth. As a consequence, instead of getting her passport within 30 minutes, she was forced to wait approximately six months.

LGBTIQ+ youth are discriminated at school, particularly when dress codes are enforced based on their gender at birth. If transgender students cross-dress, they risk being banned from entering specific programmes or taking exams.

In January 2016, Woranittha Chiewchan, a transgender man law student at Chiang Mai University, requested to dress as male during the graduation ceremony, but the administration refuted his claim. Besides, many schools lack gender-sensitive amenities like third-gender restrooms, and consequently transwomen students are hesitant to use male washrooms.
REALITIES ON THE GROUND

<table>
<thead>
<tr>
<th>Challenges</th>
<th>Cases, Facts, Comments</th>
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<tr>
<td><strong>Challenge 1: Promotion of LGBTIQ+ rights</strong></td>
<td>School health education textbooks label LGBTIQ+ individuals as deviants, and advise that they keep their abnormality a secret. These stigmas harm the development and self-esteem of LGBTIQ+ students, notably leading to a lack of self-acceptance.</td>
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<td><strong>Challenge 2: Equal education rights</strong></td>
<td>The situation of LGBTIQ+ Youth and Children is extremely challenging in conservative schools. According to a queer Thai anthropologist’s interview, Samuk Korsem, a number of religious schools in Southern Thailand, as known as Po-Nor, have divided students into two groups regarding their biological sex. Among male students, transgender women students are always sexually exploited. In secret, they are being taken advantage of. In public, they are being shamed.</td>
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<td><strong>Challenge 3: While seeking healthcare services, many LGBTIQ+ individuals face discrimination in the form of unequal standards of healthcare given to them</strong></td>
<td>LGBTIQ+ patients are being mistreated, often because of their appearance or in relation to their positive HIV status. As reported by the 2019 UNDP survey, one in five LGBTIQ+ respondents faced difficulties accessing mental health services, hormone therapy and gender-affirming surgery. On top of that, they have limited access to mental health support, and proper sexual education programs. Additional challenges are faced by transgender youth, who may need to undergo surgeries. LGBTIQ+ Youth face discrimination by health practitioners when they visit healthcare facilities, as they are not youth-friendly. For instance, most HIV clinics in Thailand focus on adult clients, while overlooking the specific needs of Youth. LGBTIQ+ Youth may be hesitant to test for HIV, as they fear that their test result may be disclosed to their parents. Transgender and non-binary persons also face barriers in accessing health care. The absence of adequate social welfare leads transgender and non-binary persons being denied access to essential health benefits. This includes gender-affirming therapies, such as putting transgender persons in prison, and requiring transgender patients to be admitted to field hospitals on their sex given at birth during COVID-19. Transgender inmates are unable to access certain basic medical services in jail. Sirisak Chaited, a Thai independent SOGIESC &amp; Sex Worker Rights activist, has filed a complaint with the National Human Rights Commission of Thailand (NHRCT) to investigate the status of transgender individuals in prisons. While incarcerated, they do not have access to medical services, such as hormone replacement therapy, having a substantial impact on their health.</td>
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<td><strong>Challenge 4: Degrading and humiliating treatment in private settings due to the lack of family acceptance</strong></td>
<td>LGBTIQ+ youth experience varying degrees of acceptance from their families. Generally, due to social and cultural beliefs that family members hold, they remain unaccepted. This results in LGBTIQ+ youth facing severe human rights violations, with families exposing them to procedures aiming to ‘converse them’. These inhumane, degrading, and cruel practices are similar to torture and have profound consequences on their psychological and mental well-being. According to a 2014 PRIDE project report, some families believe that gay-ness and male-to-female transgender-ness can be treated through various methods, such as using psychiatric services, sending children to monkhood, or engaging them in &quot;manly&quot; activities. Besides, conservative religious interpretations, such as the belief that being LGBTIQ+ is a ‘karmic punishment’ for past sins, are used to justify the resort to conversion therapies or forced monkhood. There is also a failure to understand LGBTIQ+ Youth and in particular, Young Trans people, living in marginalized communities in Thailand. Among marginalized communities, some people strongly believe that being an LGBTIQ+ is a test from God. There is this belief that Young LGBTI must turn themselves into heterosexuals to pass the test.</td>
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<td><strong>Challenge 5: Economic exclusion of LGBTIQ+ population in the area of Business and Human Rights: gender discrimination in workplace and against LGBTIQ+ customers by companies</strong></td>
<td>LGBTIQ+ community face severe exclusion in the workplace. While gay and lesbian face unfair treatment toward job promotion and equal welfare, transgender people are the most vulnerable in terms of recruitment. Also, the Thai government uses public funds to promote the ineffective National Action Plan on Business &amp; Human Rights (NAP-BHR), without mandating human rights due diligence across all business sectors. Gender discrimination in the workplace is a widely spread phenomenon. In 2020, Paire, a transgender intern at Central Plaza Westgate, was denied access to gender-specific restrooms. In 2020, June, a transgender woman, was rejected a job at Cute Press exclusively because of her gender identity, as the position was only open for cisgender women. Workplace sexual harassment continues to be experienced by transgender women. In 2021, Mimi, a transgender employee at Gaysorn Village Department Store, was subjected to sexual harassment by the company’s owner. Gaysorn Village does not have a specific code of conduct in place that abides suppliers and business partners to comply with its anti-sexual harassment policy.</td>
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### Challenges

**Section 15 of the Labour Protection Act fails to include discrimination on grounds of sex against persons with non-binary gender identities.** This results in LGBTIQ+ employees experiencing sexual harassment and violence, as well as limited professional growth prospects, being regularly and unfairly denied promotions, or being fired. LGBTIQ+ youth reported being discriminated against by companies while seeking internships and being declined jobs in their communities, such as Village Health Volunteer.

Further, although Thailand enacted a National Action Plan on Business & Human Rights (NAP-BHR) in October 2019, its implementation remains very weak, with most businesses not aware of their responsibility to respect human rights. This results in LGBTIQ+ clients facing gender discrimination when accessing services as customers.

**Challenge 6: The impacts of COVID-19 on the lives of LGBTIQ+ individuals**

The COVID-19 has exacerbated the challenges faced by the LGBTIQ+ community, as they have been particularly hit by the economic impact of the pandemic, since many of them worked in entertainment industries, tourism or sex work, which were most affected by the restrictions imposed.

Furthermore, LGBTIQ+ youth have been severely impacted by the COVID-19 related lockdown and regulations, as many of them were working in tourism and entertainment business sector in order to financially support themselves during their academic years.

Gender discrimination against LGBTIQ+ customers by companies. Ms. Mint, a transgender person, was compelled to reveal her gender identity when she went to visit her friend at a hotel in Pattaya. The hotel supervisor at the reception desk claimed that it was one of the hotel's regulations to prevent and protect the hotel's guests from any misunderstanding or deception from transgender people. Moreover, the hotel staff emphasized that trans women are not real women. After Ms. Mint reported her case with Manushya Foundation and RSAT, the hotel manager admitted their mistake and confessed having no knowledge on the 2015 Gender Equality Act and NAP-BHR regarding the protection of transgender people.

Side Foundation Pattaya, RSAT, and Transpiration Power received complaints from transgender COVID-19 patients who were forced to be admitted in the male ward of COVID-19 field hospitals.

A survey found that 47% of the LGBTI population lost their jobs or were forced to go on unpaid leave. After being laid off, many of them had to come back to their families, being exposed to physical and emotional violence within the family unit. Furthermore, complex procedures hampered access to benefits from the government COVID-19 response, and 51% of survey respondents received no support from the government.

Financial instability has impacted not only the living condition of the LGBTIQ+ youth, but it also indirectly harmed their mental health. By not being able to financially support themselves, many of them had to move back with their families, making them feel that their independence and self-confidence had been taken away from them. Because some of their families were not supportive of their gender and sexual identities, living in close proximity to them harmed the mental health of the LGBTIQ+ youth.

### RECOMMENDATIONS

1. **On challenge 1: The absence of legislation recognizing the rights to family establishment of LGBTIQ+ people cause significant social exclusion and human rights violations**

   1.1. Amend the Civil and Commercial Code, Book 4, Section 1448 to recognize same-sex marriage, by the end of 2022.

2. **On challenge 2: The lack of legal framework protecting the rights of LGBTIQ+ persons, and the lack of legal gender recognition fuel widespread discrimination against the LGBTIQ+ community**

   2.1. In line with the 2015 Concluding Observations of the Committee on Economic, Social and Cultural Rights to Thailand, adopt a comprehensive anti-discrimination law that prohibits discrimination on all grounds, including sexual orientation and gender identity, by the end of 2022.

   2.2. In line with the 2017 Concluding Observations of the Human Rights Committee to Thailand, amend the 2015 Gender Equality Act by the end of 2022 to eliminate any limitation on the protection against gender-based discrimination, including gender-harassment and gender-based hate speech and hate crimes and intensify measures to ensure LGBTIQ+ persons do not suffer from discrimination and violence, can fully exercise their rights to freedom of expression, freedom of peaceful assembly and association and freedom from arbitrary arrests; and guarantee LGBTIQ+ persons have access to effective remedy while perpetrators are held into account.

   2.3. In line with Article 28 of the CRC, Article 26 of the UDHR, and with Section 10 of the National Education Act, amend the 2003 Child Protection Act by 2023 to clearly include protection of LGBTIQ+ Children and Youth from discrimination, violence and acts of prejudice in all spheres of society: schools, within families, communities, workplaces.

3. **On challenge 3: While seeking healthcare services, many LGBTIQ+ individuals face discrimination in the form of unequal standards of healthcare given to them**

   3.1. In line with Article 24 of the CRC, and Sections 47 and 55 of the 2017 Constitution, ensure that LGBTIQ+ Youth and Children have access to adequate, available and good quality health services, including mental, sexual and reproductive health services, and HIV services.
RECOMMENDATIONS

4. On challenge 4: Degrading and humiliating treatment in private settings due to the lack of family acceptance
   4.1. Enact a Gender Identity, Gender Expression and Sex Characteristics Act in consultation with LGBTIQ+ groups in Thailand, by 2023, to ensure all persons in Thailand have the right to the recognition of their gender identity; the free development of their person according to their gender identity; be treated according to their gender identity and; to be identified in that way in the documents providing their identity; and bodily integrity and physical autonomy; and to ensure their right to physical and mental health in all circumstances, without any prejudice and without being forced to undergo a sex-reassignment surgery.

5. On challenge 5: Economic exclusion of LGBTIQ+ population in the area of Business and Human Rights: gender discrimination in workplace and against LGBTIQ+ customers by companies
   5.1. Reform the National Action Plan on Business & Human Rights (NAP-BHR) and existing labour laws to comply with international human rights standards, including related ILO conventions, by 2022, to ensure businesses respect the human rights of LGBTIQ+ persons, including LGBTIQ+ seeking employment, LGBTIQ+ employees and LGBTIQ+ customers.

6. On challenge 6: The impacts of COVID-19 on the lives of LGBTIQ+ individuals
   6.1. Adopt gender-responsive approaches to COVID-19, that account for marginalized and vulnerable communities, including LGBTIQ+ Youth and Children, notably by reinforcing and extending access to health services, social protection schemes and relief plans.

REFERENCES


For more information, evidence and data, please refer to the References and/or contact Chitsanupong Nithiwat, Founder & Executive Director, Young Pride Club. Email: contact@youngprideclub.com; and Emilie Pradichit, Founder & Executive Director, Manushya Foundation. Email: emilie@manushyafoundation.org