Across the ASEAN region, LGBTIQ persons are either treated as second class citizens, criminals, are seen as deviants, and in some cases are not even recognised as human beings. We are made to lead dual lives and be ashamed of ourselves for who we are. We are subjected to name calling, condemnation, taunts, reparative treatments and other inhumane abuses. Discrimination and violence come not only from our families, friends, communities, and employers but also from state institution such as state actors, especially police and religious officers. Even in the face of discrimination and violence, the governments refuse to protect our basic human rights.

ASEAN SOGIE Caucus (ASC 2012)

1 Introduction

Sexuality and gender diversity rights in Southeast Asia are deeply controversial and vigorously contested. Debate and protest have been accompanied by both legislative reform and discriminatory violence. In some states, moral panics have been mobilised and the lives and well-being of sexuality and gender diverse people have come under threat. In others, changes in public policy and social norms have created new opportunities and freedoms, enabling people to live more open and fulfilling lives. There is no consistent pattern among states across the region and divergent trajectories appear to be developing. These dynamics are occurring at a time when the international human rights regime has explicitly incorporated a focus on the prevention of violence and discrimination in relation to sexuality and gender diversity. However, most Southeast Asian states do not recognise the need for such rights, and the regional block, the Association of Southeast Asian Nations (ASEAN), deliberately refrained from incorporating them in its own recently promulgated human rights regime.

By contrast, and partly in response, civil society organisations promoting an emancipatory politics of sexuality and gender diversity have proliferated. Many of these groups explicitly utilise rights politics as a platform for visibility, contestation and mobilisation. Their articulation of political struggle through a shared set of rights claims derives from common and shared experiences of violence and discrimination, and a visceral demand and hope for change. Rights claiming for people of diverse sexual orientation, gender identity expression and sex characteristics (SOGIESC) has become a potent mechanism for politicisation and participation and has been used to forge connections across the region and internationally.

Political participation using SOGIESC rights claiming in Southeast Asia has been extensive and diverse, encompassing a wide range of actors from the elite to the grassroots. The forms this political participation takes and the contexts in which it occurs are critical, leading to widely differential outcomes and contending dynamics. Some political and social elites maintain the ‘ghost of Asian
values’, insisting that sexuality and gender rights are neocolonial impositions that have no local resonance (ASC 2018). ‘The LGBTs’ – where the acronym stands for people identified as lesbian, gay, bisexual and transgender (often augmented with I for intersex and Q for queer) – are here associated with Western identity and cultural categories argued to have no proper relation to the region. Many advocates and activists, however, see the merit and utility of such rights claiming, either on instrumental or substantive grounds, and argue for productive links between such new rights practices and the long histories of sexuality and gender diversity across the region (ASC 2018). In their rights advocacy, they utilise, often with qualification, varieties of both the SOGIESC and LGBTIQ nomenclature (a practice I will follow in this Element, as context dictates). Outcomes from such rights-based work have been significant and transformative: changes around gender recognition, anti-discrimination legislation, relationship regulation, media portrayal, access to health services and a range of other matters have been seen in some jurisdictions. In others, however, increased levels of state surveillance, discrimination, violence and persecution reinforce the impetus for further advocacy and protection.

Wherever SOGIESC rights claiming takes place, it occurs in an environment already riven by social and political conflict, power networks, material interests, ideological positioning and religious and ethnic contest. Struggles for authority and legitimacy produce ongoing dynamics of inclusion and exclusion. Rights claiming necessarily operates as a vector of politics, understood classically as the struggle over who gets what, where, when and how. And in that struggle, sexuality and gender are always already intersectional issues, imbricated with a wide range of other social conflicts (such as those involving class and ethnicity).

In this Element, the struggle for SOGIESC rights in Southeast Asia is understood within this broader context to show how making, engaging, contesting and constraining rights claims all feature as different forms of rights-related political participation. Neither rights claiming nor resistance to these claims can be properly understood without considering them as elements in a broader context of political (social and economic) activity. Without this perspective we cannot understand, for example, how Singapore can welcome gay tech workers while refusing to decriminalise homosexuality, or how a society with such a storied history of transgender ritualism as Indonesia can become embroiled in an LGBT moral panic. It is needed to understand why in Thailand, commonly understood as a queer haven, there are limitations on the social acceptance of gays and lesbians. Contextualising SOGIESC rights claiming in this way points us towards a more complex and sophisticated understanding of what is at stake when there is a conflict, a moral panic or a shift towards
SOGIESC inclusion in one or another policy arena; with it, we can look beyond immediate appearances to see the deeper structures that undergird SOGIESC conflicts. One objective of this work is to provide an introductory overview of that context, equipping readers to further develop a nuanced understanding of what is at stake in the region’s disputes over sexuality and gender.

Beyond this, however, I want to make an argument about how we might interpret the development and spread of the use of rights claiming by sexual- and gender diverse communities in the region. I suggest that rights claiming in this way is a newly available mode of political participation, facilitated by regional and international developments, which connect local SOGIESC activity with rights-based movements on a range of different scales. These connections open new opportunities for political engagement on SOGIESC matters.

Modes of participation analysis examine who gets to participate in political decision-making, how they participate and with what consequences (Jayasuriya and Rodan 2007; Rodan and Baker 2020). ‘Its essence’, Gary Rodan argues, ‘is to subject institutions of political participation in any regime to scrutiny over the nature and extent of contestation permitted or blocked through them’ (Rodan 2018, 33; cf. Rodan 2022). A mode of participation itself is the amalgam of institutional structures and political ideologies that enable or constrain participation in political decision-making, its manner and justification (Jayasuriya and Rodan 2007, 774; Rodan and Baker 2020, 93). As Kelly Gerard emphasises, this amalgam shapes politics, making some forms of participation acceptable, and refusing others (Gerard 2014, 5). Both rights claiming in general and claiming SOGIESC rights in particular have become newly available as modes of political participation in Southeast Asia, precisely because of shifts in the amalgam of institutional structures and political ideologies.

Rights claiming, I suggest, can be understood as a distinctive mode of political participation. It is constituted with support from diverse ideologies which allow their normative commitments to be articulated as rights, and by a similarly diverse range of interlocking institutions (governmental and not) at different levels, which engage with rights discourse.

The formal ideological and institutional reference points come from the international human rights regime, under the auspices of the United Nations. This regime is a powerful tool for legitimating claims for political participation and representation. People appeal to it as they address social conflict at very local levels, as well as at larger scales. This points to the distinctive nature of rights claiming: it is fundamentally a normative act, which to function as a form of political participation requires support from a variety of institutional, social and ideological sources at different levels (local, domestic, regional,
international) – even when these sources may be antipathetic to formal political, economic and social institutions.

Understood in this way, rights claiming differs in an instructive way from other modes of participation recently elaborated using this analysis. Rodan’s work, for example, examines discrete mechanisms: nominated members of parliament, participatory budgeting and consultative representation in Singapore, the Philippines and Malaysia, respectively. Of modes in his range of cases, he observes: ‘some are state based or state/trans-state sponsored while others are more autonomous from the state, with contrasting levels of inclusion in political participation through those sites; some entail individual participation while others admit collective organisation’ (Rodan 2018, 33). This schema patterns Rodan’s analyses, categorising these mechanisms using an individual/collective and state/non-state matrix.

Rights claiming as a mode of participation is less amenable to being divided up in this way. While a given instance of rights claiming may emerge out of a site such as those Rodan examines, the act of rights claiming itself seeks to engender political participation across all dimensions of Rodan’s schema: as a practice it depends on individual and collective participation, and is engaged with and against the state in an international context. This, I argue, is what makes rights claiming distinctive: the cross-cutting impact of its normative claim, and the need for institutional support across these dimensions for that claim to have purchase, to drive impact in contexts of social and political conflict. We can observe this too in the distinctive way in which its efficacy as a mode of participation cuts across different domains: rights are moral and political claims that require a combination of individual commitment, institutional support, legal infrastructure, economic provisioning and social legitimacy in order to gain purchase. Their full functioning requires a framework that connects the individual to the international, and civil society to intergovernmental organisation.

We can crystallise this second critical difference as one of scale (cf. Gerard 2014; Sinclair 2020). As a distinctive mode of participation, rights gain traction because the local site is connected to others: nationally, regionally and internationally. Indeed, the political ideology of human rights claims universal scale – a claim which is at once a key element of its success and a point of great ideological contention (Langlois 2001). The connections of rights politics travel through institutional structures that harness both individual and collective activity, and are based in both state and intergovernmental mechanisms and civil society. We may conceptualise these connections through the ideological reference point of the rights claim itself. The rights claim has potential traction as a mode of political participation for dealing with a local situation precisely...
because of the scale, at interlocking levels, of the diverse ideological and institutional networks that back it.

This leads us then to our specific purpose here: interpreting SOGIESC rights claiming in the region through this broader understanding of the rights claiming mode of participation. SOGIESC advocates present normative rights claims about sexuality and gender diversity through forms of rights-based political activity in contexts of social conflict across a series of interlinked scales: the local, domestic, regional and international. This Element is an introductory survey of how this political activity has been taken up by advocates and evolved as a mode of political participation.

SOGIESC rights claiming in the region emerges out of a range of historical and contemporary developments. Each nation has its own sexuality and gender diverse communities with complex and storied histories, which long predate the use of contemporary rights politics. I profile the context of SOGIESC rights claiming in five national cases: Indonesia, Malaysia, Singapore, the Philippines and Thailand. Critically, developments at this level are interlinked with regional and global shifts in SOGIESC rights institutionalisation and advocacy, especially through several contributing developments. One headline act was the establishment by a group of distinguished independent jurists, scholars and advocates of the Yogyakarta Principles (2007), which articulated SOGIESC protections already extant in international human rights law. In the same year, the United Nations established the new process of Universal Periodic Review (2007), which, as we shall see, became an important tool for SOGIESC advocates. Then, as noted, ASEAN instituted its own human rights regime (2009); controversially it excluded protection of sexuality and gender diversity, in turn precipitating a generative civil society response. The UN’s Human Rights Council (HRC) also came out strongly in support of SOGIESC rights as human rights (early 2010s) and appointed an Independent Expert (IE) (2016) – with the inaugural occupant of this role being Vitit Muntarbhorn from Thailand. Activists, advocates, professionals and ordinary community members across civil society contributed to and engaged with these international developments, expanding the sites and scale of political engagement with SOGIESC rights claiming, and establishing it as an identifiable mode of political participation.

Rights, notwithstanding the qualifiers human or universal, are political instruments (cf. Chua 2022). They require a particular moral or normative imaginary, and specific institutions in order to gain traction on our material and social well-being. But these in turn always presuppose some or another political or ideological vision. The institutional and the ideological here are the two general components of modes of participation. Both can also be
played politically, set to purposes that are tangential or even opposed to their ostensible normative ends. This too is part of the story of SOGIESC rights claiming: rights claims are not always engaged on their own terms, but can be incorporated within other, diverse, even seemingly contrary political agendas. A variety of critical and queer scholars have analysed such instrumentalisation in various contexts, including geopolitics, development assistance, aid, religious conflict and electoral politics (Bosia, McEvoy, and Rahman 2019; Duggan 2002; Gross 2018; Puar 2007; Rahman 2014; Rao 2020; Weiss and Bosia 2013 among others). SOGIESC rights claiming as a mode of political participation, as noted earlier, pays methodological attention to social conflict in context; it enables a critical analysis of the role rights play, for good and ill. It can contribute a sophisticated understanding of why and how rights come into the picture, what they are being used for and by whom, and what happens when specific rights are politicised and get drawn into social conflicts.

In the conventional story of how rights function, they require regimes, institutions and legal norms. In most critical respects, these elements are missing, incomplete or inchoate, when it comes to SOGIESC rights – and yet, the appeal to these rights persists and builds, constituting demands, claims and participation in the political space. Understanding the making of SOGIESC rights claims as a mode of participation suggests a way of theorising rights-based developments which addresses how they function in these contexts of social conflict, and which points to their value in generating political engagement, notwithstanding outcomes which, on conventional expectations of what rights should do, are poor. It transcends the limitations of analyses that might dismiss rights activity because of the weakness of formal institutions, the absence of legal systems or appropriate norms or because of (allegedly) mismatched cultural traditions. These dismissals tend to see rights claiming as a process that depends on the existence of legal and political institutions with a remit and the capacity to fulfil rights demands. In their absence, rights claiming is judged as just so much political theatre.

Seeing rights claiming instead as a tool with which to demand participation in a political process, by harnessing vectors of sociopolitical conflict, enables a more accurate reflection on how social movements utilise their claims (cf. Weiss 2017). An end point may eventually be fully adumbrated rights regimes, but none that do exist have emerged from anything other than an evolutionary and participatory political process. This points to one of the characteristic features of rights: that they are prefigurative and performative, calling themselves into existence by being claimed (cf. Zivi 2011).
Sexuality and Gender Diversity Rights in Southeast Asia

Outline
Each of the sections of this Element focusses on a different constituent element of SOGIESC rights claiming understood as a mode of political participation: the region’s own deeper history of sexuality and gender diversity; recent SOGIESC advocacy in five national cases; and regional advocacy, first with a focus on civil society and then through the lens of formal rights mechanisms. Each of these elements is of interest in their own right, but it is in their interaction together that we see the regional emergence of SOGIESC rights claiming as a mode of political participation, a concluding overview of which is offered in the final section.

A Regional History of Sexuality and Gender Diversity

Resistance to SOGIESC rights commonly situates them as alien imports: the influence of Western decadence or some form of neocolonialism. When this ‘Asia versus the West’ debate gains the headlines, it hides the long and varied history of sexuality and gender diversity within the region. While the articulation of this diversity through the rights claiming mode of participation is correctly understood as a newer phenomenon, the cultural histories and traditions of Southeast Asia are threaded through with diverse practices of sexuality and gender pluralism, practices with continuities into the present, where they proliferate and change, moulded by contemporary conditions. Remembering this diversity shifts the debate, demonstrating its political nature and the investment of power and interest in the manipulation of certain forms of social and ideological conflict through memory and forgetting. For advocates, the collective memory of indigenous and pre-colonial forms of life can play a significant role in contemporary cultural production and political participation.

Contemporary Cases

This section gives an overview of the recent trajectories of sexuality and gender politics in each of five national cases from the region: Indonesia, Malaysia, Singapore, the Philippines and Thailand. Across these cases, diverse and distinctive outcomes emerge as SOGIESC advocacy occurs within specific national contexts of social conflict and political participation. SOGIESC rights claiming can be observed at a range of sites and scales. It is layered into existing forms of sociopolitical conflict, shaping processes and outcomes. The differences between cases illustrate the complex and distinctive functioning of rights claiming as a mode of political participation. For example, rights claiming as a legal method is only available in some jurisdictions. Elsewhere, as a form of
political suasion it operates in a different register, across a range of differently scaled sites (from local social groups to national political lobbying). Rights claiming also remains unavailable or unhelpful for some individuals and communities: rights politics is not a panacea, and SOGIESC rights claiming, here as elsewhere, will not meet the needs or be to the ideological taste of all.

Rights Advocacy
Changing focus from national narratives to rights organising, this section examines the ways in which sexuality and gender diverse people come together to support one another and engage in advocacy. The focus here is on the linkages between local, national and regional organising in pursuit of SOGIESC rights, through civil society organisation and in conjunction with formal rights regimes – thus emphasising the necessary element of scale in the rights claiming mode of political participation. The emergence of SOGIESC rights claiming benefitted from the inauguration of a regional human rights regime, with a critical and counter-intuitive element being the specific omission of SOGIESC rights from that regime. The creation of the regime nonetheless gave political legitimation to the use of previously suspect rights language, and enabled comparisons to best practice elsewhere – especially concerning the omitted rights. Together with National Human Rights Institutions (NHRIs), the UN’s Universal Periodic Review process and – critically – a plethora of regional civil society organisations, an emerging architecture of human rights advocacy, can now be discerned across the region. SOGIESC civil society advocates have been prominent in all these developments.

SOGIESC Rights and Political Participation
In concluding this Element, I recapitulate my argument that SOGIESC rights claiming across Southeast Asia can be understood as a distinctive mode of political participation. Its signature extension across multiple sites and scales contributes a leverage and radical power for change that might not otherwise be possible, belying the often marginal status of its participants and supporting their desire to sustain an emancipatory and queer politics of sexuality and gender diversity in the region.

2 Historical Trajectories in Sexuality and Gender Pluralism
The histories and traditions of Southeast Asia are threaded through with diverse practises of sexuality and gender pluralism. A historical understanding of the region underscores that it is the rejection of this diversity which is new. Dédé
Oetomo made this point in a speech discussing the various regional traditions and their associated festivals. Oetomo, from Indonesia and a key figure in contemporary sexuality rights activism, noted a tendency to treat these traditions as ‘decadent practices from the past’. He commented: ‘I often say that in Southeast Asia, we do not adopt homosexuality from the West, but rather we adopt transphobia and homophobia from the West’ (Oetomo 2013, 123). It was, after all, British colonialism that criminalised homosexual practice in several Southeast Asian polities, and Western impositions across social, cultural, economic and religious domains have consequentially reshaped perceptions of sexuality and gender in the region (Kirby 2013; Lennox and Waites 2013; Sanders 2009).

Southeast Asia’s pre-colonial historical traditions and practices of sexuality and gender diversity are closely associated with ritual and religion. In some places, these practices persist in modified and contemporary forms. Transgender ritual specialists commonly held key symbolic roles in their communities. These included the *bissu*, spiritual leaders in Sulawesi, Indonesia; the *sida-sida*, priests in the service of the Sultans in Negeri Sembilan, Kelantan, Johor and elsewhere in Malaysia; *manang* who lived among the Iban people of Borneo and were held in high regard as dispute settlers; and the *warok* and *gemblakan* in Ponorogo, Indonesia, famed for their martial arts, who regularly performed at community events such as weddings (Petkovic 1999a, 1999b; Wilson 1999). Among the Ngaju Dayak people the transgender ritual specialists were known as the *basir*; in Burma they were the *nat kadaw*. In Thailand, Laos and Cambodia are the *kathoey*, often known today as ‘ladyboys’, a derogatory term that highlights the difficulty Southeast Asia’s more fluid practices and conceptions pose to conventional Western notions of gender (Jackson 2001, 2011; Jackson and Sullivan 1999; Sanders 2020b). Continuing also into the present are a wide range of transgender communities, including the *waria* or *transpuan* (a more recently favoured term) in Indonesia; the *mak nyah*, *thirutambi* and *kua xing nan* in Malaysia; the *bakla*, *transpinoy* and *transpinay* in the Philippines; and the *apwint/apôn* or ‘open/hider’ in Myanmar (Al-Mohdhar and Ngu 2019; Coleman, Allen, and Ford 2018; Gilbert 2013; Graham Davies 2018; Khanis 2013; Rodriguez 2019, 372; Wijaya 2020, 161).

Positioning Southeast Asia as antipathetic to SOGIESC rights (notwithstanding the modern particularity of thinking about this diversity through rights) contrasts sharply with this storied history of complex, diverse and porous traditions. Anthropologist Michael Peletz takes this pluralism to be a key feature of the region, integral to understanding both the practices and traditions of sexuality and gender expression themselves, but also other aspects of its
cultural formation over time. Peletz’ account is a key corrective against the ideological centring of contemporary heteronormative forms.

Succinctly identifying pluralism as ‘difference accorded legitimacy’ (Peletz 2009, 7), Peletz theorises pluralism from the historical experience of the region, particularly regarding gender, sexuality and ethnicity. He offers the concept of ‘gender pluralism’ as a means for discussing the variations and vicissitudes of gender and sexual practices, as well as being a driver of broader forms of pluralism. ‘It denotes’, he says, ‘pluralistic sensibilities and dispositions regarding bodily practices (adornment, attire, mannerisms) and embodied desires, as well as social roles, sexual relationships, and overall ways of being that bear on or are otherwise linked with local conceptions of femininity, masculinity, androgyny, hermaphroditism, and so on’ (Peletz 2009, 11).

The early modern period, spanning the fifteenth and sixteenth centuries, is a period in which the common people experienced relative ease with respect to sexual and erotic practice and gender roles (Peletz 2009, 21). Travellers noted these characteristics:

Portuguese observers of the sixteenth century reported that Malays were ‘fond of music and given to love’, the broader themes being that ‘pre-marital sexual relations were regarded indulgently; . . . [that] virginity at marriage was not expected of either party’; that divorce was rather easily initiated by women and men alike; and that women were commonly included as heirs to rights over houses and land, in some cases being favored over male heirs. . . . Chinese and European observers emphasized similar patterns when writing about Javanese, Filipinos, Thais, Burmese, and other Southeast Asians. (Peletz 2009, 21, with internal quotes from Reid 1988, 153; cf. Peletz 1988, 1996; Wieringa 2000, 450–2)

More generally, and given his focus on the role of transgender ritual specialists in the early modern period, Peletz argues that ‘in a wide variety of Asian cultural contexts, gender-transgressive behavior was both legitimate and sanctified and could bring considerable religious merit and prestige to its practitioners. . . . [R]eligious cosmologies in the Asian region undergirded prestige hierarchies that valorized different forms and combinations of gender and sexuality and different ways of being human’ (Peletz 2009, 36).

It is Southeast Asia’s pluralism that is unique, with gender and sexuality the critical drivers of this uniqueness (cf. Ong and Peletz 1995). Unlike some regions where transgender and same-sex practices were ‘bracketed exceptions’ to otherwise prevailing heterosexual hegemonies, in Southeast Asia they were diffuse, contributing to a broader pluralistic ethos of embodied being in the world (Peletz 2009, 40, 81).