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Thematic Studies Series 1: Sexuality & Rights in Asia

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CONTENTS

LIST OF BOXES	
LIST OF TABLES	iv
LIST OF DIAGRAMS	
GLOSSARY	v
ACKNOWLEDGEMENTS	vi
INTRODUCTION	9
Chapter 1 DEMYSTIFYING SEXUAL RIGHTS: A CRIBING CONCRETE INDICATORS TO CONTENTIOUS TERMS	15
Chapter 2 PUSHING THE BOUNDARIES: THE CHALLENGE OF SEXUALITY EDUCATION IN THAILAND	45
Chapter 3 NEGOTIATING POWER: SEXUAL HARASSMENT IN THAILAND	55
Chapter 4 REDEFINING IDENTITY: TRANSGENDERISM AND SEXUAL CITIZENSHIP - CONVERSATIONS ACROSS INDIA, NEPAL AND THAILAND	69
REFERENCES	97

List of Boxes

Snapshot of violations of sexual rights in the region: the past eight years

p71

Parts of the ICPD PoA That Can Be Used to Advocate for Transgender People's Rights

p72

List of Tables

Table 1: legal age and median age at marriage

p17

Table 2: Anti-Rape Laws in 12 countries in Asia

p21

Table 3: Anti-marital rape laws in 12 countries in Asia

p22

Table 4: Anti-sexual harassment laws in 12 countries in Asia

p24

Table 5: Anti-Trafficking laws

p25

Table 6: Recommendations for Governments, NGOs and Donors

p90

List of Diagrams

The diagram below shows the historical development of ARROW and partners' SRHR monitoring process from 2007-2012.

p12

Glossary

ABAC	Assumption Business Administrative College	MOE	Ministry of Education
AEP	Adolescence Education Programme	MOPH	The Ministry of Public Health
ARH	Adolescent Reproductive Health	MSM	Men who have Sex with Men
ARROW	Asian-Pacific Resource & Research Centre for Women	NGOs	Non Governmental Organisations
AIDS	Acquired Immune Deficiency Syndrome	NHRC	Office of the National Human Rights Commission of Thailand
Aravani	Tamil term for hijra; also called thiru nangai.	OBEC	The Office of the Basic Education Commission
BDS	Blue Diamond Society, Kathmandu, Nepal	OCSC	Office of the Civil Service Commission
Butch	Term used in queer subcultures to describe masculine traits or gender performance.	Pak Nyah	Malaysian term referring to a transman.
CEDAW	United Nation Convention of the Elimination of All Forms of Discrimination against Women	RH	Reproductive Health
Chhakka	Derogatory term for hijra.	RR	Reproductive Rights
Fatwa	In Islam, a religious opinion concerning Islamic law issued by an Islamic scholar.	RTI	Reproductive Tract Infections
FP	Family Planning	Sharia	Islamic law
GOs	Governmental Organisations	SIECUS	Sexuality Information and Education Council of the United States
Hijra	Term possibly of Urdu origin, referring to one who is neither man nor woman. In contemporary queer subculture, they are often referred to as transgender. In the Indian subcontinent, they live in separate communities having distinct social structure and codes, and are mostly intersex or biologically male.	SRH	Sexual and Reproductive Health
HIV	Human Immunodeficiency Virus	SRHR	Sexual and Reproductive Health and Rights
ICPD	International Conference on Population and Development	STD	Sexually Transmitted Diseases
ICPD PoA	ICPD Programme of Action	STI	Sexually Transmitted Infections
IEC	Information, Education & Communication	Transgender	Refers to persons whose gender identity or expression does not match the gender associated with the sex assigned to them at birth.
ILRF	International Labor Rights Fund	Transman	A person who, assigned the female sex at birth, expresses their gender as masculine, boy or man.
NGOs	Non-governmental organisations	Transsexual	A person who changes their physical sex through medical, surgical and/or other procedure(s).
OSCC	One-Stop-Crisis-Centre	Transwoman	A person who, assigned the male sex at birth, expresses their gender as feminine, girl or woman.
Kathoey	Thai term referring to a transwoman or effeminate gay man.	UNData	United Nations Data
Kinnar	Hindi term for hijra.	UNDESA	United Nations Department of Economic and Social Affairs
LGBT	Lesbian, Gay, Bi-sexual and Transgender	UNDP	United Nations Development Programme
LGBTI	Lesbian, Gay, Bisexual, Transgender, Intersex	UNFPA	United Nations Population Fund
Mak Nyah	Malaysian term referring to a transwoman.	VAW	Violence against Women
Meti	Nepali term referring to a transwoman.	WHO	World Health Organisation

Acknowledgements

ARROW TEAM

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- Naripokkho

CAMBODIA

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- Yunnan Health and Development Research Association (YHDRA)
- Shanghai Women's Health Institute
- Department of Women's Rights, Hei Longjiang Women's Federation
- Peking University Women's Legal Aid Center

INDIA

- Academy of Nursing Studies (ANS)
- Centre for Health Education, Training and Nutrition Awareness (CHETNA)
- Centre for Health and Social Justice (CHSJ)
- Rural Women's Social Education Centre (RUWSEC)

INDONESIA

- Women's Health Foundation

LAOS

- National University of Laos

MALAYSIA

- Reproductive Rights Advocacy Alliance Malaysia (RRAAM)
- Federation of Reproductive Health Associations of Malaysia (FRHAM)

NEPAL

- Beyond Beijing Committee

PAKISTAN

- Shirkat Gah

THE PHILIPPINES

- Reproductive Health Rights and Ethics Center for Studies and Training (ReproCen)
- Linangan ng Kababaihan, Inc. (Likhaan)

THAILAND

- Southeast Asian Consortium on Gender, Sexuality and Health
- Centre for Creative Initiatives in Health and Population (CCIHP)

VIETNAM

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INTRODUCTION

Sex and sexuality are contentious issues: the divide between those who advocate for granting greater individual autonomy and those who argue for greater social control is evident at all political levels. To confer rights connected to the issues of sex and sexuality, UN conventions and conferences such as Convention on the Elimination of Discrimination Against Women (CEDAW), Convention on the Rights of the Child (CRC), International Conference on Population and Development Programme of Action (ICPD PoA/ also known as the Cairo conference), the Beijing Platform for Action (BPfA) and the Millennium Development Goals (MDGs) endorsed the concepts of reproductive health, reproductive rights¹ and sexual health.² However the language of 'sexual rights' has not yet gained international acceptance.

Hence, these international documents, particularly the ICPD PoA, do not explicitly state 'sexual rights.' Although 'sexual rights' was written for the first time in the ICPD PoA draft, it was not retained in the final text.³

The ICPD PoA however acknowledges sexual rights when it states that in order to have a safe and satisfying sex life, men and women have "the capability to reproduce and the freedom to decide, if, when and how often to do so..."⁴

The interpretation of what constitutes a 'safe and satisfying sex life' and the conditions that provide for this, include key aspects of sexual rights such as consensual sexual relations, the choice of sexual partners, and the achievement of sexual pleasure. Sexual rights, therefore, are embedded in the ICPD PoA and it is important to acknowledge this.⁵

SELECTION OF COUNTRIES AND INDICATORS

ARROW's SRHR monitoring project spanned 12 countries and 22 partners in Asia. These 12 countries have been identified as the priority countries for ARROW⁶ through its organizational strategic planning process. ARROW has working relationships with NGOs and CBOs operating in the field of sexual and reproductive health and rights (SRHR) in all of these 12 countries.

ARROW, with input and verification from partners, collected and analysed the cross-country indicators. ARROW's Programme Advisory Committee (PAC) recommended trend analysis as useful for monitoring progress.

The review of the ARROW ICPD+5 and ICPD+10

projects started in January 2007 with a review of the methods, processes and outputs of these 2 projects. This led to a refinement of the methods and processes used in the ICPD+15 project as well as the consolidation of the indicator data set.

In November 2007, ARROW held a regional meeting on SRHR research and monitoring where SRHR indicators were chosen, clustered and prioritized. The strategic indicators which were applicable across countries, and for which comparable data was available, were taken into the regional indicator set in order to feed into the regional analysis. Important references for the final consolidated indicator set include: A Framework of Indicators for Action on Women's Health Needs and Rights after Beijing;⁷ ARROW ICPD+10 monitoring indicators;⁸ Women of the World: Laws and Policies Affecting their Reproductive Lives;^{9,10} and WHO reproductive health indicators.¹¹

ARROW'S SRHR MONITORING PROCESS AND OUTCOMES

In 2008, the Asian-Pacific Resource & Research Centre for Women (ARROW) launched a sexual and reproductive health and rights (SRHR) monitoring partnership comprised of 22 national partners across 12 countries in Asia to generate evidence on the progress of governments in the region to the Cairo consensus on the 15th anniversary (the ICPD+15 project).

Monitoring government commitments to international conferences and international covenants is a key activity of non-governmental organisations in holding governments accountable. Especially when progress in the area of sexual and reproductive health and rights is hampered by political hostility, monitoring becomes an essential activity. Monitoring is also a means of highlighting the non-recognition of rights of specific groups and within specific issues.

ARROW and her partners decided that it was imperative to press forward and tackle the 3 big compromises of Cairo: acceptance of privatization of health service provision; negation of issues of sexuality and sexual rights; and an erasure of abortion as a method of family planning.

These three compromises have hampered SRHR advocates, in the long run, of establishing the concepts of the universality of sexual and reproductive rights and of creating universal access to sexual and reproductive health.

From 2008, the national partners and commissioned

researchers studied the topics most crucial to them while ARROW, with input and verification from partners, collected and analysed the data necessary to generate the regional overview, published in October 2009, *Reclaiming and Redefining Rights – ICPD+15: The Status of Sexual and Reproductive Health and Rights in Asia*.

Amongst the national partners, the Southeast Asian Consortium for Gender, Sexuality and Health based in Thailand chose to look at sexuality education and sexual harassment in Thailand while a consultant was commissioned to look at the situation of transgendered people and their rights. This book brings together the regional findings on sexual rights and the papers on sexuality education, sexual harassment our Thailand partners' work on sexuality education and sexual harassment and a commissioned paper on transgenderism. This thematic study series addresses one of the Cairo compromises: sexuality and sexual rights.

FORMAT OF THIS THEMATIC STUDY

Within the Asian context, it was critical to ascribe concrete indicators to the concept of sexual rights to enable a better understanding of sexual rights issues. It was also important to highlight the range of issues that fall under the terminology of sexual rights, in order to help advance the uptake of the concept and language of sexual rights.

The first chapter shares the regional findings for a selection of sexual rights indicators across 12 countries which range from indicators on choice of partners, consensual sexual relations, consensual marriage, traditional harmful practices, sexual violence, adolescents' access to information and services, livelihood, sexual orientation and gender identity.

The second chapter shares the experiences and challenges in trying to introduce and provide comprehensive sexuality education within the Thai context. This will be a critical endeavour: young people form the bulk of the population in many countries across Asia, however few governments provide access to information and services, especially to unmarried youth.

Provision of comprehensive sex and sexuality education by governments continues to lag behind as most consider this as a move which will be unpopular with their respective electorates. The third chapter shares the Thai experiences creating

greater awareness of sexual harassment. Compared to domestic violence and rape, sexual harassment has been little highlighted or documented in many countries. It is pertinent within a regional context where more women are entering the labour market, particularly in the lower economic rungs, and few laws exist to protect their rights.

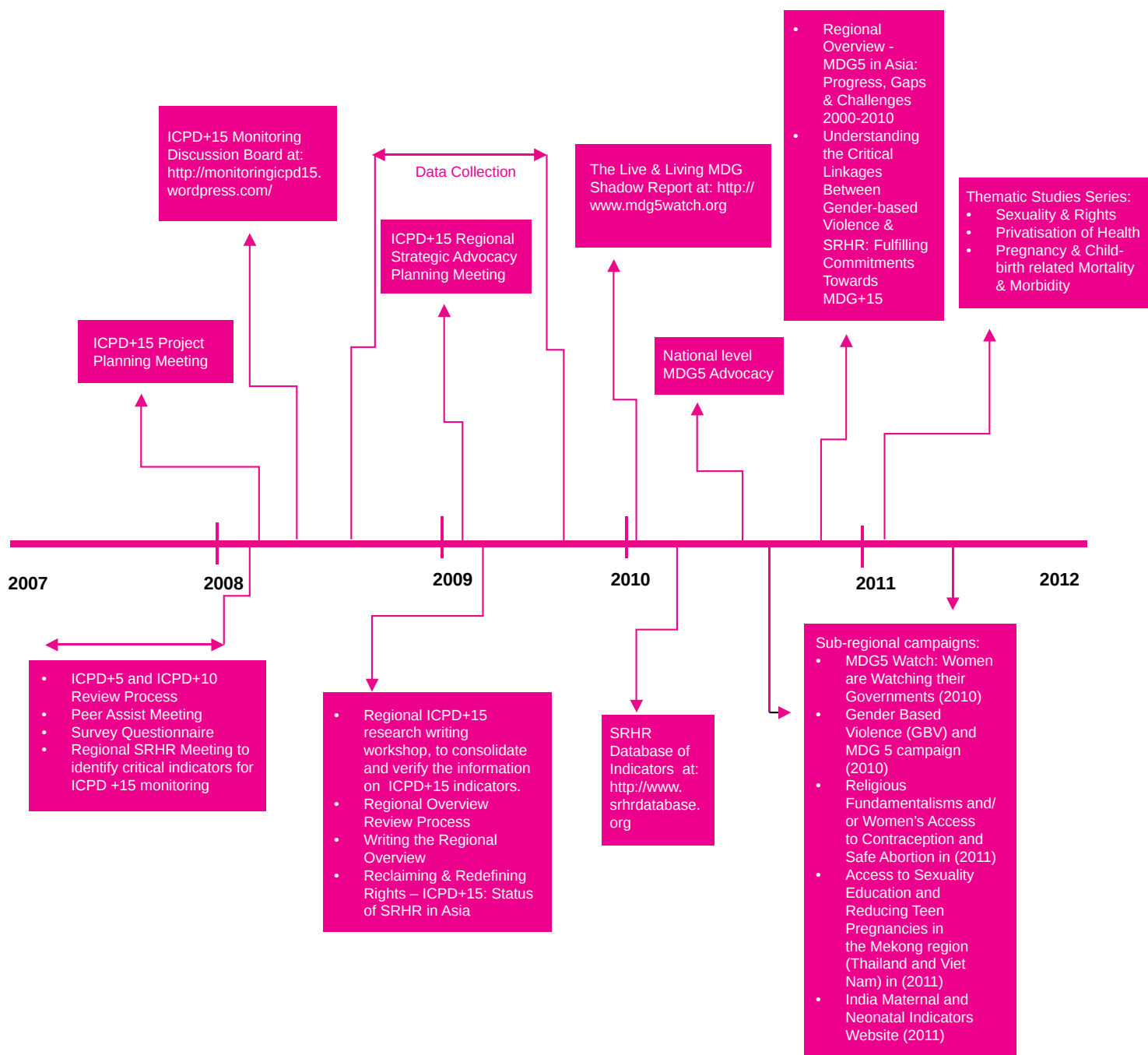
The third chapter shares the Thai experiences creating greater awareness of sexual harassment. Compared to domestic violence and rape, sexual harassment has been little highlighted or documented in many countries. It is pertinent within a regional context where more women are entering the labour market, particularly in the lower economic rungs, and few laws exist to protect their rights to bodily integrity, within the context of work.

The fourth and final chapter shares the consultant-researcher's experiences and conversations with groups of transgendered people across Nepal, India and Thailand. The marginalisation faced by transgendered people is acute and they are vulnerable to many aspects of social exclusions as is shown in this chapter. Yet, transgenderism directly challenges sex and gender binaries as it raises questions on whether sex and gender are ascribed or chosen.

DATA SOURCES FOR THIS THEMATIC STUDY

Data sources for this report are: The Joint United Nations Programme on HIV/AIDS (UNAIDS), Demographic Health Surveys (DHS) or comparable national studies such as family or population surveys, United Nations General Assembly Special Session on Aids (UNGASS) progress reports, Centre for Reproductive Rights, Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) government reports and NGO shadow reports of the respective countries, UN Secretary General's Database on Violence Against Women, United Nations Department of Economic and Social Affairs (UNDESA), WHOSIS Global Database, scientific papers from journals such as Reproductive Health Matters (RHM), Data from the ABAC Poll Research Center on *Survey of Sexual Harassment among Women of Reproductive Age Group*, Data from Bangkok Poll Research Center on *Women in Bangkok and Sexual Assaults*.

The diagram below shows the historical development of ARROW and partners' SRHR monitoring process from 2007-2012.



Endnotes

- 1 While the term 'reproductive health' was first developed by institutions, such as the World Health Organization (WHO), in the early-1980s, the term 'reproductive rights' was initially first used in feminist meetings in the late 1970s and was clearly defined in the International Women and Health Meeting (IWHM) of 1984 as described in Petchesky, R.P. (2003) *Transnationalizing Women's Health Movements*. In *Global Prescriptions: Gendering Health and Human Rights* (pp. 4). London, UK: Zed Books.
- 2 The term 'sexual health' has been defined as early as in 1975 by WHO. World Health Organization (WHO) Technical Report Series Nr. 572. (1975). *Education and Treatment in Human Sexuality: The training of Health Professionals, Report of a WHO Meeting*. Geneva.
- 3 Correa, S; Careaga, G. (2004). *Is Sexuality A Non Negotiable Component of the Cairo Agenda?* Retrieved 26 August, 2009, from Development Alternatives With Women from a New Era (DAWN) Web site: <http://www.dawnnet.org/publications/docs/non-negotiable-2520sexuality-2520aug04.doc>
- 4 Paragraph 7.2. of the ICPD PoA
- 5 Although "sexual rights" as a term has not been established in international agreements, its definition and content were adopted within the human rights framework in the Beijing Platform for Action, Paragraph 96. It is worth noting that even governments expressing reservations in opposition to "sexual rights" used the term in their statements at the closing session of the Beijing Conference.
- 6 The Asian-Pacific Resource & Research Centre for Women (ARROW). (2006). *Strategic Planning Meeting Report (18-20 April 2006)* (Unpublished). Kuala Lumpur, Malaysia: ARROW.
- 7 Abdullah, R. (2000). *Framework of Indicators for Action on Women's Health Needs and Rights after Beijing*. Kuala Lumpur, Malaysia: The Asian-Pacific Resource & Research Centre for Women (ARROW).
- 8 The Asian-Pacific Resource & Research Centre for Women (ARROW). (2005). *Monitoring Ten Years of ICPD Implementation, The Way Forward to 2015: Asian Country Reports*. Kuala Lumpur, Malaysia: ARROW
- 9 The Centre for Reproductive Rights (CRR). (2004). *Women of the World: Laws and Policies Affecting Their Reproductive Lives, South Asia* (pp. 142). New York, USA: CRR
- 10 Centre for Reproductive Rights (CRR); Asian-Pacific Resource and Research Centre for Women (ARROW). (2005). *Women of the World: Laws and Policies Affecting Their Reproductive Lives, East and Southeast Asia*. New York, USA CRR.
- 11 Department of Reproductive Health and Research, World Health Organization (WHO). (2006). *Reproductive Health Indicators: Guidelines for their Generation, Interpretation and Analysis for Global Monitoring*. Geneva, Switzerland: WHO

CHAPTER 1

DEMYSTIFYING SEXUAL RIGHTS: ASCRIBING CONCRETE INDICATORS TO CONTENTIOUS TERMS

By Sivananthi Thanenthiran and Sai Jyothirmai Racherla
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I. INTRODUCTION

Detractors often dismiss 'sexual rights' as terminology which has not been agreed upon by governments within the UN system. Sexual rights issues are seen by many governments as being synonymous with the legalization of homosexuality and same sex marriage. This is a highly limited perspective on sexual rights because the majority of women, who live in patriarchal societies, still continue to struggle for sexual rights. The concept of sexual rights is also so closely intertwined and interlinked with that of reproductive rights so much so that, in some aspects, it is difficult to separate both. In order to achieve desirable SRH outcomes, it is crucial to empower men and women with rights which enable them to be equals² in the public and in the most private spheres of life. It is also important to empower women to exercise their decision-making with regards to sexuality and reproduction.³ It is also imperative to establish rights for women, where those rights may not currently exist, in order to enable women's decision-making capacities.⁴

But what are sexual rights? Are they really so contested?

"Sexual rights embrace human rights that are already recognized in national laws, international human rights documents and other consensus documents. These include the right of all persons, free of coercion, discrimination and violence, to:

- the highest attainable standard of health in relation to sexuality, including access to SRH care services;
- seek, receive and impart information in relation to sexuality;
- sexuality education;
- respect for bodily integrity;
- choice of partner;
- decide to be sexually active or not;
- consensual sexual relations;
- consensual marriage;
- decide whether or not, and when to have children; and
- pursue a satisfying, safe and pleasurable sexual life.⁵

This WHO working definition is wholly consistent with and does not deviate from the principles of the ICPD PoA. It is useful to enunciate and enumerate the separate and different components of sexual rights in order to build the discourse and create support for the language among governments and civil society. This review attempts to do exactly this.

We will ascribe, what we feel to be, important indicators of sexual rights. In order to determine the rights around choice of partner, decision to be sexually active or not, consensual sexual relations

and consensual marriage, we choose to look at the laws and implementation of legal age of marriage and the existence of arranged marriages and forced marriages. As indicators of bodily integrity we look at traditional practices harmful to women and laws on sexual violence and trafficking. As indicators of the rights to the highest attainable standard of health in relation to sexuality, in choice of partner, in consensual sexual relations and to pursue a satisfying, safe and pleasurable sexual life we look at laws around sex work, same sex sexual relations and transgendered people.

All of these, we hope, will demystify the notion of sexual rights through the use of the following indicators, and show issues of sexual rights that need to be addressed by governments: legal age of marriage and the enforcement thereof; arranged/ forced/ child marriage; traditional practices harmful to women; laws against sexual violence – marital rape, rape, and sexual harassment; laws on the trafficking of women; laws on sex work; laws on same-sex sexual preference/ relations/ unions; and transgenderism.

We agree that "[t]he creation of the concept of sexual rights is something we should value as a platform for conversation that may help drive coalition building... While the definition of sexual rights in Cairo has limitations, we need to value it. It was the feminist community working at the UN level that crafted this incredible concept of sexual rights that goes beyond identity politics, allowing us to address issues of violence, race and disease prevention and at the same time issues of pleasure, autonomy and self-determination."⁶ We also feel strongly that 17 years after ICPD, we need to realize and recognize the value that sexual rights brings to facilitate the achievement of the ICPD PoA and the SRHR community.

II. SEXUAL RIGHTS AROUND CHOICE OF PARTNER, CONSENSUAL SEXUAL RELATIONS AND CONSENSUAL MARRIAGE

In a number of Asian countries, basic decisions such as choosing one's own life partner, and to engage in consensual sexual relations and consensual marriage is not a given. Empowering girls and young women to be able to make these decisions and to implement these decisions is an important aspect of sexual rights. In this section, we look at indicators such as the legal age of marriage and its enforcement, and the existence of forced marriage and child marriage.

i. Legal age of marriage and the enforcement thereof

Table 1: LEGAL AGE AND MEDIAN AGE AT MARRIAGE

COUNTRY	WOMEN	MEN	REMARKS	MEDIAN AGE AT MARRIAGE FOR WOMEN (AGE GROUP 25-49)
BANGLADESH (2004)	18	21		15
CAMBODIA	18	20	If an under aged girl becomes pregnant, with the consent of parents/guardian, marriage can be requested	20.1
CHINA(2003)	20	22		
INDIA(2003)	18	21		17.4
INDONESIA	16	19		19.8
LAO PDR (1990)	18	18	In special and necessary cases, age less than eighteen years but no less than fifteen years of age.	
MALAYSIA	18	18	16 for women and 18 for men under Muslim law, Individuals aged 18–21: written parental consent.	
NEPAL (2003)	20	20	18-requires parental consent	17
PAKISTAN (2007)	16	18		19.1
PHILIPPINES	18	18	Individuals aged 18–21: written parental consent and must undergo marriage counselling; 21–25: parental “advice.	22
THAILAND	17	17		
VIETNAM	18	20		

Source: UN Data: A World of Information (available at <http://data.un.org/DocumentData.aspx?id=126>)
 Median age at first marriage source: Macro International Inc, 2009. MEASURE DHS STATcompiler.
 Website: <http://www.measuredhs.com>, accessed September 20 2009.

Table 1 above shows the legal age of marriage in all 12 countries. In five of the 12 countries, the legal age of marriage is the same for both men and women, but in the other seven countries, the legal age of marriage of women tends to be lower than that of men. Raising women’s legal age of marriage to equal that of men, will enable women to spend time in education and labour, both of which will have positive correlations on their SRH and their empowerment.⁷ The legal age of marriage for women is below 18 in Indonesia, Pakistan and Thailand, and it is interesting to recollect that Article 1 of the Convention on the Rights of the Child, defines a child as “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.”⁸

Different regulations may exist for different communities within one country: in Malaysia, and Indonesia under Muslim law, for example, the age of marriage is 16 for women and 18 for men.

There are also pre-conditions for parental approval in some countries. In Malaysia, for example, individuals aged 18–21 need written parental consent to get married. In the Philippines individuals aged 18–21 need written parental consent and must undergo marriage counselling, and individuals aged 21–25 need parental advice before getting married. In Nepal, individuals aged 18 -20 also need parental consent.

Despite the existence of a legal minimum age,

girls may be getting married very early. This is evident in the country DHS data on median age at first marriage. In Bangladesh, India and Nepal the median age at first marriage for women aged 25-49 is lower than the legal age of marriage.

In other countries, alternative sources of information point to marriages at young age that are not always consensual. In Cambodia, under special circumstances, for example, when a girl becomes pregnant, marriage can be requested with the consent of parents or guardians. In the context of Cambodian society and its culture of censuring children born outside marriage, it is very likely that young pregnant girls, will be forced to get married.⁹

In Thailand, if a man “mistakenly has sexual relations with a girl over age 13 but under age 15, with the consent of the girl or her parents, the Criminal Law allows the Court to permit the couple to marry without the man being prosecuted.”¹⁰

In the Philippines, under the Civil and Commercial Code, betrothal can occur only when both the man and the woman are at least 17 years of age; children must obtain the consent of their parents or guardians for the betrothal, and only men can initiate betrothal.¹¹

In Pakistan, the legal age of marriage, according to the Child Marriage Restraint Act, 1929, is 16 for girls, and 18 for boys. This law is inadequately enforced. The religious lobby is of the view that a girl’s puberty is indicative of her maturity, a perspective that carries weight in many instances; *jirgas* force little girls to be exchanged as ‘compensation’ between warring groups or tribes.¹² The Human Rights Commission of Pakistan in its 2006 annual report also noted a rise in the number of child marriages while the Global Gender Gap Report said that “21% of girls aged 15-19 were married, divorced or widowed.”¹³

As of now, most of the laws around the legal age of marriage are constructed within a heteronormative framework. It would be interesting to look at Nepal in the coming years to see if similar age structures would apply to consent for same-sex marriages.¹⁴

ii. Marriage

ii.a Arranged and forced marriages

This is an important aspect which can indicate whether women are able to ‘choose their partners’ and enter into consensual marriages. The one factor that differentiates arranged marriage from forced marriage is the factor of ‘consent’ which exists in the former but not in the latter. Although not all arranged

marriages are forced, they are almost always governed by limited choice in partners and family and/ or group decision-making, rather than individual decision-making.

In South-east Asia, the practice of arranged marriage is uncommon in Malaysia, Philippines and Vietnam but common in Cambodia and Indonesia.

Vietnam takes a further step: arranged marriage is not legally accepted as Article 9 of the Marriage and Family Law stipulates that “the marriage is voluntarily decided by the man and the woman; neither partner is allowed to force or deceive the other; nobody is allowed to force or obstruct their marriage.”¹⁵ However, in reality, arranged marriages do happen between poor girls mostly from the south of Vietnam and men from Taiwan and Korea.

In Cambodia, daughters have to live under the strict direction of parents and consequently have little right to protest against arranged marriages. The selection of a partner for marriage is subject to the arrangement of the parents. 18% of women met their husbands for the first time on their wedding day. In more than half of the cases, the woman had no say in who she married.¹⁶

In Indonesia, arranged marriage is also part of the cultural tradition in many parts of the country,¹⁷ although this practice may not be as prevalent today as it was in the past. There is evidence that it continues to some extent, especially amongst rural communities.

In South Asia, both arranged marriage and forced marriage have been documented. Arranged marriages are very much prevalent in India. Conventionally, in India the normative framework of the right to marry does not reflect women’s autonomy and decision making in the realm of relationships per se and, more specifically in terms of marriage, the different dimensions of the right to choose if, when, and whom to marry. Digression from this leads to sanctions and violations by the family and the community reinforcing the pressures with regards to marriage whether child marriage, early marriage, practices of forced marriage (forcing a person to marry per se or marry a person of the family’s choice, denying a person’s right to marry of her own free will, a person of her own choice), adultery, and bigamy.¹⁸ There is an overall agreement that this practice was essentially a way of uniting and maintaining the differences between the rich and the poor, as well as those between the various different castes. Recently, the Indian government has come up with an innovative approach - offering people cash incentives for marrying into a lower caste.¹⁹

In Pakistan, forced marriage is common. A woman may also be forced to marry a different person if she

expresses a wish to marry someone of her choice. This is also linked to honour killings, since many couples are forced into hiding, threatened and killed, because they have chosen to marry each other.²⁰

There are also documented discriminatory traditions in Pakistan, rooted in patriarchy and feudalism, such as the iniquitous '*jirga*' system (justice by village elders, usually male); *watta satta* (exchange marriage); *vani* (bride price); *pet likhai* (promised in marriage while still in the mother's womb); and *karo kari* ('honour' killing) which are still prevalent. There is also a practice of marrying girls to the Quran, practiced by a few feudal families. This is done primarily to keep property within the family, and these girls are then forced to lead lives of complete seclusion.²¹

ii.b. Child marriage

Child marriage is a violation of many aspects of rights including of sexual rights. Child marriage is more prevalent in South Asia than in South-east Asia. India, according to the CEDAW shadow report, still operates against a "backdrop of feudalistic and patriarchal cultural norms and institutions, regardless of law, child marriages are still being practiced."²²

In Pakistan, it is common to marry girl children to men who are often much older and already married. Girls may be offered in exchange for loan repayment and to settle disputes between families.²³ The lack of mechanisms and procedures to ensure effectual registration systems of births, marriages, divorce and deaths enables families to marry off under-age daughters despite legal prohibitions against child marriages. Child marriage is a serious issue illustrated by the fact that in the last two years, at least 75% of marriages taking place in the rural sites of District Rajanpur were childhood marriages. Deepening poverty seems to be increasing the sale of women, in some cases as child-brides, especially in Southern Punjab and Sindh.²⁴

In Bangladesh, one in three adolescents has already begun child-bearing.²⁵ This is despite the Child Marriage Restraint Act 1929 which states that girls cannot be married until the age of 18 and boys, 21. These differing legal ages of marriage are superficially discriminatory as large numbers of girls are married before the legal age.²⁶ Additionally, it appears that even this discriminatory law has had little impact on the prevalence of early marriage in Bangladesh as it is estimated that half of women there are younger than 18 when they marry. The lack of birth registration and lack of awareness of the detrimental effects of early marriage make enforcement of this law difficult.²⁷

In Indonesia, child marriages²⁸ continued to be quite prevalent, reaching as high as 16% in West Java

(one of Indonesia's 33 provinces), according to the 1998 National Social Economic Survey.²⁹

In China, anecdotal evidence suggests that in rural areas and among ethnic groups girl child marriage is still practised, but this is rare and not the norm.

III. SEXUAL RIGHTS AROUND BODILY INTEGRITY

In this section we choose to look at some well-known and established indicators of bodily integrity and sexual autonomy from a sexual rights lens: traditional practices harmful to women and laws on sexual violence and trafficking.

i. Traditional practices harmful for women

Certain traditional practices which are harmful for women and girls seem to be continuing in the region. Among these are female circumcision and certain forms of violence against women which seem unique to the region.

i.a. Female Circumcision

Female circumcision seems to be more prevalent certain parts of the region. There seems to some correlation to the practice of certain schools of Islam (and some schools of Islam completely forbid it) but this is largely unclear. The practice of female circumcision seems more widespread in Indonesia, reduced in Malaysia, low in Pakistan and completely non-existent in Bangladesh. There has been no comprehensive research done on the subject and there are only small studies hence the extent is not fully understood. There are many variations of the practice itself: from the symbolic prick of the needle (which is even recorded in the Philippines) to a 'small snip' of the clitoris.

Female circumcision is usually a symbol of patriarchy and the meaning attached to it ranges from being a symbol of cleansing of primordial sin to a symbol of suppressing sexuality and desire of women.

In Indonesia, a survey covering 1694 households in eight different sites to represent the major ethnic groups of Minang, Sunda, Banten, Jawa, Madura, Bugis, Makassar, and Gorontalo, found both male and female circumcision as universal practices. Among children aged 15-18, 86% of the girls and 100% of boys were reported circumcised. The survey found that female circumcision practices are done without the consent of the girl in most cases, and exhibit no established health benefits or clear

religious mandates. However, the continuation of female circumcision is strongly supported by the communities: 92% of the families surveyed are inclined to perform female circumcision for both their daughters and female grandchildren.³⁰ In August 2007, the CEDAW committee recommended, to the government of Indonesia, to speedily enact legislation prohibiting female genital mutilation and ensure that offenders are prosecuted and adequately punished. The government was also urged to develop a plan of action and undertake efforts to eliminate the practice of female genital mutilation, including implementing public awareness-raising campaigns to change the cultural perceptions connected with female genital mutilation, and provide education regarding the practice that has no basis in religion as a violation of the human rights of women and girls.³¹

i.b. Other Discriminatory Practices

In Nepal, various forms of harmful practices have been identified and documented including: violence based on traditional Hindu practices of *Deuki* and *Jhuma* – where young girls are offered to the temple and then forced into prostitution; *Badi* – a caste of traditional prostitutes; *Chhoupadi* – isolation outside the house during menstruation; and violence based on superstition, such as torture for alleged witchcraft. “The 1992 Children’s Act discourages the practice of *deuki* by punishing offenders with imprisonment for five years. However, there is no other legislation that addresses these forms of violence against women.”³²

In Cambodia, Vietnam, Lao PDR and Thailand, female circumcision, child marriages and honour killings are not common. However, other harmful practices exist with regards to women’s SRH such as the practices of vaginal repair and tightening.

ii. Sexual violence against women

Sexual violence is defined as “any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed, against a person’s sexuality using coercion, by any person regardless of their relationship to the victim, in any setting, including but not limited to home and work.”³³ In this review we will specifically look at legislation, across the 12 countries, on rape, marital rape and sexual harassment. Trafficking of women and children is addressed as a separate indicator.

ii.a. Rape

All countries surveyed have laws against rape and these usually exist within the penal code or the criminal code. However, many barriers remain in

being able to provide justice to victim-survivors of rape. Consent is the fine line that divides rape from consensual sex and legal definitions in all countries use non-consensual and forced vaginal penetration as definitions of rape. For example, in Nepal, rape as described in the *Muluki Ain* is an act of sexual intercourse with a woman without her consent or with the use of force, threats, fear, or immoral enticement. The law does not further explain the scope or definition of rape. However, judicial interpretations have limited the definition of rape to vaginal penetration. Nepalese courts have strictly interpreted the non-consent requirement: if a woman is raped against her will but does not resist the sexual advances of the rapist, the act does not amount to rape.³⁶

These two conditions of ‘consent’ and ‘forced vaginal penetration’ convey a ‘patriarchal’ interpretation of the crime. One, consent is generally difficult to establish. It is particularly more problematic with women who are perceived to be transgressing society’s acceptable expressions of sexuality for example, young women who have had consensual sexual relations and sex workers. Two, the limiting of rape to vaginal penetrative sex fails to recognize that rape can also be a crime against children, men, including men with same sex sexual preferences, and transgendered people. It is important to expand the definitions of rape to include all possible acts and groups that are affected.

In many countries, such as China, Cambodia, India, Nepal, Malaysia and Indonesia laws on rape have also been crafted around the age of consent. For girls below the age of consent, the crime is that of statutory rape and carries a heavier penalty. Some rapes are considered worse than others. For example in China, harsher penalties are imposed if rape occurs under several circumstances, including: the rape of a woman “before the public in a public place;” the rape of a woman by “one or more persons in succession;” and causing the victim serious injury, death, or other serious consequences.³⁷

In all countries, except Malaysia, the police station was the first point of entry for victim-survivors of rape. The police culture, across all countries is problematic for rape victims. In India³⁸ and Cambodia³⁹ it has been noted that the police very often ask difficult questions which demonstrate the discriminatory attitudes and perceptions about women. Malaysia, however, provides the One-Stop-Crisis-Centre model for women victims of violence (including sexual violence) within the hospital’s emergency department. This was done as early as 1993 and a police desk is available at the hospital itself. The OSCC model was first fostered as a partnership with women’s groups, namely the Women’s Aid Organisation (WAO) and the All Women’s Action Society (AWAM), and then later

Table 2: Anti-Rape Laws in 12 countries in Asia

COUNTRY	ANTI-RAPE LAWS
BANGLADESH	The penal code and the Prevention of Oppression Against Women and Children Act (2000) provide the legal framework for prosecuting crimes of rape
INDIA	Indian Penal Code and the amendments in 1983 to rape provisions in the Indian Penal Code
NEPAL	Rape is described in the Muliki Ain as an act of sexual intercourse with a woman without her consent or with the use of force, threats, fear or immoral enticement.
PAKISTAN	The offence of rape (Zina bil jabr) is dealt under the Offence of Zina (Enforcement of Hudood) ordinance, 1979
CHINA	Rape, whether committed by violence, coercion, or other forcible means, is punishable by a minimum of 3 years and a maximum of 10 years imprisonment.
MALAYSIA	The penal code defines and prescribes the punishments for rape, while the Criminal Procedure Code and the Evidence Act 1950 provide the procedural and evidentiary rules for the prosecution of rape. In 2007, this was amended to include marital rape.
PHILIPPINES	Anti-Rape Law of 1997, which amended the Revised Penal Code
THAILAND	Penal Code governs the crime of rape
VIETNAM	The Penal Code provides the legal framework for prosecuting crimes of rape
LAO PDR	Rape is crime under the Criminal Law 1992. 3-5 years imprisonment; if victims are 15-18 years – 5-10 years imprisonment; gang rapes, victims below 15 years and if rape disables victims 7- 15 years.
INDONESIA	Rape is a crime under the criminal code.
CAMBODIA	Rape is a crime under the UNTAC Criminal Code (Art. 33) and also under the Law on Aggravating Circumstances of the Felonies (Art. 5). There is no specific government policy on rape in Cambodia.

Source: *Women of the World: Laws and Policies Affecting Their Reproductive Lives (East and South-east Asia³⁴, and South Asia³⁵) For Cambodia, CEDAW shadow report.*

with the police force and Welfare Services. Through the advocacy efforts of WAO and AWAM, the OSCC went from being a service offered at one hospital to being a policy of the Ministry of Health. The women's groups lobbied for the ministry to include a budget for the OSCC and gender training, and for the service to be recognised as a right for women. By 2006, the OSCC had already been introduced at 104 out of the 134 hospitals in Malaysia. Currently, there are even plans to start the OSCC at government-run polyclinics which provide emergency medical services to rural communities. The services could also be strengthened through continuous gender-

sensitisation of health personnel.⁴⁰ However, the coverage of the OSCC in Malaysia is limited to the public hospitals only and not replicated in the private hospitals. The hospital entry point may be easier for victims, but hospital staff, too, are in need of gender-sensitisation and training to handle victim-survivors of rape.

Young women are particularly vulnerable to rape as evidenced in Bangladesh and India. The Naripokkho Pilot Study on Violence against Women found that rape was the second most common form of violence in police First Information Reports of violence

Table 3: Anti-marital rape laws in 12 countries in Asia

COUNTRY	ANTI- MARITAL RAPE
BANGLADESH	--
CAMBODIA	Law On The Prevention Of Domestic Violence And Protecion Of Victims (2005)
CHINA	--
INDIA	Within The Domestic Violence Act (2005)
INDONESIA	Within Law No. 23/2004 Regarding Elimination Of Household Violence
LAO PDR	---
MALAYSIA	Part Of Penal Code (Amended 2006)
NEPAL	Act For Gender Equality 2006
PAKISTAN	---
PHILIPPINES	Anti-rape Law 1997
THAILAND	Criminal Code Amendment Act No 19 B.e. 2550 (2007)
VIETNAM	Within Domestic Violence Law (2007)

Source: The UN Secretary-General's database on violence against women available online: <http://webapps01.un.org/vawdatabase/home.action>. Partner input during the Research Writing Workshop held by ARROW in Kuala Lumpur, Malaysia, in March 2009 : The Philippines and Malaysia and Indonesia

against women as well as the form of violence for which women are admitted to hospital for treatment. Documentation shows that the majority of rape victims were young: 66% of total victims are below 25 years of age; and 39% were below 15 years of age indicating the extremely vulnerable position of girl children in Bangladesh.⁴¹ In India, "8.9 % of the rape victims in 2004 were under 15 years of age, while 11.0% were teenaged girls (15-18 years)." Moreover, this is not an exact picture of the gravity of the situation as a large number of such cases simply go unreported because of the social stigma attached to the crime.⁴²

Incest is one form of sexual violence against girls and young women. In Malaysia, there has also been a slight increase in the reporting of incest - incest cases numbered 213 in 2000 and 218 in 2005 according to the Ministry of Women, Family and Community Development in 2006.⁴³

Especially brutal forms of rape such as gang rapes

and rapes followed by murder were also highlighted in Bangladesh: in 2002, a total of 1434 cases of rape were reported: 35% were gang rapes and 10% were rapes followed by murder.⁴⁴

ii.b. Marital rape

Within the category of rape, marital rape has been highly contested in many countries. In Cambodia, India, Thailand, Indonesia and Vietnam, the marital rape provision is found within the Domestic Violence act. The Philippines has a separate anti-rape law which was passed in 1997, which covers marital rape. In Malaysia, marital rape is part of the penal code (amended in 2007 which made marital rape a crime). In Nepal marital rape is part of the gender equality bill and termed 'emotional violence.' Four of the 12 countries do not have any anti-marital rape provisions.

It is interesting to note that only five countries

capture 'marital rape' as a dimension of sexual violence within marriages and within anti-domestic violence acts. The Philippines, Nepal and Malaysia choose to capture 'marital rape' under the rape law, the penal code and the gender equality bill respectively. This is probably in deference to a prevailing cultural perception that wives are supposed to submit to their husband's wishes in matters of sexual relations and hence, there is no such concept of 'rape' within marriage or 'rape' being considered a form of violence within the marriage.

This is also the main reason that Bangladesh, China, Lao PDR and Pakistan do not have legal provisions for marital rape. This issue has created a continuing discussion within many societies in this region. The ICPD PoA Para. 7.3 talks of the rights of individuals and couples "to make decisions concerning reproduction free of discrimination, coercion and violence." However, the blind spot is that within the institution of marriage and family, not all sexual acts are those which are intended to result in 'reproduction.' It is important to read the paragraph in the broadest possible way to protect women, as individuals who need to be consenting partners in all sexual acts even within the institution of marriage and family.

Moreover, in some countries such as India, although there are provisions for marital rape, there are also provisions against it: "Sexual intercourse by a man with his own wife, the wife not being under 15 years of age, is not rape," according to the section 375 of the Indian Penal Code. In other words, forced sex within marriage is outside the scope of the offence of rape. The term 'rape' itself is a patriarchal construct, where the offence is understood to be the plundering of property of a man/society/community and not a violation of the right to bodily integrity of the woman.⁴⁵

However, very recently in Malaysia, a man was jailed for 5 years for forcing his wife to have sex with him. This is the first case "under a new provision in Malaysian Islamic family law introduced in 2007, making it an offence for husbands to hurt their wives or put [them] in fear of death in order to have sexual intercourse."⁴⁶

ii.c. Sexual Harassment

Another important aspect of sexual violence is sexual harassment and in this review we will look at sexual harassment in the workplace. Anti-sexual harassment provisions exist in Bangladesh and Cambodia, and are part of the labour law in Malaysia and in Thailand. Only the Philippines has an anti-sexual harassment act. No such laws exist in China, India, Indonesia, Lao PDR and Vietnam.

The commitment of governments in the region in recognizing sexual harassment as a form of violence against women is greatly reduced.

In the Philippines, trends in sexual harassment show that "from 1994 to April 2000, the committee received 38 complaints. A total of 15 respondents were dismissed from the service; seven were suspended for periods ranging from three months to one year; and two were acquitted. Fourteen of the cases were dismissed for various reasons, including lack of prima facie case, forum shopping and desistance of complaint. As of 2002, there were 40 cases of sexual harassment filed. Of these, 27 cases were decided in favour of complainants: 17 perpetrators were dismissed from service while 10 were suspended."⁴⁷ The Anti-Sexual Harassment Act of 1995 in the Philippines, prohibits all forms of sexual harassment in employment, education, and training environments; sexual harassment is committed when a person in a position of power, influence, or moral authority over another person in such an environment demands, requests, or requires any sexual favour from the other, regardless of whether that favour is accepted.⁴⁸

In Malaysia, the reporting of sexual harassment cases at the workplace reduced from 112 (2000) to 68 (2005).⁴⁹

In Thailand, "sexual harassment against women both physical and verbal also continues in offices, factories, public places and among domestic workers, most of whom have not been treated fairly by employers."⁵⁰

In India, in 1998, the National Commission for Women (NCW) produced a Code of Conduct for the Workplace that clearly codified the requirements of the *Vishakha* judgment. The code expands the definition of sexual harassment laid out in *Vishakha*, and clarifies the employer's responsibility to address sexual harassment in the workplace.

In August 2001, the NCW set up a group of civil society activists, and in consultation with these experts and several women's rights activists, designed a first draft of the Bill. This draft was submitted to the Ministry of Human Resource Development, Department of Women and Child Development, which made amendments to the Bill and, in turn, invited suggestions from the public. The draft was found to be flawed, and in November 2004, a number of organisations working on the issue of sexual harassment met in Mumbai and drafted an alternative Bill.⁵¹ A survey conducted by Sanhita, a Kolkata based women's group on sexual harassment at the workplace revealed that a large number of women faced some form of sexual harassment at the workplace, while an even larger number work under the threat or perpetual fear of being sexually

Table 4: Anti-sexual harassment laws in 12 countries in Asia

COUNTRY	ANTI-SEXUAL HARASSMENT
BANGLADESH	Labour Code 2006
CAMBODIA	Article 172 Of The Labour Law 1997 (Law)
CHINA	---
INDIA	---
INDONESIA	---
LAO PDR	---
MALAYSIA	Code Of Practice On Prevention Of Sexual Harassment At Workplace (1999)
NEPAL	Constitutional Provision (2007) Act For Gender Equality 2006
PAKISTAN	Protection against Harassment of Women at the Workplace Act 2010
PHILIPPINES	Anti-sexual Harassment Act (1995)
THAILAND	Labour Protection Act (Amended 2008)
VIETNAM	

Source: The UN Secretary-General's database on violence against women available online: <http://webapps01.un.org/vawdatabase/home.action> Partner input: The Philippines and Malaysia and Indonesia

harassed.⁵² In 2004, Lawyers Collective and other CSOs formulated a draft Bill on sexual harassment

In Nepal, there is no law addressing all forms of sexual harassment. However, some aspects of sexual harassment are dealt with in provisions of the *Muluki Ain*. Any man who touches the body of a woman other than his wife, or a girl above the age of 11, with the intention of having sexual intercourse is liable for to up to one year of imprisonment, a fine of up to Rs 500 or both. Additionally, the seduction of a woman with the intention of sexual intercourse is punishable with six months to two years' imprisonment, a fine of Rs 500–6,000 or both. There is no specific law on sexual harassment in the workplace.⁵³

ii.d. New and emerging forms of sexual violence

New emerging forms of violence include harassment of women via email and mobile phones which include sending their nude photographs to the public in order to discredit and shame them. This is almost always (thus far) perpetrated by jilted suitors and ex-partners. Many infamous cases have been documented in the Malaysian media such as the case of a nurse, whose spurned suitor circulated nude photographs of her on the internet.⁵⁴ Another infamous Malaysian case is that of an attempt to

discredit a young woman lawmaker by posting demeaning photographs of her, and demanding her resignation.⁵⁵ Anecdotal evidence suggests that such emerging forms of violence are increasing and there is currently very little retribution and no legal curbs for the perpetrators of these crimes. In these cases, very often, the media also passes judgement on acceptable and unacceptable forms of sexuality – especially for young women – which is also problematic and worsens the situation for the victims. Countries such as Thailand, the Philippines, Indonesia, China, Bangladesh, India and Pakistan have some form of laws on cyber crimes and electronic crimes; however violence against women has not been integrated into these laws as their current focus is fraud and terrorism.^{56 57}

It is also crucial to note that the data collected on violence against women are not disaggregated by women, men and transgender. In analyzing violence as a manifestation of unequal power relations, we must recognize that women are not the only group that suffers from unequal power relations in any society. Violence does occur against gays, lesbians and bisexuals (GLB) and transgendered people, but this is not documented statistically. GLB may often stay silent about their sexual orientation for fear of discrimination and violence. GLB may also face increased 'violence' and 'violations' from even conservative health providers. An extreme case of

this has been documented the Philippines where a man had a canister stuffed up his rectum by a male sex worker. When he went to hospital, his experience was recorded in the newspapers as a “rowdy surgery ... where the medical personnel joked about the misery of a patient while the procedure was filmed and later posted on the Internet.”⁵⁸ These are the types of experiences which prevent sexual minorities from seeking treatment from service providers and which in many cases, constitute a form of violence.

Radhika Coomaraswamy, SRVAW, also supports such a perspective when she notes that “gender-based violence ... is particularly acute when combined with discrimination on the basis of sexual orientation or change of gender identity. Violence against sexual minorities is on the increase...”⁵⁹ Legal recourse and service provisions for cases of violence are all the more difficult for people

of diverse sexual and gender identities in all 12 countries.

iii. Trafficking

Anti-trafficking laws are one area where all countries have provisions in place. The legal definition of trafficking is taken from the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children:

a) ‘Trafficking in persons’ shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose

Table 5: Anti-Trafficking laws

COUNTRY	ANTI-TRAFFICKING
BANGLADESH	Suppression Of Violence Against Women And Children Act (2000)
CAMBODIA	Law On Suppression Of Human Trafficking And Sexual Exploitation (2008)
CHINA	Amendments To Penal Code 1997 Regarding Trafficking
INDIA	Article 23 Of The Constitution Anti-trafficking Law (1956)
INDONESIA	Law On Anti-trafficking (2007)
LAO PDR	Law On The Development & Protection Of Women (2004)
MALAYSIA	Anti-trafficking In Person Act (2007)
NEPAL	Human Trafficking Control Act (2007)
PAKISTAN	Prevention And Control Of Human Trafficking Ordinance (2002)
PHILIPPINES	Anti-trafficking In Person Act (2003)
THAILAND	Prevention And Suppression Of Human Trafficking Act B.e. 2551 (2008)
VIETNAM	Constitutional Provision, Penal Code (1992)

Source: The UN Secretary-General's database on violence against women available online: <http://webapps01.un.org/vawdatabase/home.action>. Partner input: Philippines and Malaysia and Indonesia

of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph

(a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

c) The recruitment, transportation, transfer, harbouring, or receipt of a child for the purpose of exploitation shall be considered 'trafficking in persons' even if this does not involve any of the means set forth in subparagraph (a) of this article;

d) 'Child' shall mean any person under 18 years of age."⁶⁰

Cambodia, India, Indonesia, Malaysia, Nepal, the Philippines and Thailand have specific laws on trafficking. Lao PDR covers trafficking in the law on development and protection of women; in China it is part of penal code; in Bangladesh it is part of the Suppression of VAW of women and children and in Vietnam it is covered under a constitutional provision and the penal code. In Pakistan there is an Ordinance on trafficking – the Prevention & Control of Human Trafficking Ordinance which comes under the Federal Investigation Agency.⁶¹ In India, the constitution expressly prohibits the traffic in human beings for certain forms of forced labour under article 23.⁶² The Indian Penal Code also contains provisions related to trafficking of persons and other offenses. It imposes criminal penalties for kidnapping or abduction for various purposes, buying or selling a person for slavery, buying or selling a minor for prostitution, procuring a minor girl, and rape.⁶³ This includes internal and external trafficking for the purposes of marriage, sexual exploitation and labour.

Although the laws seem to be in place, alternative documentation suggests that enforcement and implementation seem to be questionable.

Despite the legislation in China, evidence shows that trafficking of girls and young women for sexual and labour exploitation occurs. Trafficking for marriage and sexual exploitation is expected to increase because there are many more males than females in many age groups (the sex ratio at birth is increasingly male).⁶⁴

In India, evidence shows that trafficking of girls and young women for sexual exploitation and other abusive purposes is rampant. The incidence of intra-country trafficking is very high as one study in six metropolitan cities in India suggests 94% of

trafficked women are from rural India and from lower socio-economic strata.⁶⁵

In Nepal, government sources reported 110 cases of trafficking in 1998–99. However, other sources report as many as 35% of girls are trafficked for prostitution from Nepal to neighboring countries.⁶⁶

Pakistan is a source of transit and destination for victims of severe forms of trafficking. Women and girls are trafficked into Pakistan for commercial exploitation, bonded labour and domestic servitude. Pakistan is one of the major destinations for trafficked women and girls and also a transit point into the Middle East.⁶⁷ Trafficking and prostitution continue with the connivance of the police and this is evidenced during raids on brothels, where women and children are arrested and the pimps and male agents are spared.⁶⁸

Vietnam, seems to show progress in the implementation of anti-trafficking practices. As reported by the police from provinces and cities, the police forces at all levels have disclosed and arrested thousands of trafficking cases with thousands of traffickers in women and children (both inside and outside the country). From 1998-2002 alone, the police and border guard forces at all levels quashed 921 cases with 1,807 traffickers in children and women.⁶⁹

IV. SEXUAL RIGHTS OF ADOLESCENTS TO THE HIGHEST ATTAINABLE STANDARD OF HEALTH IN RELATION TO SEXUALITY

As indicators of the rights to the highest attainable standard of health in relation to sexuality, in choice of partner, in consensual sexual relations and to pursue a satisfying, safe and pleasurable sexual life we look at adolescent sexual rights.

In this review we are focusing on unmarried adolescents, as access to information, education and services is especially problematic for this group. Theoretically, contraception and abortion are considered core reproductive health components, but for unmarried adolescents they not only ensure sexual autonomy but also sexual health. Within this area, the indicators we will examine are availability of sex and sexuality education and service provision for adolescents as their rights to the highest attainable standard of health in relation to sexuality, including access to SRH care services; to seek, receive and

impart information in relation to sexuality; to sex and sexuality education; and to decide to be sexually active or not.

The World Health Organization (WHO), defines adolescents as the 10-19 age group, and in general terms this period is considered a time of transition from childhood to adulthood, during which young people experience changes following puberty, but do not immediately assume the roles, privileges and responsibilities of adulthood.

The ICPD PoA acknowledges that this population group has sexual and reproductive health (SRH) needs that must be addressed. It urges the governments to address adolescent SRH issues, including unwanted pregnancy, unsafe abortion and sexually transmitted diseases, including HIV/AIDS, through the promotion of responsible and healthy reproductive and sexual behavior, including voluntary abstinence, and the provision of appropriate services and counselling specifically suitable for that age group.⁷⁰

There are two clear strains of thinking about adolescents in the 12 countries surveyed. In South Asia, where the age of marriage is rather low, adolescents are very often married and their rights to services are recognized within this framework. In South-east Asia, where the age of marriage is comparatively higher, adolescent sexual activity is often perceived as being outside the framework of marriage. As SRH services have been so often subsumed within the framework of reproduction, access to these services and to information becomes problematic for adolescents. In this review we will focus mainly on unmarried adolescents simply because, for this group, access to contraception and abortion, in theory, core reproductive health components, helps ensure sexual autonomy. We will focus on their access to information, education, and services.

i. Sex education and Sexuality education within the national education curriculum

Sex education is defined as the basic education about reproductive processes, puberty and sexual behaviour. Sex education may include other information, for example about contraception, protection from sexually transmitted infections and parenthood.⁷¹ Sexuality education is defined as education about all matters relating to sexuality and its expression. Sexuality education covers the same topics as sex education but also includes issues such as relationships, attitudes towards sexuality, sexual roles, gender relations and the social pressures to be sexually active, and it provides

information about SRH services. It may also include training in communication and decision-making skills.⁷²

Progress in providing sex education, in the 12 countries, is uneven. In fact there are vast differences in the interpretation of what constitutes sex/ sexuality education among and within countries. Some governments have already begun to address incorporating sex education into the education curriculum. In addition to this, the scope and coverage of sex education curriculums differ significantly within the countries. The current emphasis seems to be on biology rather than health and rights. In the 12 countries, NGOs have been working on creating awareness about the demand for sex/sexuality education and this has created an atmosphere of acceptance of sex/ sexuality education in the countries.

Indonesia, Malaysia, Pakistan, Bangladesh and the Philippines have not started providing sex education in schools as part of the school curriculum. Indonesia has a policy to extend information and reproductive health education to adolescents, to be implemented by the National Family Planning Coordinating Board and the Department of Education. Controversies persist on whether SRH education and services need to be extended to adolescents in the country and this has implications on the implementation of the policy. Training modules for parents and adolescents were also developed, however their integration into the school curriculum is limited.⁷³ Similarly, in Malaysia and Pakistan, sex education has not been integrated into the school curriculum, although the demand for sex education among adolescents has been documented by NGOs.

In Bangladesh, sex education is not taught by teachers in schools although some basic reproductive health topics are included in the school curriculum.

In the Philippines, adolescent reproductive health (ARH) education is mostly community-based. Some are school based, and a few are implemented in the workplace. Information and education interventions include lectures, workshops, discussions, trainings, and media-based activities. Most of these programmes are focused on ARH, sexuality and fertility issues, where counselling is provided.⁷⁴ In 1997, the Population Commission of the Philippines, with the assistance of the national and local governments and NGOs, launched "Hearts and Minds," a nationwide information, education and communication (IEC) campaign that teaches young Filipinos about sexual health, responsible adulthood, and parenthood.⁷⁵

In Vietnam, India and Nepal, there are attempts to introduce sex education but there are limitations. In Vietnam, from 1995-96 onwards, the Ministry

of Education and Training decided to integrate education on HIV/AIDS prevention into the official curriculum of secondary schools throughout the whole country. This move consisted of incorporating lessons on reproductive health and HIV/AIDS.⁷⁶ From 2002 to the present, after the issuance of the decision 40/2000/QH10 regarding school reformation, and with the support of UNFPA, the Population and RH curriculum in upper-secondary schools has been developed and is in the process of being piloted. It has been integrated into the school text books for Biology, Civics Education, Geography, Language and into extra curricular activities for Grades 10 to 12 in some provinces. The final evaluation by UNFPA noted that most of the information on adolescent RH mainly focuses on pathological aspects of RH and contains poorly clarified/ confusing/wrong concepts and statements; information which is sometimes insufficient or even incorrect; the use of outdated statistics, and; poorly written Vietnamese. Yet the integration of adolescent RH in upper-secondary schools has shown increased knowledge among students. Rapid assessment confirmed that more than 60% of students in all schools are aware of basic adolescent RH issues such as STDs/HIV/AIDS, condoms, oral contraceptive pills and emergency contraception. Sex education is called the Adolescence Education Programme (AEP) in India. The curriculum was developed by the National AIDS Control Programme, and was rejected by several state governments including those of Madhya Pradesh, Chhattisgarh, Rajasthan, Uttar Pradesh, Kerala and Karnataka, with the chief ministers writing to the Ministry of Human Resources Development accusing it of corrupting the morals of the young. The module was revised but, in turn, was rejected by 33 NGOs from across the country, including youth groups, sexual rights groups, women's groups and groups working with child sexual abuse. In a joint statement, they declared: "The thrust of the... curriculum is abstinence. It is silent even about the biological aspects of reproduction. The lesson on conception, whilst addressing internal biological mechanisms, omits any description of intercourse. Sexual intercourse is shrouded in the euphemism 'intimate physical relationships.' Without the knowledge of what does cause conception, the curriculum will fail in one of its own objectives -- that of addressing teenage pregnancy."⁷⁷

In Nepal, the National Adolescent Health and Development Strategy (2000) considers adolescents a key target group for information and services. Nevertheless, the extent to which sex education is being provided in schools has received little attention. At higher secondary level, students are supposed to be taught basic sex education using a chapter in a textbook called *Health, Population and Environment*. Little is known about how or how well this material is covered. A study in 2002 found

that adolescents in these schools did not appear to be getting the information they needed. Most of the teachers did not want to deal with sensitive topics and feared censure by their colleagues and society. Some lacked the skills to give such instruction. Many students also felt uncomfortable with the topics. The challenge is to strengthen sex education, make it more appropriate for the students and ensure that teachers are more comfortable and able to give instruction on the topic.⁷⁸

Only in Thailand has there been progress on sex education, with the boundaries being pushed forward with each revision of the curriculum. Thailand has already introduced sexuality education. The first national policy on sexuality education in schools was announced in 1938, but sex education was not taught in schools until 1978. Then it was called "Life and Family Studies," and its content consisted of issues related to the reproductive system and personal hygiene. The education curriculum has been revised several times, involving efforts from both government and non-government sectors and sex education has been accepted as a problem solving tool for adolescent SRH issues. This has been a consequence of educational reform following the National Education Act B.E. 2542, increasing awareness of problems related to adolescents' sexual practices, and the emergence of women's sexuality, and queer movements. The most remarkable new approach in sexuality education curricula in Thailand has been the Teenpath Project developed by PATH, Thailand. PATH has also succeeded in institutionalizing sexuality education curricula in schools since 2003.⁷⁹

Sexuality education seems to be an area where intellectual theory and perspectives have far surpassed the ability to deliver of governments in the region. Both sex education and sexuality education are contentious issues for voters, especially in the countries where conservative/ religious fundamentalist parties hold considerable power in parliament. In the countries where sex education has been initiated, challenges remain with regards the comprehensiveness of the curriculum. The increased acceptance in the countries for sex education is attributed to combating the HIV epidemic rather than providing sex education to adolescents. Recent developments have also contributed to re-conceptualising sex education as sexuality education, mostly in NGO-led programmes in Thailand and Vietnam, to include dimensions such as sexual expression, negotiation and communication.

ii. Access to services within the public health system

In the 12 countries surveyed, there was a

demarcation between married youth and unmarried youth. Generally in South-east Asia and East Asia the youth who need access to services are not married. In South Asia, because of early marriage phenomena, the majority of youth who need access to services are married. However, there are increasing numbers of unmarried youth, who face difficulties in accessing services.

In Vietnam, Cambodia, China and Lao PDR, the barriers are those of discrimination rather than law. In Vietnam, there are no legal restrictions against youth's access to SRH services within the public health system. The National Strategy on Reproductive Health Care for the 2001 – 2010 identified ARH as one of the major problems. The strategy focuses on improving ARH through education, counselling, and provision of reproductive health services.⁸⁰ However, barriers of stigma and discrimination related to pre-marital sex impede access to SRH services.

In Cambodia, the National Reproductive Health Programme /MoH recognizes the importance of providing services for young people who constitute around 36.5% of the population amidst the changing patterns of premarital sexual relationships in the country.⁸¹

The Chinese government has taken steps to improve availability and accessibility of reproductive health care for adolescents. In 2002, a government hospital in Beijing opened the country's first clinic for adolescent psychological and sexual health-care services. The clinic provides adolescents with free or low-cost gynaecology, maternity, urology, pediatrics, and psychological counselling services. Similar facilities have since opened in several cities. These government-funded adolescent health-care facilities offer free abortion services for pregnant girls under 18 years of age, and some permit anonymous abortions without parental notification.⁸²

In Lao PDR, a study noted that services are, in theory, accessible to all irrespective of age or marital status. However, services tend to be of limited quality and are not readily accessible to the unmarried. Providers at such government health facilities as the Family Planning Unit are responsible for the provision of contraceptive services. However, the unit is attached to the Maternal and Child Health section and is not widely used by the unmarried.⁸³ The same study also notes that unmarried youth have difficulties accessing services and this may be related to negative attitudes of the providers and poor quality of services.

In India, there is limited access for youth to SRH services and socio-cultural norms constrain unmarried adolescents from seeking these services. Thus contraceptives remain out of their reach. Social

stigma prevents unmarried girls and their family members from seeking services related to abortion. Providers are often judgemental and lack counselling skills.⁸⁴ However, the National Youth Policy talks about the inclusion of information on reproductive health as part of the curriculum and of setting up clinics in rural areas to address the health needs of adolescents, and of access to antenatal, postnatal and natal health services.⁸⁵

Unmarried young people are unable to access basic reproductive health information or government services in Bangladesh.⁸⁶

V. SEXUAL RIGHTS AROUND LIVELIHOOD: THE STATUS OF SEX WORK

Although sex work exists in every country, there can be great variations in the way governments deal with sex work. Broadly speaking, there are four different approaches taken by policy-making on sex work. The abolition approach considers prostitution as part of human trafficking or violence against women, which must be eradicated and cracks down on all those involved in human trafficking/ brothels while helping victims quit the flesh trade. The criminalisation approach regards prostitution as a social but necessary evil and allows commercial sex under strict control with criminal punishment for sex workers in order to keep business discreet and to protect the clients. The decriminalisation approach allows for sex workers to continue working independently and revokes all laws which criminalises or punishes sex workers. The legalisation approach considers sex work as a profession, registers sex workers as employees, regulates the business venue, and taxes it.⁸⁷

Most approaches with regards to sex work in Asia-Pacific use a structural paradigm which regards sex work as a form of exploitation and sex workers as having no choice in their livelihoods (or their lives), and frame sex workers as victims. Some approaches look at sex work from a 'free choice' paradigm. However, a more pragmatic approach would be to use the 'agency' paradigm which enables us to understand the structural constraints and respect the choices that women make.⁸⁸

Nevertheless, the agency paradigm of sex workers has not been mainstreamed in thinking around sex work in the region. This could be a useful approach especially to enhance HIV/AIDS interventions. However, there is still a long way to go before nations and societies can openly acknowledge the

role of desire⁸⁹ within social sciences, laws and public health.

None of the 12 countries studied have legalised sex work. Vietnam is a clear example of the abolitionist approach as it demonstrates all the specified criteria. On 12 December 1995 the Vietnamese government called for swift measures “to eliminate social evils” which were identified as prostitution, drug addiction and gambling. When this was implemented in subsequent years, prostitution received the greatest attention.⁹⁰ The Ordinance on Prevention and Suppression of Prostitution, No. 10/2003/PL-UBTVQH11, entered into force on 1 July 2003. This was the first ever specific document on the prevention and suppression of prostitution. The Ordinance provides social and economic measures to prevent prostitution and punitive measures against customers, procurers and prostitution organizers. Prostitutes are considered as the victims who will be put into the state’s programmes for treatment, rehabilitation and reintegration. Sex work falls under the Penal Code, is not legal, and operates under a ‘mafia’ type of system.

Five countries take the criminalization approach. In China, the government strictly prohibits commercial sex work and penalizes sex workers under the Criminal Law, several government decisions, and various administrative measures. People who voluntarily engage in sex work are punished by local police forces under the Regulations on Administrative Penalties for Public Security.

They may be detained for a maximum of 15 days, given a warning, made to sign a statement of repentance, given custodial “re-education through labour” for six months to two years, and charged concurrent fines. Sex workers must undergo mandatory testing and treatment for STIs. Those who knowingly engaged in sex work and are found to be infected with a STI can be sentenced to a maximum of five years’ imprisonment, criminal detention, and a concurrent maximum fine of CNY 5,000 (USD 604).

The Criminal Law and the Women’s Rights Law, punish people who organize, assist, force, lure, shelter, or procure any other person or persons to engage in sex work. People found guilty of these crimes are subject to imprisonment of five to ten years, fines, and/or confiscation of property. Punishment is more severe if these crimes are perpetrated against girls under the age of 14 years.⁹¹

In Lao PDR, prostitution is criminalised. Article 122 of the Criminal Law (1992) states: “Anyone who makes their livelihood by engaging in commerce for having sexual relations with another person will be punished by imprisonment from three months to one year or be reeducated without imprisonment. Anyone who

assists in or facilitates an individual to engage in prostitution will be punishable by imprisonment from three months to one year or by correctional penalties without restriction of liberties.”⁹²

In both Lao PDR and China, anecdotal evidence suggests a shift in the position of the governments in managing sex work from a moral perspective to a public health perspective. In order to successfully continue with HIV/AIDS interventions there is a need for national and local organisations to enable and empower sex workers in learning to negotiate with clients.

In Thailand, implementation of the laws is vastly different from the law itself. There are many laws relating to sex work: the Contagious Disease Act of 1908, the Entertainment Places Act of 1966 and the Prostitution Suppression Act of 1966. The Prostitution Prevention and Suppression Act of 1996 replaced the 1966 act. The 1996 law criminalises the selling of sexual services whereas the previous law stopped at penalizing soliciting for prostitution. The new law includes male sex workers and is intended to punish those involved in the sexual exploitation of minors.⁹³ However, Thailand is a popular and well-known destination for sex tourism.

In the Philippines, prostitution is criminalised and punished, i.e. “imprisonment of 8–12 years may be imposed upon any person who engages in the business of or profits by prostitution, or who enlists the services of any other for the purpose of prostitution.”⁹⁴ Currently there is a bill pending in Congress on anti-prostitution - to decriminalise sex work, protect sex workers and shift the burden of responsibility to club owners and pimps. A recent document states that ‘licensed sex work is allowed ... in the Philippines, in limited settings.’⁹⁵ However, it is unclear to what extent and what these “limited settings” may constitute.

In Malaysia, prostitution is also criminalised. The Penal Code section 372 defines the 3 different types of prostitution which are liable: exploiting any person for the purpose of prostitution; person trading or living on prostitution; soliciting on purpose of ‘prostitution’ or any immoral purpose; and suppression of brothels. Anecdotal evidence suggests that police harass sex workers and arrest them on the basis of having more than 3 condoms in their bag as proof of prostitution.⁹⁶

In South Asia, prostitution is largely decriminalised. In India, sex work per se is not criminalised but there are certain acts like running a racket in residential areas which are criminalised. The Immoral Trafficking Prevention Act 1956, the main statute dealing with sex work in India, does not criminalise prostitution or prostitutes per se, but mostly punishes acts by third parties facilitating prostitution like

brothel keeping, living off earnings and procuring, even where sex work is not coerced. The act also criminalises related activities such as soliciting.⁹⁷ In Pakistan sex work falls under Sections 371A and section 371B of the Pakistan Penal Code and according to these sections, prostitution is criminalised in terms of the person buying or selling the service – not necessarily the practitioner, but rather the ‘pimp’ or ‘madam.’ Also, sex work is deemed as ‘illicit intercourse’ which is illegal because sex outside of marriage is illegal in Pakistan.⁹⁸

The law in Nepal is silent on prostitution. However, in reality, women can be arrested under the Public Offenses Act for the practice. There are an estimated 5,000 female commercial sex workers under the age of 16 in Nepal.⁹⁹

VI. SEXUAL RIGHTS AROUND IDENTITY: THE STATUS OF DIVERSE SEXUAL AND GENDER IDENTITIES AND RECOGNITION OF THEIR RIGHTS

The recognition of diverse sexual and gender identities is still problematic in the region. The HIV/AIDS pandemic has brought up many issues affecting people of diverse sexual and gender identities, and to some extent provided services for them. Additionally, the sexuality movement in the region has also grown and flourished. However, this has not led to the overall recognition of their rights.

i. The status of laws related to same-sex sexual preferences and relations

There are three different aspects to this indicator. The first is same-sex sexual preference, the second, same-sex sexual relations and the third, same-sex marriage. In all countries, the laws are silent on same-sex sexual preference, and hence it is not criminalised.

It is only when same-sex sexual preferences need to be consummated that problems arise especially in certain countries. Among the 12 countries studied, the law is silent on same-sex sexual relations (and hence this can be construed as being legal) in Cambodia, China, Lao PDR, the Philippines, Thailand and Vietnam. Same-sex sexual relations are illegal in Bangladesh, India, Malaysia, Nepal and Pakistan. Same-sex sexual relations are not illegal, but not entirely legal in Indonesia.¹⁰⁰ Some countries in the region are, however, opening up and showing

more liberal mindsets in relation to these issues. In countries which have inherited the British system of law there is usually an act within the penal code which criminalises ‘unnatural sex acts / against the order of nature’ which is a term that can loosely cover many sex acts including anal sex and even oral sex.

It is usually by this law, that same-sex sexual relations are criminalised. These laws are uniform in almost all the ex-colonies of the British - Malaysia, India, Pakistan and Bangladesh.

It is also interesting to note the antiquity of these laws, as they all refer to sodomy, - within the framework of male desire, and within a framework in which women are still desired objects and not desiring subjects.

In Malaysia, this issue falls under the Penal Code which governs sex acts under the order of nature from the 1800s, and which was first amended in 1948. Interestingly enough, this law was used in Malaysia to convict an ambitious political figure, Anwar Ibrahim.

Section 377 of the Pakistan Penal Code criminalises same-sex sexual relations, specifically, sodomy. Sodomy is punishable by imprisonment from 11 years to life. There is evidence that there are several convictions under this statute each year, although it is not possible to give precise statistics. The ambiguity in the designation ‘unnatural offences,’ as it is termed in the law, makes the challenge of changing society’s perception of homosexuality all the more difficult.¹⁰¹

Bangladesh also retains the infamous British anti-sodomy law known as Section 377 which criminalises sexuality against the ‘order of nature.’ The punishments for crimes perpetrated under this section include fines and imprisonment of up to ten years.¹⁰²

Section 377 of the Indian Penal Code was enacted by the British in 1860. It criminalises what it calls, ‘sexual offences against the order of nature’. It criminalises sodomy and other acts considered against the order of nature. Recent developments in India, however, are very promising. The High Court of Delhi has ruled in a landmark case of Naz Foundation (India) Trust v. Government of NCT Delhi and Others that the Section 377 of the Indian Penal Code is unconstitutional.

The judgment, handed down on July 2, 2009, overturned a 148-year old colonial law that criminalised same-sex sexual relations. The Court declared that this law no longer applies to consensual sexual acts of adults because it violates Articles 21 (protection of life and personal liberty),

14 (equality before law) and 15 (prohibition of discrimination) of the Indian Constitution.¹⁰³ The case is currently being pursued in the Supreme Court.

In Malaysia, Section 377 of the Penal Code identifies different subsections pertaining to: carnal intercourse against the order of nature; punishment for committing carnal intercourse against the order of nature; committing carnal intercourse against the order of nature without consent; and outrages on decency. In addition, "several states in Malaysia have instated Islamic Shariah laws, applying to male and female muslims, criminalising homosexual and lesbian acts with up to three years imprisonment and whipping. The Shariah Penal law in the Malaysian state of Shariah prescribes penalties for sodomy (*Liwat*) and lesbian relations (*Musahagat*) with fines of RM5,000.00, three years imprisonment and 6 lashes of the whip. All these penalties can be combined."¹⁰⁴ These Islamic Shariah laws are similar to those in other Muslim countries such as Nigeria and Iran.

In Indonesia, same-sex sexual relations are not prohibited according to the national Penal Code. The only provision to deal with such relations is Article 292 which prohibits sexual acts between persons of the same sex, if committed with a person under the legal age. However, in 2002, the national parliament gave the Aceh province the right to adopt Islamic Shariah laws. These laws only apply to Muslims. This trend has also been followed in the city of Palembang in South Sumatra which has introduced jail time and hefty fines for same-sex sexual relations.¹⁰⁵

In the Philippines, the "criminal law is silent on the subject of same-sex relationships; there is little or no persecution under other statutes."¹⁰⁶

In the Mekong valley, the status of same-sex sexual relations has not been criminalised to the extent that it has been in the ex-colonies of Britain. The laws are largely silent on these aspects and hence they can be construed as legal.

There is no law against same-sex sexual preference or same-sex sexual relations in Vietnam. However, the government recently passed a law which criminalises same-sex marriage in Vietnam. In Lao PDR and Cambodia, there exists no law which prohibits same-sex sexual preferences or relations. However, in Cambodia, former King Sihanouk has called for the legalization of gay marriage, although no policy has been issued.¹⁰⁷

The most progressive country in the region is Nepal. In 2008, the Supreme Court of Nepal recognized lesbians, gays, bisexuals, transgenders, and inter-sexed (LGBTIs) persons as natural persons. The Court issued directive orders to the government

of Nepal to ensure rights to life according to their own identities and to introduce laws providing equal rights to LGBTIs and amend all the discriminatory laws against them. The Supreme Court also ordered the government to formulate an act on same sex marriage.¹⁰⁸

It is important to recognize, within the spirit of the ICPD PoA, just as human beings have a life-cycle approach to reproductive health, there may also exist a life-cycle of sexuality. Sexual preference and sexual orientation may not be fixed throughout the lifetime of a person, and sexual identity can be fluid. However, regardless of the fluidity of sexual identity, people remain human beings who are entitled to human rights; and citizens who are entitled to services from the state.

ii. The status of transgenderism

It is important to separate the issues that affect LGB and the issues that affect transgenders. Transgenderism is an over-arching term for people whose anatomies and/or appearances do not conform to the heteronormative framework. Transsexuals, cross-dressers, inter-sex people, queers, drags, androgynes and others fall under the category of transgenders. Transgenderism is an issue of gender identity. There can be issues of sexual orientation also.

Transgender people comprise of some of the most marginalised and most vulnerable groups within societies in the Asia-Pacific region and the issues that affect them can be vastly different from other sexual identity groups. Literature and information is scarce in the region on the study of transgenderism, especially on Female to Male transgendered people. There has been some research and interest in Male to Female transgendered people. For this reason, the evidence for this indicator mainly focuses on Male to Female transgendered people's experiences.

This review focuses mainly on attitudes and perceptions on transgenderism inherent in the region. There is a paucity of laws and policies in the region which protect and promote the rights of transgender people as citizens with rights, and their access to services, although they may find social acceptance within the communities they live in.

Within the 12 countries in Asia-Pacific there is a range of attitudes and perceptions about transgenders and how they are treated within countries. In some societies they are more easily accepted than in others. This is especially true in the Mekong societies of Thailand, Lao PDR and Cambodia where transgendered people are referred to as '*kathoey*' literally the third gender.

For the purposes of this report, we will be using the terms 'third gender' to mean 'another' gender, especially to challenge the gender binary. It is not meant to describe a hierarchy of genders. In Lao PDR, a research team found a high level of acceptance in Lao families and the community at large, but there was conflicting information. "*Kathoey* are present in all kinds of female activities. They are seen in all walks of life in Lao but *Kathoey* are more present in the private sector of the economy and only marginally among professional and governmental officers. But their visibility on the prostitution scenes does not mean they are locked in to this kind of occupation but use it as an addition to a more legal income."¹⁰⁹

In Cambodia, anecdotal evidence suggests that although the legal situation of transgenders is unclear, many transgendered people are high-profile actresses and actors, who have been supported by the Ministry of Culture.

Thailand is one of the most progressive countries with regards to the third gender and often more easily enables sex reassignment surgery. Traditionally, Thailand has had a history of recognizing three genders right up till the mid-twentieth century.¹¹⁰ In general there is agreement that there are factors which contribute substantially to the Thai attitude: "While the ethical principles of Buddhism, along with a generally non-interventionist state, are important factors in the international perception of Thailand as a 'tolerant,' and even accommodating place for sex/gender diversity, the most recent research suggests that attitudes toward transgendered persons are far from homogenous, even, or especially, within their families,¹¹¹ and more so for the public – Thai and non-Thai – at large."¹¹² Recent developments in Thailand also mark progress. In 2004, the Chiang Mai Technology School allocated a separate restroom for *kathoey*s, with an intertwined male and female symbol on the door. The 15 *kathoey* students are required to wear male clothing at school but are allowed to sport feminine hairdos. The restroom features four stalls, but no urinals.¹¹³ *Kathoey*s are hoping for a new third sex to be added to passports and other official documents and in 2007, legislative efforts have begun to allow *kathoey*s to change their legal sex if they have undergone genital reassignment surgery; this latter restriction was controversially discussed in the community.¹¹⁴

However, in Vietnam a mingling of Confucian, Buddhist, Christian and Communist moralities has more often than not tried to suppress gender identity issues. Literature is scarce on the subject.¹¹⁵

In the Philippines, transgendered people are usually referred to as '*bakla*.' The Philippines does not offer any legal recognition to same-sex marriage,

civil unions, or domestic partnership benefits, although there is increasingly heavy debate about them. In 1998, Senators "Marcelo B. Fernan and Miriam Defensor Santiago submitted a series of four bills that barred recognition of marriage involving transgendered individuals, contracted in the Philippines or abroad, and barred recognition of marriages or domestic partnerships between two people of the same biological sex contracted in countries that legally recognize such relationships." As of 2006, three anti-same sex marriage bills have been introduced and are pending before the Senate and Congress.¹¹⁶

In Malaysia, transgendered people are referred to as '*mak nyah*.' Cross dressing is illegal and in 1998, 45 transgendered people were arrested in the Kedah state while taking part in a beauty pageant. Most were charged with wearing female clothes and impersonating women, charges that could include up to 6 months incarceration.¹¹⁷

Malaysia has a majority Muslim population and there is a fatwa (religious edict) against sex reassignment surgery. This is largely governed by Islamic tenets that there are four perceived gender identities: male, female, *khunsa* (hermaphrodite) and *mukhannis* (cross-gender identity) / *mukhannas* (cross-gender behaviour only). While a *khunsa* can take action in relation to his condition (through sex reassignment surgery), the *mukhannis* or *mukhannas* is forbidden to do so.¹¹⁸

This is largely because the *khunsa* are perceived as products of 'nature' while the *mukhannis* and the *mukhannas* are products of 'choice.'

The '*mak nyahs*' often face much harassment from the police. If the '*mak nyahs*' caught by the police are Muslims, they can be sent to the Shariah department to be charged at the Shariah Court for offences against the Islamic law. The penalty incurred could be a fine of between RM800 to RM3,000 (i.e US\$200-\$750) or imprisonment, or both. The Islamic religious authority, like the police, can also carry out raids among the Muslim community to identify wrongdoing against the Islamic law Section 21 Minor Offences Act 1955.

In South Asia too there are differing attitudes towards transgendered people. In India, the third gender called the '*hijra*', are regarded as neither man nor woman. The '*hijra*' community plays important roles within cultural practices such as collecting payment for performances at weddings, births of children, and funerals; collecting alms from shopkeepers; collecting money from the general populace; working as entertainers and sex-workers. Some progress can be seen in Tamilnadu where the state government has offered to reimburse money for sex reassignment surgery for the '*aravanis*.'¹¹⁹

In Pakistan, there is also a large community of *hijras*. They tend to be largely poor and are subject to much discrimination and exploitation, especially sexual exploitation. They may also engage in sex work. On the other hand, many people believe that they have special spiritual powers and go to them when they want a particular wish fulfilled, such as wanting a child. In Pakistan, the *hijra* community has now become very scattered, making it much more difficult to reach them for services.

In Nepal, the third gender is also called '*methis*.' Nepal seems to be the most progressive country in the region, having decriminalised laws which control sexuality and having recognized sexual minorities as citizens with equal rights regardless of sexual orientation and gender identity. Transgendered people are now able, through a Supreme Court ruling to amend the Constitution, to obtain citizenship with the identity of third gender. A government committee has also been set up to review the marriage system to amend it accordingly with this new ruling.

It is apparent that nowhere is the struggle between the private and the public so apparent as it is in the case of diverse sexual and gender identities. There are some interesting examples that have emerged which demonstrate that the region is beginning to open up on these issues. However, it must be noted that in some countries conservative and religious forces are extremely strong in holding the fort against the tide.

Nevertheless, it is also important to note that people with diverse sexual and gender identities have often been able to negotiate a space within families and societies through identities such as son/daughter; father/mother which are equally important (if not more important) within the Asian context rather than just a sexual/ gender identity.¹²⁰ This contrasts with the Western emphasis on sexual orientation and gender identity being "the public expression of one's true self" and of the "individual experience of sex/ gender dysphoria."¹²¹

The issue of transgenderism is an important aspect within the ICPD PoA, which talks of provision of services to and the rights of 'women.' Is gender identity and the rights that come along with gender identity only ascribed to biological sex or should it be ascribed to those who profess the identity of 'woman?' Especially including some of the most marginalised and vulnerable amongst 'women?'

V. CONCLUSIONS

There is a whole spectrum of sexual rights. All countries in the region recognize and accept the sexual rights of minors through the enactment of a legal age of marriage. Enforcement of the

legal age of marriage is problematic in only a few countries. All countries recognize the rights of women to freely choose their partners and enter into consensual marriages. In some countries in South Asia, traditional practices may interfere with this choice and the exercise of choice. All countries also recognize the rights of women and girls to bodily integrity and to live lives free from sexual violence: rape and sexual harassment. Marital rape is still a problematic concept in the region, though it is gaining acceptance. All countries recognize the need to address trafficking of women and girls.

Many of these aspects of sexual rights have been accepted and legislated on by the governments in the 12 countries.

However, when it comes to issues of unmarried adolescent sexuality, sex work, same-sex sexual relations and marriage and transgenderism, these issues are not recognized as important enough to merit law and policy-making to ensure that the SRHR of these groups are protected and promoted. Politically, governments seem comfortable only in recognizing the reproductive functions of sexuality and the sexual rights that go hand-in-hand with these. The non-reproductive functions are considered secondary and have not been attributed as much commitment and importance. It is necessary to delve into the bases of political power and political motivations to understand this better.

Recent developments in Nepal and India bode well for broadening and expanding the understanding and acceptance of sexual rights in the region. The challenge for sexual rights in the region is positioned within non-reproductive functions and expressions of sexuality, but advocates should consider how the traditionally-accepted indicators of sexual rights can be pushed in order to create greater acceptance of sexual rights language.

VI. RECOMMENDATIONS

The recommendations are focused on the four major areas where urgent improvement is necessary in order to press forward to fulfill the commitments to the ICPD PoA: policy change with respect to reproductive rights and sexual rights; universal access to optimal sexual and reproductive health; continued, committed and sustained governmental and donor investment in women's sexual and reproductive health; and the concretization of sexual and reproductive health and rights for adolescents and other marginalised groups.

i. Concretise the rights to sexual and reproductive health and the sexual and reproductive rights especially

those of adolescents, marginalised groups of women and those with diverse sexual orientation and gender identities

Across the region, women who are poor, less educated, who live in remote areas, rural areas, and less developed parts of the country face greater difficulties in accessing services and realising the autonomy of their bodies. Tribal women, women from ethnic minorities, women from lower castes, and younger women as well as adolescent girls are also marginalised. This happens regardless of whether the service they require access to is contraception, maternal health services, safe abortion services, prevention and treatment of reproductive cancers, HIV testing and anti-retroviral therapy or sexual health services. Sexual and reproductive health and rights are issues of socio-economic equity as well as gender equity.

Recommendations include:

1) Create adolescent-friendly policies and services, as adolescents comprise almost 20% of the population of Asia. However, this group faces the greatest barriers in accessing information, education and services for sexual and reproductive health. Eliminate barriers of consent and discrimination which prevent adolescents, especially unmarried adolescents, from accessing all sexual and reproductive health services including contraception, abortion and post-abortion care and counselling.

2) Ensure comprehensive sex education and/or sexuality education is available in schools and out-of-school programmes/settings to inform and empower adolescents with choices regarding safeguarding their sexual and reproductive health and enable them to realize their sexual and reproductive rights.

3) Create comprehensive programmes, policies and plans to address marginalised groups. Ethnic minorities, tribal groups, hard-core poor people, elderly, disabled, migrants, and those living in mountainous areas and coastal areas will require more than one intervention to improve their sexual and reproductive health and rights. Understand the barriers that impede their access, and work deliberately and systematically to remove these barriers. Ensure national resources are also allocated to these marginalised groups. Understand the sexual and reproductive health needs of these groups in a non-judgemental manner; and create service provision if previously non-existent.

4) Create policies which will include sex-workers and people with diverse sexual orientation and

gender identities within service provision and which will ensure they are entitled to equal, fair, non-discriminatory sexual and reproductive health services, care and treatment. Create and enact legislation which will enable these groups to also realize their sexual and reproductive rights to the fullest.

5) Empower communities, especially marginalised communities, to recognize their rights to sexual and reproductive health, and build their capacities to claim these rights from duty-bearers. Create spaces for the participation of different marginalised communities in policy and programme formulation, encouraging their leadership at all levels.

5) Implement policies and programmes with an understanding of the different aspects of vulnerability: exposure to risks and danger as well as lack of the capacity to cope with the negative consequences of risks and threats of these marginalised groups. In situations of emergencies and disasters, fully understand the increased risk for marginalised groups in these situations and incorporate SRH into the formulation and implementation of disaster-preparedness, response and recovery plans (see box case study.)

In conclusion, we urge governments, donors and international organisations in the region to understand the critical need for pressing forward on the agenda of sexual and reproductive health and rights in this region. Full implementation of the ICPD PoA is fundamental for achieving the MDGs and for the advancement of women in the region.

ii. Policy change underpinned by commitment to the ICPD PoA, with respect to reproductive rights and sexual rights

The political will of governments is essential to improving the status of women's sexual and reproductive health and rights. In all areas where progress has been noted, government policies and implementation were critical for success. Now, 15 years after Cairo and Beijing, it is imperative that governments become more cognizant of their women citizens and their needs and aspirations. Women are disproportionately affected by sexual and reproductive health issues, and improving sexual and reproductive health outcomes should be viewed as critical to government efforts to improve women's status and eliminate gender inequality.

Recommendations include:

1) Population policies continue to be driven by

demographic norms rather than by meeting women's needs. Policies pertaining to women's sexual and reproductive health need to be underpinned by the PoA and the underlying concepts of reproductive rights and sexual rights. Policies on sexual and reproductive health and rights need to be mainstreamed into already existing national machineries, national policies and national plans in a cohesive manner.

2) Policies that determine sexual and reproductive health and reproductive rights should be aligned to provide access to a range of contraceptive methods, abortion services, pregnancy related mortality and morbidity interventions, STIs and HIV/AIDS, reproductive cancers, and male responsibility in sexual and reproductive health. Policies should also enunciate measures against stigma and discrimination.

3) Policies should be implemented and backed by functional health systems, adequate budgets, trained human resources and updated training and curriculum for health professionals. Policies that determine SRHR must recognize the need for inter-sectoral coordination and cooperation. Existing policies which are progressive must be publicised, especially to service providers and to women, and must be translated into programme and project implementation.

4) Policies and policy review should be informed by robust data, should measure new indicators of reproductive rights, should include groups (beyond the traditional married women aged 15-49 years) such as unmarried single women, and include input from qualitative research in order to ensure that these policies are continually relevant to the people. Intersectional analysis would enable governments to understand differences in policy implementation for different marginalised groups.

5) Policies and policy reviews that determine SRHR need to be created and implemented in secular spaces, free from the influence of fundamentalisms and other doctrines that restrict human rights.

6) Policy review efforts should be integrated into CEDAW and ICESR reporting mechanisms in order to put pressure on governments to meet international commitments to ICPD as ICPD itself does not have a reporting mechanism. NGO cross-movement collaborative efforts would help initiate policy review. ICPD national action plans have not materialised in any concrete manner in most countries.

7) Policy reviews should be underpinned by human rights paradigms. These can build on the 2009 call by the UN Human Rights Council to recognize preventable maternal mortality and morbidity as human rights violations; and on the 2009 NGO Berlin

Call to Action by the SRHR community to address deaths resulting from unsafe abortions also as a human rights issue. This is to ensure that sexual and reproductive health are framed and treated as issues of human rights, and governments are to be held accountable for fulfilling them, regardless of economic climate and political change. Legislative initiatives that expand the grounds for abortion, for instance, or which repeal laws that punish women for procuring an abortion, should be introduced.

8) Policy review efforts should integrate the good practices of neighbouring countries as performance benchmarks and engage in knowledge-sharing and learning between countries.

iii. Ensure universal access to affordable, quality, gender-sensitive services to enable the realization of the highest standard of sexual and reproductive health

Lack of access to SRH services and information contributes to high levels of morbidity and mortality for largely preventable SRH problems, particularly in developing countries. Every year, half a million women die during childbirth because women are not able to access life-saving emergency obstetric services. Lack of information and education on HIV/AIDS and condoms, as well as insufficient provision of condoms have contributed to the spread of STIs, including HIV. Restricted access to abortion services, contraceptives, and information on sexuality and reproductive health has led to unwanted pregnancies, botched abortions, women's impaired health and wellbeing and women's deaths.

Policy formulation must be backed up by service provision ensuring universal access to sexual and reproductive health.

Recommendations include:

1) There is a dire need to integrate services, especially RH and HIV services which have generally been funded separately and operated vertically, meaning that clients see a different provider for each health service. Yet with over 80 % of HIV infections being sexually transmitted, addressing RH and HIV together would better serve the needs of clients and health care providers in a more comprehensive, cost-effective, and efficient manner. In this aspect we need to:

a) Develop more effective strategies to help HIV-positive women prevent unwanted pregnancies and access contraception: this underscores the need for comprehensive SRH services where providers do not judge their clients and for the provision of

safe spaces for young, HIV-positive women to access services. Responses to address negative, judgmental attitudes of service providers toward HIV-positive women, especially those wanting children, are needed.

b) Strengthen the ability of local government units and NGOs to reach adolescent girls, including married adolescents, with RH and HIV information and services: adolescent girls have poor access to confidential and affordable reproductive health and HIV services, making it difficult for them to protect themselves from HIV and unwanted pregnancy. This is an area that demands greater innovation and attention, both through facility-based approaches and other activities to reach young people.

2) Service providers should incorporate gender-sensitive approaches and be receptive to differences in sexual orientation and gender identities. Service providers should also mitigate misconceptions on all aspects of sexual and reproductive health. Service provision should also include accountability mechanisms and redressal mechanisms for patients and clients.

iv. Ensure continued, committed and sustained investments in women's sexual and reproductive health and rights by governments and donors

Given the current aid structure; given that an estimated \$24.4 billion is needed in 2015 to provide universal access to sexual and reproductive health information and services as agreed at ICPD, excluding HIV/AIDS and other components; and given further that while total ODA reached \$68.5 billion in 2003, there has been no equivalent increase in funding in other areas of SRH.

Recommendations include:

1) Advocate for political support and encourage donors and governments to meet the agreed funding requirements to ensure universal access to sexual and reproductive health services by 2015:

- a) At the global level: by influencing the allocation of ODA to sexual and reproductive health and rights (SRHR) by forging partnerships with global inter-government agencies and international NGOs;
- b) At the regional level: by impressing the central role of SRHR in the achievement of the ICPD and, by extension, the MDGs upon regional institutions such as Asian Development Bank, Association of South East Asian Nations (ASEAN), South Asian Association for Regional Cooperation (SAARC) and UN agencies such as

Economic and Social Commission for Asia and the Pacific (ESCAP), regional offices of other UN agencies such as UNDP and UNAIDS;

- c) At the national level: by prioritizing SRHR in the Poverty Reduction Strategy Papers (PRSPs),¹²² national development plans, and legislative initiatives and by ensuring that SRHR is supported by funds stipulated in the national budget; as well as by incorporating SRH service components, especially important country specific SRH issues, into the Essential Service Packages (ESP) determined by these plans.
- d) At the sub-national or local level: by prioritizing SRHR in local or provincial investment health plans at the local level, i.e., local government units, and by ensuring that funds are invested in interventions and activities that support and sustain efforts to achieve the ICPD PoA.

2) Strengthen the capacity of partners and their constituencies to engage effectively in policymaking and political decision-making processes, i.e., to appreciate the context and understand the processes of policymaking such as setting priorities and drafting policies; to participate in developing and monitoring PRSPs and engaging in health sector-wide approaches; to strategically apply political and technical tools, e.g., national health accounts sub-account on RH to influence priorities and budgetary allocations; to forge alliances and coalitions; and to demonstrate results.

3) Donors should fulfill their commitments to the vision set out by the PoA, by funding all components of SRHR and health system strengthening from primary healthcare levels. Review vertical funding mechanisms for components of SRH services, and put them under the same umbrella. Shifting the agenda from ICPD to MDGs, has resulted in the loss of the rights-based approach so crucial to the full realization of sexual and reproductive health. With the shift in agenda, the push from donors to governments to adopt women's rights, reproductive rights and sexual rights, is waning in strength.

Endnotes

- 1 Much of this content is taken from Chapter 4 on sexual health and sexual rights of 'Reclaiming & Redefining Rights – ICPD+15: The Status of Sexual and Reproductive Health and Rights in Asia' which was written by the both of us.
- 2 As is said in Paragraph 7.34: "Human sexuality and gender relations are closely interrelated and together affect the ability of men and women to achieve and maintain sexual health and manage their reproductive lives. Equal relationships between men and women in matters of sexual relations and reproduction, including full respect for the physical integrity of the human body, require mutual respect and willingness to accept responsibility for the consequences of sexual behaviour." This is reiterated under the section's objectives in Paragraph 7.36: "permitting relations of equity and mutual respect between the genders and contributing to improving the quality of life of individuals."

Paragraph 7.35 also recognizes that: "In a number of countries, harmful practices meant to control women's sexuality have led to great suffering." Paragraph 7.38 encourages governments to "base national policies on a better understanding of the need for responsible human sexuality and the realities of current sexual behaviour."
- 3 Paragraph 4.1 states that: "The power relations that impede women's attainment of healthy and fulfilling lives operate at many levels of society, from the most personal to the highly public In addition, improving the status of women also enhances their decision-making capacity at all levels in all spheres of life, especially in the area of sexuality and reproduction."
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CHAPTER 2

PUSHING THE BOUNDARIES: THE CHALLENGE OF SEXUALITY EDUCATION IN THAILAND

By Suchada Thaweessit¹ and Pimpawan Boonmongkon²

I. INTRODUCTION

Thailand has ratified the United Nation Convention of the Elimination of All Forms of Discrimination against Women (CEDAW) since 1985. Following the ratification of CEDAW, Thailand has also recognized the Programme of Action adopted in 1994 at Cairo's International Conference on Population and Development (ICPD). The commitment to implement CEDAW and the ICPD Programme of Action has been envisaged in its subsequent national economic and social development plans. The current national economic and social development plan emphasizes that all women gain access to equal opportunity in all aspects of their lives.

In particular, the recognition of the ICPD Programme of Action has urged the Thai government and the concerned NGOs to make greater efforts to ensure the progress of women in the areas of sexual and reproductive health and rights. In 2009, fifteen years after the adoption of the ICPD Programme of Action, Thailand continues to demonstrate its considerable success in the improvement of maternal and child health. It also, to a larger extent, has been able to sustain the good quality of health services to prevent RTI, STI and HIV/AIDS.

This research is intended to examine a critical indicator related to women's sexual reproductive health and rights in Thailand: sexuality education for adolescents. Up to recent days, sexuality education has not yet received a clear political commitment and strong specific actions from the government. Rather, laws, regulations and programmes designed to engage with the issues are embedded in moral judgment and male-dominated norms. It is widely accepted that sexuality education is an important measure for addressing adolescent sexual and reproductive health problems and is fundamental for protecting the sexual rights of female adolescents.

II. OBJECTIVES

Firstly, this report aims to examine the situation of sexuality education in Thailand. Secondly, it aims to evaluate the status of the programme of action undertaken by the government and the concerned NGOs in the field of sexuality education. Finally, it discusses obstacles that hinder the progress of actions in enforcing laws and implementing policies and interventions with respect to sexuality education.

III. METHODOLOGY

This assessment combines documentary and qualitative research. With regards to documentary research, data from existing national policies, laws, and regulations relating to sexual harassment and sexuality education were collected. Programmes and movements concerning the issue were studied as was the prevalence of adolescent sexuality. Data came from official documents, research, newspapers, and the Internet.

Qualitative research was employed to triangulate and supplement data from secondary sources. The in-depth interview technique was used with four policymakers from women and child protection organization, a labor organization, an educational institution, and a police and women's group. Concerning sexuality education programmes, one policymaker from the Ministry of Education, one executive from an abstinence-based sex education programme, and one executive from a gender-and-rights-based programme were interviewed.

IV. FINDINGS

i. Status and Situation of Sexuality Education in Thailand

Thailand is a developing country in a stage of rapid economic, social, and cultural change. Consumerism, materialism, and mass media play a crucial role in reshaping traditional norms and values. Adolescent sexual behaviors have changed quickly, and while adolescents tend to have sex at an earlier age, condom use is low, with 85% of males not using condoms and females relying on post-intercourse contraception.³ Adolescents who have already had sex include both those outside the educational system and those in schools (high school, vocational school, or university), with a mean age of first sex at approximately 16 years.⁴

Nonconsensual sex is common among female teenagers at their sexual debut, as is frequent change of sexual partners.⁵ The number of new HIV cases among youth has also been steadily increasing, especially among young women who lack access to sexuality education and sexual and reproductive health services.⁶

Unsafe and unprotected sex causes negative effects on their sexual health, including teenage pregnancy, unplanned pregnancy and unsafe abortion, HIV/STDs, and sexual violence. A recent study reveals that 20% of young women have reported that their first sexual experience was nonconsensual and that nearly 50% of 10-14-year-old adolescents have experienced coercive sex.⁷

In Thailand, the first national policy on sexuality education in schools was announced in 1938, but sex education was not taught in schools until 1978. When sexuality education was firstly added to the curriculum, it was taught in only those schools that were receptive and ready to integrate sexuality education with other subjects, e.g. health education and sociology. This school-based sexuality course was called “Life and Family Studies” instead of “Sexuality Education,” and its content consisted of issues related to the reproductive system and personal hygiene.⁸ The sexuality education curriculum has been revised several times, involving efforts from both government and non-government sectors.

Sexuality education curricula have been gradually accepted as problem solving tools for adolescent sexual and reproductive health issues. This has been a consequence of educational reform following the National Education Act B.E. 2542, increasing awareness of problems related to adolescents’ sexual practices, and the emergence of women’s sexuality, and queer movements.

In addition, ongoing campaigns for sexuality education by women’s and AIDS organizations along with financial aid and academic support from international organizations, especially the Global Fund to Fight AIDS, Tuberculosis, and Malaria, have also boosted the acceptance of sexuality education.

These factors have led to a revision of the curricula and have expanded cooperation between GOs and NGOs. The most remarkable new approach in sexuality education curricula has been the Teenpath Project developed by PATH, Thailand.

PATH has also succeeded in institutionalizing sexuality education curricula into schools since 2003.⁹ An enlarged content curriculum of sex education was proposed by PATH to cover six dimensions, namely, human development, relationships, personal skills, sexual behavior, sexual health, and society and culture.

PATH also proposed new approaches to sexuality education in terms of teaching methods. Formerly, sexuality education was taught via lectures. Now it involves a student-centered learning process, changing students’ attitudes, and raising consciousness related to positive sexuality, sexual

health, and rights in the form of games, group activities, and case study analysis.

After the curriculum formulation was completed, the first activity involved an important new dimension of sexuality education: helping teachers adapt their own attitudes toward sexuality education so that they could be more effective in the classroom.

ii. State of Programme Implementation: Revolution in Sexuality Education Teaching Methods

Adjustment of teachers’ sexual attitudes and teaching methods in order to encourage them to actually listen to their students’ opinions is crucial in achieving an effective sex education programme. In the past, teachers usually underestimated the opinions or experiences of their students.

One MOPH policy maker suggested that while sex education teachers possess technical knowledge, they do not know enough about the contemporary sexual contexts that adolescents face. Such ignorance is an obstacle to effective sex education.¹⁰ One teacher remarked, “I’ve taught sex education to first-year vocational students. At first, I was rather excited and afraid that my students would feel embarrassed, but it was I who felt embarrassed instead. They asked me what they should do if they had sexual desire after watching provocative video clips.”¹¹

The process of adjusting the attitudes of teachers enables teachers and students to better understand and communicate with each other. A key informant reflected the experiences of teachers participating in the project by noting, “They said teaching in this way was good. At first, they felt uncomfortable since they had to listen to their students despite the fact that they were the teachers.

After that, if their students have problems, they’ll come to consult teachers. They don’t need to go to see only fellow students as before.” This attitudinal adjustment makes teachers more accepting of sex education. Some teachers provide extra activities outside the classroom in order to increase their students’ knowledge or to expand its scope, for example, by posting on weblogs for sexual counseling, setting up counseling centers, or preparing relevant materials, e.g. sex education short films.¹²

This new approach to sex education has resulted in high satisfaction and student participation in the

learning process as well as in safer sex practices.¹³ In discussions of sex education, most students expressed a variety of positive opinions and felt that the new approach to sex education is profound, open, and direct since it allows them to practice analytical thinking and makes teachers listen to their opinions more, thus creating an intimate learning atmosphere and greater willingness to learn.

Some remarked that after studying sex education, their ideas had changed and they became more interested in the topic, wanted to study it more often, and had a better and more comprehensive understanding of sexual health. One girl said, "Sex education helps me associate with male friends with more safety and with more confidence and makes me understand men's feelings and know ways of preventing deeper relationships with my partner."¹⁴

Overall, sex education has changed for the better. The Ministry of Education (MOE) issues policies on sex education for students at all education levels, ranging from primary, secondary, and vocational levels in both formal and informal educational systems. Details and depth of the content is adjusted according to the development and ages of students. Sex education curricula have been developed through cooperative efforts between the government and private sectors.¹⁵ At present, sex education curricula in Thailand mostly conform to guidelines of the Sexuality Information and Education Council of the United States (SIECUS).

iii. Issue of Coverage

However, the situation is still far from perfect. Although Thailand has adopted a national policy on comprehensive sexuality education, several problems related to implementing comprehensive sexuality education remain. The numbers of schools teaching the new approach of sexuality education curriculums are a mere drop in the bucket. Only 4% on average of all schools have adopted the sex educational curriculum under PATH project.

Sexuality education is taught in 0.44%, 11.74%, 60%, 5.4%, and 25% of elementary schools, middle schools, high schools, vocational schools, and teaching colleges, respectively.¹⁶ The curricula of the Office of the Basic Education Commission (OBEC), which are composed of sex education curricula from various agencies and include comprehensive content covering all six dimensions of sexuality education according to SIECUS, have been initiated in only 21 out of 76 provinces in Thailand, as pilot projects.¹⁷

Sex education has never been established as a subject in its own right, except in vocational colleges,

where sex education is taught because statistics show that the rate of sex among vocational students is the highest compared to other adolescents of the same age, thus putting vocational students in the higher risk group. A sex education officer from PATH argued that the importance of sex education has not been stressed and that sex education has not been taught consistently, which presents an obstacle to sexual health.

iv. Issue of Teacher Attitudes toward Sexuality Education

Moreover, the attitudinal adjustment process for teachers participating in the new approach to sexuality curricula is not always successful. Attitudes, socialization, and individual experiences prevent some teachers from opening their minds to the new curricula or to novel teaching approaches.¹⁸ Some teachers avoid teaching sex education, teach it the traditional way without listening to their students' opinions, or teach it without supplementary activities. In abstinence-based sex education,

in particular, teachers have rigid answers and attitudes toward sex education, so they teach in a prescriptive manner, thus blocking the analytical thinking and free decision-making of their students. This teaching method does not respect the rights of students according to the new approach toward pedagogy and course content.

v. Issue of Different Approaches in Sexuality Education

In Thailand, there are many sexuality education curricula being offered in both formal and informal educational systems and prepared by various organizations. There are two main approaches underlying these curricula.

v.a The Liberal Approach

The liberal approach to sexuality education does not explicitly criticize or prohibit sex among school-age adolescents. Liberal-based curricula provide ways for students to think, analyze, and make sound decisions regarding sexual relations. It is student-centered and may include things such as youth camps and participatory and interactive exercises to enhance the critical thinking process.

The curriculum includes activities to help adjust

attitudes towards sex as well as games, group activities, and case study analyses designed to raise sexual consciousness. The curriculum also emphasizes important new dimensions of sexuality education such as capacity building, the training of trainers (teachers), and adjustment of teachers' attitudes toward sexuality education and talking about sex. The message communicated to students is more comprehensive and focuses on sexuality, positive youth development, and experiential learning.

The Teenpath project from PATH, Thailand, which is one of the first and most prominent sex education programmes that employ the liberal approach, notes in the declaration of the Society for Adolescent Medicine in the introduction of a manual: "Abstinence-only programmes threaten fundamental human rights to health, information, and life." Liberal pedagogy and curricula are aimed at enabling adolescents to make their own decisions regarding their sexual behavior and to promote analytical and comprehensive thinking so that those who do have sexual relations possess the knowledge and resources to engage in safe and responsible sex. Another one is "World Starts with Me" of the Association for the Promotion of the Status of Women (APSW).

v.b The Conservative Approach

In the conservative approach, teaching methods are instructor-centered and lecture-based. The content of the sexuality curriculum concentrates on physiological development, and sexuality is not the major focus. Instructors focus on controlling adolescent sexuality to deter them from what is considered inappropriate sexual behavior, such as premarital sex.

This approach does not seem to recognize sexual rights, the sexual diversity and gender issues of adolescents, nor adolescents' needs for information on safe sex practices (since the right of adolescents to know about these issues does not seem to have been taken into account). Basically, we can call this approach abstinence-based sex education, in which sex among school-age youth and premarital sex is regarded as inappropriate and a cause of adverse impacts on health, ethics, and morality, and is therefore something that should be prohibited.

The concepts underlying the conservative approach can be divided into three major groups. The first group stems from the traditional Thai notion which maintains that Thai women should be virtuous. One of the projects in line with this concept is the "Rak-Nuan-Sa-Huan-Tua (Virtuousness Project)," which

attaches great importance to female adolescents' skill at refusing male sexual advances and to knowing what male adolescents are supposedly thinking in order to avoid sex during the schooling age. The target group of some projects is female adolescents only.

A second group gives weight to the deleterious impact of sexual relations for school-age adolescents. Associated projects include "Wai-Sai-Huajai-SaArd (Teenagers with Pure Mind)," run by the Thai Nun Institute and "Ad-Praw-Wai-Kin-Wan (Save up for the Future)," run by the Institute of the Thai Family.

Apart from the view that sex while at the schooling age affects adolescents, guardians, and society in negative ways, the conservative approach does not believe that condom use can totally prevent infection or pregnancy. A key informant said, "A condom can't prevent AIDS 100%."

Academics know this, but people in general do not know this fact, yet there are still campaigns promoting this [i.e., condom use]." A third group attaches great importance to life skills and psychology, which puts weight on physical, emotional, mental, and social development of adolescents based on the concept that proper rearing of children at early ages along with family warmth will retard adolescents' sexual debut and prevent relevant problems.

Sex education curricula informed by this approach therefore focuses on life skills and sexual abstinence and promote family life and associated values and can be found in curricula designed by the OBEC. While such curricula present various alternatives to safe sex, they do not accept sex among school-age youth or condom use and regard providing information about condom use as, in effect, promoting sexual relations.

vi. Target Group & Coverage

Sex education is mostly taught in the formal educational system while most sex education curricula in the informal educational system are community-based and address adolescents who have already studied sex education in the formal educational system.

The target group for sex education in the informal educational system is adolescents who have finished their compulsory education. As for freelance laborers or laborers in small enterprises, there are few sex education options for them. Activities are mostly AIDS- and drugs-related, whereby sex education

is presented only in terms of health and AIDS protection.

They are mostly implemented in projects that are associated or supported by the government, such as the “White Plant” project, which is associated with the “To Be Number One” project and the projects of the Planned Parenthood Association of Thailand (PPAT). In these projects, some reproductive health issues are taught but due to time constraints, the curricula are not as intensive as those in the formal system. For adolescents in rehabilitation centers and orphanages, sexuality education is seriously offered only in some places. Basically it is used as a tool to prevent the teenagers from going into sex trade, committing sexual crime, etc.

V. DISCUSSION

i. Sexual Rights Approach is not fully implemented

Sex education policies of the government originated from a need to “solve problems” and were initially intended to protect adolescents from prostitution and later to help solve sexual behavior problems, such as unplanned pregnancy, teen birth, abortion, sexually transmitted diseases, and HIV/AIDS. Due to such policies, the government sexual education curricula and pedagogy still focus mostly on guidelines for controlling sexual behavior, which is their main goal.¹⁹ This is because social mores still hold that students should remain single and that their main duty is to study, refraining from sex during their schooling age as it is deemed appropriate behavior and also a method for preventing negative impacts associated with sex. Teaching methods are not inclusive, do not take into account sexual diversity, and are even discriminatory. For example, transgendered people are described as people who engage in deviant or inappropriate behavior.

Since 2003, when the MOE developed sex education curricula in conjunction with NGOs under comprehensive sexuality education concepts, sexual education curricula from the government sector have attached greater importance to sexual rights. However, in practice, there is no sexuality education curriculum that focuses on the sexual rights of adolescents, and many teachers have not yet applied a rights-based approach in their teaching.

Due to traditional roles, duties, mindsets, and beliefs of the people and agencies in charge of controlling and monitoring students’ behavior, sexuality education is still not in line with international standards and best contemporary practices. As a key informant from the OBEC puts it, “We disagree

with sex for school-age youth and the campaign for condom use. We don’t support these things.”

Most sexuality education curricula focus on sex and school-age youth and try to control adolescent behavior or promote safe sex. Other issues related to sexual and reproductive health are essentially overlooked, such as reproductive cancer, reproductive tract infections, preparing for menopause, and fostering positive attitudes toward sex. Issues related to the positive dimensions of sexuality and related to the understanding of pleasure, desire, and love, are rarely taught.

For the most part, students are told not to have a lover or engage in sex, or, if they must have sex, to make sure that it is safe sex. The lessons taught in sex education class are mostly about biology, personal hygiene, family planning, contraception, STIs and AIDS, and family law. But giving advice or even discussing taboo topics such as masturbation is considered unacceptable. Instead, there are usually lessons on controlling sexual desire and on methods of solving sexual problems as well as saving oneself from sexual seduction or harassment.²⁰

The reason that some teachers do not want to broach certain topics is that they are afraid that mere discussion of such topics may lead students to engage in sexual behavior themselves. This reflects a mainstream perspective on sex in Thai society, namely that sex does not need to be taught but can be learned naturally. On the other hand, it reflects the attitude that sex is a distasteful and obscene matter, a feeling that still exists in Thai society. Thus, it is no surprise that so-called sexuality education has not sufficiently promoted sexual and reproductive health and rights.

ii. Heteronormativity is the standard

In almost all sexuality education curricula, only two genders are treated – males and females. Issues of gender and sexual diversity and fluidity and homosexuality are not mentioned, even in lessons supposedly designed to help students understand and learn about their sex or sexual preference. Most lessons limit students to the concept that there are only two genders and one type of sexuality (heterosexuality) and that being a transgender or homosexual person is an abnormality.

Sexuality education carried out by some agencies, especially government agencies and agencies adopting an abstinence-based approach, regard homosexual relations or sexuality as sexual deviance. In some sexuality education curricula, such issues are not taught or even mentioned,

presumably in light of the attitude that transgendered people are such a minority of Thai people. A key informant in the study said, "Because we see that there are not many transgendered people, we don't focus on them." However, the "World Starts with Me" project was adjusted to contain more details about LGBT upon reflection and input from some teachers and students that such an important issue was missing from the curriculum. But, in general, the topic of homosexuality remains a neglected issue and most sexuality education curricula do not consider the issue of sexual rights of LGBT people.

iii. Gender Bias in Teaching

Although gender issues are presented in most sex education courses, the context in which they are presented still reflects a gender bias. For example, teachers still emphasize that young girls should protect themselves from being seduced or sexually harassed by men, and from infections, unwanted pregnancy, or unsafe abortions, but there is little attention given to the sexual responsibilities of men. Moreover, in some sex education curricula, sexual differences serve as a reason for keeping the benefits for men. One concerned officer noted, "Children have never thought about this before. I used to ask them if they would marry a lover with whom they had sex. A girl said yes, but the boy said no, reasoning that if his partner could have sex with him easily, she could also have sex with other men just as easily. The girl turned to the boy and wondered if this is what he really thought. I then told her that she should not behave in accord with the DTAC mobile phone slogan – Easy for You."

iv. Attitude of Teachers is Another Barrier

Attitudes are important factors affecting sex education. Parents' and teachers' attitudes toward youth sexuality and toward teaching the young about sex remain conservative. Conservative adults still believe that teaching youngsters FP methods such as how to use condoms correctly will encourage early/premarital sex rather than prevent disease and pregnancy among those who are already sexually active. For most adults, sex is still regarded as a private matter and something that can be learned naturally.

Furthermore, in any given sex education curriculum, there are still people who teach sex education in a directive way or in ways that block the analytical thinking of their students. This is far from a student-

centered approach. On the other hand, teaching that encourages students to think analytically and to make their own decisions regarding their own sexuality requires confidence that students are able to think and to make appropriate choices for themselves.

These concepts are highlighted in the curricula of the "Teenpath Project" and the "World Starts with Me" project. However, Thai society still believes that adults are more likely to have more correct attitudes than children, as reflected in the Thai saying: "Adults take a hot shower before children." Thus, teachers tend not to trust their students' maturity, so they teach them in a directive way. A key informant clearly states, "I don't think that Thai children have analytical thinking [ability] since they are surrounded by so many provocative environments."

Regarding the view that children lack the maturity to resist these things, some agencies agree with this and think that sex education should be removed from school curricula because it is ineffective and that it should be replaced by family education.²¹

VI. CONCLUSIONS

As discussed, sex education in Thailand is better than it once was. The claim that sex education will lead adolescents into sexual experimentation or early sexual debut is heard less often these days. At present, there are many more channels for communicating about sexual matters and sex education is more comprehensive than it used to be.

Although it cannot cover some vulnerable groups, e.g., adolescent laborers, adolescents in orphanages, adolescents infected with HIV, etc., almost all people accept the need for sex education, and it is taught from the primary level. Sex education curricula that are applied in continual teaching cover all necessary dimensions – physical, mental and social development, learning about relationships, sexual self-adjustment and behavior, prevention of negative sexual repercussions, and understanding of environments (such as mass media) affecting attitudes toward sex and sexual relationships.

Almost all sex education curricula have been designed to allow students to learn things by doing so that they can develop analytical thinking skills by encouraging teachers to listen to their students more. But the gaps that exist in terms of implementing sexuality education shows that there is no political

will for mandatory sexuality education in schools, which results in a lack of a clear policy commitment at provincial and school levels.

As a result, comprehensive sexuality education in school systems remains an issue. Most sexuality education that has been implemented still lacks a focus on sexual and reproductive rights, in both content and pedagogy. Neither is there a focus on adolescents who are LGBT. Qualified teachers as well as necessary capacity building and coaching programmes are also lacking.

VII. RECOMMENDATIONS

1. Support a policy that mandates standard, comprehensive sexuality education for students in all schools through a process of multi-sectoral consultation.
2. Ensure the inculcation of sensitivity to sexual rights and of critical thinking skills with regard to social and cultural values concerning sexual relations and gender practices in the contents of comprehensive curricula, allowing youth to adopt more progressive values in order to protect themselves from unintended negative consequences of sexual relationships.
3. Develop strong teacher training programmes that will make teachers' conservative attitudes more sensitive and respectful of adolescents' sexual rights, including the right to learn about sexuality and contraceptive methods.
4. Ensure participation from all stakeholders, especially policy makers, parents, teachers, communities, and students in supporting a standard, comprehensive sexuality education agenda.
5. Support the teaching of sexuality education that addresses understanding and acceptance of gender and sexual diversity, thus respecting LGBT's human rights.
6. Ensure that sexuality education is a continuous learning process and that the subject is taught separately from other subjects, with content suitable for youth in different age groups.
7. Ensure comprehensive sexuality education for vulnerable groups of young people, including young people with disabilities, young people in orphanages and rehabilitation centers, and young people affected by HIV.

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CHAPTER 3

NEGOTIATING POWER: SEXUAL HARASSMENT IN THAILAND

By Suchada Thaweessit¹ and Pimpawan Boonmongkon²

I. INTRODUCTION

Thailand has ratified the United Nation Convention of the Elimination of All Forms of Discrimination against Women (CEDAW) since 1985. Following the ratification of CEDAW, Thailand has also recognized the Programme of Action adopted in 1994 at Cairo's International Conference on Population and Development (ICPD). The commitment to implement CEDAW and the ICPD Programme of Action has been envisaged in its subsequent national economic and social development plans. The current national economic and social development plan emphasizes that all women gain access to equal opportunity in all aspects of their lives.

In particular, the recognition of the ICPD-Programme of Action has urged the Thai government and the concerned NGOs to make greater efforts to ensure the progress of women in the areas of sexual and reproductive health and rights. In 2009, fifteen years after the adoption of the ICPD Programme of Action,

Thailand continues to demonstrate its considerable success in the improvement of maternal and child health. It also, to a larger extent, has been able to sustain the good quality of health services to prevent RTI, STI and HIV/AIDS. Throughout 15 years of ICPD, Thailand had launched a number of initiatives to stop gender-based violence.

As a result of many attempts, domestic violence has now emerged as a critical public concern. The attempts have brought about the assertion of Domestic-Violence Victim Protection Act B.E. 2550 (A.D. 2007). The Cabinet also endorsed the amendment of the Penal Code, Article 276 which now has been enforced to protect women from marital rape.

Although Thailand has been successful in improving women's reproductive health and rights in many areas, it has not yet taken the strong follow-up actions to better the situation in some critical aspects.

This research is intended to examine sexual harassment against women in workplaces and educational institutions. Thus far, sexual harassment has not yet received a clear political commitment and strong specific actions from the government. Rather, laws, regulations and programmes designed to engage with the issues are embedded in moral judgment and male-dominated norms.

It is widely accepted that an increase in awareness

of sexual violence against women and girls as well as clear legislations with respect to sexual harassment will serve as a key to enhance women's well-being and assure women's rights.

II. OBJECTIVES

Firstly, this report aims to examine the situations of sexual harassment in workplaces and in educational institutions in Thailand. Secondly, it aims to evaluate the status of the programme of action undertaken by the government and the concerned NGOs in the field of sexual harassment in workplaces and in educational institutions. Finally, it discusses obstacles that hinder the progress of actions in enforcing laws and implementing policies and interventions with respect to sexual harassment.

III. METHODOLOGY

This assessment combines documentary and qualitative research. With regards to documentary research, data from existing national policies, laws, and regulations relating to sexual harassment were collected. Programmes and movements concerning the issue were studied as was the prevalence of sexual harassment.

Data came from official documents, research, newspapers, and the Internet. Qualitative research was employed to triangulate and supplement data from secondary sources. The in-depth interview technique was used with four policymakers from women and child protection organization, a labor organization, an educational institution, and a police and women's group.

Perspectives regarding gender-based and rights-based approaches were used for analyzing and discussing the collected data throughout the report to evaluate whether existing policies, laws, and implementations of anti-sexual harassment programmes can solve related problems and promote sexual health and rights of women and adolescents in Thailand.

IV. FINDINGS ON SEXUAL HARASSMENT IN WORKPLACES AND EDUCATIONAL INSTITUTIONS

i. Situation, Magnitude, and Form

This research argues that sexual violence against women in Thailand finds its root in male-dominated traditions. Sexual violence, including sexual coercion, rape, sexual assault, and sexual harassment, is not just a consequence of modernity or the outcome of a breach in traditional moral order.

Rather, it is a result of well established gender normative patterns which have perpetuated imbalanced power relations between men and women in Thai society. Internationally, sexual harassment is increasingly viewed as one form of gender-based violence against women. The CEDAW prohibits sexual harassment in Article 11 of General Recommendation 19 with respect to violence against women.

To follow the definition adopted internationally, sexual harassment herein is referred to as unwelcome sexual conducts encompassing physical, verbal or non-verbal acts of a sexual nature which are considered offensive to the person being harassed. It also involves sexual advances or request for sexual favors (*quid pro quo*).

In Thailand, perceptions about sexual harassment vary greatly from one person to the other and from men to women. This is so because people tend to interpret it according to the context in which it occurs.

Some conducts, for example, unwanted kissing, touching breasts, molesting and touching the genital areas are unarguably classified as sexual harassment, whereas it may be disputable to consider conducts such as pursuing sexual advances from the subordinates, engaging in sexual blackmail, telling dirty jokes, displaying an offensive object or a picture, and creating hostile environment, as sexual harassment.

The magnitude of sexual harassment in Thailand can be approximated from the two surveys conducted by the ABAC poll center. The 2006 survey collected data from 3,139 young people aged between 15 and 24 living in Bangkok and adjacent provinces, including Nonthaburi, Pathumthani, and Samutprakan. It found that about 66 % of female youths and 26 % of male youths had experienced myriad forms of sexual harassment.³

The 2005 survey conducted among 1,331 women aged between 15 and 49, shows that a high percentage of Thai women of reproductive age had experienced sexual harassment. This survey also shows that male strangers comprised 60% of those who sexually harassed women, whereas men who were acquaintances, such as lovers and boyfriends, comprised 26.6% and 14.6% of the harassers, respectively.

The average age of women who had experienced sexual harassment for the first time was twenty years. This survey shows that female respondents encountered sexual harassment at a very young age. Moreover, the survey indicates that "leering at" accounted for 44.4% of sexual harassment while verbal harassment comprised 26.7%. Twenty-four percent of respondents reported that they were sexually harassed via telephone.⁴

Furthermore, sexual harassment can be observed in various settings. For example, it occurs in schools, universities, offices, private homes, beauty salons, and entertainment venues. It can also take place in public areas, such as parks, shopping complexes, and on public transport.

The survey mentioned above claims that 27% of respondents were likely to be harassed in public buses or taxis, 25% in neighborhoods, and 24% near bus stops or railway stations.

Fairs and festivals are other venues where men can easily sexually harass women. Perpetrators of unwelcome sexual behavior in public buses, trains, aircrafts, public areas, or neighborhoods are often male strangers, whereas in schools, universities, or workplaces teachers or superiors are usually the culprits.

Based on the same survey, 18% of respondents reported that they were sexually harassed when they attended Songkran festivals. Seventy-eight percent of the female respondents thought that women could be sexually harassed by men in different places and times.⁵

A survey of 100 samples of factory workers from ten export industries carried out by the International Labor Rights Fund (ILRF) and project partners in Thailand discloses that 90% of the respondents reported that their employment conditions did not protect female workers from sexual harassment.

Seventy-five percent of respondents admitted that they had no knowledge about the Labor Protection Law that prohibits sexual harassment in workplaces. Over 90% of the respondents were ignorant about the existence of the code of conduct in their workplaces.

The survey also discovers that less than half of respondents would take action against their perpetrators only in cases of the worst act, such as rape.⁶

In addition, the survey affirms that most women did not have a common perception regarding what behaviors can be classified as sexual harassment. This has resulted in the ignorance of some behaviors that damage women's dignity.

Women who reported sexual abuse or harassment in the workplace were likely to be fired or to be discouraged. While 70% of the workers employed in the factories in which the survey was conducted are female, 63% of supervisors are male workers. Men are promoted far more frequently than women and this situation puts women workers at risk of the quid pro quo harassment.⁷

While same-sex sexual harassment may be observed in Thailand, existing literatures and researches, however, affirm that the largest number of sexual harassment happens between men and women. Major victims of sexual harassment in Thai society are young women, ranging from students to working women.

Women in particular kinds of employment, such as factory workers, housemaids, flight attendants, bus hostesses, singers, celebrities, waitresses, and service women in entertainment places find themselves vulnerable to sexual harassment. Male harassers can be women's supervisors, teachers, co-workers, peers, subordinates and clients. This confirms the claim that sexual harassment is an indicator of women's powerlessness in a male-dominated society.

During the past several years, local media have reported many cases of sexual harassment in schools, universities, and workplaces. In 2008 alone, 16 cases of sexual offenses in educational institutions classified as acts of sexual harassment were brought to public attention by the media. Eleven out of the 16 cases happened to secondary school pupils, while three cases were found among primary school girls and boys, while the remaining two happened to female university students.⁸

In some educational institutions, male teachers have been found guilty because they exploited their position to gain sexual advantage from female students. In an educational context, teachers may request sexual favors in return for letting students pass an exam or to get a good grade. In workplaces, men in power often misuse their authority.

They may seek sexual favors from female subordinates in exchange for job promotion. This exchange takes place in the context of an

unequal power relationship between the superior and the subordinate, pushing women to endure sexual harassment as they are afraid of a negative response. In fact, many sexual harassments have gone unreported as most harassed women are afraid of the negative consequences they will face if they go public with their predicament.⁹

Also of topical interest and seen in newspaper headlines of late are reports of new technologies that are frequently used as a means to sexually harass women. For example, camera phones are being misused to take pictures under women's skirts which are then uploaded to the Internet or transmitted to other mobile phones.

Nude photos and videos, especially of female celebrities, are posted on the Internet more frequently. This act can be considered sexual harassment as it invites a hostile environment and violates women's rights. There is a study indicating that sexual harassment causes physical and psychological harm and hinders women's well-being.¹⁰

ii. Existing Laws and Regulations

ii.a National Level Laws and Regulations

The acceptance of CEDAW should give a clear legislative direction for Thailand to deal with issues regarding sexual harassment. But clear and specific laws and policies have not yet been implemented to stop the incidents of sexual harassment that happen to women and girls. This relates largely to a lack of awareness and understanding among key stakeholders about the issues.

There are several preexisting laws related to sexual harassment. The current Thai Constitution, Article 4 states that human dignity, rights, liberty, and equality of the people shall be protected.

This statement implies that the commission of sexual harassment violates a person's rights and dignity.¹¹ Yet, in order to make the statement written in the Constitution to become applicable, it requires specific laws to deal with an offense that is brought before the courts. In addition, it requires authorities to seriously pay attention to problems arising from sexual harassment.

The Penal Code that has been in use since 1956 is a major law, which has been applied to deal with sexual offenses. There are some sections of this law that should be mentioned here. For example, Section 276, on rape, Section 278, on indecent behavior, and

Section 287, on distribution or exhibition of obscene printed materials or pornography.¹²

The last two sections are loosely related to conducts of sexual harassment. In addition, verbal forms of sexual harassment may fall under the defamation provisions in Section 326 and those on sexual insult in Section 393. However, in all of the sections mentioned herein the term “sexual harassment” has never been clearly addressed in the provisions of the Penal Code as such.¹³

In principle, this law recognizes only sexual assault, indecent act, rape, or attempted rape. Sexual offenses that do not involve physical injuries are treated as cases of assault or indecent acts. At the same time, actions that fall short of rape, such as the act of “flashing,” may be classified as petty sexual offenses that intend to upset or bully other persons. It can be stated that a concept of sexual harassment has never existed in this law.

It should be noted here that sexual offenses violate not only the Penal Code but also the Thai Civil and Commercial Code. The latter code was promulgated in 1925 and requires wrongdoers to pay compensation for damage or injury that occurs as a result of sexual offenses.

Prescriptions for compensation punishment are mentioned in Sections 420 and 446. In practice, some forms of sexual harassment that have been proscribed in the criminal law may also allow for compensation for damage through the 2001 Compensation Act. According to existing Thai laws, a person guilty of sexual harassment can be sentenced to a fine or imprisonment or both.¹⁴

In addition to the Penal Code, sexual harassment is considered as unlawful conducts for the first time since 1998 by the Labor Protection Law.

The petitions from women politicians, lawyers, academics, the Ministry of Labor and Social Welfare and the National Commission on Women’s Affairs, with technical advice from The International Labor Organization contributed to Thailand’s success in asserting that sexual harassment in workplaces is illegal. Under the Labor Protection Law, employers, foremen, supervisors or inspectors are subject to prosecution if found guilty of harassing women employees or co-workers.

ii.b Regulations at Workplaces

Although sexual harassment in the workplace was recognized as an unlawful offensive sexual behavior in Article 16 of Labor Protection Law, this specific

law has not yet clearly defined sexual harassment, and several weaknesses of the law were widely debated. In effect, the law protected only female employees and children whereas sexual harassment against male employees was not mentioned. The weakness of the 1998 Labor Protection Law led to an amendment of Article 16. The 2008 Labor Protection Law, Article 16 has been changed to state that employers shall not sexually harass their employees or shall not take sexual advances from all of employees including children, women and men.

Despite this amendment, the current labor law does not protect employees from being sexually harassed by their co-workers. In addition, employees who are working in NGOs and informal sectors, such as housemaids, are not protected.

Furthermore, the procedure for the injured parties to bring their cases to the court is complicated and time consuming. The law demands that sexual harassment offenses in workplaces that fall under Section 16 must be brought to court and adjudicated under the criminal law.

This is due to the fact that a labor court is not allowed by law to handle cases involving criminal offenses.

Thus, after they file the sexual harassment complaint, plaintiffs must present their case twice, first to labor inspectors and next to the police. This complicated and time-consuming procedure discourages the harassed employees from pursuing their cases.

The statement on sexual harassment in the Labor Protection Law, however, does not apply to government officers.

To prevent sexual harassment in government workplaces, civil servants have to comply with the 1992 Civil Service Act.¹⁵ Claims of sexual harassment against civil servants are processed under Section 98, which states that civil servants must maintain a good reputation and preserve the dignity of their office by distancing themselves from misconduct of any kind.

Civil servants who commit sexual harassment are considered to have violated these disciplinary guidelines and are punished according to the degree of seriousness of their actions. Punishments include warnings, salary reductions, salary cuts, dismissal, and banishment from future government employment.

There is much inconsistency in the implementation of this code of conduct because the grounds for justification include matters of intention and rank of those accused.

Other government sectors, such as the military, police, parliament, and the judicial branch, have their own codes of conduct equivalent to the Civil Service Act.

ii.c Regulations at Educational Institutions

The prevention of sexual harassment in educational institutions is based on two provisions regarding misconduct. Teachers in schools must abide by Section 94 of the 2004 Teacher and Educational Personnel Act, which is similar to Section 98 of the Civil Service Act. However, Section 94 goes on to state that teachers or civil servants working in education who sexually harass students, whether or not the students are under their direct responsibility, are considered to have violated the code of conduct for education professionals.

Any superiors who have abdicated their responsibility for preventing sexual harassment in their educational institutions are deemed to be in breach of discipline as well.¹⁶ In addition, the 2003 Child Protection Act prescribes the penalty for abuse of a child in Article 26, defining a child as a person aged below 18 years, excluding a spouse, which implies a prohibition of sexual harassment of children.¹⁷

Instructors in higher educational institutions are required to observe Section 44 of the 2004 Higher Education Civil Service Act and the Standards for the Code of Ethics in Universities, Item 4 (2). These two provisions are very similar to Section 98 in the Civil Service Act and attempt to discourage university lecturers in both government and private institutions from sexually harassing students.

University instructors who harass students sexually or having had sexual relations with students who are not their spouse are deemed to be in serious disciplinary violation and are to be subjected to disciplinary action, ranging from a warning to being fired. At the same time, university instructors serving as government servants have to conform to Section 98, relating to sexual harassment as described in the Civil Service Act.¹⁸

iii. Policies and Programme Initiatives

iii. a Policies and Programmes at the National Level

At the national level, the government established the Children Juveniles and Women Division (CWD) of the Central Investigation Bureau in 2005. This

division focuses on problems relating to violation of women's and children's rights, human trafficking, and sexual harassment. It is engaged in investigating and bringing cases to the court. However, it will work with a particular case only when a person files a complaint. Another agency concerned is the Office of the National Human Rights Commission of Thailand (NHRC), established in 1999. According to the 1997 Constitution of the Kingdom of Thailand, the NHRC is an independent agency in charge of promoting human rights. The NHRC receives complaints, investigates, studies and researches, and campaigns regarding cases that involve all types of human rights violations.¹⁹

Another government agency dealing with sexual harassment is the Prachabodi 1300 – a 24-hour Hotline Center. This center was set up under the supervision of the minister of Ministry of Social Development and Human Security to help the general public find a channel for filing complaints about social problems.

It focuses on problems concerning trafficking of women and girls, whereas people may also call the hotline to complain about sexual harassment.

The Center coordinates with relevant agencies that investigate claims or provide assistance to victims but has no authority to control or oversee these agencies' procedures. The complainants can consult regarding cases via phone or in person.

The Center will check the details brought forth in each complaint and if solid and sufficient evidence of wrongdoing is found, the Center will pursue the case. But prior to reporting the case to the police, victims are required to fill an official complaint form themselves. This is aimed at deterring false statements or intentional defamation of other persons.

Since 1999 and even before, Thai NGOs working on women's, children's, and laborers' issues have paid greater attention to sexual harassment. They have attempted to form a network to advocate change. For example, labor unions often collaborate with other NGOs when sexual abuses come to light in workplaces.

Sometimes, ten or more organizations work together. By working collectively, they are able to influence policy and bring about changes in the law, and can thus more effectively, case by case, address the problem of sexual harassment. At present, labor unions work with the NHRC, mass media, and academics more closely.

With respect to prevention, they have arranged training programmes for the protection of workers' rights and the prevention of sexual harassment

in private enterprises and have created a labor union network. They have also advocated for policy changes and implementation by engaging in public campaigns to educate society about human rights and gender equality. Activities include distribution of relevant information, organization of forums, and creation of a safe channel for people to file complaints.

iii. b Policies and initiatives in Workplaces

Sexual harassment is now included as a workplace health and safety concern. The Department of Labor Protection and Welfare in the Ministry of Labor has designed a non-compulsory code of conduct for private enterprises to use in refining their management system in order to prevent and deal with acts of sexual harassment in the workplace.

The code is published in Section 5.7 of the Thai Labor Standard 8001-2546. It states that enterprises should have measures to protect employees, especially women and children, from any form of sexual harassment, including verbal harassment, gestures or physical contact.

Thus, some private companies, especially large-size or overseas companies, for example the Minebea Group, and Thai Airway, have a code of conduct indicating sexual harassment as a disciplinary violation.

This organizational proscription aims to cover parties that are not included in the Labor Protection Law by including sexual harassment committed by co-workers. Since 2007, the Department of Labor Protection and Welfare has encouraged companies to open an anonymous complaint system to protect complainants from retribution.

A complaint system via the Internet has also been put into place in some organizations in order to encourage victims to bring their cases to the attention of the relevant parties. Over 100 enterprises have established this system so far.

Every year, a number of grievances with respect to sexual harassment are filed by civil servants. Not until 2005, however, have government organizations begun to work more vigorously on sexual harassment in the workplace.

Part of this enthusiasm was due to Thailand's implementation of bureaucratic reform. Subsequently, the Office of the Civil Service Commission (OCSC) introduced office regulations concerning sexual harassment and set up a

complaint centre for civil servants to make complaints about sexual slander and sexual harassment. Complaints can be made in writing, in person, or by phone via the hotline number 1786. Investigations are carried out confidentially. In cases where the complaint involves persons working in government agencies that are not under the responsibility of the OSCS, the centre will consult with the complainants as to whether they want their case to be referred to the relevant authority.

iii. c Policies and initiatives in Educational Institutions

Since 2004, the MOE has formulated policies and guidelines in order to prevent sexual harassment in educational institutions. Guideline designed for schools and universities are clearer and more detailed than they are for workplaces. They have taken into consideration the sensitive issues involved, especially the imbalance of power between the parties involved, and cover prevention, protection, and disciplinary penalties.

They are intended to prevent both sexual harassment committed both by teachers and students.²⁰ In this case, the definition of sexual harassment is broadened to include rape and actions that aim to irritate and embarrass others sexually.

Educational institutions have been encouraged to design their own systems to ensure students' safety regarding sexual harassment. Measures undertaken by schools and universities include, for instance, not allowing people to enter buildings after hours, having security guards on duty, prohibiting a teacher from staying in a closed office room with a student, and not allowing teachers to arrange study tours for students without first gaining permission.

In addition, institutions have been encouraged to provide training programmes to help students become aware of what constitutes sexual harassment and of their rights to protest it. Institutions are also encouraged to monitor students who are likely to become harassers or victims of sexual harassment, e.g., students who seem depressed or students with poor performance. Institutions have been advised to be congenial and to assist the victims to gain access to treatment and counseling.

At present, particular intervention programmes have been carried out in some schools to prevent sexual harassment. Examples are the Pleasant Schools for Student Safety programme initiated by Amnesty International in 2008, the Prevention of Sexual Harassment among Kindergarten Children

project created by the Foundation for Research and Development of Sexual Health in 2007, and the Child Protection School Project conducted by the Center for the Protection of Children's Rights Foundation in collaboration with the Ministry of Education in 2003.^{21,22,23}

It should be noted that the intervention programmes mentioned above have not yet been implemented across Thailand. For instance, it was expected that there would be over 10,000 schools participating in the Child Protection School Project, but so far only 30 schools are participating in this programme, and only 15 out of 100 schools accepted an invitation to participate in the Prevention of Sexual Harassment in Kindergarten Children project.

In 2008, there were two reported cases of sexual harassment that involved lecturers and students. These two cases were highly publicized and underwent serious investigation.

Finally, the two lecturers were fired and will probably be sued by students under criminal law as their practice raising grades in exchange for sex is considered a form of corruption, which is illegal according to the Criminal Law, Article 157. Subsequently, the Ministry of Education has issued an order to investigate teachers and lecturers who have committed serious disciplinary violations concerning sexual harassment in the past, especially from the year 2006-2007 in order to blacklist them.

The Commission on Higher Education (CHE) attached a link on its website,²⁴ allowing students to make complaints about sexual harassment taking place in their university. Formerly, the website received complaints only about drugs, gambling, and severe welcoming rituals for freshmen.

In the new version of this website, complainants can choose not to disclose their name when filing complaints. From July-September, 2008, six lecturers who were accused via this website were found guilty upon further investigation.

In cases of harassment of colleagues or subordinates by supervisors that occur in university and school setting, they were considered under organization's code of conduct or the Civil Service Act. However, harassment of colleagues or subordinates by superiors in university and school settings was completely ignored in an attempt to stop the occurrences of sexual harassment in educational institutions.

Many universities have formulated guidelines for preventing sexual harassment of students. Some universities have declared that love affairs between lecturers and students as well as a request for sexual favors from students are inappropriate conducts, and

that lecturers who engage in such behaviors shall be subject to severe disciplinary action. To follow the guidelines, some universities, in fact, have provided a common room for lecturers to meet with students outside the classroom. In addition, some universities have devised a procedure for receiving complaints from students.

V. DISCUSSION

i. Patriarchy and Imbalance of Power as Root Causes

In contexts in which sexual harassment takes place, the imbalance of power between the harassed and the harasser is palpable. In Thai society, this imbalance of power relation is based primarily on gender differences, seniority, and social rank. It can be argued that sexual harassment in Thailand has its roots in the hierarchical patterns of social relations and gender inequality.

Inequalities between persons of different sexes, ages, and social positions provide grounds for the discussion hereafter. Just as ordinary people are deemed subordinate to government officers, children are considered relatively powerless in their relationship with adults. In the same fashion, lower ranking personnel in workplaces are often considered subordinate to those who are in a position of authority, and students have less power than their teachers.

This unequal power relation in different contexts is complicated further by an inequality with respect to gender differences in which men are considered superior than women. Thai men's sexual conduct is more permissive than that of Thai women. As a result, Thai women are prone to sexual violence and harassment, and men no matter they are in a higher position or not often try to seek sexual advantage from women who rank relatively lower than them in a gender ladder.

In Thai society, thus, sexual harassment affects women more than it does men and damages women's dignity as well as affects their psychological and physical well-being.

Furthermore, a tendency to regard sexual harassment as women's own fault is widespread in Thailand provoking public suggestions for women to behave and dress in a "proper" manner in order to avoid being harassed sexually by men. Attempts to change the root assumptions underlying Thai gender system and men sexuality culture are seldom made,

thus ensuring the recurrence of sexual harassment that both women and girls in all social strata have to endure. Accordingly, differential power relationships between women and men, teachers and students, and supervisors and subordinates are seldom addressed as the foundation for sexual harassment and reflecting the mores and values of a patriarchal culture.

Imbalances of power and the application of double standards in justifying sexual conduct between men and women often make it difficult for women to bring their cases to court and testify as they are fearful of intimidation, public embarrassment, and humiliation.

Thailand is dominated by the patriarchal culture, in which men still determine normative patterns and rules as well as legislation.

Thus, policies, regulations, guidelines, and laws responding to the issue are vague, weak, and inadequate. They are neither sensitive nor deferential to women's rights and dignity. Sexually harassed women and girls feel victimized under a male-dominated social milieu.

They feel helpless, angry, embarrassed, stressed, and anxious when they encounter sexual harassment, whether it happens to them individually or to friends or relatives.

Women who file complaints about unwelcome sexual advance or sexual offense often encounter various forms of intimidation.²⁵

Furthermore, although sexual harassment has long been pervasive in Thailand, they are slowly being recognized as a social problem a short time ago. Moreover, when it is recognized as a social problem, many cases of sexual harassment are not likely to be seen as a form of sexual violence against women and girls.

The failure to recognize sexual harassment as sexual violence against women is due largely to gender bias. The typical Thai interpretation of sexual violence is limited to actions that result in physical injury, such as sexual assault and rape.

Thus, incidents of sexual harassment such as sexual insults, sexual fondling, verbal comments, sexist remarks, the telling of dirty jokes, unwelcome requests for sexual favours, the displaying of offensive materials or other actions that are intended to sexually humiliate or intimidate women and girls are hardly ever perceived as sexual violence.

Instead, Thai people are likely to consider such conducts as types of scandal or indications of one individual's moral corruption that needs to be fixed through rigorous teaching of morality.

ii. Absence of a Standard Definition and Specific Law

At present, there is no specific law to address instances of sexual harassment, resulting in inconsistency of application of various laws and vagaries of interpretation and judgment.

Some jurists may argue that the existing laws, for instance, the Criminal Law and the Labor Protection Act are adequate to remedy the problem of sexual harassment. Some people go on to argue that the failure to deal effectively with sexual harassment in Thailand is grounded more in weak law enforcement than in the lack of specific laws.

Contrary to the perspectives presented above, Thai feminists contemplate that it is the absence of a specific law against sexual harassment that results in the lack of a clear definition of sexual harassment in legislation.

This lack, in turn, affects people's understanding of and sensitivity to instances of sexual harassment. Thus, the laws are likely to recognize only a critical or life-threatening sexual offense, otherwise a case of a "sex scandal".

Sexual harassment or unwanted sexual conduct has not yet been clearly defined and standardized by pre-existing Thai legislation, resulting in a general lack of public awareness, and in problems of legal interpretation.

A lack of a clear definition in laws makes it difficult to identify what actions should be classified as sexual harassment.

Moreover, the lack of standardized definition of sexual harassment has led to unclear, poorly focused and unfair legislative approaches carried out under pre-existing laws.

The term and concept of sexual harassment is relatively new for Thai people. Indeed, the ways in which Thai people and media have understood the notion of "sexual harassment" have been diverse leading to different levels of tolerance for different types of behavior.

There is no precise vernacular to translate the English term of "sexual harassment". It is often translated as "sexual intimidation" or "sexual transgression" which is not precisely equivalent to "sexual harassment".

These two terms include rape and sexual assault. Drawing from the survey in factories, the general understanding of the term "sexual harassment"

among workers and employers includes unwelcome body contact, such as molesting, touching breast or touching area near vagina and all the way to rape.

However, many women did not mention about trifling forms of sexual harassment such as a leering look, touching hand, inappropriate joke, stalking and displaying pornography at the workplace. They will make a grievance only in case of sexual assault or rape.²⁶

A survey carried out by the Bangkok Poll Research Center of Bangkok University in 2002, which collected data from 1,151 working women in Bangkok aged 18 years and above, indicates that a significant number of women (42.4%) had experienced sexual harassment.

However, about half of them were unsure when asked to name the unwanted sexual behavior they had encountered as sexual harassment.²⁷ It can be pointed out here that a large number of Thai women somehow do not recognize many types of sexual harassment rendering the ignorance of their rights and their inability to protest sexual harassment.

It is significant to be noted here that Thai laws are not sensitive to “*quid pro quo*” harassment. *Quid pro quo* means sexual harassment that occurs in the context of unequal power relations when a subordinate is either forced or consents to engage in sexual liaisons with a supervisor or a teacher in return for benefits such as job promotion or better grades.

Such behavior is not proscribed by Thai law as a form of sexual harassment. Instead, it is considered a matter of mutual agreement, except when children aged below 15 years are involved. If no underage children are involved, such cases are often dismissed by the court.

Existing laws do not consider persons who create a “hostile environment,” by doing things such as displaying offensive or pornographic materials, telling off-color jokes, stalking, slandering, relentlessly asking for dates, making sexist remarks about a woman’s body, etc., as guilty of sexual harassment. Rather, Thai jurisprudence perceives such behavior as trivial matters causing no serious harm.

As a consequence, the public remains unaware of the many types and degrees of sexual harassment that have long existed in Thai society.

This cultural mindset underlying the justice system and public opinion with regard to sexual harassment makes it difficult for women to file a complaint, let alone win a judgment, regarding sexual harassment creating for them a hostile work or study environment. Women well know that those who dare

to complain about such an environment are likely to be treated as troublemakers.

In addition, given that they allow for the concepts of “intention” and “mutual consent” in handling sexual harassment cases, the Thai laws are limited to draw the line between a sexual harassment case and non-sexual harassment case.

These concepts are such a messy concept indeed. Typically, most sexual harassment cases have few or no witness, thus they rely on the credibility of the accused and the accuser.

This causes the judge’s decision to be highly subjective and filled with gender bias since the judges also have internalized dominant sexual culture that often goes against women. It is therefore not uncommon for female petitioners to experience prejudice in legislation’s investigative procedure if they pursue the case.

iii. Coverage of Responses

Regarding the attempts of governmental and non-governmental organizations to prevent sexual harassment, it can be said that little has been done. Although, there exist regulations and guidelines both at national and organizational levels, vigorous action is undertaken only occasionally, usually after such problems are publicized in the local and international media.

This inertia is due largely to a lack of clear and strong commitment to tackle sexual harassment at all policy levels, ranging from government to educational institutions and private enterprises.

Media focus on sexual harassment cases can raise public awareness across the country. However, people tend to easily forget about it when the cases disappear from newspaper headlines.

Although the laws, policies, codes of conduct, and guidelines for disciplinary controls issued for governmental and educational civil servants are already in place and contain comprehensive content, they are focused primarily on written procedures but not in practice.

In order to prevent sexual harassment, some organizations have modified their physical environment to ensure safety, such as arranging for a common space for teachers when meeting with their students or limiting the times during which people are allowed to remain in offices or school buildings, etc.

Yet, at the same time, serious, sustained attempts to empower women and girls and to do away with the sexual double standard underlying sexual harassment have not yet been rigorously carried out in order to improve the situation.

Furthermore, the issue of respect for women's human rights is neither mentioned in written laws nor in institutional guidelines. Training programmes for preventing sexual harassment in schools that address sexual violence arising from sexist culture have not yet been implemented nationwide.

For the most part, they have been initiated only when the issue of rape, sexual coercion, and sexual harassment in schools or universities has surfaced in the news. When society is no longer interested in the issue or when the programmes gain no financial support from funding agencies, interventions are likely to be discontinued.

Many government offices, educational institutions and private companies still close their eyes to sexual harassment. Although Thai Labor Standard 8001-2546 suggests that each private enterprise setup its own system to prevent and to redress sexual harassment in the workplace, only a limited number of private enterprises have followed this suggestion.

Many employers have not yet devised clear policies and regulations to prevent sexual harassment, whereas others have failed to enforce them even if they are in place.

Thus, workplaces and educational institutions remain culpable for sexual harassment and assault on women's rights and dignity. Thai women's NGO networks have advocated for revision of particular laws, especially the Labor Protection Law, to cover sexual harassment.

The Foundation of Women in particular has played a crucial role in addressing sexual harassment and assisting women who encounter violent harassment.

The Office of Women's Affairs and Family Development provides information and recommendations for prevention of sexual intimidation in booklets and on its website.²⁸ But it focuses mainly on violent forms of sexual abuse, particularly rape, while information about sexual harassment in general is left out.

VI. CONCLUSIONS

In conclusion, this paper attempts to review socio-cultural context, situation, legislation, and various responses concerning sexual harassment

in Thailand. It can be reiterated here that sexual harassment in Thailand is widespread and its root causes are embedded in Thai patriarchal culture.

First and foremost, the existing Thai legislative framework has not yet conformed to the guidelines suggested in the provisions of CEDAW since Thai legislators have not yet thoroughly considered sexual harassment as a form of sex discrimination and violence against women and girls, as stated in CEDAW.

Actions amounting to "sexual harassment" have not yet been inclusively defined and standardized, resulting in inconsistent law enforcement, interpretation, and public concern toward the problem.

There are several existing laws that have been applied to sexual harassment cases including the Criminal Law, the Labor Protection Law, the Civil and Commercial Code, the Civil Service Act, the Teacher and Educational Personnel Act, the Higher Education Civil Service Act, and the Standards for the Code of Ethics in Universities.

Moreover, specific laws for handling sexual harassment are not yet in place, and police are not ready to enforce criminal laws against some forms of sexual harassment against women.

Hence, sexual harassment often goes unreported. It is no surprise that victims, the police, as well as prosecutors are often reluctant to pursue such cases.

Furthermore, the laws, regulations, and codes of conduct have not yet recognized two main types of sexual harassment, namely, *quid pro quo* harassment and hostile environment harassment.

As a consequence, sexual harassment that comes in such form as sexist remarks about the female body and clothing, stalking, slandering, telling inappropriate jokes, standing too close to someone, displaying pornography and offensive materials, requesting sexual favours etc., have gone unnoticed as types of sexual harassment.

There have been some NGO-supported programmes designed to aid women and girls who have experienced sexual violence in general whose services include emergency hotlines, temporary shelters, counseling services, and a television programme designed to boost awareness of sexual violence against women and girls.

Within such programmes, sexual harassment receives a minimal attention when compared to rape and other forms of sexual assault that involved physical injuries. There are also institutional

regulations stipulating that there should be no sexual abuse or sexual harassment in government offices, however, such regulations are difficult to enforce because different types of sexual harassment have not yet been defined and recognized.

In some professions, sexual harassment is clearly stipulated as a disciplinary violation but in some offices, a “disciplinary violation” refers merely to actions against norms and rules without even using the phrase “sexual harassment.” When a case of suspected sexual harassment occurs, it needs to be assessed against certain criteria.

Lacking these criteria has resulted in the ineffectiveness of protective measures. Although the Labor Protection Law makes sexual harassment illegal, its provisions covered only persons working in large size factories and enterprises. Women in informal sectors such as housemaids are not protected by this law.

Finally, the legal definition of harassment in current legislation as well as in institutional codes of conduct has not been standardized. As a matter of fact, the vagueness of laws made the prosecution of harassment claims difficult and unreliable.

to include the three dimensions of sexual harassment, namely, unwanted sexual attention, quid pro quo and hostile environment harassment in future legislation.

5. Authorities in workplaces and educational institutions should mobilize resources and people in their organizations to continuously prevent sexual harassment and to create friendly as well as gender-sensitive approaches and procedures in dealing with complaints related to sexual harassment.
6. The donors should support initiatives that will help broaden response to the problem. As it appears, sexual harassment involves not just a law enforcement system but also the judiciary, school officials, labor union, business owners, media, and the women and students themselves.

VII. RECOMMENDATIONS

1. The government should support actions that attempt to educate people about sexual harassment and try to increase public awareness about its negative consequences for women and girls.
2. NGOs, labor unions, the MOE, the Ministry of Social Development and Human Security, Ministry of Labor, schools, universities, enterprises, and the media should launch intensive public campaigns for specific targets using specific messages to foster correct attitudes towards harassed victims and deter would-be harassers. These campaigns should point out the link between sexual harassment and power imbalances, sex discrimination, as well as violence against women. They also need to connect sexual harassment to women's rights.
3. The government, NGOs, and the private sector should form a multi-sectoral committee to review relevant laws in order to come up with a draft of rules and guidelines that include clear definitions of sexual harassment and standards to judge it.
4. Women's NGOs should form a strong network with legislators, media, and human rights groups in order to advocate a strong commitment

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CHAPTER 4

REDEFINING IDENTITY: TRANSGENDERISM AND SEXUAL CITIZENSHIP - CONVERSATIONS ACROSS INDIA, NEPAL AND THAILAND

By Neha Sood, Consultant & Researcher

I. INTRODUCTION

“Sexuality is a critical and strategic frontier in which the possibilities of justice, democracy and secularism are at play.”

Correa and Careaga, 2004

This study was commissioned to examine and report on issues related to sexuality in 12 Asian countries - Bangladesh, Cambodia, China, India, Indonesia, Lao PDR, Malaysia, Nepal, Pakistan, the Philippines, Thailand and Vietnam. This is significant because feminist theory and activism has not always examined or understood the links between gender and sexuality, and how these influence experiences of injustice and achievement of rights.

Sexuality is recognised, variably, in sections of civil society, United Nations' institutions, donor agencies and governments to be a central aspect of personhood which affects all individuals, families, communities and societies. Also recognised are the links with health, reproductive health and rights, livelihood, poverty, survival and life and these are demonstrated by social movements focusing on abortion, HIV and AIDS, sexual orientation and gender identity (SOGI), sexual violence, genital mutilation and other issues. Thus, while the ICPD PoA falls short of addressing the multiple aspects of sexuality, it is valuable in that it recognises the centrality of sexuality in women's rights and adolescent needs, includes within the definition of reproductive health a satisfying and safe sex life, and calls for accessible sexual health care and sexuality education for all.

In the past few decades, sexuality has increasingly been established as an integral aspect of personhood. Therefore, States, being responsible for facilitating realisation of one's fullest potential, should ensure that people are able to freely develop and express their sexuality. However, what we find prevailing is a continued regulation of sexuality and all related matters, by societies and governments using instruments such as education, religion, law and policy, seeking to enforce a sexual discipline that emerges from a hetero-normative¹ framework that favours the heterosexual male.

Such regulation of sexuality, more often than not, impacts sexual and reproductive rights of people, some groups of people more so than others. For example, adolescents and young people, the elderly, women – especially single women - sex workers, and people marginalised on the basis of their sexual orientation, gender identity and expression (including lesbian, gay, bisexual, transgender and intersex people) are disproportionately affected. They

experience social and/or systemic exclusion, various forms of violence, including stigma, discrimination, physical and sexual violence, and/or criminalisation.

In many parts of Asia, the fear of the sexual immorality of certain classes of people and communities caused the colonial State to criminalise certain tribes and enact anti-sodomy laws in the colonies. These impositions were tools of power, which sought to subdue and divide the subjects. These continue in the post-colonial era and are seen to mirror social values and morals while serving as instruments of social control.² Most of the countries included in the study are living with these alien, colonial, legacies while social morals in the colonising countries have changed in the past decades. In current times, there has been a rise of fundamentalism in the region, which signifies the strong nexus between religion, nationalism and patriarchy, and rigidly seeks to further regulate sexuality. Hence, it was considered important to map trends in sexuality and monitor how governments have upheld their commitment to ensure access of all people of appropriate ages to reproductive health (7.6, ICPD PoA), which implies that people are able to have a satisfying, healthy and safe sex life (7.2, ICPD PoA).

Of the different groups of people marginalised for their sexuality, transgender people's health needs, experiences and access to rights have had limited documentation. There is existing literature and scholarship on histories of 'third sex,' 'third gender' and transgender identities in Asia.³ There also exists documentation of the present-day social position, marginalisation, discrimination and violence faced by transgender people.⁴ However, the status of their access to reproductive and sexual health and rights has had limited documentation, and thus has been the subject of this study. This is significant because feminist activism has often had a very troubled relationship with transgenderism over concerns that it enacts and reinforces gender stereotypes. As a result, transgender issues have rarely been included in discourses, research and programmes on women's health and rights. Similarly, the broader health and development movements have rarely included transgender issues, with the exception of HIV and AIDS movements in which the focus has also been on disease prevention and service provision, and less so on empowerment and rights.

The ICPD was a landmark conference for recognising that progress could not be made with respect to health, sustainable development, population, human rights and poverty eradication without State investment in health, provision of comprehensive sexual and reproductive health information, services and supplies for all people, and advancement of gender equality. Movement towards such progress requires supportive law and

SNAPSHOT OF VIOLATIONS OF SEXUAL RIGHTS IN THE REGION: THE PAST EIGHT YEARS

2003

→ Indonesia's Justice Ministry reviewed several laws and drafted regulations to ban gay sex, cohabitation, oral sex, anal sex, extramarital and pre-marital sex.

2004

→ In India, a video clip recorded by a male school student on his mobile phone of his girlfriend performing oral sex on him was passed around via e-mail and sold on discs. Subsequently, mobile phones were banned in schools.

2005

→ Two girls from a small town in India eloped to get married to each other. Elsewhere in the country, a lesbian couple tried to commit suicide. Section 377 of the Indian Penal Code is used to harass and charge gay men and women.

2006

→ Cambodia's Prime Minister banned the use of mobile phones with video features and 3G technology for fear that they may be used to spread pornographic videos and increase sexual exploitation of women and children. He said that the country should wait 10 years before allowing these and in the meantime, the morality of its society should be strengthened.

→ An Indian woman athlete was made to take a gender test and failed. She was stripped of her silver medal for a race.

2007

→ Adolescent education programme textbooks were banned in 11 states of India due to the "graphic" illustrations and "inappropriate exercises."

→ Crezendo, a condom that comes with a vibrating ring, was banned in Madhya Pradesh (in India). The reasons stated were that it was un-Indian and a sex toy. Sex toys, as well as pornography, are illegal in India.

2008

→ Five *hijras* were arrested at a traffic light in a city in Southern India. They faced physical and sexual abuse in the police station, and were made to perform menial tasks. They were charged with extortion and wrongful restraint.

→ A lesbian couple in West Bengal (in India) ran away from their home town to be able to live together. They were forcibly separated on their return.

→ Two women in Southern India committed suicide by setting themselves on fire as they were not allowed to be together.

→ Sex work is illegal in Cambodia. A crackdown by the police on certain soliciting sites, such as the Pursat Bridge, pushed sex workers to more dangerous parts of the city which they are less familiar with and exposed them to theft and forced sex.

→ Malaysia's National Fatwa Council, comprising Islamic scholars, issued a *fatwa* banning lesbian sex and other "masculine behaviours" for Islamic women, including wearing trousers. They said that by wearing trousers, girls risked becoming sexually active "tomboys."

A *sharia* court annulled a marriage between a woman and a transman. Gay sex is outlawed in Malaysia. Cross-dressing is illegal under public decency laws.

2009

→ The Gay Pride Parade in Chiang Mai in northern Thailand was cancelled when the parade participants were locked in the compound where they were gathering, harassed and subjected to violence by a political group for 4 ½ hours while 150 police personnel looked on.

→ Cambodia's Ministry of Culture and Fine Arts banned songs with "rude or obscene meanings." This includes any references to sex. The Minister of Women's Affairs explained the ban by drawing a link between sex movies, obscene songs and rape attacks on women.

→ *Fatwas* were issued in Indonesia and Malaysia banning vasectomy and sterilisation respectively.

→ Activists of a fundamentalist outfit attacked young women in a pub in Mangalore, India, claiming they were violating traditional Indian values.

→ The commission on elections (Comelec) in the Philippines, rejected the petition of Ang Ladlad Party which represents homosexuals, bisexuals and transgender individuals to be registered as a sectoral party on the grounds of 'immorality.'

2010

→ In March 2010, in Surabaya, the fourth regional conference of the Asia chapter of the International Lesbian, Gay, Bisexual, Transgender and Inter-sex association (ILGA) was cut short as protesters from hard-line Islamic groups opposed and threatened to disrupt the conference.

policy. State policies and law create the political environment for affirmation and realisation of human rights or systemic violations. It is within this environment that societies evolve, governments function, public services including health care are provided, and people can realise their rights or seek redress in case of violations. Hence: this study focuses on how State policies and laws in the 12 Asian countries studied advance or prevent transgender people's access to reproductive and sexual health and rights.

There have been recent developments in parts of Asia such as Nepal, Tamil Nadu (in India), Thailand, and parts of China that have recognised citizenship of transgender people, affirmed their rights, and enforced policies for their advancement, including access to education, health, housing and family formation.

Nepal's Supreme Court passed a judgement that recognised LGBTI persons as "natural persons" and instructed the government to change laws and policies that discriminate against them and enforce laws that protect them from discrimination.

The Tamil Nadu government started issuing ration cards⁵ to *aravanis*, constituted a Transgender Welfare Board, conducted a census of *aravanis* and issued an order that they can share 30% of seats

reserved for women in government-owned and government-aided arts and science colleges.

Thailand's new constitution states that all people shall enjoy equal rights and protection under the law regardless of their sex, and the attached explanation states that this includes men, women and people of other gender identities. Some jurisdictions in China have laws that recognise transgender people in their new gender.⁶ It is important to analyse these developments and the factors that brought them about so that lessons from these situations can be replicated or adapted by movements in other parts of Asia and the world.

While the ICPD PoA was conceived using a binary framework of gender and, therefore, does not make a specific mention of the needs and rights of transgender people, it states the right of all people to the highest standard of sexual and reproductive health (7.2, ICPD PoA); this includes transgender people. Hence, States are required to create and implement laws, policies and programmes that facilitate transgender people's access to education, health and livelihood, and eliminate social and legal discrimination faced by transgender people.

The following box lists portions of the ICPD PoA that can be used to advocate for transgender people's rights:

PARTS OF THE ICPD POA THAT CAN BE USED TO ADVOCATE FOR TRANSGENDER PEOPLE'S RIGHTS

→ All human beings are born free and equal in dignity and rights. Everyone is entitled to all the rights and freedoms set forth in the Universal Declaration of Human Rights, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other status. Everyone has the right to life, liberty and security of person. (Principle 1)

→ Human beings ... are entitled to a healthy and productive life ... Countries should ensure that all individuals are given the opportunity to make the most of their potential. They have the right to an adequate standard of living for themselves and their families, including adequate food, clothing, housing, water and sanitation. (Principle 2)

→ Everyone has the right to the enjoyment of the highest attainable standard

of physical and mental health. States should take all appropriate measures to ensure ... universal access to health-care services, including those related to reproductive health care, which includes family planning and sexual health. (Principle 8)

→ ... basic right of all couples and individuals to ... attain the highest standard of sexual and reproductive health. (Paragraph 7.3)

→ Reproductive health care in the context of primary health care should, inter alia, include: family-planning counselling, information, education, communication and services; ... prevention and appropriate treatment of infertility; ... treatment of reproductive tract infections; sexually transmitted diseases and other reproductive health conditions; and information, education and counselling, as appropriate, on human sexuality, reproductive health

and responsible parenthood. (Paragraph 7.6)

→ To achieve universal access to quality education, with particular priority being given to primary and technical education and job training, to combat illiteracy and to eliminate gender disparities in access to, retention in, and support for, education; to introduce and improve the content of the curriculum so as to promote greater responsibility and awareness on the interrelationships between population and sustainable development; health issues, including reproductive health; and gender equity. (Paragraph 11.5)

→ ... contribute to the understanding of factors affecting universal reproductive health, including sexual health, and to expand reproductive choice. (Paragraph 12.11)

→ Governments ... should increase support for ...

research to strengthen reproductive health services ... (Paragraph 12.12)

→ ... promote socio-cultural and economic research that assists in the design of programmes, activities and services to improve the quality of life and meet the needs of individuals, families and communities, in particular all underserved groups; ... understand that sexual and reproductive behaviour occurs in varying socio-cultural contexts, and to understand the importance of that context for the design and implementation of service programmes. (Paragraph 12.20)

→ There is also growing recognition that population-related policies, plans, programmes and projects, to be sustainable, need to engage their intended beneficiaries fully in their design and subsequent implementation. (Paragraph 13.2)

II. OBJECTIVES AND METHODOLOGY

The purpose of this report is to describe how laws and policies in the 12 Asian countries studied here impact – whether violating or affirming – on the health and rights of people marginalised on the basis of their sexuality and gender identity, particularly transgender people. The findings will serve as a resource for advocacy groups to demonstrate to legislators and policymakers how progressive laws and policies relating to gender and sexuality can empower marginalised communities, reduce stigma, discrimination and violence, improve access to essential information, as well as reproductive and sexual health services and facilitate constructive social engagement. The report intends to highlight transgender issues, including access to reproductive and sexual health and rights, so that these may receive greater attention in research, programmes and policies. Using gender, sexual rights and human rights frameworks for analysis, this report makes recommendations to governments and civil society actors for law, policy and programmes to affirm transgender people's rights and improve their access to health services so as to meet commitments made in the ICPD PoA.

In order to do this, three methods were employed. First, existing literature on health and rights of transgender people was reviewed, with a particular focus on writings from Asia. Second, two sites – Nepal and Thailand – were examined for legal and policy positions and levels of social acceptance of transgender people, their access to education, health services including sexual health, livelihood options and citizenship benefits in accordance with gender identity, as well as related advocacy efforts towards these. In addition to this, the State policies and advocacy efforts in Tamil Nadu in India were studied briefly for the positive developments there.

Third, data collected by ARROW's partner organisations in the 12 countries on sexual health and rights indicators, including law and policy related to homosexual acts and transgender behaviour, sexual violence and sex work, were collated for this study.

For the two country case studies, 30 informants were interviewed in Kathmandu, Lalitpur and Narayangarh in Nepal, and Bangkok in Thailand, including transgender people, LGBTI rights activists, sexual rights activists, people working on HIV and AIDS management, lawyers, counsellors, medical personnel, researchers and a Human Rights Commissioner. Additionally, three transgender informants were interviewed in Chennai in Tamil Nadu – an activist for transgender rights, a writer and

activist, and a student. Given and preferred names of all respondents have been used in this report, with their expressed consent.

III. STATE AND SEXUALITY

Laws and policies can both promote and regulate sexuality. These include laws pertaining to homosexuality or homosexual acts, cross-dressing, sex reassignment, sex work, age for consent to sexual relations, rape, marital rape, marriage, and others; and policies pertaining to sexuality education, sex reassignment, and others. A study of the 12 countries by ARROW partner organisations revealed the following picture:

- (i) Bangladesh, India, Malaysia and Pakistan retain versions of the British law that criminalises sodomy. In July 2009, the Delhi High Court has excluded adult consensual sexual acts in private from the purview of this law.
- (ii) In 2008, the Supreme Court (SC) of Nepal ordered the government to amend all laws that discriminate against LGBTI people.
- (iii) In the Philippines, an anti-discriminatory bill to protect LGBTI rights is pending in Congress.
- (iv) In Malaysia, a *fatwa* was issued against cross-dressing and sex reassignment operations except for "hermaphrodites." Non-Muslim *mak nyah* can be charged with "indecent behaviour" for cross-dressing under the Minor Offences Act 1955.⁷
- (v) None of the 12 countries reviewed here allow same sex marriage. However, in Nepal, the SC order to amend discriminatory laws includes mention of marriage laws. Cambodia's king called for legalisation of same sex marriage and while this has not progressed, the debate has started.
- (vi) Only the state of Tamil Nadu in India provides sex reassignment operations within public sector health services.
- (vii) Most of the 12 countries do not legally recognise change of a person's sex.⁸ In Nepal and Tamil Nadu, one can get an identity card with a "third gender" category. After sex reassignment surgery in Indonesia, a transgender person's gender can be changed by a judge in a local court having jurisdiction over the person's place of residence in the

same manner as a change of name.

- (viii) Rape laws in 11 of the 12 countries do not offer protection for men or transwomen. Only Thailand's law offers protection for all.
- (ix) Marital rape is not considered an offence in Bangladesh, China, Lao PDR and Pakistan.
- (x) Girls below the age of 16 cannot consent to sex in India and Malaysia. It is considered statutory rape.
- (xi) Sex work:
 - Sex work is illegal in Pakistan (sex outside marriage is illegal and therefore sex work is illegal), Cambodia, China, Lao PDR and Thailand.
 - While the law in Nepal is silent on sex work, sex workers are arrested for "public offences."
 - Sex work is not illegal in India, Malaysia, Indonesia and the Philippines. In India and Malaysia, the following are penalised: soliciting, brothel keeping, and living off earnings of prostitution of another person. In Malaysia, having more than 3 condoms in your bag is considered proof of prostitution as interpreted by the police. This approach recognises sex work as a "necessary evil" and subjects it to legal limitations.
 - In the Philippines, there is a move to decriminalise sex work.
- (xii) Various approaches to sexuality education are being adopted in the 12 countries; none of them is comprehensive, or focused on empowerment:
 - In China, since the ICPD, the government has tried to mainstream sexuality education in school. However, the curriculum needs to be more comprehensive regarding sexuality as well as sexual and reproductive health.
 - In India, the National AIDS Control Organisation's adolescent education programme curriculum was banned in several states in 2007. It was later reviewed and a less comprehensive version released in 2008.
 - In Nepal and Lao PDR, only reproductive health is taught using biology textbooks.
 - In Pakistan and Indonesia, there is no government-supported sexuality education. Only NGOs provide sexuality education in schools.
 - In Malaysia, the Ministry of Women, Family and Community Development adopted an NGO-produced adolescent

reproductive health module and put it up on their website. However, this has yet to be implemented.

- In Thailand, sexuality education is implemented in schools but is not included in the compulsory teaching curriculum. The government encourages implementation but does not enforce it.
- In Cambodia, the Ministry of Education, Youth and Sport, through its inter-departmental committee on HIV/AIDS, expanded its sexual and reproductive health activities in school settings through the Life Skills for HIV/AIDS Programme.

It is clear that many aspects of sexuality are impacted by State policies and laws. In the case of transgender people, some policies and laws in the studied countries fail to recognise their gender expression and identity, such as the lack of a third gender category in identification and citizenship documents in Bangladesh, Indonesia, Malaysia, the Philippines, Pakistan, Thailand and other countries, or that the Islamic law in Malaysia is against cross-dressing and sex reassignment operations. Apart from Indonesia, none of the countries legally recognise a post-operative transsexual person's change of sex.

Laws in all the 12 countries discriminate against transgender people's right to choose their partner and consensual marriage (as per working definition of sexual rights developed at an international technical consultation on sexual health convened by the World Health Organization in January 2002) by allowing marriage only between a man and a woman.

Similarly, laws in Bangladesh, India, Malaysia and Pakistan discriminate against transgender people's right to a satisfying and safe sex life (7.2, ICPD PoA, definition of reproductive health) by criminalising sexual acts against the order of nature, interpreted as all acts other than penile-vaginal intercourse, including specifically anal and oral sex.

Apart from Thailand, laws in none of the countries studied recognise that transwomen can also be raped and penalised the same, thus not providing protection or legal recourse to this section of people in the face of crimes perpetuated against them.

As mentioned before, the social ostracism and marginalisation faced by transgender people is well documented, resulting in many transgender people taking up sex work as an occupation due to lack of formal education, skills training and work opportunities. Laws against sex work in Cambodia, China, Laos, Pakistan, and Thailand serve to

criminalise their chief means of earning a livelihood.

In the following sections, this report describes societal prejudice, discrimination and other forms of violence faced by transgender people, and demonstrate how a lack of affirmative political infrastructure in the form of laws and policies affects transgender people's rights to education, health, housing, employment, and a life of dignity and respect. It then documents advocacy efforts and analyses political factors that led to rights-affirming changes in laws and policies in Nepal, Thailand and Tamil Nadu in India.

Finally, it makes necessary recommendations not only for governments but also for civil society organisations, advocates and donors. All of these actors are responsible for promoting human rights.

IV. HUMAN RIGHTS VIOLATIONS: CURRENT SCENARIO

This section of the report describes societal prejudice, discrimination and other forms of violence faced by transgender people. It also demonstrates how a lack of affirmative political infrastructure in the form of laws and policies affects transgender people's rights to education, health, housing, employment, and a life of dignity and respect. While doing this, it draws upon the text of the ICPD PoA as well as the Yogyakarta Principles⁹ (YP, 2007). This also serves to highlight the continuity in the ICPD PoA from fifteen years ago and other recent human rights instruments.

i. Stigma, Discrimination and Other Forms of Violence

A few years ago, in my village, Naikap, people used to abuse and insult me. They didn't know about transgender people, that there are others like me. I used to think, why has God made me like this? People would say - there are organisations for hijras, chhakkas; go there. I thought - I am not a chhakka, why should I go ...

Bhoomika Sreshtha, Kathmandu

Family, society and institutions in Nepal do not understand issues of gender and sexuality. They cannot understand why some men are gay, or why some people are transgender. They don't understand why men cannot behave like "real men." They ridicule these men.

Devendra Sreshtha, Narayangarh

(Right to non-discrimination, Principle 2, YP, 2007)

These respondents' narratives point to the existence of a hetero-normative ideology in society and lack of understanding and acceptance of sexuality and gender diversity, including same-sex attraction and multiple expressions of gender. It results in various forms of marginalisation of transgender people (some of which will be examined in this report such as exclusion or even violence from the family or community; police violence; abuse and coercion in educational institutions; discrimination, ridicule and neglect in health care institutions; discrimination and prejudice in seeking employment; and lack of

State recognition of the individual's gender identity or changed sex. There is a need to educate the public about sexuality and gender diversity and the value of every human life. There is also a need for anti-discrimination laws to protect transgender people from direct discrimination in various public and private institutions.

i.a. Family

My family wants me to get married to a woman and have a kid so that I will have support in my old age and a companion. From the moment a boy is born to a family, the parents have dreams about their son growing up, bringing home a bride and giving them grandchildren. I tell them that I can provide every kind of happiness to them except a bride.

Pinky Gurung, Kathmandu

(Right to found a family, Principle 24, YP, 2007)

About a year ago, somewhere in eastern Nepal, a man got to know that his teenage son is a homosexual. He gave his son poison and killed him. The BDS branch office there filed a case with the police. The whole village collected money and gave it to the police to bury the case.

Kumar Vaidya, Lalitpur

(Right to life, Principle 4, accountability, Principle 29, YP, 2007)

Respondents in Thailand also shared that transgender children and youth face a lot of violence from their families. Some get expelled from the home, while others are sent to the military as their parents think this will make them "more male." Neighbours also make it difficult for a family with a transgender son; they gossip and tease. There was a case of a man who was drinking with his friends when they made fun of his transgender son. Enraged by his humiliation, he went home and beat his son and threw him in a well, where he drowned. Thus, a young man was deprived of his *right to life* (Principle 4, YP, 2007). Ron, a researcher from Bangkok, found that "80% of transwomen face sexual violence from family members. They are seen as sexual

objects whereas for most this is their first sexual experience and it is abusive" (*Right to security of the person, Principle 5, YP, 2007*). This demonstrates transgender people's greater vulnerability to abuse during childhood and youth.

At a public hearing¹⁰ in Tamil Nadu about human rights violations faced by the transgender community, the accounts shared demonstrated that when changes in gender expression of a child become obvious – and that happens usually with the onset of puberty – parents resort to policing the child's sexuality and adopt cruel measures to ensure gender conformity. There was a case shared of a young boy whose parents administered electric shock to his genitals in an attempt to "fix" his fondness for girls' clothes (*Right to freedom from torture, Principle 10, YP, 2007*).

They hoped it would "rouse" the man in him. In another case, a young transwoman's parents forced her to take male hormone tablets (*Protection from medical abuses, Principle 18, YP, 2007*). Even "honour killings" of transgender persons are not uncommon but go unreported. Rose, of the popular chat show on Tamil television, Ippadikku Rose (Yours, Rose), shares in a 2008 interview to Gloria Elayadathusseril for thestar.com that her mother still beats her, at the age of 29, and despite her being a celebrity. It is clear that families in the countries studied are not accepting of gender diversity and sexual freedom, and punish digressions. The ICPD PoA gives great importance to the family as noted in Principle 9 and Chapter 5. In order to support families and contribute to their stability (5.2, ICPD PoA), interventions are needed that educate families about sexuality and gender diversity, enable them to accept plurality within and play a supportive and empowering role.

i.b. Police

One meti was raped by four police officers three months ago near the teaching hospital in Kathmandu. She came to BDS and spoke to the lawyer. She had noted the registration number of the police van, but no medical examination had been conducted after the crime and therefore there was no evidence in order to go to court. However, the senior police officials were supportive of her case and helped get compensation worth 150,000 rupees for the victim. Additionally, the guilty were punished by having them transferred to remote areas and withholding their pay for a year.
Sharmila Dhakal, Kathmandu

A meti sex worker performed oral sex on a policeman client, and thereafter he slit her throat with a knife. When he struck again, she put her hand forward and it got slashed. The policeman escaped.

BDS collected money for her operation at a hospital in Delhi, India. Later, her family married her off to a woman.

Sunil Babu Pant, Kathmandu
(*Right to security of the person, Principle 5, YP, 2007*)

Raju Barah, an activist from Narayangarh shared: "Transgender people face a lot of human rights violations. People on the streets abuse them and demean them. Our staff persons have been sexually harassed and physically assaulted on the streets. The police once picked up a staff person's transgender friend with threaded eyebrows and locked her up with no charge. He said she was a 'bad influence and needed to be removed (from society)' (*Right to non-discrimination, Principle 2, right to security of the person, Principle 5, right to freedom of expression, Principle 19, YP, 2007*).

Human Conscious Society in Narayangarh (HCS) invites police personnel and local administration officials for workshops and public programmes; they attend but their mindsets do not change. They are sceptical – they say that we do this for fun or for the HIV prevention funds. There are gay police men and women here who are in contact with HCS. The other police personnel say that we have been a bad influence on them. In 2004, a butch lesbian policewoman came to notice; she was sacked" (*Right to non-discrimination, Principle 2, right to work, Principle 12, YP, 2007*).

In India, kinnars and aravanis are routinely subjected to arbitrary detention and sexual harassment and abuse by police personnel. It is absolutely imperative that law enforcement personnel (including the police and the judiciary) do not discriminate against any population group, as this is a failure to meet their responsibilities and amounts to abuse of institutional power. This indicates the need for specific efforts towards educating and sensitising police and the judiciary on human rights, gender and sexuality. There is also a need to formulate guidelines on police conduct towards transgender people.

i.c. Within Sexual Diversity Movements

In society, transgender people are viewed as a sexual minority, but within LGBTI movements, they are often considered to be of a lower status. This is reflective of the unofficial hierarchy within LGBTI movements, where gay men assume most power, followed by lesbians, bisexuals, transgender and intersex people. Difference in socio-economic class intensifies this hierarchy. Raju shared: "The discrimination towards transgender people is so strong and permeates the LGBTI community. Gay men do not want to receive HIV prevention

education from our transgender outreach workers in public and don't want to go to an organisation working with transgender people to access services." Being HIV+ compounds the discrimination further. Divya Gurung from Kathmandu shared: "Within the transgender and broader LGBTI community, there is discrimination on the basis of HIV+ status. We already lack social support; HIV+ transgender people lack support from within the community as well."

The LGBTI movement is a grouping of several movements with distinct identities that come together in different spaces to express their shared needs and advocate for shared demands. But such an arrangement tends to obscure the experiences and needs of some of them (very often transgender and intersex people). Hua, an activist from Bangkok shared: "There is not much knowledge even in the LGBT movement about intersex people and their needs. Recently, there was a screening of a film from Chile on intersex issues in which two intersex Thai persons spoke about their experiences. There is no specific organisation or even programmes for intersex people. I imagine that among the LGBTI community, intersex people must be the most vulnerable." There is a need for LGBTI movements to further democratise their politics and internal working, and be inclusive in their demands.

i.d. Within Transgender Communities



Figure 1: The Sign Outside the Toilet for Transgender Students at the Kampang Secondary School. **Source:** BBC website

Hua shared that within the transgender community also there is discrimination based on social class, occupation and femininity; for instance, she says, sex workers are discriminated against. Within India's kinnar community, those who do sex work occupy the bottom rung of the hierarchical society. The transgender community is also not immune to social values around commercial sex. Among kinnars, those who are not castrated are discriminated

against. Transgender people identify themselves in different ways – as women, as transgender, as third gender, as kathoeyes (in Thailand), kinnars (in India), or mak nyahs (in Malaysia).

Even among those who identify themselves as women, not all want to undergo the sex reassignment operation. A large proportion are attracted to men, some to women and other genders. In sexual activity, some enjoy being active (penetrating), contrary to popular belief that transwomen are always passive (penetrated). This is important to know for HIV prevention work. Hua suggests that there is a need to do more workshops with transgender people (particularly leaders, peer educators, health workers) and other activists of sexual diversity and sexual rights movements on gender and sexuality so that they can understand these issues, and work with their peers with no judgement and no self-discrimination.

i.e. Differential Treatment: Transmen

There is very little information on transmen in Thailand. Research does not focus on them; there is very little discourse or discussion about them. I guess this is because more importance is attached to masculinity and the preservation of it. There isn't much information on what kind of violence they might face.

Ron, Bangkok

Respondents shared that there is a difference in the treatment of transwomen and transmen. Suman Tamang from Kathmandu shared that while people curse transwomen and police beat them and pick them up off the streets, transmen in Nepal do not face the same kind of social ridicule or police harassment.

This shows that the issue is not just about prejudice against transgender people; it is about rigid social and cultural notions of masculinity and femininity and the preservation of these within a patriarchal framework that idolises masculinity and severely punishes any departures from it.

It also points towards the differences in how transmen transition compared to transwomen, and towards how mobile, visible, organised and vocal transwomen are compared to transmen, reminiscent of patriarchal power relations, resulting in an almost total silence around transmen in the region. There is a need to develop further discourse on masculinities and femininities, which promotes respect for plurality.

i.f. Change in Mindsets: The Thai Red Cross Experience

Donating blood is seen in Thailand as an act that earns the person religious merit. So, in March 2008, when the Thai Red Cross (TRC) made changes to the screening process effectively barring LGBTI people from donating blood, LGBTI rights groups protested vehemently (Rights to equality and non-discrimination, Principle 2, YP, 2007). As a result, a couple of weeks later, the TRC announced that it would remove discrimination by changing the screening process, and would focus more on screening for behaviour considered high-risk for HIV infection.

Yet, respondents shared that the implementation depended on the person reviewing the screening forms. Similarly, in other spheres and institutions such as law enforcement and healthcare, where law and policy may not be discriminatory or oppressive, the enforcement of these with respect to transgender people is prejudiced. This shows that along with policy, people's mindsets need to be changed.

ii. Identity Documents/Titles (Right to recognition before the law, Principle 3, right to social security, principle 13, right to freedom of expression, principle 19, YP, 2007)

Respondents in Nepal shared that transwomen face a lot of difficulties when they produce their citizenship card for social services, in terms of not being recognised. The card has their male name and earlier appearance, which does not resemble their current appearance conforming to their gender expression or assumed gender identity.

They are then discriminated against, ill-treated and denied access to health and other services. Ron and Guide, researchers from Bangkok shared: "Transgendered people face difficulties even while travelling; at immigration there is confusion because their passport/ID says they are male but their current appearance is that of a woman; it does not match. It is their right; if they feel that they are women, they should be recognised as such."

When Bon from Bangkok lost her ATM card and called to cancel it, the bank representative did not act on her request because the bank's records showed the customer to be a man while her voice sounded like that of a woman, and the bank had no record of her being transgender.

As a result, a large amount of money was stolen from her account. When she went with her mother to the police station to record her complaint, the officers did not advise her on what kind of complaint to make, and additionally surmised that one of her family members or a one-night-stand might have used her card to withdraw money. They regarded her and her mother as the criminals rather than the victims. This points to the fact that being transgender sums up their identity for other people, and that this identity is strongly associated with criminality.

In Thailand, a network of transwomen tried to advocate for a change in the law to record their title as Ms. or Mrs. in order to be equal to women.¹¹ This bill was not passed by Parliament, the argument being that "if transwomen have titles like women, in criminal cases, how will they be tried? This will make the police investigation process more complicated." Male members of Parliament wondered how they would know if their wife could have a baby or not, and if the woman they would marry were a biological woman or not?

They said: "Men are likely to be cheated." Ron and Guide shared that at a recent consultation on reproductive health issues hosted by members of the teaching profession, activists from the transgender movement were invited, and a debate erupted with some expressing the view that it was legitimate for post-operation transsexuals but not others to assume the title of a woman. They lamented: "Who has the power to decide their (transgender people's) control over their biology and bodies – doctors and economics!" However, laws in Thailand still prohibit post-operative transsexuals from changing their gender on their passports and identity cards. There is a need for policy that allows for updating citizenship, identity cards and other official records according to a person's current gender identity, including appearance and the category of transgender or third gender where applicable.

Such policy needs to be rooted in an environment of respect for transgender people so that they may access social spaces and services without prejudice, and have access to government schemes and policies available to people of their assumed gender. Ideally, gendered titles such as Mr., Ms., Mrs. and Miss should be discarded. These are attempts to distinguish the sex of a person and will only serve to alienate and marginalise many.

iii. Education

At school, teachers used to scold me: "Why are you so girlish? The way you walk, the way you talk, acting shy, your appearance and long hair." This went on till I started 10th class. Teachers asked me to change my ways or leave the school. I couldn't

change since I felt so different from the way the other boys were. So I left school rather than face their scolding and pressure.

Bhoomika Sreshtha, Kathmandu

Even a routine activity such as using the toilet can be a stressful one for a transgender student. They might be watched, laughed at or groped in the boys' toilet; they might evoke discomfort from female students if they use the girls' toilet. For this reason, Kampang Secondary School in north-east Thailand has created separate toilets for the social convenience of transgender students (please refer to Figure 1).

A technical college with 1,500 students in the northern province of Chiang Mai set up a "Pink Lotus Bathroom" for its 15 transgender students in 2003. A transgender activist analyses this as a helpful step at the school and university level. At later ages, if transwomen undergo sex reassignment, they will choose to use the women's toilet since they want to be accepted as women. However, these toilets symbolise segregation to many as they were not built out of respect for diversity or rights, or for that matter with proper consultation. Most schools are spaces for disciplining and moulding students with regards to, among other things, sex and gender. In such a scenario, any expression of sex and gender falling outside of the hetero-normative male-female binary are discouraged.¹²

As a result, adolescents realising and expressing their gender variance while in school often face direct or indirect coercion and drop out of school (Right to education, Principle 16, right to freedom of expression, Principle 19, YP, 2007). This stunts their social development, knowledge and skills acquisition, and leaves them ill-equipped to engage with mainstream society and economy. There is a need for a comprehensive sexuality education curriculum to be developed and taught in schools after training teachers; a curriculum that includes information on sexuality, gender diversity and gender equality.

Overall, education curricula need to be revised so that they do not conform to gender binaries and a hetero-normative framework in order to make them inclusive and less gendered. Policies of educational institutions need to be more inclusive, such as allocation of separate toilets and hostels for transgender students and adding the category transgender or third gender to admission forms.

iv. Health (Principle 17, YP, 2007)

In a medical emergency, when a transwoman is taken to a hospital, the hospital staff will look at her

face and body; they get confused and make fun of her rather than treating her.

Bhoomika Sreshtha, Kathmandu

Transgender people have lower self-esteem. They have internalised the homophobia, stigma and discrimination from society. When they get an infection or fall sick, they do not access treatment quickly because they fear that they will not be treated properly. They often access health services very late, often when their problem has intensified manifold. In the case of HIV+ transgenders, many of them are in denial and refuse to accept their status. They are not accepted by society and so have very low self-worth. Badri Pandey, Counsellor at Voluntary Counselling and Testing Centre, Lalitpur

Respondents shared that medical staff do not recognise their identity or rights; they only treat them for their body and title as per their ID cards. In hospitals, transgender people are confused about what line to stand in – the line for women or for men – and about how to report their sex in the form.

There is also confusion regarding what ward transwomen should go to. Since their title is that of a man, they are required to go to the male ward but they do not feel comfortable there. Respondents in Thailand shared that the big cities have government-run STI clinics for men who have sex with men (MSM). If a transwomen is raped and has an anal tear, the clinic cannot treat her as they only treat STIs.

So they reject the case and refer her to the one-stop crisis centre set up to deal with violence against women, but she does not belong there either. When getting an x-ray, female patients are provided gowns while males are not. Bon shared that in the case of transgender people, the medical staff may not understand that they need a gown. She suggested that the staff be flexible and just ask transgender patients how they want to be treated.

Respondents shared that transgender patients are mocked and ridiculed by hospital staff and often kept waiting longer than other patients. There have been instances where both male and female doctors refused to examine them. Those seeking treatment for an STI in hospitals have been advised to stop or change their sexual behaviour rather than having their illness treated.

As a result, they do not like to go to hospitals even for general health issues; they go to the chemist shop instead. HIV+ status compounds the prejudice for transgender people and MSM; it is difficult for them to get admission in hospitals. Raju shared: "Our organisation is treating patients infected with HIV and often faces difficulty in getting regular supply of anti-retroviral (ART) drugs from the

government hospital, while other organisations receive them on time. This is clearly because of discrimination towards our clients.” In consonance with the ICPD PoA, governments need to take action to ensure that HIV infected persons and AIDS patients have access to appropriate treatment and adequate medical care (paragraphs 8.29 and 8.33). This involves recognising sexuality as a crucial link in the HIV epidemic.

Doctors do not know enough about anal STIs or oral STIs, mostly only about vaginal STIs. They also do not know how to treat transgender people who are taking hormones. Respondents in Nepal shared that there are not enough doctors qualified to work on reproductive and sexual health issues. If they do have knowledge, they are not sensitised to treat the cases properly.

Jyoti, medical supervisor of a hospice in Kathmandu shared: “In tuberculosis treatment centres, staff do not understand how to deal with transgender people and are hesitant to examine them. Once, a pregnant nurse refused to touch a HIV+ patient for fear of infection. There is lack of knowledge about HIV among health personnel and even less about sexuality. There are laws for people living with HIV, including directives that they be referred to as *sankramit* (infected) and not *rogi* (diseased). These laws contain clauses about confidentiality and rights to a proper death certificate, documents and rituals. There remains a large gap in the implementation of these laws.”

Manisha and Pinky Gurung, activists from Kathmandu shared that condoms and lubricants are difficult to find and are not affordable: “Transwomen and gay men rely on what we supply, and we rely on the UNDP supply which is not regular. A stoppage of even 15 days means that unsafe sexual behaviour is possible. In reproductive and sexual health programmes and HIV prevention programmes conducted by the government as well as NGOs, transgender people are often grouped under the category of MSM.

We do not like that. We do not consider ourselves homosexual. We are not attracted to other transgender people. We are attracted to the opposite sex (men) and consider ourselves heterosexual.” Usasinee Rewthong from Bangkok shared: “The State’s HIV and AIDS public education campaigns do not contain messaging for MSM or transgender people. Most condom promotion work is targeted at young people but portrays heterosexual males and females. This needs to be broadened so that many others can relate to it, understand their vulnerability and protect themselves.” Governments and funding agencies need to incorporate issues of gender and sexuality in policies and programming, take affirmative action, and provide more funding

specifically for programmes aimed at transgender people.

As stated earlier, transgender people internalise societal gender norms, operating within a hetero-normative framework that prescribes “masculine” and “feminine” body types and punishing anything in between. These do not recognise sexuality and gender expression as a continuum of experiences. Therefore, many transgender people want to alter their bodies to match their gender identity. Respondents in Thailand shared that many want to be fair-skinned because women should be.

They, particularly teenagers, take drugs that are available over the counter for treatment of certain illnesses, the side effects of which make the skin fair. Respondents at all sites explained that transwomen often take oral contraceptive pills (OCPs) without a doctor’s advice. When word spreads in the community that taking OCPs increases breast size, everyone takes it without knowing what side effects it can have on their health. Ron shared examples from Thailand: one person took 20 pills in one day hoping to speed up the transition process; most think that one-pill-a-day is for women’s contraception and does not apply to them; many take two pills a day. There is a Chinese contraceptive drug that women are supposed to take once a month; some transwomen take it once a day.

Hua shared that even doctors know very little about hormone use for transgender people. They may tell them: “You are a man; do not take female hormones, you might get cancer.” But transgender people do not want to be told that; they want to know about the appropriate hormones, dosage and side effects.

Sex reassignment surgery (SRS)¹³ is not available in Nepal but is available in India and Thailand, although the legal position of SRS is ambiguous in India.¹⁴ In Thailand, SRS has been practised for several years. Bangkok, in particular, has become famous globally for sex reassignment operations with people from all over Asia and developed countries visiting Thailand for the operations. SRS is available in the public health sector in Thailand and in some parts of India. However, Tamil Nadu is the only state where the government is reimbursing the cost of sex-change operations.

In Thailand, government hospitals, while more affordable, undertake a long procedure that includes psychological testing and year-long counselling. The government is concerned that people are taking the operations too lightly because they are widely available, and that people undergoing the operation and regretting it later will have no recourse since it is irreversible. In both countries, SRS is available in private clinics and hospitals, but this is unaffordable to most transgender people.

Therefore, they access crude methods of castration by quacks which carry risks such as urinary stricture, septic infection and even death. In 2008, in Thailand, there was the case of a young boy getting himself castrated in Chiang Mai and the procedure got botched. Newspapers highlighted this case and there was a lot of public unrest around it, leading to the Thai health minister, Chaiya Sasomsab, issuing a directive imposing a temporary ban on castration operations. Since sex reassignment operations require the testicles to be removed (castration), such bans are dangerous as those wanting to get the operation will visit underground, unlicensed clinics.

According to Vidya Venkat, writer and activist from Chennai: “Unfortunately, transsexuality is more a subject of cheap jokes than of any serious medical inquiry in India.” The Indian Medical Council has not formulated any guidelines for SRS and this causes incomplete responses such as the lack of counselling services.¹⁵ The Medical Council of Thailand is discussing how to regulate the operations and determine eligibility criteria for getting one, including age and counselling.

Activists shared that this is not a rights-based approach. In the current environment, client or parental consent is not paramount – the doctor’s approval is. In Thailand, the panel responsible for formulating regulations, comprising only men, will invite transgender people to a consultation to get their perspective on this matter. These accounts point to the need for governments and Medical Councils to formulate guidelines in consultation with the transgender community, and for governments and transgender movements to deliberate on the provision of government sponsored SRS as an essential public health service.

There is concern for transgender people suffering from mental health problems. However, these problems are not usually related to the gender identity itself but to problems that arise from dealing with a gender identity that does not match an assigned gender role and related social conflicts. Legal and medical standards¹⁶ place hurdles on the path of achieving one’s desired body and gender identity.

One has to be diagnosed with gender identity disorder (as per the Diagnostic and Statistical Manual of mental disorders) to obtain sex reassignment therapy. For that, one has to admit to feelings of discontent and distress with one’s self, which may not be present. This medicalisation destigmatises transsexuality as it ceases to be viewed as a deviant choice or sin. However, it creates a different kind of stigma – that of a problem, a disorder or a disease. Hua raises some pertinent issues when she asks: “Give information so one can make a decision; it’s their choice, but why certify it

as gender disorder or a mental disorder? Why is a doctor required to certify that they can get this done? Why is the doctor given so much importance and power?”

It is clear from these findings that there needs to be greater research on transgender people’s health needs, including hormone therapy and SRS, in conjunction with the transgender community; inclusion of the same in medical curricula and dissemination among the community – developing and training peer educators would be particularly effective; legalisation of sex reassignment operations and state provision of the same for the needy; legal recognition of change of sex; training for health care personnel on sexuality and gender equality, and sensitisation to the situation and needs of transgender people.

Institutional changes need to be made, such as adding the category of third gender or transgender on hospital forms, separate queues, toilets and wards, and provision of gowns. Greater attention needs to be paid to the mental health needs of transgender persons and counselling services must be strengthened to serve them.

v. Employment (Right to work, Principle 12, YP, 2007)

I have completed 10th class and used to teach at a government school in Myagdi district. I used to teach health, games, economics and accounts – I was an “all rounder.” My appearance was somewhat masculine, and I dressed in jeans, trousers and shirts. The female teachers in school used to get attracted to me. Parents were unhappy about my appearance. I was told by other teachers to start dressing and behaving “like a woman” or leave the employment of the school. I could not take the pressure for long and left the employment of the school.

Badri, transman working at BDS, November 2008
(*Right to freedom of expression, Principle 19, YP, 2007*)

Activists in Thailand shared that it is difficult for transgender people to get employment or even to study in some fields like medicine. Some medical schools will not accept transgender people, especially military medical schools (*Right to equality and non-discrimination, Principle 2, YP, 2007*). In most institutions, they are confined to certain faculties such as tourism or mass communication.

Widespread prejudice and discrimination in society obstructs even educated and skilled transgender people from getting jobs they are suitable for. Only a change of mindset in society, coupled with anti-

discrimination laws, will ensure employment for transgender people.

Revathi's (2005) account is telling:

My strongest desire was to live the life of a woman, to marry the man I liked, to find a job I could do. In trying to become a woman, I had ended up living the life of a hijra among other hijras. I needed money to live with respect in society, to wear nice clothes, and to meet my daily needs. Having no real option, I was forced to take up sex-work to make enough money for my needs. I had to deal with policemen and their torture. This society does not look on me favourably. The legal system refuses to provide either facilities or assistance. My family treats me well only if I give them money. I grew sick of life thinking of all this and wanted to do something to end my life.

Raju shared: "At Human Conscious Society, we try to dissuade the transgender and gay community from doing sex work since society forms a bad image of them. So, we employ them in the organisation, or in organisations in other districts. But how many people can we employ like this? The government needs to provide jobs." There is a need to provide skills training and jobs or capital for entrepreneurship to transgender people.

As in many parts of the world, working in the military is especially difficult for LGBTI people in Asia. Sharmila Dhakal, a lawyer at Blue Diamond Society shared a case: "In 2007, before the Supreme Court judgement, two military personnel were discovered to be lesbians. They were punished with about a month's confinement in dark cells and then removed from service.

A case was lodged, and the military court declared that they had different regulations from the law of the land (*Right to freedom from arbitrary deprivation of liberty, Principle 7, accountability, Principle 29, YP, 2007*).

In Thailand, military rules stipulate that transgender people are those who are born with male bodies but want to be women and that they have a mental illness.

Activists shared that in the drafting process of joining the military, transgender people are certified as suffering from a permanent or severe mental disorder; this is entered in their records.

After leaving the army, if the person seeks a job elsewhere, they are most often rejected because of this certification. An individual made a complaint to the Human Rights Commission of Thailand and filed a suit in the administrative court, the result of which is still pending. The old rules being followed need to be revised, and anti-discrimination provisions put in place.

vi. Housing (Principle 15, YP, 2007)

Most transgender people face coercion and/or violence from their family and/or community. Some choose to leave, while others are thrown out of homes, villages or communities. With little or no financial support from the family and skills to get jobs, transgender people live in poverty.

In a recent budget (announced on 19th September 2008), the Nepal government allotted 25,000,000 Nepali Rupees (less than USD40,000) to Blue Diamond Society, a non-profit organisation working to empower LGBTI people in Nepal, to buy land and construct low cost housing for 50 LGBTI people who have been thrown out of their houses and schools, are not employed, and do not have a place to live. There is a need to provide low cost or free housing to needy transgender people in order to provide the social support that they lack so that they may focus their resources on skills building and acquiring work.

Although the amount allocated is insufficient, it is a step in the right direction. Advocates in Kathmandu are in discussions with government representatives about increasing the amount in the budget for the following year.

vii. Marriage (Right to found a family, Principle 24, YP, 2007)

While the ICPD PoA recognises that there are different kinds of families (5.1, ICPD PoA) – language that many States held reservations against – it did not venture into aspects of sexual rights such as the right to choose one's partner or decide one's gender expression and identity. Had the negotiated document guaranteed these as rights, the PoA would have been a valuable instrument for bringing about law, policy and social change to meet these needs. However, other international documents such as the 2006 WHO report, the International Bill of Gender Rights¹⁷ (IBGR) and the Yogyakarta Principles (2007) can be used for advocacy as in the Nepal Supreme Court case, detailed in the next section of this report.

The IBGR lists "The Right To Form Committed, Loving Relationships And Enter Into Marital Contracts." Article 16 of the Universal Declaration of Human Rights notes that "men and women of full age ... have the right to marry and to found a family. They are entitled to equal rights as to marriage ..." While this uses the gender binary, it may be used cautiously where the situation is favourable, highlighting the right to marry and all human beings having equal rights (Principle 1, ICPD PoA).

Since none of the countries studied, barring Indonesia, recognises change of sex or allows same-sex marriage, transgender people do not have the legal right to marry since in most cases, technically they are of the same sex as their partner. They cannot adopt children for the same reason, and often cannot access assisted reproductive technologies (ART) or artificial insemination. In the event of a partner's death and in the absence of a will, they cannot inherit their partner's property or claim insurance or pension (*Right to social security and to other social protection measures, Principle 13, YP, 2007*).

Respondents shared that where couples of opposite sex persons are able to acquire bank loans, couples of the same sex or with a transgender partner are not given loans as they are viewed as not having stable relationships (*Rights to equality and non-discrimination, Principle 2, YP, 2007*). All the above issues amount to discrimination against transgender and same sex loving people. Respondents of this study shared that a change in marriage and related laws to make them gender neutral and more inclusive would address all of these issues including family planning, the right to which is guaranteed in the ICPD PoA (paragraph 7.2).

V. AFFIRMING RIGHTS: CASE STUDIES

This section of the report documents recent developments and advocacy efforts, and analyses political factors that led to rights affirming changes in laws and policies in Nepal, Thailand and Tamil Nadu in India.

i. The Case of Nepal: Supreme Court Litigation

In 2004, a writ petition was filed in the Supreme Court (SC) of Nepal seeking to ban homosexual activities. The petition was quashed and following this in 2005, Blue Diamond Society along with three other NGOs filed a petition in the SC citing discrimination faced by LGBTI people and seeking to gain protection of their rights. In December 2007, the bench issued a summary decision recognising discrimination and violence faced by LGBTI people as well ordering the government to recognise their existence as natural persons, enact new laws and amend existing laws that discriminate against them so that all individuals with different sexual orientations and gender identities can exercise equal rights like any other citizen of Nepal.

In November 2008, the SC gave its final judgement reinforcing its decision and also calling for decriminalisation of same-sex marriage by amending the law on unnatural coition, and inclusion of sexual orientation and gender identities as a basis for non-discrimination in the Constitution currently being drafted.

Strategies

The central arguments made in the case were the twin arguments of **personhood** and **naturalness**. Hari Phuyal, one of the lawyers representing Blue Diamond Society (BDS) et al in the SC case, shared their key strategies for the case: "When BDS approached us, we took up the case and asked Sunil Babu Pant (Founder of Blue Diamond Society) to make a presentation for us on sexuality, sexual orientation and gender identity so we could understand the issues in depth. It turned into a day-long workshop. We invited two lawyers from India who are involved in the Delhi High Court case¹⁸ to meet with us and help us strategise."

"At the first hearing, the strategy used was to elaborate the different forms of discrimination and violence faced by LGBTI people, and to cite case law and highlight international jurisprudence such as Toonen v. Australia, Lawrence v. Texas, Dudgeon v. United Kingdom and another case – to answer a basic question: "Can there be discrimination based on sexual orientation and gender identity?" We used the INTERIGHTS non-discrimination handbook¹⁹ which has a chapter on sexual orientation as a ground for non-discrimination. There is no international jurisprudence on gender identity as basis of discrimination but the Yogyakarta Principles mention gender identity as a basis."

Reference was made to the country's Constitution and international treaties – the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) – to make the case for non-discrimination, equality, protection and promotion of human rights.

When the bench noted that the ICCPR does not list sexual orientation and gender identity as grounds for non-discrimination, it was argued that the Covenant states "any other grounds" for the purpose of covering all grounds, and that every individual should be protected from discrimination of any kind. Hari elaborated: "The bench then noted that in Toonen v. Australia, the term 'sex' was interpreted as including sexual orientation, to which we responded that while this could be done, sexual orientation also emerges as a separate ground. We gave the examples of other Southern countries – South Africa and Fiji's

constitutions - which were more recent.”

“The bench raised a point that in the West, there was no official recognition of transgenderism, only of transsexualism. If an individual does not undergo sex-reassignment surgery, they are not recognised as transgender, but by their sex at birth (male or female). We argued that sex re-assignment surgery is not available in Nepal, or indeed, in South Asia. They would have to go to Thailand for the procedure and cannot afford the cost. The bench then asked if there was any transgendered person in the courtroom. Manisha of BDS stood up and said that she was. She stated that she did not choose to be the way she is, but felt this way.

She said that she wanted to change her sex, regardless of any health implications it might have, but currently could not afford it. The presence of an affected party in the courtroom and their statement had an impact on the bench and was useful to the case.”

“We pointed out to the bench that non-heterosexuality and transgenderism are not new in our society, and that history and religion have recorded their presence abundantly. We cited internationally respected organisations, including a World Health Organisation (WHO) report which explains that being LGBTI is normal and not a disease, and the American Psychological Association and American Psychiatric Association’s *amicus curiae* brief in *Lawrence v. Texas*,²⁰ which argued that homosexuality is a normal form of human sexuality and not a mental disorder. The brief also states that anti-sodomy statutes reinforce prejudice, discrimination and violence against gay men and lesbians.”

“The bench asked how LGBTI people’s behaviour affects society, and how public morality will not be disturbed if they are granted rights. We argued that their behaviour is perfectly natural; society has been trained to view their behaviour as odd, and to expect certain behaviour from those born male and certain other behaviour from those born female.

So when we see a male, we expect them to behave according to expectations of male behaviour, whereas the person feels like a female and so behaves like a female (in the case of a transgendered person).

The problem is not with their behaviour but with our lack of understanding of them. To address the bench’s second question, we argued that with greater liberty comes greater discipline. When LGBTI people can acquire housing more easily, they will have greater privacy and will not cruise in public places; if marriage is allowed, many LGBTI people will not run away from home; and so on.”

“When the government stated that there is no specific provision in law that discriminates against LGBTI people, we argued that there was a need to form new grounds for non-discrimination in Nepal’s constitution. The bench recognised that sexual orientation and gender identity were grounds for discrimination and stated that no persons should face discrimination on these grounds, including in public places and public services such as schools, hospitals, etc.”

It is not enough to prevent violations; we need to demand from our governments to respect, protect, promote and fulfil rights.

It is important to note that this development came about at a stage in Nepal’s political history where a major political upheaval was happening – the move from monarchy to democracy and political parties (particularly the Maoists) were wooing various constituencies including groups working on issues of people of diverse sexual orientation and gender identities.

The last is evident from the fact that three major political parties included LGBTI rights in their election manifestoes and that the Communist Party of Nepal-United invited one person from the LGBTI community²¹ to stand for the 2008 Constituent Assembly (CA) election. This development may be analysed as part of the nation’s attempt to gain international acceptance and support in its new status. This may be one of the reasons, along with CA member Sunil Babu Pant’s efforts to educate and sensitise other CA members on LGBTI rights, for Nepal signing on to the statement made at the UN General Assembly session in December 2008 in favour of LGBTI rights and against discrimination and other forms of violence.

After the SC Judgement

Since the summary judgement in 2007, the situation of transgender people has been improving. Sharmila shared that the police does not harass them as much on the streets. If they are picked up for sex work, they do not get raped in custody as frequently happened before. Suman shared that visibility of LGBTI issues has increased after the Supreme Court judgement. The number of public programmes has increased as have media advocacy and coverage of LGBTI issues. Respondents shared that LGBTI people are more confident about coming out to their families.

Badri Pandey, a VCT Counsellor in Lalitpur, shared that the SC order and the hope of getting new citizenship cards has increased the confidence of transgender people. Now that they have been recognised by the Court and the government, they

feel worthy. They believe their voice will be heard and that they can achieve their rights. They feel empowered. The SC order has given them strength to work further for their rights. Other respondents shared instances where they were teased or abused on the street and they told the miscreant that the SC has supported them and that abuse will not be tolerated.

Pushpa from Lalitpur expressed the need for the government to implement the SC order in a timely manner. She said: “We also want to live our lives with dignity, be recognised by our names and our expressed gender, have our identity and be respected in society. The government has to ensure this.”

As Sunil Babu Pant says: “Nepal has taken a lead in championing inclusion, human rights and freedom in Asia.” It’s time for other States to follow suit!

ii. The Case of Thailand: Constitutional and Law Reform

The case of Thailand is different from Nepal in terms of the degree of social tolerance of *kathoey*s being far greater than that of *metis*. Examples of this include the 2003 Thai feature film *Beautiful Boxer* which tells the life story of a *kathoey* Muaythai (a form of martial art) fighter, model and actress; and the Pink Lotus Bathrooms in colleges and schools to provide transgender students with safe facilities. With Thailand having no anti-sodomy law for civil society to challenge, the focus lay on furthering the social tolerance into legal and political recognition of sexual and gender diversity.

2007 Constitution

A new constitution was drafted from September 2006 through August 2007 following the military coup in Thailand. Article 30 of this constitution, pertaining to equality and non-discrimination, guarantees all people equal rights and protection under the law regardless of their sex.

As Paisarn Likhitpreechakul shared and elaborated in his 2008 article for the International Gay and Lesbian Human Rights Commission, in 2007 a coalition of LGBTI organisations, citing the Yogyakarta Principles and other documents, lobbied the Constitution Drafting Committee to list sexual orientation and gender identity as grounds for protection from discrimination in the Article. While this was not achieved, an incident where a famous *kathoey* was denied entry to a nightclub (which made newspaper headlines) spurred debate on the issue and resulted in an explanation attached to the Article stating that the Article pertains to men, women and

people of other gender identities. Naiyana Supapung from the Human Rights Commission of Thailand shared that if LGBTI people face a violation of their rights based on their sexuality or gender identity, they can now file a case in the Constitutional Court of Thailand.

Activists shared that the *strategy* employed was to gain the trust of policy-makers (in this case, individuals on the Constitution Drafting Committee), secure their investment in the cause and work with them to advocate for the issue within the policy-making space. One of the Members of Parliament is a lecturer; he presented the argument in the Legislative Assembly and is now regarded as an expert on LGBTI issues. This worked in his benefit and may also inspire others not to be scared to defend LGBTI rights in Parliament. In his argument, he used theory, concepts and examples of individuals’ life experiences. Naiyana opined: “In Thailand, leaders are viewed as being flawless. So if more leaders help LGBTI cases and further discussion on LGBTI issues, this will lead to greater societal acceptance for LGBTI people, and the leaders will also gain their votes.”

With the measured success of Article 30, the Human Rights Commission of Thailand can now strategise on how to use the Article in the Constitutional Court to set a precedent for LGBTI rights. Naiyana shared that the Commission has many cases that could be submitted to the Court; a strong and clear case, with a willing complainant, would have to be identified. The existing cases address varied issues such as regulations of insurance companies and banks (for loans), marriage registration and inheritance laws. Changes to the marriage registration laws require tact and strategy as it is a sensitive subject. The composition of the Court has to be considered; currently they are quite conservative. It is worthwhile to note that since the Commission has started working on LGBTI rights issues in partnership with LGBTI organisations, the staff members’ understanding on the issues has increased, cases pertaining to LGBTI issues are handled more sensitively and appropriately, and LGBTI employees experience a more conducive working environment.

Rape Law

Along with the explanation attached to Article 30, another success was achieved in 2007 by LGBTI and women’s rights groups. Previously, the rape law used to cover only women who were not wives of the perpetrator; wives, men and transgender people were not covered. Sustained advocacy by LGBTI and women’s rights groups during the drafting of the new constitution in 2006-2007 bore fruit and succeeded in changing these laws to include marital rape and the rape of men and transgender people.

The *strategy* used to bring this about was similar to that for Article 30. Activists approached allies in the Law Reform Division of the Council of State, and in the Constitution Drafting Assembly (CDA) – one of the members was the owner of a cabaret where a lot of transgender people worked and she understood their issues, difficulties and needs – to further this issue. The other strategy was to work with the Human Rights Commission which works with the CDA.

Contrary to Nepal's Supreme Court litigation, in Thailand the movement's approach has been to work with insiders in law-making processes to further rights issues. Part of the reason for this is that there is no sodomy law or law explicitly against homosexuality to challenge. Hence, in trying to bring about affirmative law and policy, the movement identifies and works with allies within law and policy-making processes. Another factor in the successes has been that the movement capitalised on the political environment and happenings in the country; the constitutional and law reforms brought about by the coup were identified as opportunities to include LGBTI rights.

The government in 2006-2007, constituted by the army, initiated many laws on LGBTI rights, human rights and civil rights issues, one of them being a law to punish individuals and institutions for discriminating on the basis of gender identity or sexual orientation. However, these were scrapped by the coalition government that came to power in January 2008 following elections. In this manner, the development of laws and policies affirming health and rights has been significantly affected by the political agenda of those in government.

iii. The Case of Tamil Nadu, India: Affirmative Action

In 2005, India's Central government introduced a category 'E' in passport application forms where 'E' stands for "eunuch." Transgender people would like this to be changed. The term "eunuch" bears a lot of historical stigma and transgender people do not want to be addressed thus.

Additionally, other countries do not recognise the eunuch identity and this causes difficulties during international travel. This was a typical case of a government making a policy without consulting the population that it affects. In the Southern state of Tamil Nadu, the state government has been more understanding of transgender people's issues and needs, and consultative in formulating several policies that facilitate their development.

The state has accorded official recognition for the

transgender community with the issue of ration cards with a separate "third gender" category. This is, without a doubt, a major step forward in the demand for citizenship rights, as only two sexes – male and female – are recognised in Indian civil law. Furthermore, government orders have been issued to educational institutions to provide transgender people access to education and counselling services. More recently, the state's social welfare department announced the constitution of a separate welfare board for transgender people and a census exercise was undertaken to enumerate transgender people in the state.

Strategy

The *aravani* community in Tamil Nadu identified and then worked with Kanimozhi, a Member of Parliament who understood their issues and needs, and was committed to promoting their rights. She then worked from within the state government to build political will towards welfare and development of *aravanis* and enforce policies and schemes for them.

One of the results was the public hearing in December 2007, organised by the State Commission for Women, the Tamil Nadu AIDS Solidarity Action (TASA) and ActionAid. The hearing had members of the transgender community speaking of human rights violations and other atrocities they had faced.

The jury's recommendations formed a key input for the state government's decisions to set up the Transgender Welfare Board, issue ration cards to transgender people, as well as bringing about other policy reforms.

Progress Thus Far

Transgender Welfare Board

The Tamil Nadu government constituted a Transgender Welfare Board in April 2008 with the social welfare minister as president of the Board. Appointed to the board are the secretaries of law and finance, and senior officials heading various agencies like the women's commission, police, and state human rights and social justice commissions. In addition, a number of transgender people have been included as advisors to the Board.

This effort is the first of its kind in India and perhaps even in the world. With a budget of 50,000,000 Indian Rupees (around USD100,000) for the first year (2008-09), the mandate of the board is to look into "various problems faced by the community and to formulate and execute welfare schemes for the betterment" of the community. This includes

extending grants to self-help groups of transgender people to set up businesses.

Some businesses have been set up already under this scheme including fruit or vegetable shops. In a recent call by a state government undertaking tenders for a family card (ration card) administration project, the call stated if tenders were received from *aravani* self-help groups, priority would be given to them, qualification criteria would be waived, and other tenders would not be opened.²²

Census

Districts are undertaking census of transgender people across the state to identify them and register them with the Welfare Board. The effort intends to ensure good living conditions for transgender people and improve their socio-economic conditions. The Board is empowered to look into the various problems, difficulties and inconveniences faced by the transgender people and based on these inputs, formulate and execute welfare schemes for their betterment.

An NGO is helping to create a database of transgender people with comprehensive information to assess their numbers, needs and demands so that the Board can identify ways to resolve them. Government and NGO partnership has been a key factor in the progress of transgender rights in Tamil Nadu.

Ration Cards

The government has also started issuing food ration cards or family cards which serve as identity cards in many situations for transgender people with the special category of "third gender." This is particularly significant as a step in the direction of citizenship rights for transgender people and State recognition of their gender expression and identity.

Education

Acting on the recommendations of a sub-committee for the rehabilitation of transgender people, the state government issued orders in December 2006 directing the school and higher education departments to ensure that transgender people are not denied admission to schools and colleges. The government order strongly favours counselling as a means to deter families from disowning a transgender child. It also recommends counselling for children with behaviour changes in schools, for which teachers need to be specially trained.

The government order is clear that no discrimination should be shown against transgender persons on account of their gender identity or expression. In an additional effort to improve the education of

What is required in Asia is a comprehensive, and above all, rights-based response; a response that seeks to build an environment where the rights of all members of society, especially the most vulnerable, are protected. Policies and laws are needed to empower marginalised groups and create a supportive framework for action, as well as to provide protection against discrimination.

(UNDP, 2004)

transgender people, the Tamil Nadu government issued an order on May 2008 to create a third gender category for admissions to government colleges and stated that they can share 30% of seats reserved for women in government-owned and government-aided arts and science colleges. While this is a welcome step in ensuring access to education for transgender people, it takes away from provisions for an already marginalised population – women. It would be more appropriate to make separate reservations for transgender people.

I was the first transgender to be admitted at the university level under the third gender category (as per the government order of May 2008). I am pursuing a Masters degree in Journalism in the University of Madras. Apart from giving the order on education, the government needs to pay attention to the financial and other needs of transgender students as well in order to support their access to education. My family has shunned me; I do not live with them or have financial support from them. I work in a full-time job so I can pay my rent, daily expenses and tuition. I save practically nothing from my salary. I am unable to collect enough money to pay the hostel deposit which carries a lower monthly cost. Now, I go to work in the evening and return early the next morning and then I go directly to classes. I spend about four and a half hours a day travelling between home and work and between home and the university. I sleep barely four hours a day during the week. In my case, I have received a lot of emotional and some financial support from within the community, but there needs to be a systemic solution to these problems for all transgender youth.
Glady, Chennai

Transgender people need government acceptance, societal acceptance and family acceptance. We do not need special treatment in the form of free housing or reservations in jobs or education. We need basic rights. We need to be treated with dignity, to be treated as all other people are and to not be ridiculed, abused, beaten or cast out of homes and society. Then we will be able to access health care and education as all others do, and contribute to society the same as others.

Vidya Venkat, Chennai

Sex Reassignment Operations

As mentioned earlier in this report, the Tamil Nadu government is fully reimbursing the cost of sex-change operations in government healthcare institutions, and a few people have utilised this provision already. Yet there are problems with this programme.

To begin with, this process requires the person to be able to raise the amount for this costly operation, pay for it, process the reimbursement and wait to recover the money; this is practically impossible for most transgender people as they live with modest means or in poverty.

Additionally, transgender people are reluctant to use these services as they fear being the “guinea pigs” for inadequately trained or inexperienced doctors; they want to save up money to travel to Thailand, but of course this is also practically impossible for almost all of them.

Further, transgender people largely do not get sex reassignment surgeries done because a lot of maintenance and care is required in the form of regular cleaning of the constructed vagina, else infections including fungal infections are possible.

Also, for transgender people engaged in sex work, this poses a challenge, for if their clients discover that they have a vagina, they will insist for or even forcibly have vaginal sex. It is difficult to have vaginal sex regularly and the constructed skin can get loose.

Grievance Redress

Under directions from the government, exclusive grievance redress meetings are being organised once every three months by district collectors. This initiative has been particularly successful in opening direct channels for dialogue and negotiation between the community and the administration.

In 2008, a group of 200 transgender people met the Thiruvallur district collector and requested some land to address housing issues which the collector promised to look into. While these are significant developments, the Tamil Nadu government needs to continue consulting with the aravani community through the Transgender Welfare Board to ascertain their needs and formulate policies and programmes to address them. Housing, skills training, microcredit, and health services are areas that need immediate attention. Sustained efforts are required to educate and sensitise society so that transgender children and youth are not cast out of families, driven out of schools and jobs, or ill-treated in healthcare institutions.

VI. CONCLUSIONS AND RECOMMENDATIONS

States have committed to promote, protect and fulfil the rights of all people to receive the highest standard of sexual and reproductive health (7.2, ICPD PoA); this includes transgender people. Hence, States are required to create and implement laws, policies and programmes that facilitate transgender people’s access to education, health, housing, work and an adequate standard of living, and eliminate discrimination and other forms of violence faced by transgender people at the hands of society, police and the judiciary.

With five years remaining before the completion of the 20-year period to which governments have committed to achieving several things (among them universal access to reproductive and sexual health), States can still take steps to do so using the recommendations made throughout this report.

States should recognise sexual rights as separate from reproductive rights but closely linked with the same. Realisation of reproductive rights is not possible without a complete realisation of sexual rights, and vice versa. One should take care not to collapse the sphere of sexual rights within reproductive rights and understand that these do not exist for LGBTI or women per se, but for all persons equally regardless of gender, sexual orientation, class, age, race, ability, religion or any other status.

Therefore, sexuality is an issue for all people and for all movements. Sexuality movements need to address underlying structures of oppression and not just their manifestations. Sukthankar notes that various movements for rights of persons of diverse sexual orientation, whether advocating positive rights or negative rights, need to challenge the basic issue of State control over the body.²³ When identified thus, the struggle for sexuality and gender rights can be widened by including a number of other movements such as transgender people's rights, women's rights, children's rights, human rights, Dalit rights, reproductive rights, health, anti-communalism, etc. Inherent in this is the recognition that persons have multiple identities and experience multiple kinds of violation based on those identities. This will create a strong coalition that approaches rights issues with a deeper understanding of the problems while working towards comprehensive and democratic solutions.

Most sexuality-related policy and programme formulation and advocacy take place using a public health framework. A prime example of this is the Delhi High Court litigation challenging the constitutional validity of Section 377²⁴ of the Indian Penal Code by stating that it impedes HIV prevention efforts among men who have sex with men and transgender people.

While this is a strategic decision for civil society advocates, given that the public health argument is more persuasive for governments than human rights arguments, it is important for governments and civil society to work towards creating an environment where human rights are the bases for all actions. As Correa, Petchesky and Parker argue, the human rights framework is not flawless in that it tends to "ignore cultural and historical differences" and often lacks effective enforcement mechanisms. However, it is currently the most comprehensive framework for "making social and erotic justice claims and seeking redress or accountability."²⁵

Within the human rights framework, advocates set their sights on legal reform, as argued earlier in this report. Laws and legal systems do not operate in a vacuum, but in a social, cultural and political environment at a historical point in time. For example, in the case of the Nepal Supreme Court litigation, international treaties and jurisprudence, the nation's shift to democracy, an active and visible LGBTI movement built over 8 years, and growing public acceptance of LGBTI rights played a major role in the successful judgement. In Thailand, as discussed before, the development of laws and policies affirming health and rights has been affected by the political agenda of those in government. Therefore, it is critical not only to map shifts in the social, cultural and political environment but also to influence them.

Influencing policies is another area of particular importance as affirmative policies contribute greatly towards empowering marginalised communities and towards their development, as observed in the case of Tamil Nadu in India. Political will needs to be created and inspired to bring about policy change to empower and develop communities, and thus societies. Policies would be even more empowering if the process of formulating them was consultative and ensured the meaningful participation of all those communities and stakeholders being affected by it. Affirmative action should be planned in such a way that it offers immediate benefits to communities and provides opportunities to assist them in acquiring the average standard of quality of life available in society. The long-term policy vision must be of creating a social environment where all individuals and communities are able to access available services and opportunities equally

Movements need to pay greater attention to public education and sensitisation, and shaping people's perspectives and mindsets towards acceptance of diversities. This includes (but is not limited to) key stakeholders such as health care personnel, educationists, researchers, community leaders, religious leaders, lawyers, police personnel, judiciary, policy makers and law makers.

The immediate objective of such education and sensitisation must be to end violence perpetuated by these actors on transgender people. In the long run, such education must aim to create an enabling environment for all persons to attain sexual citizenship²⁶.

The importance of empowering marginalised individuals and communities cannot be underscored enough. It is not enough to reform social and State institutions; the communities need to be empowered to engage with society and State. In Nepal, Pinky shared that interaction with the LGBTI rights movement and participation in capacity building workshops have helped many previously submissive and quiet transgender people develop confidence to respond to harassment and demand rights.

In Tamil Nadu, development initiatives such as Tamil Nadu AIDS Initiative's (TAI) Araychi Mani (Bell of Distress) violence redressal mechanism²⁷, Peer Jeevan Collective²⁸ (Peer Life Collective), and Natpukoodam²⁹ (Friends Clubs) provide services and at the same time serve to empower the transgender community and strengthen their confidence and sense of self-worth.

Increased agency with regards to themselves, their relationships, communities, social spaces, economics and politics will lead to greater access to health services, legal redress and political participation, which in turn increases agency

– it is a continuous and cyclical process. Correa, Petchesky and Parker describe empowerment as socially engaged agency which reduces risk and vulnerability, and promotes erotic justice and sexual freedom.³⁰ Slamah emphasises the same concept when she notes of the *mak nyahs* in

Malaysia: “Taking action on our own behalf created a sense of empowerment for us as a community.”³¹ Montoya and Becerra recommend interventions

to strengthen transgender organisations, specific allocation of funds to transgender people that are managed by them and inclusion of transgender people in design and implementation of projects. There is also a need for legal awareness among the transgender community, support groups, and inclusion in policy making and law drafting processes.³² These recommendations and those made throughout the report are compiled in the following pages.

VII. SPECIFIC RECOMMENDATIONS FOR GOVERNMENTS, NGOs AND DONORS

Table 6: Recommendations for Governments, NGOs and Donors

NEEDS/ RECOMMENDATIONS FOR	GOVERNMENTS	NGOS	DONORS
Need to incorporate issues of gender and sexuality (refer p.18 and 19).	In law, policies, programmes: take affirmative action. Consult transgender people in formulating law, policy and programmes that affect them.	In internal policies and programmes. Training, sensitization and awareness of gender and sexuality issues and concepts; encourage critical reflection on these. Make linkages with other rights-based groups/movements where applicable.	In internal policies, programmes; fund programmes for transgender people; incorporate transgender issues in a broad range of programmes.
Change laws including religious laws that criminalize or discriminate against LGBTI people including marriage and adoption laws (refer p.22).	Review laws with focus on issues of LGBTI people. Form a committee for the same, with ¾ of its members comprising LGBTI people. Change laws found to be discriminatory based on recommendations.	Litigate for change of laws. Develop legal awareness among transgender people and empower them to participate in such processes. Identify allies within religious bodies to read scriptures in new light and change laws.	Fund organising of transgender people, legal awareness programmes and legal advocacy.
Need anti-discrimination laws (refer p.11).	Constitute laws that prohibit discrimination, prejudice and violence based on sexual orientation and gender identity in consultation with LGBTI.	Draft law; advocate with key government officials to get it approved.	Fund legal advocacy; facilitate constructive dialogue.
Need for laws and policies to update citizenship, identity cards and official records with gender identity or changed sex, and legalise sex reassignment operations (refer p.15 and 19).	Consult transgender people in formulating such law and policies.	Draft law; advocate with key government officials to get it approved.	Fund legal advocacy; facilitate constructive dialogue.

NEEDS/ RECOMMENDATIONS FOR	GOVERNMENTS	NGOS	DONORS
Need to ensure that HIV-infected persons and AIDS patients have access to treatment and medical care (refer p.17).	Educate healthcare personnel on HIV and AIDS, and train them to fulfil their responsibilities.	Partner and advocate with the healthcare system to ensure access to treatment and care.	Fund training, sensitisation and advocacy.
Establish affirmative action for transgendered people including jobs, capital and housing (refer p.20 and 21).	Establish a committee with at least half of its members comprising LGBTI people to draft a plan for affirmative action. Ensure that the plan is implemented across the country.	Advocate with government for affirmative action. Implement affirmative action in hiring policies as well as organisational programmes.	Fund learning exchanges, training and advocacy. Implement affirmative action in hiring policies as well as organisational programmes.
Build public awareness and opinion about gender and sexuality diversities (refer p.11 and 12).	Develop and communicate public service messages that include issues of LGBTI people. Allot programming slots on public media (radio, television).	Implement public education programmes and further discourse on masculinity, femininity, gender plurality, including targeting families to enable them to play supportive and empowering roles.	Fund public education programmes; contribute to the public discourse.
Sensitise health personnel, teachers, police and judiciary on gender and sexuality (refer p.12-3).	Partner with NGOs to implement sensitization and awareness programmes.	Partner with government to implement sensitization and awareness programmes.	Fund sensitization and awareness programmes; facilitate government and civil society partnership.
Need for gender plural and non-heterosexist education curriculum, particularly sexuality education; institutional support for transgender students (refer p.16).	Partner with NGOs to review and revise curricula.	Partner with government to review and revise curricula.	Fund organisations working on reforming education curricula.
Laws need to be more specific so that they are not interpreted to enforce heteronormativity, for example, laws regarding indecent behaviour, unnatural sex, obscenity.	Review and revise laws in partnership with organisations working on women's rights, sexuality, human rights and legal reform.	Work in partnership with the government to review and revise laws.	Fund legal reform.
Need for research on transgender people's health issues and health infrastructure to respond and adapt to the needs of transgender people (refer p.19-20).	Fund research on transgender people's health issues. Formulate policies and allocate funds for health infrastructure to respond to the needs of transgender people.	Advocate for research on transgender people's health needs and policies.	Fund advocacy and research; connect advocates and researchers to facilitate sharing of perspective and working together.

NEEDS/ RECOMMENDATIONS FOR	GOVERNMENTS	NGOS	DONORS
Rape laws need to offer protection to all persons including men and transwomen, and to recognise the multiple dimensions of rape and sexual assault beyond the physical act.	Review and revise rape laws in consultation with organisations working on human rights, women's rights, sexual rights and children's rights.	Women's rights, human rights, sexual rights and children's rights groups to advocate for change of rape laws, and further understanding of rape, gender power and oppression.	Fund legal advocacy and public education.
LGBTI movements need to democratise their politics and be more inclusive (refer p.13).		Further dialogue within the movement on issues and rights of diverse sexual orientation and be mindful of these in programming and advocacy.	Support movement-building processes and activities.
Educate sexual diversity movements on gender, sexuality (refer p.13-14).		Further dialogue on gender and sexuality among various movements.	Fund organisations working on gender, sexuality, leadership and movement building.
Implement programmes to empower transgender people and organisations (refer p. 20, 31 and 32).	Fund programmes for transgender people such as peer education and vocational training.	Develop and implement programmes for transgender people such as support groups, counselling, peer education, life skills, legal awareness and vocational training. Organise transgender people. Seek partnerships and linkages with other social justice movements where applicable and share skills, services, perspectives; for example, movements of youth rights, children's rights, health, habitat and housing, women, human rights, legal advocacy and reform groups, civil liberties etc.	Fund programmes such as support groups, counselling, life skills, peer education, legal awareness and vocational training. Fund transgender organisations. Connect transgender organisations with other organisations, facilitating sharing of perspective and skills.

SUGGESTED READINGS

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Endnotes

- 1 This term is used to denote a dominant societal ideology which prescribes rigid gender roles and compulsory heterosexuality.
- 2 Human Rights Watch. (2008). *This Alien Legacy: The Origins of "Sodomy" Laws in British Colonialism*. Available at <http://www.hrw.org/en/reports/2008/12/17/alien-legacy-0>
- 3 These include: Sanders, D. (2008). *Third Sex Identities and Transgender Rights: Policies in Asia and the West*. Paper presented at VII Conference – International Association for the Study of Sexuality, Culture and Society, Hanoi, Vietnam, 2009; Slamah, K. (2005). *The Struggle to be Ourselves, neither Men nor Women: Mak Nyahs in Malaysia*. In Misra, G. and Chandiramani, R. (Eds.) *Sexuality, Gender and Rights: Exploring Theory and Practice in South and Southeast Asia*. New Delhi: Sage Publications; Sukthankar, A. (2005). *Complicating Gender: Rights of Transsexuals in India*. In Narrain, A. and Bhan, G. (Eds.) *Because I Have A Voice: Queer Politics in India*. New Delhi: Yoda Press and some titles included in the Suggested Readings section of this report).
- 4 Including Sanders, 2008; Slamah, 2005; Revathi (2005). *A Hijra's Own Story*. In Narrain, A. and Bhan, G. (Eds.) *Because I Have A Voice: Queer Politics in India*. New Delhi: Yoda Press; Peoples' Union for Civil Liberties, Karnataka [PUCL-K] (2003). *Human Rights violations against the transgender community: A study of kothi and hijra sex workers in Bangalore, India.*; and Teh, Y. K. (2001) *Mak Nyahs (Male Transsexuals) in Malaysia: The Influence of Culture and Religion on their Identity*. IJT 5,3, http://www.symposion.com/ijt/ijtvo05no03_04.htm.
- 5 A Ration Card is a document issued under an order or authority of an Indian State Government, as per the Public Distribution System, for the purchase of essential commodities from fair price shops. It has become an important tool of identification for Indian citizens.
- 6 Sanders, D. (2008). *Third Sex Identities and Transgender Rights: Policies in Asia and the West*. Paper presented at VII Conference – International Association for the Study of Sexuality, Culture and Society, Hanoi, Vietnam, 2009.
- 7 The Act does not define "indecent behaviour", and therefore it is up to the discretion of the police to determine what constitutes "indecent behaviour."
- 8 In Malaysia, before 1996, people who had had sex reassignment operations could change their name on their identity cards but there was a change of policy that year, after which a person's original name could not be changed, and the sex would have to remain as per what was on the birth certificate. A person getting a sex reassignment operation could have a new name added to their birth name, resulting in two names on the identity card - one male and one female. As a result, post-operative transsexual people cannot marry people of the sex other than their acquired sex; technically it would amount to same sex marriage, which is not allowed in Malaysia (Slamah, 2005). This move shows the State's concern with reproductive capacities of individuals and couples (or lack thereof), and not with one's right to express one's gender expression and identity, or one's right to choose one's partner.
- 9 The Yogyakarta Principles is a set of international legal principles on the application of international law to human rights violations on the basis of sexual orientation and gender identity. These principles recognise that sexual orientation and gender identity are integral to every person's dignity and humanity and must not be the basis for discrimination or abuse. The principles were drafted by a distinguished group of international human rights experts at a meeting held in Yogyakarta, Indonesia, from November 6-9, 2006.
- 10 On December 17, 2007, the Tamil Nadu AIDS Solidarity Action (TASA), which is a network of 18 NGOs, ActionAid and the State Commission for Women (SCW) organised a public hearing where members of the transgender community spoke of human rights violations and other atrocities they faced. Listening to them was a six-member jury – K.M. Ramathal, chairperson of the SCW; K. Sampath Kumaran, retired Punjab High Court Judge; K.M. Marimuthu, former Vice-Chancellor of Bharathiyar University; Ossie Fernandez, director of Human Rights Research and Advocacy Foundation; P. Kalimuthu, former Tamil Nadu Director General of Police; and Qudisia Gandhi, member of the SCW – whose recommendations formed a key input for the State government's decisions, including forming a Transgender welfare Board.
- 11 Women's groups in Thailand advocated for married women to have the right to choose to be addressed as Ms. or Mrs., and succeeded.
- 12 Correa, S. & Careaga, G. (2004). *Is Sexuality a Non Negotiable Component of the Cairo Agenda?* Available at <http://www.dawnnet.org/publications/docs/non-negotiable-2520sexuality-2520aug04.doc>
- 13 Sex reassignment surgery (SRS) is a term for the surgical procedures by which a person's anatomy, physical appearance and function of their existing sexual characteristics are altered to resemble that of the other sex. Sex reassignment therapy (SRT) is an umbrella term for all medical procedures regarding sex reassignment of both transgender and intersex people. SRT alters physical sexual characteristics to more accurately reflect the individual's psychological/ social gender identity. SRT can consist of hormone replacement therapy (HRT) to modify secondary sex characteristics, SRS to alter primary sex characteristics, facial feminization surgery, breast augmentation and permanent hair removal for transwomen, and mastectomy and chest reconstruction for transmen. In addition to undergoing medical procedures, transsexual people who go through sex reassignment therapy usually change their social gender roles, legal names and legal sex designation, where this is permitted.
- 14 Under S.320 of the Indian Penal Code, "emasculatation" (castration) is listed as grievous form of hurt, for

causing which one can be punished under S.325. An exception to this is made under S.88, which states that if an act is done in good faith and with consent of the other, it is not considered an offence. The validity of consent given by a person seeking SRS may come under doubt, since they are diagnosed with Gender Identity Disorder, a psychiatric disorder. Under S.90, consent given by an "insane person" – someone who is of unsound mind, and "is unable to understand the nature and consequence of that to which he gives his consent."

- 15 Peoples' Union for Civil Liberties, Karnataka [PUCL-K] (2003). *Human Rights violations against the transgender community: A study of kothi and hijra sex workers in Bangalore, India.* p. 55.
- 16 In many countries or areas, an individual's pursuit of SRS is often governed, or at least guided, by documents called Standards of Care for Gender Identity Disorders (SOC). This most widespread SOC in this field is published and frequently revised by the World Professional Association for Transgender Health (WPATH, formerly the Harry Benjamin International Gender Dysphoria Association). Some alternative local standards of care exist such as in the Netherlands, Germany, and Italy. Standards of Care usually give certain very specific "minimum" requirements as guidelines for progressing with SRT. For many individuals, these may require a minimum duration of psychological evaluation and living as a member of the desired gender full time (sometimes called the real life experience (RLE)) before genital reconstruction or other sex reassignment surgeries are permitted. For this and many other reasons, both the WPATH-SOC and other SOCs are highly controversial documents. Many transgender people assert that these do not acknowledge the rights of self-determination and control over one's body, and expect (and even in many ways require) a monolithic transsexual experience. Many qualified surgeons in North America and many in Europe adhere strictly to the WPATH SOC or other SOCs. However, many experienced surgeons are able to apply the WPATH SOC in ways which respond to an individual's medical circumstances, as is consistent with the SOC.
- 17 The International Bill of Gender Rights articulates basic human rights for transgender people. It enunciates ten rights that are universal rights which can be claimed and exercised by every human being regardless of sex or gender.
- 18 Naz Foundation (India) Trust filed public interest litigation in the Delhi High Court in 2001, arguing that Section 377 of the Indian penal Code (which criminalises "carnal intercourse against the order of nature") is unconstitutional and calling for the exclusion of adult consensual sex in private from the scope of this law. On 2nd July 2009, the Delhi High Court judgement in the case was pronounced whereby it excluded adult consensual sex in private from the purview of this law.
- 19 Non-Discrimination in International Law: A Handbook for Practitioners, Edited by Kevin Kitching (INTERIGHTS, January 2005). Available at <http://www.interights.org/handbook/index.htm>
- 20 Available at http://archive.psych.org/edu/other_res/lib_archives/archives/amicus/02-102.pdf
- 21 Sunil Babu Pant, former President of Blue Diamond Society accepted the CPN United offer, stood for election and got elected to the Constituent Assembly.
- 22 Ramya Kannan (June 20, 2008), <http://www.hindu.com/2008/06/20/stories/2008062061521200.htm>.
- 23 Sukthankar, A. (2005). *Complicating Gender: Rights of Transsexuals in India.* In Narrain, A. and Bhan, G. (Eds.) *Because I Have A Voice: Queer Politics in India.* New Delhi: Yoda Press.
- 24 The Section relating to "Unnatural offences" states: Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fines. Explanation – Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.
- 25 Correa, S., Petchesky, R. & Parker, R. (2008). *Sexuality, Health and Human Rights.* Oxon: Routledge. p. 152.
- 26 Sexual citizenship depends on sexual rights being protected by the State and also social, cultural, religious, scientific, political and other actors respecting sexuality, sexual diversity, sexual rights and the right of all individuals to sexual pleasure, and can be realized in an environment where the principles of inclusion, equality, freedom and dignity are upheld.
- 27 This intervention ensures response to instances of violence within 24 hours through medical, legal and counselling aid.
- 28 Spread across 13 districts of Tamil Nadu, this collective comprises 1,650 peer educators reaching out to transgender people in their locality with information on STDs, HIV/AIDS and legal aid. Additionally, they distribute condoms, coordinate self-help groups and Friends Clubs and work to address violence within 24 hours through the Araychi Mani rapid response mechanism.
- 29 These are drop-in centres where transgender people have access to low-cost beauty services, food and clothes banks as well as information on safe sex practices.
- 30 Correa, S., Petchesky, R. & Parker, R. (2008). *Sexuality, Health and Human Rights.* Oxon: Routledge, p. 4.
- 31 Slamah, K. (2005). *The Struggle to be Ourselves, neither Men nor Women: Mak Nyahs in Malaysia.* In Misra, G. and Chandiramani, R. (Eds.) *Sexuality, Gender and Rights: Exploring Theory and Practice in South and Southeast Asia.* New Delhi: Sage Publications, p. 105.
- 32 Montoya, J.E. and Becerra, A.G. (2009). *Gender and HIV/AIDS Reconfigurations in Male to Female Transgender People in Colombia.* Paper presented at VII Conference – International Association for the Study of Sexuality, Culture and Society, Hanoi, Vietnam, 2009.





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