

Laws affecting HIV responses among MSM and transgender people in Asia and the Pacific

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High Level Dialogue
**Punitive laws, human rights and HIV prevention among
men who have sex with men in Asia Pacific**

Hong Kong, 17 May 2010

UNDP APCOM study

Objectives

- Describe laws affecting HIV responses for MSM & TG in Asia Pacific
- Summarize impact of laws on HIV responses
- Build consensus on recommendations

Method

- Review of legislation, cases, peer review literature, grey literature
- Consultations (Bali ICAAP, Bangkok, Suva, PNG, Colombo)
- Work in progress: HK High Level Dialogue informs final report

Time frame

- Data collection & consultations: Dec. 2009 - May 2010
- Finalization May → July 2010 International AIDS Conference

High levels of HIV among MSM & TG

Alarming HIV prevalence data since 2005: Much higher than in the general population

- 42% TG Mumbai
- 34% TG Jakarta
- 30% MSM Bangkok, Rangoon
- 13% MSM Kunming
- 4% MSM Hong Kong (For sources see discussion draft page 4)

Pacific data is lacking

- Most known MSM HIV cases are in French & US territories
- Under-reported elsewhere

MSM are significant to the future of the region's epidemics

- Increasing % of total pool of infections
- Up to 30% of new Asian HIV infections will be MSM, unless prevention is intensified
(Commission on AIDS in Asia 2008)

Key points

Punitive laws & law enforcement practices exist in majority of countries

**Many governments are responding to MSM & TG needs in national AIDS policies....
but not in legislation**

**Punitive laws & lack of protective laws contribute to low coverage of HIV services
(<10% MSM)**

Very few examples of legislative action on MSM & TG rights

- Nepal a potential leader

Some recent examples of judicial action 2006-2010

- Fiji, HK, India, Nepal, Pakistan, Philippines, South Korea

Punitive laws

Male-to-male sex illegal: 19 of 48 Asia Pacific countries

Countries that criminalize have common law or Sharia traditions

- 16 ex-British colonies: sodomy / unnatural sex
 - Malaysia, Brunei, Myanmar, Singapore
 - Pakistan, Bangladesh, Sri Lanka, Maldives
 - Nauru, PNG, Samoa, Tonga, Kiribati, Solomon Islands, Tuvalu, Cook Islands
- + 3 countries influenced by common law
 - Afghanistan, Bhutan, Palau

Sharia penalties: death (Afghanistan, NW Pakistan), whipping (Afghanistan, Maldives, Malaysia, Brunei, Aceh, NW Pakistan), prison

Sodomy offences rarely enforced... but provide basis for extortion, harassment, violence

Civil law countries have no sodomy offences, but other offences are applied

Punitive police practices

Selective enforcement of public order & prostitution offences

- Many MSM & TG are sex workers, easy targets in crackdowns
- MSM & TG subjected to police abuses, extortion, harassment, assault, detention
- e.g. 70% of 240 South Asian MSM reported police harassment, 42% sexually assaulted by police (NFI, 2005)

Cambodia: Trafficking law

China: Public order, prostitution laws

Fiji: Prostitution offences

India: Immoral Traffic Prevention Act, breach of peace

Indonesia: Public Disturbance Law, prostitution offences

Philippines: Anti-Vagrancy Law, Anti-Trafficking Law

Singapore: Soliciting, Obscenity

Sri Lanka: Vagrants Ordinance

Reported impacts of punitive laws

HIV prevention outreach workers harassed, threatened or detained by police

- India, Nepal, Sri Lanka, Bangladesh, China

Condoms confiscated as evidence of illegality

- Thailand, Malaysia, Mongolia, Bangladesh, India, Nepal, Cambodia, Philippines, PNG

HIV education materials censored

- Singapore, China, India

Police raids on events where HIV education takes place

- Singapore, China

Reported impacts of punitive laws

- **Increases stigma, makes MSM & TG difficult to reach**
 - Reduced access to appropriate health services
- **Contributes to low self-esteem**
 - MSM & TG fail to protect themselves and their male & female partners
- **Few resources are invested in MSM & TG services or research**
 - MSM & TG under-represented in policy and management e.g. CCMs, national AIDS councils
- **HIV services fail to address MSM & TG needs**
 - lends legitimacy to discrimination & unethical practices by health services

Reported impacts of punitive laws

- **Lack of protections from discrimination in education & employment**
 - Many MSM & TG turn to illegal sex work, high incidence of violence and HIV
- **Schools fail to address sexual orientation & gender identity issues**

Legal protections

Constitutional protections for sexual minorities (7/48 countries)

- Equality, non-discrimination and privacy protections
- Hong Kong, India, Nepal, Pakistan (TG), Philippines, Pitcairn Ids., South Korea (TG),
- Judiciary have played a key role

Anti-discrimination laws: sexual orientation (7/48), transgender (2/48)

- Hong Kong (public sector)
- Fiji (employment)
- Philippines (police & social work)
- Taiwan (education & employment)
- Timor Leste (employment)
- Australia & NZ (comprehensive, includes TG)

Laws enabling TG to change sex or be recognised as 3rd sex (9/48)

- China, Indonesia, Japan, India, Pakistan, Nepal, South Korea, Australia, NZ

Draft recommendations

Tailor agenda to local cultural contexts

- Solutions need to be locally driven & owned
- Risk of jeopardizing progress if the agenda is seen as too radical / Western

Advocacy

- Support local advocates to generate a social climate supportive of reforms
- Support to networks:
 - Community based organizations
 - Judges
 - Parliamentarians
 - Progressive religious leaders

Engage national & regional human rights institutions

- ASEAN Intergovernmental Human Rights Commission

Draft recommendations

Law reform options

- Decriminalization of sex between consenting adults
- Anti-discrimination laws
- Protections from vilification & hate crimes
- Constitutional equality & privacy rights
- Legal recognition of gender reassignment & third sex status

Draft recommendations

Capacity building of police, judges, lawyers

- Training and protocols: address police abuses , sensitize to HIV impacts
- Access to evidence-based information on vulnerabilities of MSM and TG to HIV
- Examples of success in India, PNG

Legal aid services

Alignment of justice sector with HIV policy

- Include justice sector actions in National AIDS Plans (e.g. Cambodia, Thailand)

Comments welcome ...

The CD includes the Discussion Draft of study report

Comments by 31 May to:

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Acknowledgements

- Advisory Panels
- Consultation participants
- UNDP reviewers

Acknowledgements

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Prof. Dennis Altman La Trobe University
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Prof. Douglas Sanders Chulalongkorn University (Thailand)

George Hwang Human Rights Lawyer, MARUAH - Singapore Working Group
for ASEAN Human Rights Mechanism (Singapore)

Hon. Michael Kirby Retired Judge of the High Court of Australia (Australia)

Prof. Vitit Muntarbhorn Faculty of Law, Chulalongkorn University (Thailand)

Acknowledgements

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