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# Gender identity and sexual orientation in Thailand



**Promoting Rights, Diversity and Equality in the World of Work (PRIDE) Project**

ILO Country Office for Thailand, Cambodia and Lao People's Democratic Republic



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**Busakorn Suriyasarn**

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ILO Country Office for Thailand, Cambodia and Lao People's Democratic Republic

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# PREFACE

Discrimination and violence against people of diverse sexual orientation and gender identity is a serious problem around the world. Lesbian, gay, bisexual and transgender (LGBT) workers face discrimination in the labour market throughout the employment cycle, from education for employment, access to employment, refusal of employment, dismissal, and denial of career training and promotion, to access to social security because of their perceived or actual sexual orientation. There is also increasing evidence of a pay gap between LGBT and non-LGBT workers. Since LGBT workers are not well represented in government structures, employers' and workers' organizations, their particular interests are rarely the subject of social dialogue nor agreed upon in collective bargaining agreements. Consequently when they encounter discrimination, harassment or bullying, the avenues for workplace dispute resolution may be scarce.

The ILO is committed to eliminating employment discrimination, promoting workplace diversity and achieving decent work for all women and men, including people of diverse sexual orientation and gender identity. The right to equal treatment and opportunities empowers all people to meet their full potential and earn a productive income to care for themselves and their families. Pursuing equality makes good business sense, as liberating employment practices from bias allows companies to improve their talent pool and increase their access to profitable markets. In today's world, successful economies make the most of all human potential available and the elimination of discrimination at work is one of the ground rules of a fair globalization.

In order to effectively deliver upon its mandate to end discrimination in the workplace in all its forms, the ILO has been undertaking country-specific studies to identify the extent and forms of discrimination faced by LGBT workers at all stages of the employment cycle, and investigate challenges and good practices among the LGBT communities, from employers' and workers' organizations, relevant government organizations and civil society in Argentina, Costa Rica, Hungary, Indonesia, Montenegro, South Africa and Thailand.

This report reflects the study's findings and recommendations from Thailand, a country which is considered relatively progressive in advancing the rights of LGBT workers. However, homosexuals and transgendered people are still regarded by some members of the community in Thailand as suffering from a mental illness, even if their classification as "mentally ill" has been removed from the law. However, in practice they continue to face widespread discrimination at work and in life.

There is a need to strengthen legal protection as Thai law does not explicitly cover sexual orientation and gender identity either in the Constitution or in the Labour Protection Act, and the Thai Government has not ratified the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) which represents one of the fundamental principles and rights at work. In the meantime, efforts must be made to make use of existing laws to the fullest. Soft laws and guidelines as well as role models are also needed to convince the business community and change discriminatory attitudes among medical staff. Further mobilization of LGBT communities will be vital to advocate saying no to violence, discrimination and criminalization. Priority measures include recognizing people's gender identity in passports, and realizing proper remedies for those whose rights were violated, in particular transgender and gay persons who do not conform to the masculine and feminine gender stereotypes set for men and women respectively.

This study was prepared in the context of the ILO's Gender Identity and Sexual Orientation: Promoting Rights, Diversity and Equality in the World of Work (PRIDE) project, with the generous financial support of the Government of Norway. The ILO would like to extend its sincere gratitude to Busakorn Suriyasarn, the main researcher and author of this study. Many thanks also go to the numerous members of the Thai LGBT communities, ILO constituents, partner organizations, and UN agencies in Thailand for their valuable contributions to this study. It is our hope that the research and the discussions it entailed will inspire the Thai government, employers' and workers' organizations, the judiciary, the academe, civil society and LGBT representative organizations, as well as the wider public to realize the principles of non-discrimination and equality of opportunity and treatment for all people irrespective of their sexual orientation or gender identity in the world of work.

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# EXECUTIVE SUMMARY

Discrimination on the grounds of sexual orientation and gender identity (SOGI) has been recognized in international law, and developments in recent years have led to increased focus on the prevalence of discrimination against lesbian, gay, bisexual, and transsexual (LGBT) persons around the world. While some countries have adopted legal provisions prohibiting discrimination against LGBT persons, most countries have not.

LGBT workers face discrimination in various aspects in the job market throughout the employment cycle. There is a growing concern within governments and international trade union federations regarding violations of the rights of LGBT persons. However, specific information about discrimination against LGBT workers is not available in many countries.

## PRIDE Thailand research

The International Labour Organization (ILO) commissioned a study to map the patterns of discrimination faced by LGBT persons in Thailand's world of work. This study forms part of the ILO's Gender Identity and Sexual Orientation: Promoting Rights, Diversity and Equality in the World of Work (PRIDE) project which aims to identify multiple types of discrimination facing LGBT persons in the workplace in selected countries, initially including Argentina, Hungary, South Africa, and Thailand, followed by Costa Rica, Indonesia and Montenegro.

The PRIDE Thailand study, which includes a legal review and field research, was conducted during the period from June 2012 to June 2013 in close collaboration with the Thai LGBT networks and the ILO tripartite partners. The field research involved in-depth interviews, focus groups and meetings in Bangkok, Pattaya, Chiang Mai and Lamphun with over 80 individuals from LGBT organizations, academics, and representatives of relevant government agencies, workers' and employers' organizations, and civil society.

The study findings were validated at a national workshop on 4 June 2014, attended by over 160 people from various stakeholders, including many PRIDE research respondents, interested individuals and staff members of several UN agencies. Seventy-eight per cent of 90 participants who returned a completed validation questionnaire said the findings reflected the experience of LGBT people they knew, and 87 per cent of self-identified LGBT respondents said the findings reflected their personal experience and others in LGBT communities.

The PRIDE Thailand findings also confirm the findings of a national participatory review and analysis carried out in Thailand under the "Being LGBT in Asia" initiative conducted with support of UNDP and USAID around the same period. Overall, the 4 June 2014 national workshop participants found the PRIDE Thailand findings important and useful in helping their respective organizations to step up actions to address discrimination against LGBT and promote LGBT rights at work. Their recommendations have been reflected in the report.

## Summary of findings

Recent years have seen **some positive steps to recognize SOGI rights under Thai law**, such as the removal of the term "permanent mental disorder" from the reserved military service exemption document (Sor Dor 43) for transgender persons, which has been replaced by "gender identity disorder." "Persons of diverse sexualities" have also been recognized for the first time as a population group needing assistance to access social services in a recent regulation under the Social Welfare Promotion Act.

Yet, **legal protection of LGBT persons remains limited** as there is currently no major Thai law that ensures equality for persons of diverse sexualities, and there is no specific anti-discrimination law covering employment and occupation. Despite the common perception that Thailand is open to people of diverse sexualities, the PRIDE Thailand study found that **LGBT people are not fully accepted by Thai society** due to persistent prejudices and lack of understanding about different sexual orientations and gender identities. Extensive discrimination in various aspects of employment and occupation means Thai LGBT people do not enjoy fundamental rights and equal opportunity and treatment at work and can not reach their full potential.

- **Persistent stigma, discrimination and exclusion** – Thai LGBT persons face persistent stigma and many forms of discrimination in employment and education. Gays and lesbians are tolerated as long as they conform to the hetero-normative gender roles expected by society, but people with more visible different gender

expressions, in particular transgender persons as well as intersex persons who are often lumped together with transgenders, face severe barriers to equality and decent jobs. They are often marginalized and excluded, and unable to make a full contribution to society.

- **Discrimination at all stages of employment** – The majority of LGBT persons in the study have experienced discrimination starting from education and training, to access to employment, career opportunity and advancement, as well as in access to employment and social security benefits.
- **Least access to employment opportunities for transgender persons and *toms*** – Transgender persons (*katoey*, *sao praphet song*, transwomen and transmen) and *toms* (masculine lesbians) encounter the biggest barrier to employment and are often excluded from mainstream jobs, especially in the civil service. The exclusion tends to occur at the interview stage or once their legal gender title is found to be different from their physical appearance and gender expression. They are routinely asked about their sexuality in job interviews and subsequently denied the job. Transgender job applicants are often given psychological tests not given to other applicants.
- **Ghettoization of employment for transgenders** – Most transgenders, including those highly qualified, have no other choice than to earn a living by engaging in limited stereotypical jobs such as cabaret performer, make-up artist, or in cosmetic sales and public relations. Transgenders in poor rural communities struggle to sustain their livelihood with whatever options available such as home-based work at the bottom of the manufacturing supply chains and even as spiritual mediums. Many end up in sex work.
- **Differential preference for tomboy factory workers** – In the past decade or so *toms* have become workers in demand by factories in the manufacturing industry which have traditionally employed a large number of women. A recent study suggests that *toms* became desirable because employers perceive them to be “nimble” and “detailed oriented” like women and “strong” like men, and importantly because they tend not to take maternity leave.
- **Lack of legal recognition of transgender identity and same-sex partnership** – Unlike in many other countries, transgender identity is not legally recognized in Thailand. Intersex persons can apply for a legal title change after they have chosen one sex and completed the required surgical procedures. However, transgender persons with a sex change are not allowed to change their legal title, causing difficulties in getting jobs and scholarships, in international travel, in making legal transactions, etc. Same-sex partners are also not allowed to legally register their partnership or marriage, and are hence deprived of many benefits and rights enjoyed by legally married couples.

- **Limited acceptance of gender diversity in the workplace** – Many gay men and women tend to play heterosexual roles to avoid possible rejection at work. They hide their sexuality in the early stages of their career and come out later after they feel some security in their job. This also depends on the workplace culture and the profession. Non-heterosexual gender identity is perceived to damage credibility in leadership and in high-status jobs, such as lawyer and judge.
- **Hostile work environment for LGBT, in particular transgenders and toms** – LGBT often have to tolerate jokes, gossips and insensitive comments at work. Transgenders and *toms* in particular are subject to intrusive questions about their private lives, insinuations, slurs and insults about their sexuality that are sometimes violent, such as jokes about transgenders and *toms* being raped or gang raped. Gay men and women can also experience a hostile work environment.
- **Sexual harassment and violence at school and at work** – LGBT persons face many forms of gender-based harassment, from mild teasing, taunting, gossips, slurs, insults, and groping, to more serious forms of physical and sexual violence, including hazing, bullying, physical assaults, and rape. Transgender persons and young feminine gay students face severest bullying. There are cases of *toms* raped by co-workers, transgenders raped in male prisons, and intersex persons facing sexual assaults in their community because of their ambiguous gender identity. Thai media have also reported rape and murder of *toms* which fit the definition of hate crime.
- **Opting out of mainstream jobs** – Due to repeated rejections, a hostile work environment, limited freedom of gender expression at work, and limited career advancement opportunities, many LGBT persons opt out of formal jobs in large organizations to seek jobs in which they can express themselves more freely in smaller enterprises or non-government organizations. Others become freelance workers or set up their own business.
- **Lower job security and limited access to social protection** – LGBT find themselves in informal jobs with less job security, lower pay and fewer benefits. Often assumed to have a “risky lifestyle,” transgenders and gay men are required to pay higher health insurance premiums. Transgenders also face discrimination at public hospitals due to unmatched legal and physical identity, prejudices, and inflexible hospital rules. Same-sex couples are denied joint bank loans, while applications by unmarried heterosexual couples are commonly granted.
- **Double stigma and discrimination for people living with HIV (PLHIV)** – Thailand has no law prohibiting discrimination in employment on the ground of HIV status, but a non-binding code of practice and guidelines. While access to antiretroviral treatment has improved, PLHIV continue to face involuntary HIV screening for job application and during employment, as well as violation of confidentiality at work and job termination due to HIV-positive status.



- **Discrimination and harassment of transgender sex workers** – Transgender sex workers are routinely harassed and extorted by police in red light districts popular with foreign tourists. Compared to freelance female sex workers, freelance or street-walking transgender sex workers are more vulnerable to being arrested and “fined” for solicitation and periodic crackdowns.
- **Increasing but limited social dialogue** – So far there has been limited serious discussion on labour issues among LGBT organizations, while LGBT rights are not a priority issue for employers’ and workers’ organizations. However, LGBT organizations have recently begun to work with some government agencies, specifically on legal same-sex partnership and access to social services.
- **No dedicated agency to tackle employment discrimination** – The National Human Rights Commission of Thailand (NHRC) has served as the de facto agency that LGBT organizations turn to in times of need, including when the grievances concern education and labour rights. However, the NHRC has limitations in resources and mechanisms to ensure timely and effective redress.

## Policy recommendations

Full rights can not be exercised and full participation is not possible, unless society accepts all members as equal and entitled to the same human and workers’ rights. The gap in legal protection of SOGI rights requires further policy mobilization to include LGBT in the full protection against discrimination under Thai law, including in the Labour Protection Act.

And the lack of anti-discrimination legislation specific to employment and occupation can be remedied by seeking useful guidance in international instruments and good practice examples from other countries.

Effective action against discrimination of LGBT in the workplace involves responsive laws, policies and mechanisms, responsive human resources and practices, as well as more education and social dialogue towards a better understanding about LGBT rights and acceptance of LGBT as full and equal members of society. More cooperation from all key stakeholders is needed to ensure that LGBT rights are respected and protected.

Following are the legislative and policy recommendations for government, employers’ and workers’ organizations, LGBT organizations and civil society, to promote rights, diversity and equality for workers of diverse sexual orientations and gender identities in employment and occupation in Thailand.

## A. Government

- 1) **Ensure protection of LGBT rights in national laws and policies.** Improve implementation of existing mechanisms, e.g., labour inspection, law enforcement and judicial systems, to combat discrimination against all workers, including LGBT. Adopt a national law and policy to promote equal opportunity and treatment in employment and occupation that explicitly includes SOGI as prohibited grounds of discrimination.
- 2) **Ensure equality in legal rights for LGBT people aligned with international standards.** Ratify the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111). Allow transgender people a legal title change and legally recognize same-sex partnership. Revise discriminatory rules and regulations.
- 3) **Develop anti-discrimination legislation and a monitoring body specific to discrimination in employment and occupation with effective implementation mechanisms.** Consider an Equality and Non-Discrimination in Employment and Occupation Act and an independent Equal Employment Opportunity Commission (EEOC) as an advisory and monitoring body.
- 4) Promote social dialogue with LGBT, workers' and employers' organizations towards proactive and sustained cooperation to ensure equality and rights protection for LGBT people.
- 5) Promote national education about gender diversity and LGBT rights in school curricula and among the public.

## B. Employers' and workers' organizations

- 1) Promote awareness about LGBT rights within respective organizations.
- 2) Develop a knowledge base about LGBT workers with research and identification of good practice examples.
- 3) Promote acceptance for gender equality and diversity in the workplace by preventing and eliminating a hostile work environment and violence at work for people of all sexual orientations and gender identities.
- 4) Work with LGBT rights advocates and organizations to protect LGBT workers from discrimination and all forms of violence in the workplace.
- 5) Promote dialogue between workers and employers and representatives of LGBT workers towards proactive and sustained cooperation to ensure equality and rights protection for LGBT people.

## C. LGBT and civil society organizations

- 1) Promote awareness about labour rights in LGBT communities and share experiences across different groups to increase understanding of the issues and undertake joint action to represent and promote LGBT interests, human and workers' rights in society and in workplaces.
- 2) Improve the existing knowledge base about discrimination in employment against LGBT workers through systematic data collection and research.
- 3) Build alliances and promote dialogue with government, workers' and employers' organizations towards proactive and sustained cooperation to ensure equality and rights protection for LGBT people.
- 4) Step up legislative and policy advocacy to combat all forms of employment discrimination and violence against LGBT people at work and in society.
- 5) Promote awareness and understanding of gender equality and diversity, LGBT rights and discrimination among civil society, media organizations, and society at large.

# LIST OF ACRONYMS

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AHRD	ASEAN Human Rights Declaration
Anjaree	Anjaree Group
ART	Antiretroviral (treatment for HIV and AIDS)
ASEAN	Association of Southeast Asian Nations
ASO	AIDs-response Standard Organization
BRO	Bangkok Rainbow Organization
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CESCR	Committee on Economic, Social and Cultural Rights
DDC	Department of Disease Control
DLPSW	Department of Labour Protection and Social Welfare
DRLP	Department of Rights and Liberties Protection
ECHR	European Court of Human Rights
FOR-SOGI	Foundation for Sexual Orientation and Gender Identity Rights and Justice
FSW	female sex workers
FTM	female-to-male (transgender persons)
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IGLHRC	International Gay and Lesbian Human Rights Commission
ILO	International Labour Organization

LGBT	lesbian, gay, bisexual, transgender persons
MOJ	Ministry of Justice
MOL	Ministry of Labour
MOPH	Ministry of Public Health
MSDHS	Ministry of Social Development and Human Security
MSM	men who have sex with men
MSW	male sex workers
MTF	male-to-female (transgender persons)
NCPE	National Congress Private Industrial of Employees
NGO	Non-governmental organization
NHRC	National Human Rights Commission of Thailand
NIDA	National Institute of Development Agency
NSWPC	National Social Welfare Promotion Commission
PE	physical education
PEF	People's Empowerment Foundation
PLHIV	people living with HIV
RSAT	Rainbow Sky Association of Thailand
SERC	State Enterprise Workers Relations Confederation of Thailand
Sisters	Sisters, Center for Transgenders (Pattaya)
SWING	Service Workers in Group
TFAT	Trans Female Association of Thailand
TGA	Thai Transgender Alliance
TKF	Teeranat Kanjanauksorn Foundation
TNP+	Thai Network of People Living with HIV/AIDS
UDHR	Universal Declaration of Human Rights
UN	United Nations
WHAF	Women's Health Advocacy Foundation



# INTRODUCTION

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## A. Background and rationale

Discrimination and violence targeted toward people because of their actual or perceived sexual orientation and gender identity is a serious concern around the world. While extending the same rights enjoyed by all others to people of diverse sexualities is not a radical concept, deeply rooted negative attitudes towards them combined with inadequate legal protection against discrimination on the grounds of sexual orientation and gender identity leave many lesbian, gay, bisexual and transgender or LGBT<sup>1</sup> persons exposed to multiple abuses and rights violations.

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<sup>1</sup> The acronym 'LGBT' refers to lesbian, gay, bisexual and transgender persons, as well as others with diverse sexualities including intersex and queer people. Although 'sexual orientation' and 'gender identity' are the more formal and legally accepted terms, the acronym LGBT is widely used within the UN and the ILO, as well as by many States, workers' and employers' organizations, and civil society, including those in the LGBT communities. Hence, for brevity the acronym LGBT will be used in this report in collective references to persons of diverse sexual orientation and sexual identity.

The report to the United Nations High Commissioner for Human Rights following the June 2011 UN resolution that expressly affirms the right to non-discrimination of LGBT persons presents evidence of a pattern of systematic violence and discrimination directed at people in all regions of the world because of their sexual orientation and gender identity – from discrimination in employment, health care and education, to criminalization and targeted physical attacks and killings.<sup>2</sup>

Human rights violations against LGBT persons include extra-judicial killings, torture and ill-treatment, sexual assault and rape, invasions of privacy, arbitrary detention, denial of employment and education opportunities, and serious discrimination in relation to the enjoyment of other human rights. These violations are often compounded by other forms of violence, hatred, discrimination and exclusion based on race, age, religion, disability, or economic, social or other status.<sup>3</sup>

Discrimination on the grounds of sexual orientation and gender identity has only recently been officially recognized in international law. Developments in recent years have led to increased focus on the prevalence of discrimination against LGBT persons. While some countries have adopted legal provisions prohibiting discrimination against LGBT persons, the vast majority of countries have not. Anti-discrimination institutions in most countries do not specifically cover sexual orientation as part of their mandate.<sup>4</sup>

LGBT workers face discrimination in various aspects in the job market throughout the employment cycle, from access to employment, refusal of employment, dismissals, and denial of training opportunities and promotions, to access to social security because of their perceived or actual sexual orientation.<sup>5</sup> Moreover, there is increasing evidence of a pay gap between LGBT and non-LGBT workers.<sup>6</sup>

LGBT workers who have same-sex partners rarely enjoy the same benefits as married couples, as in most countries these partnerships are not legally recognized. Currently only 14 countries legally recognize same-sex union, whereas consensual same-sex relationship is still criminalized in 76 countries.<sup>7</sup> LGBT workers lack the right to include partners in company health insurance plans, medical leave guarantees and other benefits shared by other workers. Also, LGBT workers may not be represented in government structures, employers'

<sup>2</sup> UN Human Rights Council, 19<sup>th</sup> session, Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General Follow-up and implementation of the Vienna Declaration and Programme of Action, *Discriminatory Laws and Practices and Acts of Violence against Individuals Based on their Sexual Orientation and Gender identity: Report of the United Nations High Commissioner for Human Rights*, 17 Nov. 2011, A/HRC/19/41, cited in United Nations, Office for the High Commissioner for Human Rights (OHCHA): *Born free and equal: Sexual orientation and gender identity in international human rights law* (New York and Geneva, 2012), p. 9.

<sup>3</sup> The Yogyakarta principles on the application of international human rights law in relation to sexual orientation and gender identity: [http://www.yogyakartaprinciples.org/principles\\_en.pdf](http://www.yogyakartaprinciples.org/principles_en.pdf), p. 6 [accessed 24 May 2013].

<sup>4</sup> ILO: *Equality at work - Tackling the challenges* (Geneva, ILO, 2007), pp. 42-43.

<sup>5</sup> *Ibid.*

<sup>6</sup> N. Drydakis: "Sexual orientation discrimination in the labour market," in *Labour Economics* (2009), Vol. 16, No. 4, p. 366.

<sup>7</sup> UN, OHCHA: *Born free and equal*, op. cit., p. 7.



organizations and trade unions, and their particular interests are rarely the subject of social dialogue nor agreed upon in bilateral collective bargaining agreements. Consequently when they encounter harassment and bullying, the avenues for workplace dispute resolution around such issues may be limited.

There is a growing concern within governments and international trade union federations<sup>8</sup> regarding violations of the rights of LGBT persons around the world. Many universities and academic institutes have also included coverage of LGBT issues in gender studies programmes. However, most of the existing knowledge is based on data, reports and studies from developed countries.

The International Labour Organization's (ILO) PRIDE project aims to address this knowledge gap by undertaking country-specific studies to identifying multiple types of discrimination facing LGBT persons in the workplace in selected countries where relatively little research has been done. The first four countries selected were Argentina, Hungary, South Africa and Thailand. The project seeks to identify patterns of discrimination in these countries and establish how discrimination affects LGBT women and men differently in the world of work in these respective countries.

## B. Study objectives

The PRIDE Thailand country study aims to map the patterns of discrimination faced by LGBT persons in the world of work. It investigates challenges and good practices in combating discrimination and in promoting equality in employment and occupation for LGBT women and men under the four pillars of the ILO's Decent Work Agenda: fundamental principles and rights at work, employment promotion, social protection, and social dialogue. The study also involves LGBT persons living with HIV and AIDS since they tend to face double discrimination based on their gender identity and sexual orientation as well as their HIV-status. Specifically the study aims to:

- Review protection for LGBT persons in Thai law: record positive legal provisions where LGBT rights are protected; and identify gaps and shortcomings in legal provisions and their application, which lead to discrimination in the world of work for LGBT persons (fundamental principles and rights).
- Identify patterns—extent and forms—of discrimination against LGBT persons in employment and occupation through qualitative, in-depth data collection in close partnership with LGBT networks, constituents, civil society partners and research institutions in the country (fundamental principles and rights).
- Identify “good practice” workplaces where diversity and tolerance for LGBT persons is promoted (employment promotion).

<sup>8</sup> Education International (EI); Public Services International (PSI); International Trade Union Confederation (ITUC): *Equal rights dignity and respect for all workers*, 17 May 2011.

- Assess whether social security instruments such as medical care, job benefits, pension entitlements, and other benefits are available to LGBT persons on the same terms as other workers (social protection).
- Assess the extent of constituents' knowledge and technical capacity to raise LGBT issues in tripartite social dialogue fora and in collective bargaining processes (social dialogue).
- Identify the discrimination facing LGBT persons in sex work and in relation to HIV and AIDS including accessing HIV prevention, treatment, care and support through the world of work (social protection).

The research findings will enable the ILO to work effectively with its constituents and other partners to promote rights, diversity and tolerance in the workplace and to end all forms of discrimination in the world of work across all regions of the world.

## KEY PRINCIPLES, CONCEPTS AND TERMINOLOGY

### 1.1 Equality and non-discrimination principles and concepts

The principles of equality and non-discrimination have been recognized in international law for decades. The **equality principle** was first recognized in the ILO Constitution since its inception in 1919 (see Box 1.1), then again in 1944 in the Declaration of Philadelphia and in the Universal Declaration of Human Rights in 1948. Thereafter, the **non-discrimination principle** has been established in various international human rights treaties and international labour standards.<sup>9</sup>

<sup>9</sup> For a list of relevant UN treaties and international labour standards, see ILO: *Equality and non-discrimination at work in East and South-East Asia: Guide* (Bangkok, 2011), p. 10.

### Box 1.1

## The ILO Constitution

The Peace Treaty of Versailles of 1919 initially spelled out nine objectives for the ILO, including the principle of equal remuneration for women and men for the work of equal value. The Treaty called for equitable economic treatment for all workers lawfully resident in any country (Part XIII, Article 427). Then the Declaration of Philadelphia annexed to the ILO Constitution in 1944 reformulated and reaffirmed the principle of equality at work:

All human beings, irrespective of race, creed and sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity.

The rights to **freedom from discrimination, equality before the law** and **equal protection of the law** constitute the general principles relating to the protection of human rights in the Universal Declaration of Human Rights (UDHR)(1948) and the nine core United Nations (UN) human rights treaties that followed (Thailand is a State party to seven of these).<sup>10</sup>

Everyone is entitled to all the rights and freedoms [...] without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.(Article 2, UDHR).

The non-exhaustive list of prohibited grounds for discrimination set out in this article is reinforced in the core UN human rights treaties. **States' obligation to respect individual right to freedom from discrimination** is also a key part of the treaties. For instance, the International Covenant on Civil and Political Rights (ICCPR) (1966) provides:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. (Article 2(1), ICCPR).

<sup>10</sup> The nine core UN human rights treaties include the International Covenant on Civil and Political Rights (ICCPR) (1966), the International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) (1966), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment (CAT) (1984), the Convention on the Rights of the Child (CRC) (1989), the Convention on the Rights of Persons with Disabilities (CPRD) (2006), the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW) (1990), and the International Convention for the Protection of All Persons from Enforced Disappearance (ICCPED) (2006). Thailand is a party to seven of these UN treaties but has yet to become a signatory to the CMW and the ICCPED.

**Individual rights to equality before the law and to equal protection of the law** are also elaborated in the ICCPR:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. (Article 26, ICCPR).

The UN defines “**discrimination**” as:

Any distinction, exclusion, restriction or preference, based on the proscribed grounds, which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.<sup>11</sup>

In respect of employment and occupation, the two main international labour standards on equality and non-discrimination are the ILO Equal Remuneration Convention, 1951 (No. 100) and the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (see Box 1.2).

<sup>11</sup> Human Rights Committee, General Comment No. 18: Non-discrimination, (para. 7).

## Box 1.2

### Non-discrimination is a fundamental workers' right

The **Equal Remuneration Convention, 1951 (No. 100)**, adopted by the International Labour Conference in 1951, promotes equal pay for work of equal value between men and women. It was the *first ever international labour instrument* adopted to eliminate discrimination in employment, addressing pay discrimination on the ground of sex.

The **Discrimination (Employment and Occupation) Convention, 1958 (No. 111)**, adopted by the 42<sup>nd</sup> Session of International Labour Conference on 4 June 1958, sets comprehensive standards to promote equality of opportunity and treatment in the world of work:

- The purpose of Convention No. 111 is to **protect all persons against discrimination** on the basis of race, colour, sex, religion, political opinion, national extraction or social origin in employment and occupation.
- The Convention protects not only those who are employed or engage in an occupation, but also those who are preparing to work, seeking work, or at risk of losing their work.
- The Convention applies to all sectors of activity and covers all occupations and employment in both public and private sectors, as well as in the informal economy. It covers not only wage-employment, but also independent and own-account work.

Source: ILO: *Equality and non-discrimination at work in East and South-East Asia: Guide* (Bangkok, 2011), p. 11.

Thailand ratified Convention No. 100 in 1999 but has yet to ratify Convention No. 111.<sup>12</sup>

The ILO Convention No. 100<sup>13</sup> and Convention No. 111<sup>14</sup> set the fundamental standards on the elimination of discrimination at work. The ILO Convention No. 111 defines **“discrimination” in employment and occupation** as:

- (a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;

<sup>12</sup> Thailand is one of the four countries in Asia that have not yet ratified ILO Convention No. 111.

<sup>13</sup> Supplemented by the Equal Remuneration Recommendation, 1951 (No. 90).

<sup>14</sup> Supplemented by the Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111).

(b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers 'and workers' organisations, where such exist, and with other appropriate bodies. (Article 1(1) ILO Convention No. 111).

Convention No. 111 calls upon States to adopt and implement a national policy to promote equality of opportunity and treatment with a view to eliminating discrimination in all aspects of employment and occupation for all workers. This means that the Convention does not only require the prohibition of discrimination but goes a step further and requires a proactive, positive approach towards the promotion of equality in opportunity and treatment in employment and occupation:

- **Equal employment opportunity** means that a person must have opportunities to secure access to training, placement or employment that are no less favourable than the opportunities of persons in the same or comparable situations.
- **Equal treatment in employment** means that an employer must treat an employee no less favourably than other employees who are in the same or comparable situations.<sup>15</sup>

Convention No. 111 aims at the elimination of discrimination with respect to all aspects of employment and occupation:

- **Employment** refers to work performed under an employment relationship with an employer
- **Occupation** means the trade, profession or type of work performed by an individual, irrespective of the branch of economic activity or the employment status of the worker.<sup>16</sup>

<sup>15</sup> ILO: *Equality and non-discrimination at work in East and South-East Asia: Guide* (Bangkok, 2011), p. 17.

<sup>16</sup> Ibid.

## 1.2 Application of human rights to sexual orientation and gender identity

### 1.2.1 Recognition of sexual orientation and gender identity as prohibited grounds of discrimination

The rights to freedom from discrimination, equality before the law and equal protection of the law in the context of sexual orientation and gender identity have increasingly become the subject of interpretive comments and decisions within the UN system as well as regional human rights mechanisms.<sup>17</sup>

The first acknowledgement that international human rights law applies to individuals discriminated against based on sexual orientation was recorded in the Human Rights Council's 1992 decision in *Toonen v. Australia*, in which the Council held that the reference to the word "sex" in Article 2(1) and Article 26 of the ICCPR was to be taken as including "sexual orientation."<sup>18</sup>

In the early 2000s the Committee on Economic, Social and Cultural Rights (CESCR) adopted a similar interpretation in relation to various rights contained in the International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966). The 2009 General Comment No. 20 on non-discrimination reiterated the CESCR's view:

'Other status' as recognized in article 2, paragraph 2, includes sexual orientation. States parties should ensure that a person's sexual orientation is not a barrier to realising Covenant rights, for example, in accessing survivor's pension rights. In addition, gender identity is recognized as among the prohibited grounds of discrimination, for example, persons who are transgender, transsexual or intersex often face serious human rights violations, such as harassment in schools or in the workplace.<sup>19</sup>

<sup>17</sup> For more details on application of human rights in the context of sexual orientation and gender identity, see Asia Pacific Forum (APF): *ACJ report: Human rights, sexual orientation and gender identity (APF 15)*, 15<sup>th</sup> Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions, Bali, Indonesia, 3-5 Aug. 2010, pp. 11-18.

<sup>18</sup> Communication No.488/1992, U.N. Doc CCPR/C/50/D/488/1992 (1994), <http://hrlibrary.ngo.ru/undocs/html/vws488.htm> [accessed 26 Apr. 2010]; Communication No.488/1992, U.N. Doc CCPR/C/50/D/488/1992 (1994), <http://hrlibrary.ngo.ru/undocs/html/vws488.htm> [accessed 26 Apr. 2010], cited in Asia Pacific Forum (APF): *ACJ report: Human rights, sexual orientation and gender identity (APF 15)*, op. cit., p. 11.

<sup>19</sup> Committee on Economic, Social and Cultural Rights, *General comment No. 20: Non-discrimination in economic, social and cultural rights (art.2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, 2 July 2009, E/C.12/GC/20, cited in S. Agius et al.: *Human rights and gender identity: Best practice catalogue* (ILGA Europe, TGEU, Dec. 2011), p. 9.



In November 2006, a distinguished group of human rights experts from diverse regions and backgrounds developed and adopted what would be called the “**Yogyakarta Principles**” at a seminar at Gadjah Mada University in Yogyakarta, Indonesia. The seminar clarified the nature, scope and implementation of States’ human rights obligations in relation to sexual orientation and gender identity under existing human rights treaties and law.<sup>20</sup>

### Box 1.3

#### The Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity (2006)

The Yogyakarta principles clarify the application of existing human rights standards, and in addition, recommend to States a series of activities that they should undertake to ensure respect for, and the enjoyment of human rights by, persons of diverse sexual orientations and gender identities.

With regard to the rights to equality and non-discrimination, principle 2 of the Yogyakarta principles states as follows:

**Everyone is entitled to enjoy all human rights without discrimination on the basis of sexual orientation or gender identity.** Everyone is entitled to equality before the law and the equal protection of the law without any such discrimination whether or not the enjoyment of another human right is also affected. The law shall prohibit any such discrimination and guarantee to all persons equal and effective protection against any such discrimination.

**Discrimination on the basis of sexual orientation or gender identity** includes any distinction, exclusion, restriction or preference based on sexual orientation or gender identity which has the purpose or effect of nullifying or impairing equality before the law or the equal protection of the law, or the recognition, enjoyment or exercise, on an equal basis, of all human rights and fundamental freedoms. Discrimination based on sexual orientation or gender identity may be, and commonly is, compounded by discrimination on other grounds including gender, race, age, religion, disability, health and economic status.

Source: The Yogyakarta Principles: [http://www.yogyakartaprinciples.org/principles\\_en.pdf](http://www.yogyakartaprinciples.org/principles_en.pdf) [accessed 24 May 2013].

<sup>20</sup> The Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity: [http://www.yogyakartaprinciples.org/principles\\_en.pdf](http://www.yogyakartaprinciples.org/principles_en.pdf) [accessed 24 May 2013], op. cit., p. 6.

The Yogyakarta Principles, the most comprehensive instrument to date in the application of international human rights law to sexual orientation and gender identity, were created to affirm binding obligations of States to implement human rights according to a broad range of existing international legal standards and their application to issues of sexual orientation and gender identity (see Box 1.3).

The Yogyakarta Principles collate and articulate 29 rights and principles from various international human rights standards for persons of diverse sexual orientations and gender identities. These include, among others, the right to equality and non-discrimination, the right to recognition before the law, the right to a fair trial, the right to education, the right to work, the right to social security and to other social protection measures, and the right to freedom of peaceful assembly and association. Under the protection from medical abuses principle, the Yogyakarta Principles also affirm that States have an obligation to “ensure protection of persons of diverse sexual orientations and gender identities against unethical or involuntary medical procedures or research including in relation to vaccines, treatments or microbicides for HIV/AIDS or other diseases.”<sup>21</sup>

Each Yogyakarta Principle is accompanied by detailed recommendations to States, although responsibilities of other actors to promote and protect human rights are also emphasized. Additional recommendations are addressed to other actors, including the UN human rights system, national human rights institutions, the media, non-governmental organizations, and funders.

The Principles have become the principal instrument cited by human rights monitoring bodies at international, regional and national levels. Domestic courts and tribunals have referenced the Yogyakarta Principles in Australia, India, Nepal, and the Philippines.<sup>22</sup>

In its 2008 resolution on extrajudicial, summary or arbitrary executions the UN General Assembly also referenced sexual orientation. Subsequently in December 2008 a broad-ranging statement on human rights vis-à-vis sexual orientation and gender identity was issued by Argentina on behalf of 66 countries:

3. We reaffirm the principle of non-discrimination, which requires that human rights apply equally to every human being regardless of sexual orientation or gender identity.<sup>23</sup>

Additionally, the **ILO Recommendation concerning HIV and AIDS and the World of Work, 2010 (No. 200)** applies the principle that HIV and AIDS should be recognized and treated as a workplace issue and builds on the principle of non-discrimination.

<sup>21</sup> The Yogyakarta Principles, (Principle 18), op. cit.

<sup>22</sup> For more information, see APF: *ACJ Report: Human Rights, Sexual Orientation and Gender Identity (APF 15)*, op. cit., p. 17.

<sup>23</sup> APF: *ACJ Report: Human Rights, Sexual Orientation and Gender Identity (APF 15)*, op. cit., p. 14.

- (b) HIV and AIDS should be recognized and treated as a workplace issue, which should be included among the essential elements of the national, regional and international response to the pandemic with full participation of organizations of employers and workers;
- (c) there should be no discrimination against or stigmatization of workers, in particular jobseekers and job applicants, on the grounds of real or perceived HIV status or the fact that they belong to regions of the world or segments of the population perceived to be at greater risk of or more vulnerable to HIV infection;<sup>24</sup>

ILO Recommendation No. 200 calls on ILO member States to take measures in or through the workplace to reduce the transmission of HIV and alleviate its impact by “promoting the involvement and empowerment of all workers regardless of their sexual orientation and whether or not they belong to a vulnerable group.”<sup>25</sup>

The **UN Political Declaration on HIV and AIDS**<sup>26</sup> which was adopted in June 2011 and serves as the highest HIV and AIDS guidance document for UN member States also specifically mentioned men who have sex with men.<sup>27</sup> In advancing human rights to reduce stigma, discrimination and violence related to HIV, paragraph 85 of the Political Declaration states:

- 85. Commit to mitigate the impact of the epidemic on workers, their families, their dependants, workplaces and economies, including by taking into account all relevant conventions of the International Labour Organization, as well as the guidance provided by the relevant International Labour Organization recommendations, including Recommendation No. 200, and call on employers, trade and labour unions, employees and volunteers to eliminate stigma and discrimination, protect human rights and facilitate access to HIV prevention, treatment, care and support;

Decisions, statements and resolutions made by various UN Treaty Bodies, UN Special Procedures, and the UN General Assembly and Human Rights Council, indicate growing support for the recognition of sexual orientation and gender identity as prohibited grounds of discrimination proscribed by international human rights law.

However, it wasn't until 2011 that such recognition was officially and unequivocally stated by the UN. **On 17 June 2011 the UN Human Rights Council adopted the first-ever resolution affirming the right to non-discrimination of LGBT persons, regardless of their sexual orientation and gender identity.**

<sup>24</sup> ILO Recommendation concerning HIV and AIDS and the World of Work, (para. 3 (b) (c)).

<sup>25</sup> *Ibid*, (para. 14 (e)).

<sup>26</sup> UN: *Political Declaration on HIV/AIDS: Intensifying our Efforts to Eliminate HIV/AIDS*, General Assembly, 65<sup>th</sup> Session, Geneva, 8 June 2011, A/65/L.77, [http://www.unaids.org/en/media/unaids/contentassets/documents/document/2011/06/20110610\\_UN\\_A-RES-65-277\\_en.pdf](http://www.unaids.org/en/media/unaids/contentassets/documents/document/2011/06/20110610_UN_A-RES-65-277_en.pdf) [accessed 25 May 2013].

<sup>27</sup> It notes: “[M]any national HIV-prevention strategies inadequately focus on populations [...] at higher risk, specifically men who have sex with men...” *Ibid*, para. 29.

Thailand was among 23 countries (including Argentina, Hungary, and South Africa) that voted for this historic resolution. Nineteen countries voted against it and three countries abstained. The approval of the June 2011 resolution by such a narrow margin reflects that while support is growing for the recognition of LGBT rights across all regions, it is not yet universal.

Issues of sexual orientation and gender identity have nonetheless become frequently mentioned in the Universal Periodic Review with the rights of non-discrimination being emphasized in the context of the review of individual States.<sup>28</sup>

Following the June 2011 resolution and formal discussion of the subsequent report's findings in March 2012 at the UN Human Rights Council, the Office of the High Commissioner for Human Rights published a report which sets out **five core obligations that States have towards LGBT persons**:

- 1) Protect individuals from homophobic and transphobic violence.
- 2) Prevent torture and cruel, inhuman and degrading treatment of LGBT persons.
- 3) Decriminalize homosexuality.
- 4) Prohibit discrimination based on sexual orientation and gender identity.
- 5) Respect freedom of expression, association and peaceful assembly for LGBT and intersex people.<sup>29</sup>

## 1.2.2 Regional human rights instruments

At the regional level, the **European Court of Human Rights (ECHR)** has a significant body of jurisprudence dealing with the violation of rights under the European Convention due to discrimination based on sexual orientation and gender identity. Jurisprudence from other regional human rights mechanisms is comparatively less developed.<sup>30</sup>

The **ASEAN Human Rights Declaration (AHRD)** was adopted in November 2012 to grave disappointment of LGBT advocates in the region. Despite lobbying attempts by LGBT representatives, the first-ever AHRD does not mention sexual orientation and gender identity in the entire document.<sup>31</sup> A coalition of over 65 national, regional and international civil society groups severely criticized and rejected the Declaration, saying it provided a lower level of rights protection than similar regional treaties in Europe, Africa and the Americas.<sup>32</sup>

<sup>28</sup> APF: *ACJ Report: Human rights, sexual orientation and gender identity (APF 15)*, op. cit., p. 15.

<sup>29</sup> UN: OHCHR: *Born free and equal*, op. cit.

<sup>30</sup> APF: *ACJ report: Human rights, sexual orientation and gender identity (APF 15)*, op. cit., p. 16.

<sup>31</sup> International Gay and Lesbian Human Rights Commission (IGLHRC): "ASEAN Human Rights Declaration refuses to protect LGBTIQ rights!", 18 Nov. 2012, <http://www.iglhrc.org/cgi-bin/iowa/article/pressroom/pressrelease/1616.html> [accessed 10 Mar. 2013].

<sup>32</sup> G. Poore; G. Cristobal: "Human rights compromised in Southeast Asia," in *Pressroom* of the International Gay and lesbian Human Rights Commission (IGLHRC), 21 Nov. 2012, <http://www.iglhrc.org/cgi-bin/iowa/article/pressroom/iglhrinthenews/1622.html> [accessed 10 Mar. 2013].

## 1.3 Terminology on diverse sexual orientations and gender identities

The following are definitions of key terms used in this study, including those used internationally in the English language as well as those in Thai language and specific to the Thai cultural context.

### 1.3.1 English terminology<sup>33</sup>

The Yogyakarta Principles define two terms which have the broadest legal acceptance:

**Sexual orientation** refers to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.

**Gender identity** refers to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.

Besides these two terms, the term "gender expression" is also often used in the discussion about gender diversity.

**Gender expression** refers to the manifestation of each person's gender identity, and the one that is perceived by others. Typically, people seek to make their gender expression or presentation match their gender identity/identities, irrespective of the sex that they were assigned at birth.

The following are terms widely used to describe individuals of diverse sexual orientations and gender identities.

- | **Gay** – a man who is emotionally/sexually/physically attracted to men.
- | **Lesbian** – a woman who is emotionally/sexually/physically attracted to women.
- | **Bisexual** – a person who is emotionally/sexually/physically attracted to both men and women.
- | **Transgender** – a person born anatomically with a certain sex, who is more comfortable with a different gender/sexual identity.
- | **Intersex** – a general term used for a variety of conditions in which a person is born with a reproductive or sexual anatomy that does not fit typical definitions of female or male reproductive or sexual anatomy, including being born with both male and female sexual organs.

<sup>33</sup> The English-language terms in this section are sourced from APF: *ACJ report: Human rights, sexual orientation and gender identity (APF 15)*, op. cit., p. 8, and *ILGA-Europe Glossary*, [http://www.ilga-europe.org/home/publications/ilga\\_europe\\_glossary](http://www.ilga-europe.org/home/publications/ilga_europe_glossary) [accessed 20 Dec. 2012].

**Queer** – an academic term that is inclusive of people who are not heterosexual or do not conform to mainstream heterosexuality. While many LGBT persons are uncomfortable with the term “queer” due to negative connotations in its historical usage, many others in the LGBT community have “reclaimed” it as a symbol of pride.

**LGBT** – acronym for “lesbian, gay, bisexual and transgender,” synonymous with GLBT. LGBTI or LGBTIQ is also used to explicitly include “intersex” and “queer” people. LGBT is generally taken to include intersex and queer people and is the acronym of choice in this report.

**MSM** – acronym for “Men who have Sex with Men.” This term is used in the HIV/AIDS sector to denote a vulnerable population of men who have sex with men but may not identify themselves as homosexual or bisexual.

**Sexuality minorities** – people discriminated against due to their sexual identity/orientation or gender identity. This includes gays, lesbians, bisexuals, transgender and other traditional gender identities from around the world like *hijras, kothis, warias, katoey, berdache*, etc.

**Transsexual** – a person born with the physical characteristics of one sex who emotionally and psychologically feels belonging to a different sex and who chooses to live in a different gender role. A transsexual person’s choice to live in a different sex may include sex reassignment surgeries.

**Transvestite/Cross-dresser** – a person who enjoys wearing the clothing of another gender for certain periods of time, and whose sense of identification with another gender can range from very strong to less strong. Some transvestite or cross-dressing people may seek medical assistance to transition and live permanently in their preferred gender at some point in their life. Others are happy to continue cross-dressing part-time for the rest of their lives.

**Transperson/people/man/woman** – an inclusive umbrella term referring to people whose gender identity and/or gender expression differs from the sex they were assigned at birth. It includes, but is not limited to: men and women with transsexual pasts, and people who identify as transsexual, transgender, transvestite/cross-dressing, androgyne, polygender, genderqueer, agender, gender variant or with any other gender identity and/or expression which is not standard male or female, and express their gender through their choice of clothes, presentation or body modifications, including undergoing multiple surgical procedures.

**FTM** – an acronym for Female-To-Male, most commonly used to refer to a female-to-male trans person: someone assigned the female sex at birth who now identifies himself as male, also called a “transman.” (The term “transman” should be used with caution as it reinforces the assumption that there are only two possible sexes.)

**MTF** – an acronym for Male-to-Female, most commonly used to refer to a male-to-female trans person: someone who was assigned the male sex at birth but who now identifies herself as female, also called “transwoman.” (The term “transwoman” should be used with caution as it reinforces the assumption that there are only two possible sexes.)

### 1.3.2 Thai terminology

Some English-language terms such as “gay,” “lesbian,” “bisexual,” “transgender” and “intersex” have been adopted into usage in the Thai language but with cultural adaptation and additional nuances. Specifically:

**เกย์ Gay** – is used exclusively for men in Thailand. Women attracted to women are not referred to as “gay women,” but *tom*, *di* or *les* (lesbian), depending on their specific sexual orientation and gender identity/expression. There are also specific, relatively new, Thai terms used to collectively refer to homosexual men and homosexual women (see below).

**เลสเบี้ยน Lesbian** – is sometimes used but connotes a negative perception that lesbians are mentally abnormal and is therefore generally not favored by homosexual Thai women.

**ไบ Bi** – is an informal Thai term for “bisexual” and used as in English, although very few Thais openly identify themselves as bisexual.

**TG** – has commonly been used in place of ‘transgender’ among Thai transgender activists and members of the MTF transgender community.

The terms “transwoman” and “transman” are emerging in usage among Thai LGBTs.

Many Thai terms are widely used and specific to the Thai context of gender diversity. Key Thai-specific terms include:

**ชายรักชาย, ชรช. Chai rak chai** – literally “men who love men,” a collective and preferred term for gay men.

**หญิงรักหญิง, ญรญ. Ying rak ying** – literally “women who love women,” a collective and preferred term for lesbian women, *toms* and *dis*.

**ทอม Tom** – from English “tomboy,” a woman with a masculine gender identity/expression who is emotionally/sexually/physically attracted to women who are often but not always a *di*.

**ดี Di** – from English “lady,” a woman with a feminine gender identity/expression who is emotionally/sexually/physically attracted to women who are often but not always a *tom*.

**เลส Les** – from English “lesbian,” a woman whose outward gender expression is indistinguishable from that of heterosexual women but who is emotionally/sexually/physically attracted to women.

กะเทย **Katoey** – a person who was born male but has a feminine appearance, expression and behavior more consistent with that of a female person. This term has historical and medical meanings as “hermaphrodite,” which medically means a person who has both male and female sexual organs, and historically used to mean either a male-to-female or female-to-male transsexual. In current usage, *katoey* refers exclusively to MTF transvestite/transsexual/transgender persons. Some MTF transgender persons, in particular those aiming towards a final transition to the female sex, do not favor this term, while other MTF transgender persons, in particular those who take pride in the unique, in-between gender identity of *katoey*, embrace the term.

สาวประเภทสอง **Sao praphet song** – literally “woman/women in the second category,” referring to *katoeys* and MTF transsexual/transgender persons whose gender identity/expression is similar to that of a female person.

ตุ๊ด **Tut** - from “Tootsie,” the Dustin Hoffman film. *Tut*, the Thai equivalent for the English term “fag” or “faggot,” is a common but highly pejorative term for gay men, *katoeys* and MTF transgender persons although those among the younger generation may embrace it and use it subversively. However, in general usage it is best avoided.

เพศที่สาม **Phet thi sam** – literally “the third gender,” referring to individuals who are not heterosexual, including lesbian, gay, bisexual, and transgender persons. This term is not favored by many Thai LGBTs as it reinforces gender hierarchy.

■ คนข้ามเพศ **Khon kham phet** – literal translation of the English term “transgender.”

■ หญิงข้ามเพศ **Ying kham phet** – literal translation of the English term “transwoman,” used with MTF transgender persons who have had, or are in the process of, sex reassignment.

■ ชายข้ามเพศ **Chai kham phet** – literal translation of the English term “transman,” used with FTM transgender persons who have had, or are in the process of, sex reassignment.

■ เพศกำกวม **Phet kam-kuam** – literally “ambiguous sex,” which refers to intersexuality. An intersex person is also referred to as คนที่มีเพศกำกวม **Khon thi mee phet kam-kuam**, “person who has an ambiguous sex.”

■ คนสองเพศ **Khon song phet** – literally “person with two sexes,” meaning an intersex person.



## LEGAL REVIEW

Thai law does not criminalize persons on the ground of their sexual orientation or gender identity. However, as official recognition of sexual orientation and gender identity is still in its infancy legal protection of LGBT rights remains limited. Some laws and regulations exist that discriminate against LGBT persons, while there is as yet no enforceable law against discrimination in employment and occupation in the country.

Thailand has seen some positive legislative developments in recent years. Certain discriminatory provisions have been revised and new regulations come into effect to promote the protection of disadvantaged populations, including people of diverse sexualities. A few draft bills specifically dealing with LGBT rights are also being developed.

## 2.1 Gender equality and protection of LGBT rights in Thai law

Thai law does not criminalize homosexuality or explicitly ban discrimination on the grounds of sexual orientation and gender identity. However, persons of diverse sexual orientations and gender identities are generally not recognized in the Thai legal system, which strictly and explicitly identifies persons in the law only by the male and female genders.<sup>34</sup> There are as yet no Thai laws that deal directly with persons of diverse sexualities.

The **Constitution of Thailand B.E. 2550 (2007)**<sup>35</sup> **guarantees equality for all persons** and between men and women as follows:

All persons are equal before the law and shall enjoy equal protection under the law.

(Sec. 30, para. 1)

Men and women shall enjoy equal right. (Sec. 30, para. 2)

Besides these general equality provisions, the Constitution also prohibits discrimination on the ground of sex, along with 11 other grounds.

Unjust discrimination against a person on the grounds of the difference in origin, race, language, sex, age, disability, physical or health condition, personal status, economic or social standing, religious belief, education or constitutionally political view, shall not be permitted. (Sec. 30, para. 3)

During the drafting process of the 2007 Constitution, Thai LGBT advocates lobbied but failed to have 'sexual diversity' included as a protected category in Section 30.<sup>36</sup> Nonetheless, despite no such explicit protected category, **"sexual identity," "gender" and "sexual diversity" were noted as protected grounds inclusive in the ground of "sex" in the Constitution Drafting Assembly's "Intentions of the Constitution of the Kingdom of Thailand 2007"**<sup>37</sup> (see Box 2.1).

<sup>34</sup> S. Preechasilapakul: "บุคคลหลากหลายในระบอบกฎหมาย" [Persons of diverse sexualities in [Thai] legal system], research presentation at Faculty of Law, Thammasat University, 19 June 2013. The research project was supported by Foundation for Sexual Orientation and Gender Identity Rights and Justice (FOR-SOGI) and Teeranat Kanjanauksorn Foundation (TKF), and funded by the Thai Health Promotion Foundation.

<sup>35</sup> This constitution was abrogated by the 22 May 2014 coup d'état.

<sup>36</sup> "Thailand: LGBT Activists Fight for Constitutional Protection," in *Pressroom* of the IGLHRC, 7 Nov. 2011, <http://www.iglhrc.org/cgi-bin/iowa/article/takeaction/resourcecenter/438.html> [accessed 24 June 2012].

<sup>37</sup> The Intentions of the Constitution of the Kingdom of Thailand (2007) (เจตนารมณ์รัฐธรรมนูญแห่งราชอาณาจักรไทย พุทธศักราช ๒๕๕๐) is an official document accompanying the Constitution that provides clarifications and guidelines for applications to specific articles in the Constitution. The "intention" for Section 30 of the Constitution clarifies the definition of the ground "sex" to include "gender," "sexual identity," and "sexual diversity" as agreed upon by the Constitution Drafting Committee following the negotiation by LGBT rights advocates. This was a compromise as the Constitution Drafting Committee could not agree unanimously to include the term "sexual diversity" as another ground for prohibited discrimination in Section 30.

## Box 2.1

### Intentions of the Constitution of the Kingdom of Thailand B.E. 2550 (2007)

Intention to define the equality and non-discrimination principle for persons of [sexual] diversity:

The State has an obligation to eliminate obstacles and promote the exercise of rights and freedom by persons [of sexual diversity] as enjoyed by others. This is not considered unjust discrimination as it is an important principle of human dignity.

The differences on the ground of 'sex' [in paragraph 3, Section 30] refer not only to the differences between men and women, but also the differences between individuals of 'sexual identity', 'gender', or 'sexual diversity' that is inconsistent [with] their birth sex. [These differences] are not specifically prescribed because the term 'sex' is already inclusive, and there shall be no discrimination against these individuals.

Source: Intentions of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

Section 30 of the Constitution with the interpretation elaborated by the Constitution's Intentions has been cited in the Administrative Court's decision to revoke an order by the Chiang Mai Governor to prohibit transgender participants from the processions in the province's annual flowers festival in 2009.<sup>38</sup>

In the area of employment and occupation, Thailand's **Labour Protection Act B.E. 2551 (2008)** which provides protection for workers in the private sector,<sup>39</sup> contains provisions that guarantee **equal treatment for male and female workers** (Sec. 15) and equal pay for work of equal value (Sec. 53). The Act also **prohibits sexual harassment against all workers including men** (Sec. 16).<sup>40</sup>

<sup>38</sup> P. Likitpreechakul: "ครู "เพศที่สาม" ต้นแบบของสังคมที่เคารพความแตกต่างหลากหลาย" [**'Third-sex' teachers: Role models in society that respects sexual diversity**], **Thai Transgender Alliance**, <http://www.thaitga.com/index.php/library/articles/176-lgbt-teachers> [accessed 28 May 2012].

<sup>39</sup> The Labour Protection Act does not apply to (1) central, provincial and local administration, and (2) state enterprises under the law governing state enterprise labour relations. (Sec. 4)

<sup>40</sup> B. Suriyasarn: *Towards equality and non-discrimination in employment and occupation in Thailand: Law and practice report* (ILO, Bangkok, forthcoming), pp. 35-38.

A recent legislative amendment in the Criminal Code also reflects a more inclusive definition of sexual rights under Thai law. Unlike before when protection from rape applied to only women and girls, the **Criminal Code Amendment Act (No.19) B.E. 2550 (2007)** expands the definition of rape to **cover raping of people of all sexes** and all types of sexual penetration, and imposes more severe penalties on offenders in all forms of rape and sexual abuses.<sup>41</sup>

The **Ministry of Labour Regulation on Thai Labour Standards, Social Responsibility of Thai Businesses B.E. 2547 (2007)**, which covers issues such as payment of wages, provision of benefits, opportunity for training and development, job grading or promotion, employment termination or age of retirement, uses an inclusive term in its guidelines to enterprises for non-discriminatory treatment of workers. It **prohibits discrimination against workers on numerous grounds, including** “nationality, ethnicity, religion, language, age, **sex**, marital status, **personal sexual attitude**, disability, labour union membership, political party affiliation or any other personal opinion.”<sup>42</sup>

The November 2012 **National Social Welfare Promotion Commission (NSWPC) Regulation** issued under the 2007 amendment of the Social Welfare Promotion Act B.E. 2546 (2003)<sup>43</sup> **identifies “persons of diverse sexualities”<sup>44</sup> among 13 target population groups** deemed “facing difficulties” (i.e., disadvantaged or facing discrimination) and **requiring special assistance to access social services.**

The regulation gives comprehensive definitions of members of this group. Each of the LGBT group is expressly and clearly defined, including homosexuals (including gays and lesbians), bisexuals, transgender persons (including transsexuals, *katoeys*, *sao praphet song*, transwomen, *toms*, *dis*), intersex persons, and queer persons.

This regulation represents **Thailand’s first clear legal recognition of LGBT people as a separate population group.** The regulation empowers the NSWPC to work with LGBTs and the other target population groups to improve their quality of life through improved access to social services. LGBT representatives provided extensive input to the drafting of this regulation and their recommendations were by and large adopted.<sup>45</sup> It sets out three key measures for implementation for the LGBT group (see Box 2.2).

<sup>41</sup> The UN Secretary-General’s database on violence against women: <http://sgdatabase.unwomen.org/searchDetailaction?measureId=18245&baseHREF=country&baseHREFId=1277> [accessed 27 June 2012].

<sup>42</sup> B. Suriyasarn: *Towards equality and non-discrimination in employment and occupation in Thailand: Law and practice report*, op. cit., p. 131.

<sup>43</sup> “ข้อกำหนดคณะกรรมการส่งเสริมการจัดการสวัสดิการสังคมแห่งชาติ ว่าด้วยการกำหนดบุคคลหรือกลุ่มบุคคลเป้าหมาย เป็นผู้รับบริการสวัสดิการสังคม พ.ศ. ๒๕๕๕”

<sup>44</sup> The National Social Welfare Promotion Commission uses the Disease Control Department estimate that approximately three per cent of the population are “persons of diverse sexualities” (“บุคคลที่มีความหลากหลายทางเพศ”). Based on this estimate, 1.96 million of Thais are LGBT (933,000 born male and 1,029,000 born female). Meeting minutes for the second meeting (4 April 2011) of the LGBT working group under the National Social Welfare Promotion Commission sub-committee on quality of life development and special target groups. รายงานการประชุมคณะพัฒนาคุณภาพชีวิตและกลุ่มเป้าหมายเฉพาะ กลุ่มบุคคลเพศที่สามในคณะกรรมการพัฒนาคุณภาพชีวิต และกลุ่มเป้าหมายเฉพาะ คณะกรรมการส่งเสริมการจัดการสวัสดิการสังคมแห่งชาติ ครั้งที่ ๒/๒๕๕๔.

<sup>45</sup> Ibid.

### Box 2.2

#### Measures to improve quality of life of persons of diverse sexualities in the National Social Welfare Promotion Commission Regulation (2012)

Three key measures are set out as follows:

- 1) Promote pride and value in gender diversity and correct prejudices in social values, tradition and belief systems that devalue human dignity of persons of diverse sexualities
- 2) Increase opportunity and options in employment, education, health for equal rights and protection of persons of diverse sexualities
- 3) Systematize social services and participation in policymaking and governance, and revise measures, rules, regulations, laws and policies that discriminate against persons of diverse sexualities

Source: National Social Welfare Promotion Commission, Ministry of Social Development and Human Security, National Social Welfare Promotion Commission (NSWPC) regulation under the Social Welfare Promotion Act B.E. 2546, No. 2 amendment B.E. 2550 (2007).

At the time of this report, there are a few pieces of legislation in the pipeline, notably the Gender Equality bill which has been approved by the lower house and Thailand's first same-sex partnership draft bill to be proposed in Parliament. (See more discussion in Section 2.3 below.)

## 2.2 Discriminatory provisions

While there is now increasing attention to legal rights of LGBT persons and new laws and regulations to protect the LGBT rights are being developed, some discriminatory provisions remain in existing laws and regulations. Some discriminatory regulations have been addressed while other ambiguous provisions in laws, regulations, policies and rules remain subject to arbitrary and discriminatory interpretation and application.

### 2.2.1 Discrimination and revision in military service exemption regulation

All Thai males who have reached the age of 21 must attend compulsory military draft. Unless they have attended at least three years of reserved military training in upper secondary school, have obtained a special postponement in case of pursuing further studies or performing official duties, or are considered unfit to serve, all eligible 21-year-old males must draw a lottery whether they will become military conscripts: red cards mean they will spend two years in reserved military service and black cards mean they will not be drafted.

While Thailand allows homosexuals to serve in the military, transgender/transsexual males receive a markedly different treatment (women are exempt from military draft). Since 2006 men reporting for military draft are classified into four groups according to their physical and health condition:

- 1) Person with normal physique.
- 2) Person whose physique is unlike persons in category 1).
- 3) Person whose illness cannot be cured within 30 days.
- 4) Person whose illness is incompatible with military service.

Healthy MTF transgender/transsexual persons have typically been classified in category 2), automatically rejected and given an exemption document known in Thai as **“Sor Dor 43.”** Before 2006, they were classified in category 4) and the Sor Dor 43 exemption documents were stamped with the wording “permanent mental disorder” or similar variations.<sup>46</sup> This has long been an **obstacle for many Thai transgender/transsexual persons wishing to apply for jobs** in government, state enterprises and major private companies, which require proof of military service or exemption thereof.

Change came in 2006 as a result of heavy lobbying by the LGBT networks with the Ministry of Defence to discontinue certifying the Sor Dor 43 documents with the “mental disorder” wording. The military agreed in March 2006 but it refused to revise previously issued Sor Dor 43 papers.<sup>47</sup> This means those already issued a Sor Dor 43 are in no better position in terms of work and life options. Besides severely limiting job opportunities, the document is also an obstacle in conducting legal transactions and overseas travel, among other difficulties.

The real change in this military exemption and regulation policy came five years later, following a court order. On 13 September 2011, the **Central Administrative Court** issued a **landmark ruling** in a case in which a 27-year-old transgender person filed a lawsuit against the Ministry of Defence in 2006 for the use of such wording on the plaintiff’s Sor Dor 43 (see Box 2.3).<sup>48</sup>

<sup>46</sup> Common terms used include: โรคจิตถาวร ผู้วิกลจริต โรคจิตวิปริตถาวร โรคจิตประเภท ๔ จิตวิปริตอย่างรุนแรงถาวร (“permanent mental disorder,” “mentally ill person,” “permanent mental deviancy,” “type 4 mental illness,” “severe permanent mental disorder”).

<sup>47</sup> As a temporary measure to address the issue while awaiting a new ministerial regulation, the Defense Ministry opted for using new wordings on the exemption document for transsexuals: “irregular breasts, undesirable characteristics for military service” (ตรวจออกผิดปกติ ลักษณะไม่พึงประสงค์ทางทหาร).

<sup>48</sup> Samart “Namwarn” Meecharoen filed a case with help from the LGBT community, “Court hears evidence in case by transgender,” in *The Nation*, 31 Aug. 2011, <http://www.nationmultimedia.com/2011/08/31/national/Court-hears-evidence-in-case-by-transgender-30164126.html> [accessed 13 Oct. 2011]; “Military might use ‘katoey’ and ‘psychotic,’” in *Bangkok Post*, 31 August 2011, <http://44877-web01.bangkokpost.net/news/local/254254/military-might-use-katoey-and-psychotic> [accessed 13 Oct. 2011].

### Box 2.3

#### Transgender's legal case against Ministry of Defense for use of discriminatory wording in reserved military service exemption document (2006-2011)



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In 2006 Samart "Namwarn" Meecharoen filed a lawsuit against Ministry of Defence for the discriminatory wording in the reserved military service exemption document called Sor Dor 43. The picture above shows Samart at the Central Administrative Court in Bangkok in 2006, holding Sor Dor 43 which recorded "permanent mental disorder" as the reason for her exemption. In September 2011, the Central Administrative Court stated in its landmark ruling that the wording was "inaccurate" and "unlawful."

In its ruling the Central Administrative Court **described the wording as "inaccurate" and "unlawful"** and ordered the Ministry of Defence to stop labeling transgender persons as having a "permanent mental disorder" and to correct the wording on the plaintiff's Sor Dor 43. However, the Court did not bar the military from rejecting transgender persons from reserved military service or stipulate any new wording.<sup>49</sup>

On 11 April 2012 **Ministerial Regulation No. 75 B.E. 2555 (2012)** was issued under the 1954 Military Service Act to **use the term "gender identity disorder"**<sup>50</sup> in military service exemption. Following the 13 September 2011 Central Administrative Court ruling, transgender persons can request a new Sor Dor 43 with the new wording.

<sup>49</sup> "Thai court to military: transsexuals not ill," in *The Huffington Post*, 13 Sep. 2011, <http://www.huffingtonpost.com/huff-wires/20110913/as-thailand-transsexuals/> [accessed 13 Oct. 2011].

<sup>50</sup> The equivalent Thai term is "ภาวะเพศสภาพไม่ตรงกับเพศกำเนิด", literally "current gender state is inconsistent with birth sex."

## 2.2.2 Legal and regulatory provisions subject to arbitrary interpretation against LGBT persons

Ambiguous language in laws and regulations can also lead to discrimination resulting from arbitrary interpretation of the law, limiting the opportunities of transgender people (and other population groups, in particular persons with disabilities).

For example, the **Civil Service Act B.E. 2551 (2008)** defines a prohibited qualification for civil service applicants as “being morally defective to the extent of being socially objectionable” (Sec. 36, B(4)). This type of requirement is typical in regulations for employment in public service and gives room for arbitrary interpretation for those with prejudice against LGBT persons to reject LGBT candidates, although many in Thai society do not necessarily consider LGBT persons “morally defective” or “socially objectionable.”

Besides official laws and regulations, discrimination against transgender persons in Thailand is sanctioned by **institutional policies and rules** that limit their opportunities through rigid dress code and prescribed conduct which tend to allow only traditional heterosexual male or female modes. Education institutions, public sector institutions as well as many private companies commonly require that students and employees are dressed according to their ‘natural’ (birth) sex. Although recently there has been more flexibility in this respect in the private sector and among a few public institutions, such policies and rules continue to be important barriers to full participation of transgender persons in mainstream society.

## 2.3 Gaps in legal protection

There are gaps in legal protection for LGBTs in Thailand. Two main gaps are in the lack of legal recognition of transgender identity and of same-sex partnership.

### 2.3.1 Lack of legal recognition of transgender identity

While Thailand is known for world-class medical skills in sex assignment surgeries and a high visibility of transgender people in society, the Thai legal system does not recognize transgender identity. Legally Thai citizens are either male or female according to the sex registered at birth, and Thai law does not allow legal sex change. Sex reassignment surgeries are permissible by law in Thailand for those aged 18 and above,<sup>51</sup> but **transgender persons who have had sex reassignment surgeries are not allowed a legal title change.**

<sup>51</sup> Sex reassignment surgery is banned for those below the age of 18 and parental consent is required for those aged 18 to 20. APF: *ACJ report: Human rights, sexual orientation and gender identity (APF 15)*, op. cit., p. 42.



**At present only intersex persons with ambiguous or both male and female sexual organs can apply for a legal title “correction,”** after a medical procedure has been completed to keep either male or female sexual organs.<sup>52</sup>

### 2.3.2 Lack of legal recognition of same-sex partnership

**Thai law** allows only a man and a woman to be legally married, and **does not allow couples of the same sex to register a marriage or partnership.** Although there have been more same-sex couples recently who have married in cultural or religious ceremony, they **cannot be legal heir of one another under Thai law.** Section 5 of the Civil Code stipulates that only persons with a legal marital status can be considered a legal heir of the spouse.<sup>53</sup>

Without legal recognition of the union, **same-sex partners in Thailand are deprived of many legal spousal entitlements and benefits and the capacity to conduct legal transactions as legal spouses,** for example, the right to co-manage spousal assets, tax benefits, alimony, social security benefits for spouses through the employer and the state, life insurance benefits, etc.<sup>54</sup>

## 2.4 Recent legislative and policy development to promote gender equality

In recent years there have been concerted efforts, in particular by LGBT networks, academics and the National Human Rights Commission of Thailand (NHRC) with cooperation from some government agencies, to push for legislative reform to ensure protection of LGBT rights. Efforts on certain issues have met with success, such as the military service exemption issue mentioned above, while other issues remain continuing challenges.

### 2.4.1 Gender Equality Bill

A significant recent development is the proposed Gender Equality Bill now awaiting approval by the Senate. When enacted, it will be Thailand’s first piece of legislation dedicated to gender equality. The Bill, sponsored by the Ministry of Social Development and Human Security (MSDHS) and approved by Cabinet in April 2012,<sup>55</sup>

<sup>52</sup> Persons with an “inborn ambiguous sex” are defined as “persons whose sex cannot be clearly identified because they have both [male and female] sexual organs from birth.” Information brochure on how to apply for a legal title change for intersex persons distributed by the National Human Rights Commission at a seminar at the NHRC office, 11 Sep. 2012. “การขอแก้ไขเปลี่ยนแปลงรายการในเอกสารการทะเบียนราษฎรกรณีขอเปลี่ยนแปลง คำนำนามของบุคคลที่มีภาวะกำกวมมาตั้งแต่กำเนิด.”

<sup>53</sup> R. Kobsirikarn: *The work of the National Human Rights Commission of Thailand on human rights in relation to sexual orientation and gender identity*, Thailand country paper, for the APF-Komnas HAM Workshop on the Role of NHRIs in the Promotion and Implementation of the Yogyakarta Principles, 5-7 May 2009, Yogyakarta, Indonesia, p. 4.

<sup>54</sup> S. Preechasilapakul: “บุคคลหลากหลายในระบบกฎหมาย” [Persons of diverse sexualities in [Thai] legal system], op. cit.

<sup>55</sup> “ตันกม. คุ่มครองดีดแต่่วทุกเพศเท่าเทียมผ่านกรม.แล้วก็ดักันทางเพศออกกม.เอาผิด,” in *Thai Post*, 4 Apr. 2012, <http://thailawwatch.org/2012/04/20120404034/> [accessed 29 June 2012].

aims to provide “measures to protect persons suffering from unfair gender discrimination and to prevent unfair gender discrimination.” It defines “**unfair gender discrimination**” as follows:

Any direct or indirect action or non-action which is an unfair distinction, exclusion or restriction of any right or benefit because the person is male or female, or has a gender expression different from his/her birth sex, except in cases which have an academic, religious, or public interest reason. (Sec. 3, para 1)<sup>56</sup>

While the Bill uses a sex/gender definition that includes sex/gender diversity, the **exception clause has drawn strong criticisms** from academics, civil society, and women’s and LGBT groups. Critics have raised concerns that such **exceptions are too broad and subject to arbitrary interpretation**, which may enable certain discrimination to continue depending on who defines what constitutes “academic, religious, or public interest reason.”<sup>57</sup>

Critics point out that the exception clause in the Bill is **inconsistent with equality and non-discrimination principles and not in compliance with international treaties** to which Thailand is a party, in particular the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

It has also been pointed out that the establishment of two gender equality commissions and their proposed composition are not appropriate as they will be heavily male-dominated with insufficient gender expertise.<sup>58</sup> Also, the Bill contains **no provisions to promote and protect equal opportunity and gender equality**, and **no clear mention of sexual or gender-based violence and sexual harassment**. Moreover, specific guidelines for practical implementation and **complaint and redress mechanisms in the case of discrimination are lacking**.<sup>59</sup>

<sup>56</sup> Content in the draft bill submitted to parliament on 24 April 2011. Unofficial translation by author.

<sup>57</sup> *iLaw*: “เครือข่ายผู้หญิงชี้ก.ม.เท่าเทียมระหว่างเพศ ฉบับของรัฐ มีช่องโหว่” [Women’s networks point to loopholes in government-sponsored Gender Equality Bill], 21 Jan. 2011, <http://www.ilaw.or.th/node/703>: “เครือข่ายผู้หญิงฯ ดันก.ม.เสมอภาคระหว่างเพศ ปร.กสม.ร่วมจกร่างรัฐบาล” [Women’s networks push Gender Equality Bill; NHRC chair joins in criticizing government-sponsored Bill], 11 Apr. 2011, <http://ilaw.or.th/node/863> [accessed 30 Aug. 2011].

<sup>58</sup> Membership of the Gender Equality Commission and the Ruling Commission on Gender Discrimination as provided in the government draft bill is dominated by high-level government officials who are overwhelmingly men. Only 3 out of 18 members of the Gender Equality Commission are required to have gender expertise. S. Ekachai: “Gender equality cannot wait,” in *Bangkok Post*, 6 July 2010, <http://www.bangkokpost.com/blogs/index.php/2010/07/06/gender-equality-cannot-wait?blog=64> [accessed 30 Aug. 2011].

<sup>59</sup> วรลักษณ์ ศรีโย [Woralak Sriyai]: “จีเดินหน้ากฎหมายเสมอภาคระหว่างเพศ จวกรัฐ หมกเม็ด-กฤษฎีกาเติมท้ายนิยาม นนจะมี 7 ข้อหลัก-เปิดที่ยีน กลุ่มหลากหลายเพศ.” [Pressure to move forward with gender equality bill, government and Council of State slammed about hidden agenda, 7 recommendations to give space for people of gender diversity], *Thailand Information Center for Civil Rights and Investigative Journalism (TCIJ)*, 22 Aug. 2012. <http://www.tcijthai.com/TCIJ/view.php?ids=1016> [accessed 12 Dec. 2012].

LGBT and civil society networks submitted several petitions to the NHRC, which subsequently organized a public forum to discuss the Bill in which over 170 representatives from the government, private and civil society sectors participated. From the public forum, an open letter was then issued **calling for another careful review** of the Bill and the exception clause to be deleted.<sup>60</sup>

A more comprehensive “people’s” parallel draft bill has been drafted by the women’s rights network and supported by civil society and LGBT organizations. It has garnered more than 10,000 signatures of support, which means this parallel draft bill will be discussed along with the MSDHS-supported bill in the Senate.<sup>61</sup>

## 2.4.2 Civil Partnership Bill

Gay rights activist Mr Natee Theerarojananupong and his partner of 19 years were denied a marriage registration in Chiang Mai province where the couple lived. They were told their request for marriage registration on 9 August 2012 did not comply with the conditions of marriage according to **Section 5, Articles 1448 and 1458, of the Civil Code B.E. 2533 (1990)** (amendment, 10<sup>th</sup> ed.) which state that **marriage can only take place between a man and a woman**. Mr Natee filed a complaint with the NHRC for human rights violation.<sup>62</sup>

Following Mr Natee’s complaint a committee was set up under the House Committee on Legal Affairs, Justice, and Human Rights and supported by the Rights and Liberties Protection Department, Ministry of Justice, to review the matter, resulting in a (same-sex) civil partnership draft bill<sup>63</sup> which, **if passed into law, will grant many rights that heterosexual couples registered under the existing marriage law enjoy**, such as joint taxation, inheritance, family health coverage, and medical decision-making<sup>64</sup>

<sup>60</sup> *National Human Rights Commission (NHRC):* “Open letter on suggestions towards an exception in Article 3 of the Gender Equality Bill B.E. ...,” 16 August 2012, [http://www.nhrc.or.th/2012/wb/en/news\\_detail.php?nid=723&parent\\_id=1&type=highlight](http://www.nhrc.or.th/2012/wb/en/news_detail.php?nid=723&parent_id=1&type=highlight) [accessed 13 Dec. 2012].

<sup>61</sup> The parallel draft bill prohibits all forms of gender discrimination and sexual harassment in all areas of life, including but not limited to education and training, employment, economic and political participation, health, and access to benefits and resources. It provides specific measures to protect and promote equal opportunity and gender equality, and provides for special channels for rights protection for vulnerable groups. Provisions are made to ensure that the two commissions are gender-balanced and that civic society groups shall be given opportunity to nominate and select commissioners. In case of discrimination disputes, the decisions by the Ruling Commission can also be contested through the Administrative Court. Finally, it proposes to have a special commission set up under the Prime Minister’s Office to implement the gender equality law. FOR-SOGI: “ขอเชิญร่วมลงชื่อเสนอกฎหมายส่งเสริมโอกาสและความเสมอภาคระหว่างเพศ.” [Invitation to sign petition for a parallel draft equal opportunity and gender equality bill] <http://www.forsogi.org/index.php/project-activity> [accessed 10 Mar. 2013]. Drafts of the Gender Equality Bill (ร่างพ.ร.บ. ส่งเสริมโอกาสและความเสมอภาคระหว่างเพศ) as well as a comparison between the MSDHS draft and civil society draft are downloadable at iLaw: <http://ilaw.or.th/node/326> [accessed 10 Mar. 2013].

<sup>62</sup> *NHRC:* “Mr Natee, a prominent gay, complained to the NHRC that he had been refused marriage registration,” 14 Aug. 2012, <http://www.nhrc.or.th/2012/wb/en/news.php?page=2&id=1> [accessed 13 Dec. 2012].

<sup>63</sup> “ร่าง พ.ร.บ. คู่ชีวิต” (Civil Partnership Bill - “partnership” refers only to same-sex partnership), downloadable on iLaw: “ตั้งไข่ร่างพ.ร.บ. คู่ชีวิต ทดแทนการจดทะเบียนสมรส” [Setting stage for civil partnership draft bill in place of marriage registration], 23 Jan. 2013, <http://ilaw.or.th/node/1821> [accessed 11 Mar. 2013].

<sup>64</sup> “Hundreds back civil unions for gay couples, same-sex partners in push for equal rights,” in *Bangkok Post*, 9 February 2013, <http://www.bangkokpost.com/news/local/335059/hundreds-back-civil-unions-for-gay-couples> [accessed 10 Mar. 2013].

and other rights currently still inaccessible to LGBT couples.<sup>65</sup> The House Committee's civil partnership draft bill went through four rounds of public hearing in four provinces<sup>66</sup> and a public discussion at the NHRC among those involved in the drafting process and LGBT representatives.<sup>67</sup>

No country in Asia has a comprehensive civil partnership law. If this bill is passed, it could be the first in Asia.<sup>68</sup> However, while LGBT rights advocates are enthusiastic about a civil partnership or same-sex marriage law, this is only the beginning of a possibly long campaign for marriage equality in Thailand. Thai LGBT rights advocates feel that the government draft bill does not offer full rights to LGBT couples, for example it requires a higher minimum age<sup>69</sup> for same-sex couples to register their partnership and does not allow child adoption. They feel that the drafting process of this bill was rushed (it was drafted in less than three months) and had insufficient public participation, and that there is currently little support for this draft bill among lawmakers in Parliament.<sup>70</sup> Meanwhile, LGBT advocates are developing their own draft bill for civil partnership for all people – heterosexual as well as homosexual couples – as an alternative to the existing marriage law.

### 2.4.3 Discussion on legal title change legislation

A public forum was held at the NHRC on 11 September 2012 on legal title change for intersex and transgender persons.<sup>71</sup> At present intersex persons are able to apply for a legal title change, provided that they have chosen a single sex and have completed the necessary medical procedure for the desired sex selection. The first legal title change for an intersex person, from Mr to Miss, was recorded on 9 August 2012.<sup>72</sup>

<sup>65</sup> *iLaw*: “สิทธิตามกฎหมายที่คู่รักเกย์ เลสเบี้ยนเข้าไม่ถึง” [Inaccessible legal rights for lesbians] 8 February 2013, <http://ilaw.or.th/node/1841> [accessed 11 Mar. 2013].

<sup>66</sup> The public hearing was held in Chiang Mai, Khon Kaen, Songkla and Bangkok, in February and early March 2013.

<sup>67</sup> *Thai Transgender Alliance (TGA)*: “เวทีสาธารณะเรื่องร่างพระราชบัญญัติคู่ชีวิต พ.ศ. ... ให้สิทธิจริงหรือ?” [Public hearing on Civil Partnership Bill B.E... A true right?], 7 Mar. 2013, <http://www.thaitga.com/index.php/events/2013/256-civil-union-act-thailand> [accessed 11 Mar. 2013].

<sup>68</sup> A. Leach: “Thai government drafting same-sex civil partnership law,” *Gay Star News*, 17 December 2012, <http://www.gaystarnews.com/article/thai-government-drafting-same-sex-civil-partnership-law171212> [accessed 11 Mar. 2013].

<sup>69</sup> The current minimum age for a man and a woman to marry in Thailand is 17 years old for both sexes. The House Committee's civil partnership draft bill requires the same-sex partners to be at least 20 years old.

<sup>70</sup> Brainstorming session on “Principles for drafting a People's Civil Partnership Bill” (“หลักการเพื่อพิจารณากร่างพระราชบัญญัติคู่ชีวิต ฉบับประชาชน”), 28 May 2013, Bangkok, attended by 40 LGBT rights advocates, legal experts and legal rights advocates. (See No. 34 on Annex 1 for more details.)

<sup>71</sup> The half-day session was attended by about 120 participants, including LGBTs and interested people from various sectors of society (see No. 33 on Annex A for more details).

<sup>72</sup> “นายเป็นน.ส.คนแรกในไทย” [The first Miss from Mr in Thailand], in *Thai Rath*, 10 Aug. 2012, <http://www.thairath.co.th/content/newspaper/282592> [accessed 25 Dec. 2012].

Different groups of transgender persons (including transwomen who have had sex reassignment and *sao praphet song* or *katoeys* who have not yet had or may not desire to have sex reassignment) have discussed the legal title change issue, but have not been able to agree on exactly who in the transgender community should have the right to a legal title change (only those who have had sex reassignment or also those who have not). As a result, there has been little development concerning this legislation.

#### 2.4.4 NHRC sub-committee overseeing LGBT rights

Since 2002 the National Human Rights Commission of Thailand (NHRC) has designated a sub-committee to oversee LGBT rights. The designated sub-committee is entrusted to investigate cases of LGBT rights violations, work with relevant government agencies on individual complaints, and carry out awareness campaigns on LGBT rights, among other duties. The NHRC has disseminated the Yogyakarta Principles with key stakeholders, including the LGBT community, sex-worker groups, educators, government officials, and law enforcement officers.<sup>73</sup>

In the past decade the NHRC has responded to cases of right violation complaints from LGBT persons or groups and has assisted the LGBT network in the process of legislative change such as the case of reserved military service exemption. More recently it has responded to complaints about the strict dress code which affects both MTF and FTM transgender students, lack of legal identity for transgender persons, and lack of legal right to marriage for same-sex couples.

However, the NHRC commissioner and staff serving in the sub-committee reveal that as a percentage of the total complaints to the NHRC, LGBT-related complaints are negligible. There have been almost no complaints concerning LGBT discrimination. In fact, there is no separate complaint category for LGBTs within the NHRC system.<sup>74</sup> There have also been few complaints related to employment and only one complaint case directly related to employment discrimination against an LGBT person has been filed with the NHRC, in which a MTF transgender person was hired and then denied employment due to her gender identity (see Box 4.3 in chapter 4 for details).

In many instances LGBT-related complaints come through informal channels and are dealt with informally through personal networks and not formally registered. Information gathering and due diligence is also often insufficient, or the aggrieved person is unwilling to pursue a formal complaint. Also, while the NHRC has the authority<sup>75</sup> to receive, review and investigate complaints about human rights violations, it lacks adequate personnel and resources to handle a large number of complaint cases.

<sup>73</sup> R. Kobsirikarn: *The work of the National Human Rights Commission of Thailand on human rights in relation to sexual orientation and gender identity*, op. cit.

<sup>74</sup> Dr Taejing Siripanich, chairman of NHRC sub-committee on LGBT rights, and Kitiporn Boon-am, NHRC human rights lawyer serving on the sub-committee, personal interviews, 26 Dec. 2012.

<sup>75</sup> National Human Rights Commission Act B.E. 2542 (1999).

## 2.4.5 Lack of gender equality promotion in national master plans

In its report to the Asia Pacific Forum in 2009, the NHRC noted the **lack of a national policy and plan for the promotion of LGBT rights**. It reported that there was no single paragraph concerning LGBT rights in the Government Policy Statement on gender mainstreaming.<sup>76</sup> Thailand has a national human rights plan which is now in its second phase. The **Second Human Rights Plan (2009-2013)** aims to improve human rights protection for all. It has four strategies:

- Prevent human rights violations and create equality in reality and in law.
- Protect human rights in every target group.
- Develop laws and legal mechanisms and ensure law enforcement to promote and protect human rights.
- Strengthen the capacity of all network organizations in every sector to promote and protect human rights in accordance with international standards.

However, the Plan does not clearly identify who the specific target population groups are. In general, Thai national policies and plans have not paid much attention to the issues of gender equality and non-discrimination and are only slowly moving towards fairness and equality principles. The “people-centred” Tenth National Economic and Social Development Plan B.E. 2550-2554 (2007-2011) had no mention of gender equality at all, while the executive summary of the current Eleventh Plan (2012-2016) mentions the word gender equality only once.<sup>77</sup>

<sup>76</sup> *Ibid*, p. 4.

<sup>77</sup> Executive summary of Thailand's Eleventh National Economic Social and Development Plan (2012-2016): <http://www.nesdb.go.th/Portals/0/news/academic/Executive%20Summary%20of%2011th%20Plan.pdf> [accessed 3 July 2012].

## RESEARCH METHODOLOGY

The PRIDE study is the first study in Thailand that focuses on discrimination against LGBT persons in the world of work and therefore is exploratory in approach. It aimed to identify key issues and patterns of discrimination in the employment and occupation of LGBT women and men in Thailand.

### 3.1 Research framework

The study was designed within the framework of the **ILO's Decent Work Agenda**. Under the four pillars the study assesses the current situation of combatting discrimination and promoting equality for LGBT workers in Thailand:

- 1) **Fundamental principles and rights at work** – rights, equal opportunity and treatment of LGBT workers; legal protection for LGBT persons in law and in practice based on the equality and non-discrimination principle.
- 2) **Employment promotion** – opportunities in employment, skills development and sustainable livelihood; diversity and tolerance for LGBT persons in the workplace.
- 3) **Social protection** – safe working conditions, access to social security benefits such as medical care, pension entitlements, and other job benefits on the same terms as other workers.

- 4) **Social dialogue** – awareness and understanding of workers’ rights; participation in workers’ or employers’ organizations and in collective bargaining process.

In addition to the four pillars, the study also explores the situation of LGBT workers the contexts of HIV and AIDS prevention and sex work because workers in these two contexts tend to be particularly vulnerable to multiple forms of discrimination.

## 3.2 Data collection

The Thailand PRIDE study has two main components, legal review and field research. The research commenced in June 2012 and ended in June 2013. It was conducted in close collaboration with ILO partners and LGBT networks; inputs were actively sought from leading experts on LGBT issues and individuals and organizations advocating LGBT rights in Thailand, and tripartite partners, government, employers’ and workers’ organizations.

### 3.2.1 Legal review

The legal review conducted in June 2012 involved **desk research** in two main parts:

- 1) Literature review of key principles and concepts of equality and non-discrimination on the basis of sexual orientation and gender identity in international instruments, and terminology of gender diversity in international and Thai contexts (see chapter 1).
- 2) Review of existing Thai national laws, regulations and policies that guarantee LGBT rights to equality and non-discrimination and discriminatory provisions thereof, gaps in legal protection for LGBT rights, and recent legislative and policy changes to promote gender equality and LGBT rights (see chapter 2).

### 3.2.2 Field research

The field research component was conducted mostly during July 2012 and February 2013. The field research involved **interviews, focus group discussions, participation in meetings and seminars** with a number of individuals and organizations within Thailand’s LGBT networks, academics, civil society and ILO constituents, including representatives of relevant government agencies, workers’ and employers’ organizations. The field research also involved **monitoring of media reports** and connecting with **Thai LGBT online media** to follow evolving LGBT movements and relevant policy and legislative development (see Annex 1: List of interviews, focus groups, meetings and seminars for the research and Annex 2: List of key Thai LGBT organizations online).

- The interviews and focus groups were conducted mostly during July 2012 and February 2013 in three major cities (**Bangkok** in the central region, **Pattaya** in the East, and **Chiang Mai** in the North), with one focus group conducted in an industrial city of **Lamphun** (near Chiang Mai). Some additional phone and follow-up email interviews were conducted from March to June 2013.



- **Twenty-one (21) in-depth interviews** were conducted with **26 individuals**, including leading LGBT rights advocates, academics specialized in gender and LGBT issues, and representatives of relevant government agencies, civil society, workers' and employers' organizations. (See No. 1 to No. 21 in 'Interviews' section in Annex 1.)
- **Ten (10) focus groups** were conducted with **54 respondents** (aged 20 to 54) from various sub-groups within the Thai LGBT community, with **12 email interviews** to supplement data from the focus groups. The focus groups and supplementary email interviews were arranged with the assistance of the following LGBT organizations: two lesbian organizations, Anjaree Group and Sapaan; three organizations supporting gay men and men who have sex with men (MSM), Rainbow Sky Association of Thailand (RSAT), Bangkok Rainbow Organization (BRO) and Mplus+; Sisters, Center for Transgenders, supporting transgender sex workers; and two transgender organizations, Thai Transgender Alliance (TGA) and Trans Female Association of Thailand (TFAT). (See No. 24 to No. 35 in 'Focus Groups' and 'Email Interviews' sections in Annex 1.)
- Other organizations that gave interviews and provided inputs include Foundation for Sexual Orientation and Gender Identity Rights and Justice (FOR-SOGI), Teeranat Kanjanauksorn Foundation (TKF - NGO advocating gender justice), The Poz Home Center (NGO supporting people living with HIV), SWING (Service Workers In Group, NGO supporting sex workers), Women's Health Advocacy Foundation (WHAF), and People's Empowerment Foundation.
- The researcher also attended **two meetings and four seminars** to keep abreast with Thai LGBT legislative and rights protection development (see Nos. 22 and 23 under 'Meetings' and Nos. 36-39 under 'Seminars' in Annex 1.) The early meetings and seminars were useful for networking and identifying potential individuals and LGBT groups/organizations for interviews and focus groups.

The data collection process received **good cooperation from LGBT networks and ILO constituents**, including nine LGBT organizations, two organizations supporting sex workers, one organization supporting men living with HIV and AIDS, four research and civil society organizations, as well as the National Human Rights Commission, the National Social Welfare Promotion Commission, the Ministry of Labour, the Ministry of Social Development and Human Security, and selected workers' and employers' organizations.

It was discovered early on that the **Thai LGBT community is burgeoning and very diverse**; it comprises many sub-groups with divergent perspectives and focused interests. During the period of the research Thai LGBT organizations have become markedly active, developing synergy in policy advocacy and legislative campaigns (in particular, for the campaigns on same-sex civil partnership law, and against the exemption clause in the Gender Equality Bill that if passed would allow gender discrimination based on "academic, religious or public interest reason"). These resulted in a lengthened and more comprehensive data collection process than originally designed.

Efforts were made to obtain balanced data and perspectives from respondents, who came from all walks of life and from various educational and social backgrounds. While the focus groups were conducted in four provinces the respondents came from all regions of Thailand. They ranged from university students and university-educated urban professionals and gender/LGBT rights advocates, to low-income workers and sex workers, to less educated, unemployed/underemployed persons in rural and urban areas.

The numbers of **LGBT respondents in the focus groups** are broken down as follows (some focus groups included more than one category of LGBT persons):

- 19 lesbian and bisexual<sup>78</sup> women (in one focus group and a set of 10 supplementary email interviews).
- 13 gay men (in two focus groups and two email interviews).
- 15 MTF transgender persons (in three focus groups representing university educated professionals in Bangkok, low-income service workers in Chiang Mai, and rural underemployed persons in Lamphun respectively).
- Four transwomen (in one focus group).
- Three transmen (in one focus group).
- Nine MTF transgender persons working as, or in organization providing support to sex workers in Pattaya and Chiang Mai (in two focus groups).
- Three men who have sex with men (two are sex workers – in 1 focus group).

For each focus group, the aims of the research and the purpose of the focus group discussion were explained to respondents who were then asked to sign a consent form (see Annex 3: Focus group consent form).

In addition to the field research, where relevant the researcher reviewed further secondary sources (e.g., organizational reports and publications, academic studies, media reports) concerning LGBT rights in Thailand for background information and supplementary inputs to obtain more balance in the data (see References).

### 3.3 Data limitations

While efforts were made to obtain direct inputs and diverse perspectives from various individuals, organizations and groups within the Thai LGBT networks, and from relevant organizations and constituents, there remain some limitations in the data.

<sup>78</sup> A few self-identified bisexual persons were included in these groups. There are no organizations for bisexuals in Thailand.

- Most active LGBT organizations tend to favour the younger LGBT generation, most active individuals are in their twenties and thirties, and some in their forties. Efforts were made to include persons older than 40 years in the focus groups but they were the minority among the focus group participants. As a result, the information received is somewhat skewed toward younger LGBT persons in the early and middle stages of their career. This was rectified to some extent by supplementary email interviews with older respondents.
- As most interviews and focus groups were conducted in large cities, there is a slight skew toward better educated, urban LGBT population in white-collar jobs. This is particularly true for the lesbian group. While the age representation among the lesbian respondents is widespread from the early twenties to early fifties, most of them are relatively well educated (vocational education and higher) and live in big cities (although many respondents in the lesbian and other LGBT groups have a rural or provincial background). In this respect supplementary data were added for balance from a master's thesis on "tomboy" factory workers in an industrial estate in a rural province of Lamphun in Northern Thailand.<sup>79</sup>
- A focus group was conducted with four MTF transgendered persons living in a rural village in Lamphun. There is still insufficient direct information about low-education and low-income LGBT persons living in the rural areas and poor urban communities. These groups can be a focus in further research.
- While there is diversity in terms of types of employment and occupation among the respondents, there is a difficult-to-avoid over-representation of those working in LGBT and non-governmental organizations.
- Given the scale of the data collection it was not possible to include representatives of all ethnic minorities and foreign migrant population among the respondents. Still, efforts were made to include some Thai-Muslim LGBT respondents who face additional religious and cultural constraints in their lives.
- Secondary data about people living with HIV and AIDS in Thailand are widely available but secondary data about sex workers are scarce. Time was insufficient to elicit in-depth information from respondents in sex work in this research. Respondents who were sex workers, in particular gay men, were reluctant to discuss details of sex work with the female researcher. A separate research project with a different approach may be needed to obtain more in-depth data on LGBT sex workers and discrimination experienced by them.

<sup>79</sup> R. Chailangka: การสร้างอัตลักษณ์ทางเพศในแบบหญิงรักหญิง: ฉากชีวิตที่แตกต่างหลากหลายของกลุ่มแรงงานหญิง ในนิคมอุตสาหกรรมภาคเหนือ จังหวัดลำพูน [*Lesbian identity construction: Different life styles of female workers in Northern Region industrial estate Lamphun Province*], Master's thesis, (Chiang Mai University, 2011).

- No concrete good practice examples on promoting employment of LGBT workers and gender diversity by Thai employers were reported by the research respondents. While efforts were made to obtain inputs from representatives of employers' organizations, perspectives of employers are limited in this study. More systematic surveys to find good practice examples by employers and studies on the attitudes and practices of Thai employers and workers on promoting gender diversity and LGBT workers' rights at the workplace are needed to fill this gap.

Notwithstanding the limitations above, the representation of LGBT people in this research is diverse in terms of education, family and social backgrounds, and places of origin.

### 3.4 Research validation

The Thailand PRIDE research was validated in a national workshop on 4 June 2014 in Bangkok. The workshop was attended by 163 participants, including over 80 members of LGBT community from across Thailand, 26 representatives of relevant government agencies, workers' and employers' organizations, over 30 interested academics and individuals from civil society, and around 20 staff members of various United Nations agencies and the ILO. Many respondents in the research were among the participants of the workshop.

At the workshop the report findings were presented by the author, selected LGBT respondents in the research shared their own discrimination experience in two moderated discussion panels, and participants discussed and identified legislative and policy measures for government, workers' and employers' organizations, LGBT organizations and civil society, to address existing discrimination and to promote rights, diversity and equality for LGBT workers in Thailand (see Annex 4: Thailand PRIDE Research National Workshop).

Workshop participants largely confirmed the research findings. They were asked to give their feedback on the findings in a brief 10-question questionnaire. In total, 90 people returned a completed questionnaire. Seventy-three per cent of the questionnaire respondents identified themselves as LGBT.

- Ninety-eight per cent thought discrimination against LGBT in the world of work in Thailand was important (28 per cent) or very important (70 per cent).
- A majority (78 per cent) was not surprised by the research findings, although some respondents commented that they were surprised that the topic received serious attention. Nearly half (43 per cent) said the findings reflected their personal experience, and 78 per cent said the findings reflected the experience of LGBT people they knew. As high as 87 per cent of self-identified LGBT respondents said the findings reflected their personal experience and/or the experience of LGBT people they knew. Some self-identified heterosexual respondents commented that they were surprised by the findings because they were unaware of the problems before, especially the extent of discrimination against transwomen.

- Similar proportions of questionnaire respondents also confirmed the experiences of discrimination shared by the panelists at the workshop (whose cases were featured or included in the research report): 44 per cent said they shared similar experiences of the panelists and 71 per cent said they had observed similar experiences among the LGBT people they knew. The latter figure was higher among self-identified LGBT respondents (84 per cent). On the other hand, nearly one-third (29 per cent) of self-identified heterosexual respondents found the panelists' experience different from what they have learned or observed.
- Overall, the participants of the workshop and questionnaire respondents considered the research findings very good, useful, and important in helping organizations to step up action to promote equal rights for LGBT persons. Many suggested studies on awareness and attitudes on LGBT rights of employers and relevant state officials whose work deals with LGBT, and quantitative surveys to measure the scale of LGBT discrimination. Some stressed that the survey sample should include various social and occupational groups and cover more rural provinces. Many thought the research report should be shared with a wider audience, especially the government.
- The Thailand PRIDE research findings also confirm findings of the national participatory review and analysis in Thailand under the Being LGBT in Asia initiative supported by UNDP and USAID, in particular that discrimination against LGBT starts before employment, that transgender persons face the severest discrimination due to their visibility, and that LGBT are pressured to hide their diverse gender identities at work or face lack of career progress.<sup>80</sup>

<sup>80</sup> Rashima Kwatra, LGBT human rights officer of UNDP Asia-Pacific Regional Centre, comment at the Thailand PRIDE Research National Workshop, Bangkok, 4 June 2014. More information about the UNDP-USAID Being LGBT in Asia initiative is available at: <https://beinglgbtinasia.crowdmap.com> [accessed 25 June 2014].

## RESEARCH FINDINGS

The findings discussed in this chapter are summarized primarily from data collected in the field research supplemented with data from secondary sources where relevant. The discussion is organized by theme because different LGBT groups tend to share similar experiences. Different treatments of different sub-groups are discussed where appropriate.

### 4.1 Perception vs. reality: No real acceptance of LGBT persons in Thai society

The overwhelming majority of the respondents in personal interviews and focus groups feel that people of diverse sexual orientations and gender identities are **still not fully accepted in Thai society** as there are still a lack of understanding and many misconceptions about gender diversity. **Different LGBT groups experience different levels of acceptance.**

- Many acknowledge that the **general social attitudes toward diverse sexual orientations and gender identities have become more tolerant than in the past**, but the allowances made for diversity are still within the confines of the traditional dichotomy of masculinity and femininity and male-female gender roles.

- Compared to previous generations, **younger LGBT persons experience more gender diversity<sup>81</sup> and are more comfortable** with their sexuality. However, although the Department of Mental Health issued an official statement over a decade ago that homosexuality was not “abnormal,” **most LGBT respondents feel that they still face strong belief and stigma that any sexuality other than heterosexual is a form of “perversion”, “mental disorder,” and “against Thai culture.”<sup>82</sup>**
- **LGBT people now have more public space compared to a generation ago,<sup>83</sup>** for instance, young *tom-di* couples and transgenders are now common sights in Thailand, and more younger gay men have come out and are more open about their sexuality. However, **many gays and lesbians still feel the need to hide their true sexuality at home, at school and in the workplace.**
- MTF transgender persons in particular feel that the general perception that Thai society is open to people of diverse sexualities because Thai transgender people are highly visible and well known internationally, is an “illusion” and not a reality. In their view, because there is no legal recognition for their identity, there is no real acceptance. One extreme example given is a sign in front of a restaurant in Pattaya: “Dogs, Katoeys and Durians Are Not Allowed.”
- **Most LGBT respondents had or still have difficulties being accepted by their families, although a significant minority say their families have been supportive.** MTF transgender persons in particular tend to have difficulties with their fathers unable to accept their sexuality at least in the initial years. Several who later became MTF and FTM trans people left home during their teens and early twenties due to lack of acceptance and understanding in the family; some later reconciled with their families. A few MTF and FTM transgender respondents reported verbal and physical abuse by family members.

<sup>81</sup> In a study conducted in 2012 by UN Women and the Office of Basic Education (OBEC) involving 574 Thai students aged 15-18 years old, 100 per cent of respondents identified more than three gender identities with the majority identifying between four and seven. Nevertheless, nearly all stated that only two sexes are formally recognized in Thai society. UN Women: *Perceptions and attitudes of young people on issues related to violence against women and girls in Thailand: A qualitative study – Summary findings* (Bangkok), [http://unwomen-eseasia.org/docs/sitecore/2013/UNDP\\_Thai\\_Summary\\_140113\\_FINAL.pdf](http://unwomen-eseasia.org/docs/sitecore/2013/UNDP_Thai_Summary_140113_FINAL.pdf) [accessed 21 Apr. 2013].

<sup>82</sup> The Department of Mental Health’s statement was issued on 29 January 2002, ten years after the World Health Organization removed homosexuality from the International Classification of Diseases (ICD). The national standardized O-NET examination for secondary school students in 2012 included questions with answer choices that portrayed homosexuals and *katoeys* as “sexual perverts.” Muslim lesbians and MTF transgender persons have strong concerns of rejection by their religious community.

<sup>83</sup> For instance, a public discussion on gender diversity was held on mainstream public television for the first time in September 2012. The programme invited representatives of the Thai gay, lesbian, transgender, intersex, and bisexual community to discuss sexual orientation and gender identity following a widely publicized news of a graduating transgender student who petitioned Thammasat University to wear female university uniform to graduation ceremony. The discussion was aired in two parts, each lasting one hour. “เวทีสาธารณะ: เพศที่ไม่เสมอภาค” [Public Stage: Unequal gender] Episode 1: <http://youtu.be/vSb-TDwoFSs>; Episode 2: <http://youtu.be/eKr5FXHJQyw> [accessed 20 Sep. 2012].

- Mothers in general tend to be more supportive than fathers of MTF transgender persons or transwomen but from some personal stories told by respondents, it appears that mothers have difficulties accepting lesbian daughters (*dis* as well as *toms*) and transmen.<sup>84</sup>
- Gay and lesbian respondents who do not cross-dress say their parents still expect them to change and “be cured” and eventually get married and have children. Several take a “don’t ask, don’t tell” approach and indirectly inform their families of their sexuality through implicit actions.
- Several *katoey* respondents also have stories from childhood about their parents, especially fathers, trying to “cure” them by various means, typically engaging them in “manly” activities such as boxing and football. A few were sent to psychiatrists or to the monkhood. A young *katoey* respondent was ordained as a novice and was sent to study in a Buddhist temple for six years, because the parents hoped that it would cure their son of being *katoey*. Another, older *katoey* who later entered sex work was hung upside down from a tree as a boy by his father. A *tom* reported being regularly pushed, shoved and beaten by relatives.
- Appearance is very important in Thai society and gender roles are still largely defined by distinctly masculine or feminine expression (dress, speech, body language, etc.). In the Thailand PRIDE study, **gay and lesbian respondents said they tend to conform with the expected gender roles, whereas transgender persons who appear to be the “in-between sex” (*katoeys*, *sao prophet song*, *toms*) enjoy the least social acceptance and are subject to a higher degree of social censure.** On the other hand, **transwomen or transmen** whose sexual transition is complete or near complete and whose appearance and behaviors are like those of natural born women and men **tend to enjoy more tolerance and acceptance than those in the “in-between sex”.**
- **Expectations of traditional male vs. female gender roles are the most pronounced in formal/official settings**, such as in government offices, public or major private institutions, official events and functions. In these settings LGBT persons are expected to suppress or tone down their “divergent” sexuality and behave within social norms. As a result, **transgender persons tend to avoid, or opt out of formal society.**
- While different transgender respondents report different degrees of acceptance in Thai society (depending on family background, education, level of self-confidence, social status, etc.), virtually all agree that there is **still a very limited space for transgendered persons in Thai society** where they can express themselves freely.

<sup>84</sup> In the first public come-out of FTM transgenders in Thailand, two transmen (aged 29 and 40) gave media interviews in October 2012. They shared their difficulties being accepted by their mothers and by society in general. Transmen distinguish themselves from masculine lesbians “*toms*”, most of whom still consider themselves “women who love women.” Transmen see themselves as “men.” Y. Bohwongprasert: “A tricky transition,” in *Bangkok Post*, 8 Oct. 2012, pp. 1, 4.



- **Acceptance is high only in a few narrow, stereotypical spheres assigned to transgender persons**, for example, in entertainment as cabaret performers or beauty pageants, in the beauty industry as make-up artists and sales in cosmetic department, and in a few service jobs such as public relations. They feel they have little or no place in public life and are excluded from mainstream jobs, particularly official and civil service jobs. They feel stigmatized as “freaks of nature” or “sexual perverts,” subject to ridicule and not accorded with the same human dignity as others.
- **Most LGBT respondents, in particular transgender persons, said they have to work harder than others in order to be accepted** and prove to their families and society that their sexuality does not affect their value as children, workers and members of society.
- **A recent national poll indicates a high level of acceptance of LGBT persons in the larger Thai society.** The poll conducted by the National Institute of Development Agency (NIDA) in May 2013 with a sample of 1,252 respondents nationwide revealed that 88.49 per cent accept LGBT friends and colleagues in the same workplace, while 8.79 per cent do not.<sup>85</sup> **However, respondents’ acceptance decreases if the LGBT person is someone in the family:** 77.56 per cent say they can accept an LGBT family member, while 17.25 per cent cannot. This confirms the observation by LGBT respondents in the interviews and focus groups that acceptance is tested when a family member is revealed as *gay*, *katoey* or lesbian. The respondents generally characterized the acceptance of diverse sexualities in Thai society as: “It’s OK, as long as they are not my children.”
- A **2012-2013 survey involving 868 LGBT respondents from eight provinces** in four regions of Thailand revealed that **27.10 per cent experienced violence** based on their sexual orientation and gender identity in the family, with the **highest percentage (38.4 per cent) among MTF transgender persons** (*katoey* and *sao praphet song*), followed by gay men (13.8 per cent), *toms* and transmen (12.7 per cent), feminine lesbians (11.5 per cent), bisexual women (5.6 per cent), and bisexual men (5.4 per cent).<sup>86</sup>

<sup>85</sup> *NIDA Poll: “สังคมไทยคิดอย่างไรกับเพศที่ 3”* [What does Thai society think of the third sex?], <http://nidapoll.nida.ac.th/main/index.php/en/2012-08-06-13-57-45/415-42-56> [accessed 21 May 2013]. The poll was conducted during 15-16 May 2013 with 1,252 respondents representing Thais in all education levels and a wide range of occupations from all regions of Thailand (S.E. <1.4). The reasons for acceptance among the 88.49 per cent include: “LGBTs are no burden to others,” “[sexuality does not matter] as long as they are good persons,” “LGBT people are capable,” “Thai society is more accepting now.” The 8.79 per cent that do not accept LGBT persons say “[diverse sexuality is] unnatural,” and “LGBTs create a negative image for the organization.”

<sup>86</sup> Ronnaphoom Samakkikarom and Jetsada Taesombat, “ชีวิตคู่และการสร้างครอบครัวของ LGBT: ความหมาย ความต้องการ และความรุนแรง” [Partnership and making family for LGBT: Meaning, needs and violence], research presentation at Faculty of Law, Thammasat University, 19 June 2013. The research project was supported by Foundation for SOGI Rights and Justice (FOR-SOGI) and Teeranat Kanjanauksorn Foundation (TKF), and funded by the Thai Health Promotion Foundation.

- Forms of violence experienced within the family ranged from being forced to enter psychological treatments, to dress according to birth sex, to behave as mentally ill, or to study and work according to the family's dictate, to verbal, psychological and physical abuse, eviction from the family home, being publicly "outed" and humiliated by unauthorized photographs or videos of cross-dressing on Facebook, and sexual harassment, molestation and rape by family members, friends and relatives. However, **most did not report the violence to authorities.**
- **Another recent survey** on prejudices towards different sexualities in Thailand shows **varying degrees of acceptance among men and women for different sexual orientations and gender identities.**
  - The survey involved a smaller sample (150 men and 100 women). Among the 150 Thai men surveyed, 38 per cent dislike *toms*, 27 per cent dislike *katoeys* who have not had sex change, 19 per cent dislike gay men, 4 per cent dislike lesbian women in general, and only 2 per cent dislike transwomen who have had sex change. Of the 100 Thai women surveyed, 40 per cent dislike *toms*, 25 per cent dislike lesbian women in general, and 15 per cent dislike *katoeys* who have not had sex change.<sup>87</sup>
- The May 2013 NIDA Poll also revealed that the **majority of poll respondents disagreed with granting the right to legal title change for transgender persons** (43.53 per cent disagreed and 42.01 per cent agreed) **and the right to register same-sex partnership for LGBT couples** (52.69 per cent disagreed, 33.87 per cent agreed, and 13.18 per cent not sure).
  - Of the 42 per cent who agreed with granting the right to legal title change for transgender persons, the agreement was overwhelming for those who have had a sex change and minimal for those who have not: 92.97 and 81.75 per cent for transwomen and transmen who have had a sex change respectively, and 25.48 and 25.29 per cent for *katoeys/sao prophet song* and *toms* without the sex change respectively.<sup>88</sup>

<sup>87</sup> Early survey results shared on Facebook on 6 and 7 March 2013 of an ongoing study by queer anthropologist and gender diversity expert Narupon Duangwises, head of the Academic Department, Princess Maha Chakri Sirindhorn Anthropology Centre (SAC). The men and women surveyed were 15 years and older. Given that the general Thai public generally does not distinguish between *toms* and transmen, the definition of "toms" in this study may also include transmen. <http://www.facebook.com/narupon.duangwises.1> [accessed 7 Mar. 2013].

<sup>88</sup> *NIDA Poll: "สังคมไทยคิดอย่างไรกับเพศที่ 3"* [What does Thai society think of the third sex?], op. cit.

## 4.2 Opportunity and treatment of LGBT persons in the world of work

**The majority of LGBT respondents in the research have experienced discrimination in various aspects and stages of employment and occupation.** In particular, they face discrimination in education and training and barriers to access to employment, career opportunity and advancement, as well as social security benefits.

### Box 4.1

#### Violated lives: Narratives from LGBTIQs and international human rights law



Violated lives: Narratives from LGBTIQs and international human rights law by Chanjira Boonprasert (ed.), (Bangkok: Teeranat Kanjanauksorn Foundation, Rainbow Sky Association of Thailand, and GFATM, March 2011). The book explains LGBTIQ rights in The Yogyakarta Principles and gives examples of cases of violations of such rights in Thailand, including:

- The right to equality and non-discrimination
- The right to recognition before the law
- The right to education
- The right to work
- The right to social security and the other social protection measures
- The right to the highest attainable standard of health
- Protection from medical abuses
- The right to found a family
- The right to freedom of movement
- The right to privacy
- The right to freedom of opinion and expression
- The right to participate in cultural life.

Source: Janjira Boonprasert (ed.): Violated lives: *Narratives from LGBTIQs and international human rights law*, (Bangkok: Teeranat Kanjanauksorn Foundation; Rainbow Sky Association of Thailand; GFATM, 2011), <http://teeranat.com> [accessed 12 Feb. 2014].

This finding is consistent with the **National Human Rights Commission of Thailand's report to the Asia Pacific Forum of National Human Rights Institutions (APF) in 2009** which **identified lack of opportunity and prejudice in education and in employment** among other human rights issues facing persons of diverse sexual orientations and gender identities in Thailand. The report said that in many instances **discriminatory practices were rooted in institutional policies and rules or negative attitudes among officials** towards alternative sexuality.<sup>89</sup>

In addition, many example cases of discrimination and rights violations experienced by LGBTIQ persons in Thailand are featured in a book entitled *Violated lives: Narratives from LGBTIQs and international human rights law*. The book was published as a tool for awareness raising campaign on the rights of LGBT persons in the Yogyakarta Principles (see Box 4.1).

### 4.2.1 Education and training

Education and training is an area where discrimination is common. Respondents report having experienced **many differential treatments and forms of discrimination**, ranging from limited education choices and the strict uniform code in most Thai educational institutions which affects their opportunity and treatment, to exclusion from certain fields of studies and professional training. Transgender persons seem to have experienced more direct (open) and indirect (hidden) discrimination than other groups.

#### a) Pressure and prejudices about choices in education and training

- While none of the gay respondents reported feeling undue pressure from their families in education, some transgender and *tom* respondents say they **lost family support in education after revealing their sexuality**.
- **Many families with transgender children** often don't support their education and **discourage them from "hard" and high-status fields** such as medicine, law or engineering, in the expectation that transgenders will not be accepted in such jobs. Some transgender respondents were **encouraged by family to choose "soft" fields of study** (humanities and social science). Parents of transgenders see better opportunities in entertainment and service jobs for them. Some encouraged learning skills that allow them to earn income in the informal sector. A transgender academic/activist said her mother offered to open a spa for her, although she had no interest in that line of work.
- Teachers sometimes also recommend transgender students to choose study fields they believe are "appropriate" for LGBT persons. Transgender students are generally **discouraged from entering the teaching profession** because teachers must be "good role models" for students, which in Thai society, means to be either a man or a woman.

<sup>89</sup> R. Kobsirikarn: *The work of the National Human Rights Commission of Thailand on human rights in relation to sexual orientation and gender identity*, op. cit.

- Some educational institutions have policies to exclude transgender students from teachers' training, according to the 2009 NHRC report. In May 2012 a boys' school in Bangkok reportedly turned down a transgender trainee teacher as "unsuitable for the students."<sup>90</sup>
- Some respondents referred to cases of university **professors in medical school discouraging transgender students from becoming surgeons** and recommending them to study pharmacy instead **because being a surgeon** requires a "normal" mental state. Transgender students are also generally **discouraged from studying psychology** because they are deemed psychologically "abnormal."
- University-educated MTF transgender respondents said many of their transgender friends from secondary school **did not go to university or dropped out** of secondary school, partly due to an unfriendly environment at school and the need to freely express themselves. They explained that many MTF transgenders feel the strong need to transform into feminine bodies, and as a result are pressured to find income to finance their body transformation process. A common source of income is sex work because it is easily accessible, requiring no educational or professional qualifications.

#### b) Uniform issue for transgender students

- Students in Thailand are required to wear school uniforms at all levels, including colleges and universities up to the undergraduate level. There have been many media reports in 2012 and early 2013 of transgender university students having problems with the dress code. The transgender respondents in this research confirmed that the dress code affected many of them, both MTF (*katoeys*, *sao praphet song*, and transwomen) and FTM (*toms* and transmen).
- Several MTF transgender respondents said their **sexuality** was the main **reason for their choice of studies or college/university**. Due to the **dress code restrictions in many colleges and universities**, they purposefully chose to apply to only the (few) universities or colleges that were more relaxed about dress code or those that allow transgender students to wear the female student uniform. A *tom* respondent said she decided to attend a vocational school instead of a formal secondary school because she did not want to wear skirts.
- As a rule students in formal schools (secondary level and lower) are not allowed to cross-dress. However, MTF and FTM transgender students are informally allowed by some universities and most vocational/technical colleges (upper secondary school equivalent and higher) to wear uniforms different from their birth sex.

<sup>90</sup> "‘เกย์นที’ เล็งยื่น รมว. ศธ. เพื่อเพศที่สามฝึกสอนได้" ["Gay Nathee' urges education minister to allow the third sex in teaching training], in *Voice TV*, 5 June 2012, <http://news.voicetv.co.th/thailand/40940.html> [access 15 Mar. 2013]; "นิสิตฝึกสอนโวย โรงเรียนดั่งไม่รับสาวประเภทสอง" [Student teacher cries foul school rejects transgenders], in *MThai*, 31 May 2012, <http://news.mthai.com/general-news/168142.html> [accessed 15 Mar. 9013].

Those in institutions that do not allow cross-dressing may simply do so without official permission. In large classes transgender students avoid detection of dress code violations by hiding in numbers and staying at the back of the classroom. Often their birth sex is not revealed until their identity document is checked in the examination room.

- **Most teachers or college/university personnel generally turn a blind eye to the violations of dress code by transgender students.** However, some teachers who do not approve of this practice tend to punish them for it. Many transgender respondents said they felt **targeted by some teachers and professors.**
- Students found to have violated the dress code by some teachers often have **points deducted in class.** This occurs both at the secondary school<sup>91</sup> and tertiary levels.<sup>92</sup> In most universities, students are expected to wear “correct” (i.e., consistent with birth sex) uniform to examination. Many transgender students not wearing uniform according to their birth sex are **barred from examination in various universities.**
- A **tom university student** wearing trousers while submitting a term paper which indicated the title “Ms” in front of her name on the title page was reprimanded in front of the entire class and was told to wear a female uniform otherwise the paper would not be graded.<sup>93</sup>
- A **transman** respondent was barred from taking examinations because he did not wear skirts. He applied to another university and finally graduated but this caused delays in his studies.<sup>94</sup>

<sup>91</sup> Formal schools in Thailand have very strict dress codes for male and female pupils. While cross-dressing is inconceivable for secondary school pupils, boys may be punished for wearing lipstick or longer hair than crew cuts and girls may be punished for wearing their hair too short or their belt far too low below the waist.

<sup>92</sup> Many educational institutions in Thailand have behaviour marks for students. For each behavioural problem, a certain number of points are deducted depending on the severity of the offense, the strongest violation or a certain level of points result in students being expelled. Point deduction is accumulative.

<sup>93</sup> C. Boonprasert (ed.): *Violated lives: Narratives from LGBTIQs and international human rights law*, Bangkok: Teeranat Kanjanauksorn Foundation; Rainbow Sky Association of Thailand; GFATM, 2011, pp. 34-35.

<sup>94</sup> Kritipat Chotithanitsakul, personal interview, Bangkok, 16 Sep. 2012.

#### Box 4.2

### MTF transgender student forbidden to wear female uniform in teachers' training

Twenty-two year old Inthukorn Sitthiwong was about to finish her four years of course work at the Education Faculty of Chiang Mai University. Inthukorn was born male, but now looks like a girl and lives as a girl. Along with other MTF transgender students in the faculty, Inthukorn had been wearing female uniform on campus since her first year at the university.

Like other education major students, Inthukorn was required to participate in a year of teacher's training after the four-year course work as part of her fulfillment for the bachelor degree in education. She found a school which accepted her as a trainee teacher. However, the Chiang Mai University's Education Faculty prohibited her from wearing female uniform as a trainee teacher, citing the university's dress code and arguing that as a trainee teacher she must behave as an appropriate role model for school pupils. If she insisted on wearing the female student uniform, she would not be allowed to be in the teacher's training programme and would not be allowed to graduate.

The director of the school which accepted Inthukorn as a trainee teacher said that the school had no objection to Inthukorn's female uniform but it deferred to the university. With help from Mplus+, a non-government organization supporting transgenders and men who have sex with men in Chiang Mai and Bangkok-based Teeranat Kanajauksorn Foundation advocating gender justice, Inthukorn appealed to the Education Faculty again but to no avail. Meanwhile, Inthukorn was criticized by her peers, including transgender peers, for "making a unnecessary trouble" as other education transgender students have opted to comply with the rule and dress in male uniform for one year.

The National Human Rights Commission was notified and intervened. The matter was discussed with the university executives and finally the university agreed to allow Inthukorn to wear the female uniform in her training. However, the permission only applied to Inthukorn and not to any future cases of transgender trainee teachers wishing to do the same.

Source: Inthukorn Sitthiwong, personal interview, Chiang Mai, 20 Oct. 2012; Pongthorn Chanlearn, coordinator of Mplus+, telephone interview, 26 June 2013.

- An **intersex person** dropped out of university partly because of the dress code and the social pressure on her "ambiguous" gender identity.<sup>95</sup>

<sup>95</sup> Nada Chaiyajit, Thai PBS, เวทีสาธารณะ "เพศไม่เสมอภาค" ตอนที่ ๑ [Public Stage "Unequal Gender" Episode 1]: <http://youtu.be/vSb-TDwoFSs> [accessed 20 Sep. 2012].

- A **MTF transgender** education major at Chiang Mai University was forbidden to wear female uniform to her one-year teacher's training course. The university threatened not to allow her to graduate if she insisted on wearing a female uniform (see Box 4.2).
- University graduates **must wear "correct" uniform in graduation ceremony**. In a recent case reported by the media, MTF transgender university graduates at Thammasat University petitioned the university to wear female uniform under the graduation gown. Thammasat gave permission on a case-by-case basis on the condition that the students obtain a medical certificate from doctors confirming they have a "gender identity disorder" or a mental health condition that requires them to dress as a woman.<sup>96</sup>
- Having seen MTF transgender students allowed to wear female uniforms, **tomboy students have begun demanding equality**. *Tom* students at Suan Sunandha Rajabhat University said it was unfair that they were banned from wearing trousers while MTF transgender students are allowed to wear skirts and female professors can wear trousers on campus. *Tom* students wearing a male student uniform are still asked to leave the classroom by some teachers.<sup>97</sup>

**c) Differential treatments of katoey and gay students (in co-ed schools)**

- **Many katoey respondents** of all education levels engaged in **extra-curricular activities** in school, usually out of their own personal interest but sometimes because **teachers expected them to have "special skills" in cultural activities** such as dancing, stage performance, flower arrangement, event organization, etc.
- Many reported being selected by teachers or elected by peers as class representatives or leaders in school performances and activities including debates and athletic activities, especially volleyball. While on the one hand they took pride in teachers' and peers' recognition of their talents and the prestige of leadership status, on the other hand they felt it was the expectation that they had no choice to refuse but to live up to.

<sup>96</sup> "ธรรมศาสตร์ไฟเขียว บัณฑิตชายแต่งหญิงไปรับปริญญา" [Thammasat green-lights male students wearing female uniform in graduation ceremony], in *Thai Rath*, 16 Aug. 2012, <http://www.thairath.co.th/content/newspaper/283898> [accessed 12 July 2012]; "Thammasat transgenders permitted to wear female graduation gown gets nods from Higher Education Commission," in *The Nation*, 16 August 2012, <http://www.nationmultimedia.com/national/Thammasat-transgenders-permitted-to-wear-female-gr-30188451.html> [accessed 12 July 2012].

<sup>97</sup> "Tomboy students seek equality," in *Bangkok Post*, 5 Feb. 2013, <http://www.bangkokpost.com/news/local/334356/tomboy-students-seek-equality>; Phatcharin Thongpakdi; Waraporn Rattanamongkol: "ทอม ทวงสิทธิสวมกางเกง นักศึกษาชายยังแต่งกายข้ามเพศได้" [Toms demand right to wear pants because male students can cross-dress], in *Sunandha News*, 1 Feb. 2013, <http://sunandhanews.com/2011-10-14-04-41-27/81-education/1813-2013-02-01-03-21-10.html> [accessed 11 Feb. 2013].



- Some felt their **academic performance was compromised**: while some teachers expected them to perform extra-curricular activities sometimes during class or even examination hours, they were **punished by other teachers who did not approve of their engagement in extra-curricular activities**. The punishments came in the form of non-attendance or not being allowed to make up for class or examination.
- Three MTF transgender respondents reported that they competed for **scholarship** but two failed the interview round and one won an overseas scholarship but was not allowed to go. The first person passed the examination for a science scholarship to study at a selected high school but failed at the interview. She later learned that she was not chosen because the school thought a transgender student would not make a good **image** for the school. The second person applied for a post-graduate scholarship to study in Japan, passed the exam and also failed at the interview in which she was asked only about her sexuality. The third person was awarded a scholarship to Japan but was told that she could not go because “the Japanese did not accept transgenders.”<sup>98</sup>
- **Many gay respondents** said they tried to **hide their sexuality** and not associate themselves with gay or *katoey* classmates in fear of being found out in secondary school. More felt safer to come out in university or after secondary school. (In general, most respondents who were *katoey* students in boy schools and *tom* students in girl schools reported positive experiences in school life.)
- **Students identified as gay or katoey often face teasing** and sometimes **bullying, hazing and physical and sexual assaults** aimed to humiliate by peers as well as by teachers at school (see more in section 4.3.4 below.)

## 4.2.2 Access to employment

The NHRC reported **multiple barriers to employment for LGBT jobseekers**, starting from the job application process. In addition to some institutional rules and policies that automatically disqualify transgender applicants, LGBT jobseekers are routinely **refused jobs at the interview stage**. Job applicants whose alternative sexuality is evident are commonly given **psychological tests not given to other applicants**.

<sup>98</sup> Focus group, Sisters, Center for Transgenders, Pattaya, 5 Sep. 2012; Focus group, Trans Female Association of Thailand (TFAT), Bangkok, 24 Sep. 2012; Focus group, Thai Transgender Alliance (TGA), Bangkok, 14 Oct. 2012.

Even when some have passed both the written examination and the job interview, transgender applicants in particular can still be **rejected after their legal identity is known** to be inconsistent with their outward appearance (see an example case in Box 4.3). Furthermore, when self-declared transgender persons get hired, they often must **observe a dress code of their birth sex** with which they no longer identify.<sup>99</sup>

The problem of discrimination against transgender persons in access to employment is also recognized by the National Social Welfare Protection Commission (NSWPC).<sup>100</sup>

**Jobs in the public sector are the least LGBT friendly, and generally exclude transgender people.** Many LGBT respondents decided to opt out of public service and formal jobs where they are not allowed free self-expression and chose work in non-governmental organizations or in the informal sector, or became self-employed. Many gays, lesbians and transgenders feel they do not enjoy equal benefits as heterosexual workers, and they are unwilling to change their own gender identity so drastically to conform to the heterosexual norms.

#### a) Exclusion of transgender persons from mainstream jobs

- Among all LGBTs, **MTF transgender respondents (*katoey* and *sao praphet song*) reported the least access to formal employment in both the public and private sectors.** Except for a small highly educated and highly talented minority, most transgender persons tend to “opt out” of mainstream jobs.
- Transgender persons feel **almost completely excluded from employment in the civil service** which observes male- and female-specific dress codes rather strictly. For MTF transgenders to gain employment in the civil service, they must observe the male dress code at work, including wearing short hair or a wig, because they are still legally male. As a result many unwilling to do so are deprived of the opportunity to secure employment in the public sector which provides generous benefits.
- A transgender government social worker related her experience applying for a job in the civil service:<sup>101</sup> “I had to cut my hair short and dress as a man to apply for the job because I was afraid I would not be considered otherwise. After having worked for a period I still kept my hair short but I started telling my direct superiors [of my real gender identity]. They acknowledged it and I started dressing as normal, as a woman.”

<sup>99</sup> R. Kobsirikarn: *The work of the National Human Rights Commission of Thailand on human rights in relation to sexual orientation and gender identity*, op. cit.

<sup>100</sup> PowerPoint presentation provided by the National Social Welfare Protection Commission (NSWPC) which was used in a policy discussion to include LGBTs as a special population group in the 16 December 2012 NSWPC regulation.

<sup>101</sup> Montrakarn Ketkaew, comment shared at the Thailand PRIDE Research National Workshop organized by Foundation for SOGI Rights and Justice (FOR-SOGI) and the ILO, Bangkok, 4 June 2014.

- In recent years there are **signs of more acceptance of transgenders in some areas of work.** In January 2011 a Thai start-up charter airline PC Air made international headlines after it announced its policy to hire transgender flight attendants.<sup>102</sup> In May 2012, a transgender politician was elected for the first time in Thailand in a local election to Nan provincial administrative office.<sup>103</sup> And also for the first time a transgender film director was elected to be the president of the Film Directors Association of Thailand for 2012.<sup>104</sup> **Yet these positive changes remain few.**
- Some transgender respondents who have less than university education and have worked outside the formal sector in entry-level service jobs or sex work said that they felt their transgender appearance did not “fit in” mainstream jobs. They want to work in “regular jobs” dressed as women but most jobs do not allow them to do so.<sup>105</sup>
- **The experience of repeated rejection demoralizes transgender jobseekers.** Some respondents in the Sisters, Center for Transgenders, Pattaya focus group said they applied for jobs in retail sales, hotels and call centers but were rejected directly or indirectly because of their transgender identity. One reported having a job application torn up in front of her.
- Several MTF transgender respondents in different focus groups have experience being denied employment. They **passed the written examination but were turned down after the job interview.** A 2007 court case involved denial of employment to a transgender after an employment contract had been signed due to “cross-dressing” (see Box 4.3). Well qualified transgender applicants are also often denied jobs. Some respondents said they went together with their heterosexual female or gay friends who were equally or sometimes less qualified but were given jobs in the same position.

<sup>102</sup> Transgender respondents reported that only transgenders who have had sex reassignment got the job.

<sup>103</sup> “Transgender wins PAO seat,” in *Bangkok Post*, 29 May 2012, <http://www.bangkokpost.com/news/politics/295482/transgender-wins-pao-seat> [accessed 1 June 2012]. See also, P. Winn: “Thailand: Transgender diva seeks political office,” in *Global Post*, 26 May 2012, <http://www.globalpost.com/dispatch/news/regions/asia-pacific/thailand/120525/transgender-candidate-yollada-nok-suanyot-politics-elections> [accessed 27 May 2012].

<sup>104</sup> Thanwarin Sukhapisit directed films often with LGBT themes. Her film “I’m Fine, Sabaidee Kha” which reflects the life of transgenders in Thai society won the best short-film award in Thailand in 2008. She is best known for “Insects in the Backyards” which had special screening at major international film festivals but the film is banned in Thailand for its “inappropriate” sexual (homosexual/transgender) content.

<sup>105</sup> Focus group, Sisters, Center for Transgenders, Pattaya, 5 Sep. 2012.

### Box 4.3

## MTF transgender denied employment in breach of contract due to cross-dressing

Twenty-nine-year-old Phakjira Visavakorn-skow filed a complaint with the National Human Rights Commission of Thailand (NHRC) on 17 July 2007 (Case No. 426/50) for discrimination based on gender identity.

Phakjira applied and was hired for a sale administrative officer position with a laboratory equipment company Sartorius (Thailand) Co. Ltd. on 5 June 2007. The employment contract was drawn on the same day indicating 9 July 2007 as the starting date of employment and THB18,000 as the monthly salary. On 5 July 2007, Phakjira received a telephone call from a Sartorius (Thailand) employee informing that the company would like to cancel the employment contract because the regional office in Hong Kong had disapproved of the hiring because Phakjira cross-dressed as a woman.

Phakjira filed a suit with the Central Labour Court in Bangkok (Black Docket Case No. 6097/2550) demanding Sartorius Thailand to either honor the hiring or pay THB216,000 in compensation for breach of contract. The Central Labour Court recommended arbitration and the case was resolved in a settlement in which the company agreed to pay THB63,000 in compensation on the condition that the complainant withdrew the complaint with the NHRC.

In its investigation the NHRC found that Sartorius (Thailand) Co. Ltd. had no official policy to reject cross-dressing job applicants. After the resolution of the case the NHRC notified Sartorius that denial of employment based on gender identity and cross-dressing was a prohibited form of discrimination. It also requested Ministry of Labour to inform public and private agencies that discrimination against persons of diverse sexualities was prohibited under the 2007 Constitution of Thailand, and informed workers' and employers' organizations of LGBT right to be free from discrimination [in employment on the basis of gender identity].

Source: National Human Rights Commission of Thailand.

- Several transgender sex workers said that they entered **sex work because they were unable to get regular jobs**. The other main reason was that sex work provides **good income**. Most transgender respondents felt the pressure to prove their worth to parents and other people in their family's community. One explained: "People underestimate you and put you down [because you are *katoey*]. They say you won't amount to anything. So that becomes a drive to prove them wrong." And one way to prove them wrong is to have a lot of money and to provide for the family, and sex work is a ready option.

- At a workshop on human rights with 27 mostly university-educated transwomen contestants in the world-famous Miss Tiffany beauty pageant in Pattaya in April 2013, the contestants shared their experience in employment discrimination: “We were often denied jobs because we were judged as abnormal, different, and less valuable than women and men, but in truth we have no different capacity and can also be doctors, prosecutors, judges, etc.” The first priority of contestants was to change their official gender title. Their second priority was protection of their labour rights.<sup>106</sup>

**b) Change in Sor Dor 43 has no great impact on transgenders’ employment opportunity**

- According to transgender activists, the change of wording on the military service exemption document (Sor Dor 43) issued to transgender persons in military conscription (from “permanent mental disorder” to “gender identity disorder”) has helped improve the perception of transgender persons in society. Surprisingly however, none of the transgender respondents in the focus groups thought that the change of wording had any positive impact in their lives. They saw no real benefit in terms of increasing job opportunity because:
  - Most MTF transgender respondents did not use Sor Dor 43 in their job applications as they applied for jobs outside mainstream employment that do not require submission of official documents such as Sor Dor 43.
  - More importantly, **difficulties in getting mainstream jobs for MTF transgenders lies in the mismatch of physical (female) and legal (male) identity**. That is, even if the Sor Dor 43 no longer brands them as “mentally ill” their chance of getting hired in the formal sector still remains very small.
  - For a few who now work in large public or private institutions, they typically took the three-year military reserve training in upper secondary school which automatically exempted them from the military conscription process.

**c) Discrimination against/discriminatory treatments of toms and transmen in hiring practices**

- Anjaree Group, an NGO supporting lesbians, has received many complaints from *toms* and transmen about lack of access to employment. Some reported being **asked outright at job interviews about their sexuality**, whether they were a man or a woman, and subsequently denied the job.

<sup>106</sup> The workshop was organized by the Thai Transgender Alliance (TGA) and Miss Tiffany Company. The average age of the 27 Miss Tiffany contestants was 25. Jetsada Taesombat, TGA, online communication. Information about the event: <http://www.thaitga.com/index.php/events/2013/268-thai-transgender-alliance-announces-series-of-idahot-events> [accessed 29 May 2013].

- Many *tom* lesbians and transmen with university education have been unable to find jobs and became discouraged from **many rejections**, so that they are **no longer actively looking for salaried jobs**. Others who obtained employment found the hostile work environment intolerable and were unable or unwilling to stay on the job. Many choose to set up a small or micro business or petty trade, often selling products or services.
- A self-identified transman in his late twenties who became an international LGBT activist said he had to wear skirts to job interviews and most interview questions he was asked were not about knowledge or job skills but about his gender identity, e.g., “why did you choose this sex, why do you want to become a man, which toilet will you use?” One job interviewer told him, “We are open-minded here but we still have rules. Can you wear the female uniform to work?” The activist was hired by a bank, but only worked there for a brief period of time because he was unable to tolerate the anti-LGBT slurs from co-workers, especially those directed at a transgender co-worker who was asked daily whether she washed her anus. Afterwards he became unemployed for two years because he lost courage to apply for jobs, having to wear skirts to job interviews and to work, and was weary of possibly facing another unfriendly workplace.<sup>107</sup>
- *Toms* who are not particularly attractive are sometimes hired but **relegated to backroom operations**. According to some respondents with experience in the hospitality industry, most hotels do not hire *katoeys* or *toms* unless they are very good looking. Generally *katoeys* or MTF transgenders are not hired for front desk, and *toms* are relegated to housekeeping away from guests. This is partly because hotel employees are required to wear male and female uniforms and the hotels do not want the guests to be “confused” about the employees’ sex. Still, decisions to hire can be arbitrary, depending on individuals with decision-making power to hire. (This does not apply to LGBT establishments that cater to specific gender groups of clients which usually hire employees with the same gender profile as the target clients.)
- Some factories in industrial estates may favour *tom* workers because they are deemed to be as “nimble” and “detail-oriented” as women but “strong” like men. The past decade has seen an increase of *tom* factory workers in the country.

<sup>107</sup> Kaona Saowakun, Anjaree volunteer and co-chair of ILGA Asia, panelist at the Thailand PRIDE Research National Workshop, Bangkok, 4 June 2014.

- A 2011 master's thesis study on lesbian *tom* identity construction in two electronics factories in a large industrial estate in Lamphun province in Northern Thailand<sup>108</sup> revealed that the supervisors of the production lines at the female-dominated Japanese and German factories preferred tomboy workers because, they said, unlike regular women workers, *toms* generally took very few days off and had no long extended leave like maternity leave, and they were also generally punctual and willing to do any type of work.

#### d) Access to employment for gay men

- **Masculine gay men have more or less the same access to jobs as heterosexual men.** However, gay men who are not very masculine or are openly gay will have some barriers to employment. Generally, **gay men hide their sexuality** and later come out in a workplace only if it is gay friendly or after they feel some security in their job.
- In civil service, the workplace culture tends to be traditional and men as well as women are expected to behave more traditionally. In academia, certain fields of studies are considered more masculine than others such as political science, law, engineering, fine arts, not to mention traditionally male domains in the police and military academies. Gay men, especially if not masculine, are not so well accepted in these fields compared to “softer” fields such as languages, communication and public relations. A gay male university lecturer in political science said he faced some rejection from colleagues in some universities.
- A gay man, working as a clinical psychologist mentioned that he had to downplay his sexual orientation to maintain professional credibility, however, some patients found it out anyway. He said one of the most painful questions he was ever asked by some patients who could not accept his sexual orientation was whether he could help them while being gay. He recounted that the parents of a young patient asked him: “How can you cure my child when you are like this?” The parents subsequently asked to have their child transferred to another psychologist.<sup>109</sup>
- Due to stifling mainstream workplace culture that is not open to diverse gender expression and sexuality, some gay men choose to also **opt out of mainstream jobs** in large public or private institutions, **or stay in the closet.**

<sup>108</sup> R. Chailangka: *Lesbian identity construction: Different life styles of female workers in Northern Region industrial estate Lamphun Province*, op. cit., pp. 112-113, 144.

<sup>109</sup> A participant who asked to remain unnamed at the Thailand PRIDE Research National Workshop, Bangkok, 4 June 2014.

### 4.2.3 Acceptance and treatment at work

- **Many gay and lesbian respondents play heterosexual roles to avoid possible rejection at work** (unless they work in an LGBT-specific organization). Those who do not hide their sexuality often do not talk about it openly even if their sexuality is known and to some extent accepted or tolerated at the workplace.
- **In educational institutions, LGBT teachers are not considered good role models** and are presumed to have a negative influence on students (by emulating their sexuality). As a result, there are few teachers in the public institutions who are openly gay, *katoey* or *tom*. Respondents reported knowing some people who are able to express their sexuality fully after they have worked for some time in some workplaces in the civil service but these cases are still exceptions. The freedom of diverse gender expression depends much on the attitudes of the supervisors and co-workers in a particular office or institution.
- **In mainstream jobs sex-specific dress codes pose a problem for *toms* and transgenders.**
  - Lesbian tomboys must still wear skirts, and flamboyant gay men must refrain from wearing make-up. Some tomboyish lesbian women have no problem observing the dress code and did not see it as a big issue, but at the same time, one, for example, said she was so pleased that her company finally allowed women to wear trousers and she never went back to wearing skirts again. Many *tom* lesbians said they chose only jobs that do not require women to wear skirts.
  - Some allowances are made for *sao praphet song* or transwomen who have had sex reassignment to wear female uniform but only on a case-by-case basis and usually after the persons have already been employed for some time or have enough leverage to “push the envelope.”
    - Nok Yollada Suanyot, a high profile transwoman who became the first transgender elected official at the provincial administrative office in Nan in early 2012, wears female uniform at work. A former beauty queen, she is highly feminine and beautiful, but even she faces criticisms from some quarters. She explains that she chooses to wear skirts as a “political statement.”<sup>110</sup>
- The courage to break the rules depends on **individual self-confidence, status**, as well as the **culture and flexibility of the workplace**. Some young transgenders among the respondents wear female dress to work at university or office in the private sector. However, in some cultural and working environments, self-confidence and status is not enough to support personal courage for self-expression.

<sup>110</sup> Focus group, Trans Female Association of Thailand (TFAT), Bangkok, 24 Sep. 2012.



#### Box 4.4

### Lesbian Muslim lawyer hides her sexuality at work for fear of losing credibility

A Muslim lesbian lawyer working in Bangkok and Muslim provinces in southern Thailand says she has enough difficulties getting accepted as a young woman in a male-dominated profession and male-dominated Muslim culture that she chooses not to reveal her sexuality at work.

In the beginning of her career local law clerks who were local Muslim men refused to carry out her instructions and she had to rely on senior male lawyers to repeat her instructions to them and order them to carry out assignments from her. She felt that her credibility with local Muslim colleagues and clients was already fragile as a modern Muslim woman who does not cover her head. To reveal her sexual orientation would further jeopardize her credibility.

She told a colleague in Bangkok about her sexuality but received pity and attempts to persuade her to reconsider the benefits of having a male partner. The experience convinced her that she could not reveal her sexuality with her Muslim colleagues in the south. She explains, "in the Muslim culture, being a lesbian would mean excommunication... The locals would say [lesbianism] is a sin and satanic."

Source: Focus group, Bangkok, Sep. 2012.

- For example, a lesbian Muslim lawyer working in southern Thailand already has difficulties being accepted as a woman in a male-dominated profession. For her to come out as lesbian Muslim while working in Muslim-dominated provinces in southern Thailand would put her career, her social acceptance and perhaps even her safety at risk (see Box 4.4).
- The study on the construction of the lesbian *tom* identity among female factory workers in the industrial estate in northern Thailand also suggests that the **acceptance for a particular group of workers with a particular gender identity can change, along with the change in circumstances, the perception of the benefits on the work from their gender identity and the organizational culture.**
- With preferential hiring of *toms*, a huge increase of the *tom* population in the Japanese and German factories (the author estimated 40 per cent of 3,000 workers in the two factories combined to be *tom*, and 17 per cent men and 43 per cent women at the time of the study) had an impact on the factory culture: *tom-di* (butch-femme) relationships became increasingly common and tolerated (more so at the German factory than the Japanese factory which has stricter rules governing conduct of workers). Generally they were also tolerated by their male co-workers as long as they did not act in exaggerated "macho" fashion. There were, however, occasional tensions with single men in competition for female attention. Given increasingly widespread romantic pairing up of women workers within the close space, relationship-related brawls and altercations also broke out

sometimes among *tom* workers. Moreover, unlike the traditional “obedient” women workers *tom* workers began to organize and demanded higher pay and benefits and other rights at work.

- These new changes in the factory culture were undesirable for the factory management and resulted in falling demand for *tom* workers by the factories and many *tom* workers became unemployed. For a period the factories reversed to preferring traditional feminine women. Interestingly, the *tom* workers adjusted and re-applied as women, putting on feminine dress and make-up. Some even resorted to hair extension and putting on high heels. Some were hired back, while others were not.
- Once rehired, *tom* workers also adjusted their behaviour at work to keep their jobs: although reverting to their *tom* gender identity, they strived to be more observant of factory rules (e.g., no brawls) and work harder. They proved themselves valuable workers once again and the factory management became more accepting of the *tom* gender identity and stopped rejecting *tom* workers based on appearance and gender expression.<sup>111</sup>
- **Access to toilets is an issue for transgender employees**, both MTF and FTM. Often neither male co-workers nor female co-workers like *katoeys*, *sao praphet song* or *toms* to use their restrooms. Very few workplaces in Thailand have special restrooms for transgenders.

#### 4.2.4 Career opportunity and job advancement

Many LGBT respondents in white-collar jobs talked about the issue of **credibility**, that it is **diminished if their sexuality is revealed**.

- A transgender civil servant with a graduate degree in a supervisory position was **told by a superior to “man up,”** “not act like a *katoey*,” and to talk and dress like a man in order to appear “more professional.” The (male) supervisor explained to the transgender civil servant that credibility was important and personality was a consideration for promotion.<sup>112</sup>
- A lesbian activist in her fifties with experience in academia related her experience that she realized in retrospect that she was keeping her sexuality a secret because she did not want to lose certain privileges she was still enjoying. She told a story of a lesbian academic being **passed over** for a college dean position time and again, although she was qualified. She herself, even when she had not come out publicly in the early stages of her career, was not accepted among women’s rights advocates.

<sup>111</sup> R. Chailangka: *Lesbian identity construction*, op. cit., pp. 144-145.

<sup>112</sup> C. Boonprasert (ed.): *Violated lives*, op. cit., p. 33.

She was **ignored**, and never asked to join any committee. As a result she decided not to work full time in any academic institution.<sup>113</sup>

- **Prejudice against gender diversity at work** was a source of undue pressure that forced a *tom* employee to resign from an office job (see Box 4.5).
- **Incongruous legal identity** poses a problem in career advancement for some transgender workers. A transwoman working in a multinational company lost a chance at a promotion because her legal identity was inconsistent with her gender identity (see Box 4.6).

#### Box 4.5

### Tomboy lesbian worker pressured to leave job by deliberate unfair treatments

“Putty,” a tom in her thirties with experience in various low-level service jobs in the informal and formal sectors who now works as a swimming instructor and a part-time tour guide said she has experienced different levels of acceptance and treatments at work. How tomboy workers are treated also depends on how they carry themselves. Extra attention and gossips are a given for toms but she did not let that bother her.

However, during her employment in an office she felt she was pressured to leave with deliberate unfair treatment. For example, her assignments were given less priority and importance than those of heterosexual male and female co-workers. Male co-workers were sometimes taunting her that “if you want everybody to treat you the same then you should go back to wear skirts like normal women, not dress abnormal like this.”

She was also given a smaller raise than other male and female employees: men were given an THB800-1,000 raise and women THB700 but she received only THB400. This happened despite the fact that she worked as hard, if not harder than the others, and the work products of some men were actually what she did for them. She finally left the job.

Source: “Putty,” email interview by Chantalak Raksayoo, 20 Sep. 2012, <http://sapaan.org/?p=95> [accessed 13 Dec. 2012].

- Due to lack of freedom of gender expression at work, many gay men also make personal choice to work outside of formal organizations. They tend to choose jobs that allow them more freedom outside of office on a freelance basis, such as sales, computer programming, architecture and interior design, etc. Some set up their own business.<sup>114</sup>

<sup>113</sup> Focus group, Anjaree Group, Bangkok, 29 Sep. 2012.

<sup>114</sup> Nikorn Arthit, advisor to Bangkok Rainbow Organization, personal interview, Bangkok, 23 Sep. 2012.

- A Muslim MTF transgender in her late twenties also made the same choice. She left a salaried job in the private sector because she saw little chance of professional advancement and set up her own company.<sup>115</sup>
- However, a *tom* lesbian in her late forties who had a mid-level position in a construction company feels that she had good opportunities at work, as her bosses focused more on the ability of employees. While she did not talk of her sexuality it was clear to everyone because of her “**tomboy**” appearance. As a *tom*, she was often considered to go on field assignments alone, when generally one man or two women would be sent on a field assignment. In a way she was treated as if she were a man and could do the job “**like a man.**”<sup>116</sup>

#### Box 4.6

### Transwoman lost a chance in job promotion because her legal identity was inconsistent with her gender identity

Thirty-three year old Pitchaya Wong-anusorn is a transwoman who has had sex reassignment. She works as medical sales representative in a multinational pharmaceutical company in Thailand and was considered for a promotion to a regional sales position. The promotion was approved by the Thailand office but was later reversed by the overseas headquarter office due to potential complications in international travel because her passport shows her sex as male. As Thai law does not allow transgender persons even those who have completed sex reassignment to change their legal title, Pitchaya’s title in all of her Thai identity documents is “Mr”

Pitchaya says her legal title “Mr” has also created confusion and complications for work-related travel in Thailand. For example, for business trips the company usually assigns employees of the same sex to share hotel rooms and she is usually assigned to share a room with a female co-worker. Additional explanation needs to be provided to the relevant departments or meeting organizers of her transgender identity. This gives an impression to others that her case is “extra work.”

Source: Pitchaya Wong-anusorn, focus group, Thai TransFemale Association of Thailand (TFAT), Bangkok, 24 Sep. 2012.

- Similarly, a middle-aged *tom* production line supervisor indicated that after 20 years in the factory, she has proven herself and felt accepted by her bosses, co-workers and women, men and *tom* workers under her supervision. She noted that acceptance at work depended on “how you carry yourself”;

<sup>115</sup> Focus group, Trans Female Association of Thailand (TFAT), Bangkok, 24 Sep. 2012.

<sup>116</sup> Focus group, Anjaree Group, Bangkok, 29 Sep. 2012.

how to relate differently to different groups of people in different situations, and how to use the “soft” and “hard” approach as appropriate for each situation.<sup>117</sup>

- Transgender persons (often MTF but transmen are also affected) face **obstacles in international travel** because their passports identify them as the sex that does not correspond to their physical appearance. Especially during private or business travel without official invitation letters, transgenders are commonly detained by immigration and face questioning under suspicion of using a fake passport that can last an hour or longer, sometimes causing travel delay. This incurs costs to businesses and decreases employment opportunities for transgender persons.
- A forty-five year old gay man who now works in a non-governmental organization said there is not much acceptance in most companies and public institutions for gay men. As a result, gay men have fewer career opportunities and advancement, as well as lower wages and benefits.<sup>118</sup>

## 4.3 Sexual harassment and violence against LGBT persons

Sexual harassment is part of the various degrees of violence LGBT respondents said they have experienced in their lives: teasing, taunting, slurs and insults, physical assaults such as slapping and kicking, sexually suggestive or derisive comments, hazing and bullying in school, at work and in the military, inappropriate touching (from both men and women) and groping (by health officials), rape or (attempted) gang rape.

### 4.3.1 Verbal harassment

- The most common taunt and name calling for *katoeys*, *sao praphet song* and feminine gay men is the word ตุ๊ด *tut* (equivalent to the English term “faggot” - the term is from an old film featuring a cross-dressing Dustin Hoffman as *Tootsie*); sometimes a more vulgar variation ไ้ตุ๊ด *ai-tut* or อี้ตุ๊ด *ii-tut* (*ai* and *ii* are the vulgar terms of address for men and women respectively). Most gays and transgenders find this term strongly derogatory. However, the term is widely used by non-LGBT Thais in daily life and a common term of insult, especially among young people, at men whose gender identity may or may not be in question, but it is meant to deride or put down their credibility or manhood.
- Often the term กะเทย *katoey* itself is also used as an insult, but many young transgenders resist the insult and subversively use the term in self-identification of their chosen gender identity that they are not a man or a woman, or a *tut*, but a *katoey*.

<sup>117</sup> R. Chailangka: *Lesbian identity construction*, op. cit., pp. 117.

<sup>118</sup> Chuwit Thongbai, email interview, 8 Jan. 2013. Due to limited sample of respondents there are insufficient details on differential wages and benefits in this study.

While beautiful and feminine *katoeys* or transwomen are generally admired for their looks and femininity, large, heavily built, unfeminine *katoeys* are often called กะเทยควาย *katoey kwaay* or “*katoey buffalo*.”<sup>119</sup>

- Many LGBT respondents have experienced strong judgmental comments from people in various situations. They are often described as ผิดเพศ *phit phet*, meaning “sexually abnormal” or “sexually perverse.” Most gay males and MTF transgenders said sometimes even their male friends tell them that they “wasted” their lives by being a gay or *katoey*: เสียชาติเกิด *sia chat kerd* in Thai.
- Tomboy lesbians also commonly face teasing, taunting and insults from men, including being told to “die and be reborn” so perhaps they would have “a penis like real men” in the next life. Vulgar teasing involves “invitations” to have vaginal penetration with men so that they would be “cured” of being a *tom*.
- Besides these strongly objectionable comments, all LGBT groups feel they are seen as sex-obsessed or relationship-obsessed by people in society in general, and comments along the line of that perception are common.

### 4.3.2 Unfriendly and hostile work environment for LGBT workers

- Many lesbian women reported their **male colleagues watch pornographic videos at work**, or download the films and save them in common folders in office computers. Sometimes while the male co-workers watch pornographic films or clips, they also make **sexually suggestive comments** at them, asking for example, if *tom* and lesbian women “do certain positions,” etc.<sup>120</sup>
- A *tom* employee in a private company received **derisive, homophobic comments** from co-workers and supervisors at work. A friend and co-worker who was well aware of her sexuality asked a religious supervisor in her presence if one of the Buddhist precepts on adultery also includes lesbianism and the co-worker and supervisor shared strong disapproving comments of lesbianism without consideration for her. At the same workplace, a male co-worker who was also aware of her sexuality told a story and **joked about a tom lesbian friend being gang-raped** by male friends.<sup>121</sup>
- A young Muslim lesbian lawyer working in southern Thailand felt unsafe by comments from male colleagues (“sexy,” “pretty,” “why still single”, etc.), especially accompanied by **threatening body language** (e.g., crowding, coming physically too close).

<sup>119</sup> Transwomen who do not identify themselves as *katoey* find the term *katoey* offensive. They also dislike the term “ladyboy.”

<sup>120</sup> Focus group, Anjaree Group, Bangkok, 29 Sep. 2012.

<sup>121</sup> C. Boonprasert (ed.), *Violated lives*, op. cit., pp. 40–41.

Many gay men and lesbian women say one unpleasantness they face at the workplace as a result of their sexuality known or perceived by co-workers is the **gossiping**, the **speculations**, and suggestive comments or **probing questions about personal relationship and interests**, such as “why are you not married, are you gay, why are you gay”, etc. Those who work at LGBT NGOs are asked questions such as, “why do you work there,” “are you HIV-positive,” “do you have AIDS?”

### 4.3.3 Police harassment of transgender sex workers

- MTF transgender sex workers are **routinely harassed and extorted by police in red light districts popular with foreign tourists** in Bangkok, Pattaya, Chiang Mai, and Phuket.<sup>122</sup> Most transgender sex workers in Pattaya said part of their work is avoiding various units of police. Even though prostitution is illegal in Thailand and more women than transgenders are engaged in sex work, they said **transgender sex workers are especially targeted**. They are regularly stopped by one or more police units (e.g., local police, Pattaya city police volunteers, tourist police, special force) and “fined” on the spot (usually THB100-200 per each stop). If they object, they will be taken to police station, detained and face heavier fines.
- Generally **police raids target transgender sex workers on the street** (they usually have no problem working inside bars). While streetwalkers are more at risk of arrests and fines, transgender sex workers who work in bars but happen to be walking on the street with a foreigner who may or may not be a client, are assumed to be soliciting. Non-sex worker transgender tourists from outside Pattaya have been reported being “fined” for solicitation. During street arrest, police may also confiscate the ID card of the transgender person. (There have been campaigns by sex workers’ support groups to not give the ID card to police when they are stopped on the street.)
- Recently media have reported more cases of MTF transgender sex workers involved in theft and robbery from foreign clients. Police have told the media that transgender sex workers give a “bad image” to Thailand.<sup>123</sup>

<sup>122</sup> Focus group, Sisters, Center for Transgenders – Pattaya, 5 Sep. 2012; Pongthorn Chanlearn, coordinator of Mplus+, personal interview, Chiang Mai, 31 Aug. 2012; and Surang Janyam, director of SWING, organization supporting sex workers, personal interview, Bangkok, 18 Sep. 2012.

<sup>123</sup> See, for example, recent arrests of transgender sex workers in Chiang Mai. “กะเทยประตู่ท่าแพกระเจิง! ถอดล้นสูงแผ่น-หนีตร. กวาดล้าง,” [Tapae Gate katoeys dispersed! Bolted sans high-heels in flight from chasing cops], in *Thai Rath*, 6 Dec. 2012, <http://www.thairath.co.th/content/region/310603> [accessed 6 Dec. 2012].

### 4.3.4 Harassment, bullying and physical/sexual assaults of gays and katoeys

Bullying and hazing aimed to humiliate *katoey* and gay men often occur in school (usually in the secondary school level in formal school system and in vocational school at both the equivalent upper-secondary and tertiary levels), and in reserve military training and in military service.

#### a) **Bullying and physical assaults in school by peers and teachers**

- While **many *katoey* or gay men among the respondents say they had a relatively easy experience in school life** (besides mild teasing and joking from classmates and expected censure and scolding from strict teachers), **many others were bullied**. Being ganged up on by a group of male classmates threatening to or actually undressing them was common, as well as being groped on the breasts or genitals, or being kissed.
- Sometimes the ganging up by schoolmates amounts to serious physical assaults and results in **school drop-out** or **change of study course and school** (see Box 4.7).

#### **Box 4.7**

#### Gay technical school student was bullied and physically assaulted by classmates

Twenty-five year old Chalit Sadthong is a feminine gay man. He attended a technical school in Bangkok, studying industry logistics. He was good at his studies and received top marks. In the first year he was chosen to be the school's representative in a competition. This made his classmates unhappy because they felt industry logistics was a "manly" subject.

One day he was ganged up on by eight classmates. They were working on undressing him in order to take his pictures and make a video clip to post on the school web board, which at the time featured clips of undressed *katoeys* (who likewise experienced forced undressing). The classmates said they disliked the way Chalit was and would make him "a man."

The incident happened after class. Chalit tried to fight the classmates off (Chalit is heavily built and skilled in boxing and martial arts) but no one came to help until he screamed and a teacher came to the scene. The classmates told the teacher they were "humiliated" that a "*katoey*" was chosen to represent them.

The classmates were punished but the harassment and bullying worsened, resulting in Chalit being involved in frequent brawls outside the school with the classmates. Eventually, after two terms he decided to move to another school and change his major to business which actually was his preferred field of study. He said he only chose industry logistics major because his mother pressured him to do so. Chalit was happy at the new school where there were more female students.

Source: Focus group, Rainbow Association of Thailand (RSAT), Bangkok, 21 Nov. 2012.



- A 36-year-old gay man said he was **ganged up on and physically brutalized by schoolmates** when he was a schoolboy. He was spread-eagled and held by the arms and legs and swung. The movement was designed to have his genitals repeatedly slammed against a pole. The experience caused him to drop out of the school and instead take non-formal education courses.<sup>124</sup>
- **Young gay male respondents said they feared being bullied and humiliated as well as being rejected by male friends.** They said these were the main reasons they hid their sexuality in secondary school.<sup>125</sup>
- School teachers generally do not take bullying of gay male and *katoey* students seriously. Many gay and *katoey* respondents reported that teachers tend to see the bullying as “normal teasing” among students. And it seems that the bullies are not generally punished unless the bullying involve physical assaults.
- **Harassment and humiliation are sometimes also done by teachers** themselves. While traditional teachers, male and female, tend to disapprove of sexual expressions different from the heterosexual norms, teachers who tend to act out their disapproval are “macho” physical education (PE) teachers. Gay and *katoey* respondents reported being humiliated by teachers. For example:
  - **A *katoey* student** was often rounded up by a PE teacher along with other *katoey* students to perform Thai boxing as entertainment in the PE class.<sup>126</sup>
  - **A gay boy scout** was singled out in a boy scout assembly by a teacher who yelled at him, “*Ai tut*, come out!” and other vulgar sexual remarks. At the time he was 14 years old and he did not make his sexual orientation known. Suffering intense humiliation he refused to go to school until another school teacher came to call on him at home and convinced him to return to school.<sup>127</sup>
  - In July 2012, Thai media reported that a 14-year-old **feminine school boy** attempted suicide after having been humiliated in front of the school assembly by the headmaster and insulted by two other (female) teachers after they found he was wearing a girl’s undershirt. The headmaster smacked him on the head in the open assembly and ordered him to “stop being a *tut*”

<sup>124</sup> Focus group, Rainbow Sky Association of Thailand (RSAT), Bangkok, 21 Nov. 2012.

<sup>125</sup> *Ibid.*

<sup>126</sup> Focus group, Sisters, Center for Transgenders – Pattaya, 5 Sep. 2012.

<sup>127</sup> Focus group, Rainbow Sky Association of Thailand (RSAT), Bangkok, 21 Nov. 2012.

and threatened to strip him naked if he didn't obey his order. The boy told his mother he had suffered this kind of treatments for three years. He was hospitalized after having overdosed on painkillers. His mother filed a complaint with the police against the three teachers.<sup>128</sup>

- A **transman** told the panel at a conference at the National Human Rights Commission that he was singled out by a psychology professor in university, who called him to come out in front of the class and used him as an example of “sexual perversion.”<sup>129</sup>

#### **b) Harassment and sexual assaults in reserve military training and service**

- *Katoey* and gay respondents who attended military reserve training during three years of upper secondary school also reported differential treatments, sexual harassment and attempted rape by school friends or demands of sexual favours by military personnel.<sup>130</sup>
  - *Katoey* and feminine gay boys tend to receive differential treatment in military training. Typically, at the beginning of the military reserve training in grade 10, or the beginning of military service, the trainers would call on any *katoey* or gay recruits to step out. At this time they are either relegated as a group to do “women’s” work, such as cooking, cleaning in the kitchen or in the bathrooms and laundry and exempt from heavy training, or they are isolated from one another and assigned to different units or companies, usually to perform similar “women’s” chores for each unit/company. They are sometimes called to provide massage services to military trainers.
  - The experience is not always bad, and some *katoey* military reserve trainees preferred such differential treatment, where they were not treated as masculine men and in effect avoided rough training. However, some said that during their military reserve training, they faced sexual harassment including groping, being attacked or mock-attacked at night by male classmates in the training camp, or attempted rape by them and by military trainers.
- Virtually all MTF transgender respondents experienced differential treatments when they reported for military conscription because of their gender identity. Many had no complaints about the treatment because they did not want to be conscripted and tended to emphasize their transgender identity to ensure they would get exemption from service. However, many felt their rights were violated by military personnel.

<sup>128</sup> “ครูประจานเด็กเป็นกะเทยจนคิดสั้น” [Teacher humiliated *katoey* student to the point of suicide], in *RSU News*, 6 July 2012, <http://www.rsunews.net/index.php/news/detail/2318> [accessed 17 Mar. 2013]; “ด.ช. วัย 14 กินยาฆ่าตัวตาย หลังครูใหญ่สั่งให้เลิกเป็นตุ๊ด” [Fourteen-year-old boy overdosed in attempted suicide after headmaster’s order to stop being a fag], in *K@pook!*, <http://highlight.kapook.com/view/73415> [accessed 17 Mar. 2013].

<sup>129</sup> Kritipat Chotithanitsakul, the first Thai transman who came out publicly, spoke at the seminar entitled, “When desired sex is different from birth sex, does one have a right to change one’s legal title?,” at the NHRC, 11 Sep. 2012.

<sup>130</sup> Focus group, Thai Transgender Alliance (TGA), Bangkok, 12 Oct. 2012; focus group, Rainbow Sky Association of Thailand (RSAT), Bangkok, 21 Nov. 2012.

- Responding to many complaints (besides the “permanent mental disorder” wording in Sor Dor 43), the Teeranat Kanjanauksorn Foundation in collaboration with LGBT networks conducted an investigation into treatment of transgender persons in military conscription. A report of findings of the investigation based on information from 19 MTF transgender persons aged 21 to 40 is consistent with the experience of some respondents in this research.<sup>131</sup> Some of the rights violations experienced by transgenders during reporting for military conscription include:
  - Being forced to strip naked along with men reporting for the conscription and paraded although the body of the transgender person is already in the female form, and as a result being subject to the men’s ogling, cheering and humiliation.
  - Inappropriate groping and touching of body parts, especially breasts, by military personnel who are not responsible for physical examination.
  - Teasing and verbal harassment by military personnel, including inspecting military physicians (e.g., saying that the examined transgender can expect an easy military service, as she will be assigned to serve a certain high ranking officer or a certain doctor).
  - Demands by military personnel for inappropriate favours, such as asking the transgender persons to give massages or serve drinks to military officers during or after the conscription process. Some have been asked for sex in exchange for exemption.

#### 4.3.5 Rape and murder of transgender, tom, lesbian, and intersex persons

Many transgenders, *toms* and lesbian women among the respondents reported having experienced sexual harassment and rape, which occur at school and at work. There have also been reported cases of rape and murder of *toms* and lesbians, and rape of intersex persons.

- A lesbian respondent said she was close to being raped by male co-workers who planned to “show” her “proper sex” with men. She avoided the incident because other co-workers told her of the planning. Lesbian respondents related stories of *toms* they knew being raped by male friends and co-workers and were forced to marry. Rape of lesbian women by male friends and co-workers tends to happen during socialization outside working hours and involves drinking. This is in part due to *tom* lesbians trying to socialize with men to be “one of the guys” and sometimes they find themselves at risk of sexual harassment and rape.<sup>132</sup>

<sup>131</sup> Teeranat Kanjanauksorn Foundation and Sexual Diversity Network: “สิทธิมนุษยชนของผู้มีร่างกายไม่สอดคล้อง กับเพศกำเนิดชาย ประเด็นการพิจารณาร่างแก้ไขกฎกระทรวงกลาโหม กรณีบันทึกผลการตรวจเลือกทหารกองเกิน (เอกสาร สด. 43)” [Human rights of persons whose bodies are incongruent with the male sex, Issues for consideration in the Ministry of Defense Regulation amendment, Data recording in reserved military service conscription (Sor Dor 43 Document)], seminar background paper, 22 Nov. 2010, Faculty of Economics, Thammasat University.

<sup>132</sup> Focus group, Anjaree Group, Bangkok, 25 Sep. 2012.

- Two intersex persons reported having been raped and nearly gang raped due to their ambiguous sex.<sup>133</sup>
- MTF transgender respondents said that there is a prevailing belief in Thai society that *sao praphet song* or *katoeys* are sexually “easy” and rape happens as a result. Worse, police officers tend not to accept rape complaints from *sao praphet song* or *katoeys* because they believe *katoeys* enjoy sexual attention and don’t take the complaints seriously.
- Rape is a real concern for many MTF transgender respondents in this research including both those who have already had a sex reassignment and those who have not. They fear that they may not be fully protected by the Thai rape law. Although the definition of rape under Thai law now includes oral, vaginal, or anal penetration, transwomen with a complete sex change are still unsure if they can rely on the police to apply the new definition of rape and the judicial system to ensure them justice because sexual assaults against non-heterosexual persons have been considered only as acts of indecency. There are also concerns among the transgender community about a possible change in the rape legislation, given the Council of State’s consideration to revert the definition of rape back to the old one, which covered only male-on-female vaginal penetration.<sup>134</sup>
- Another situation that put transgenders at serious risk of sexual assault and rape is the fact that due to their male legal identity, when MTF transgenders are arrested they are put in a male prison, even those who have had sex reassignment. In a case reported in late 2012 ostensibly in an attempt to protect transgender inmates, three transgender inmates were put in a special 2 x 3 meter cell inside a male prison. Such cells are generally used to constrain movements of inmates under punishment within the prison. Being put in separate cells those inmates additionally suffered neglect. This is an issue that has not yet received adequate attention by the Thai authorities.<sup>135</sup>
- There is also an emerging pattern of hate crimes against lesbians and *toms*. The International Gay and Lesbian Human Rights Commission (IGLHRC) wrote to the Thai Government in March 2012 charging police of ignoring 15 killings of lesbians and *toms* during 2006 and 2012 and demanding an investigation into the pattern of such crimes.<sup>136</sup>

<sup>133</sup> Nada Chaiyajit, *Thai PBS*, Public Stage “Unequal Gender” Episode 1, op. cit.; an intersex person at the seminar “When desired sex is different from birth sex, does one have a right to change one’s legal title?,” NHRC, 11 Sep. 2012.

<sup>134</sup> Nada Chaiyajit, comment shared at the Thailand PRIDE Research National Workshop, Bangkok, 4 June 2014.

<sup>135</sup> “ ‘คุกซ้อนคุก’ ชีวิต transgender ในเรือนจำ สิ่งแปลกปลอมที่ถูกกักขังและล่วงละเมิด” [“Prison within prison”: The life of transgenders in prison, an excluded and violated oddity], in *Prachatai*, 28 Sep. 2012, <http://prachatai.com/journal/2012/08/42335> [accessed 6 Dec. 2012].

<sup>136</sup> “LGBT human rights advocates charge Thai police ignore fifteen killings of lesbians and toms, dismiss as ‘love gone sour,’” in *Pressroom of the IGLHRC*, <http://www.iglhrc.org/cgi-bin/iowa/article/pressroom/pressrelease/1506.html> [accessed 3 Aug. 2012].

## 4.4 Employment and social protection for LGBT workers

### 4.4.1 Access to health services

In general LGBT respondents tend to avoid accessing health services through their employment (if any) partly due to personal aversion to insensitive attitudes or services within their own company/organization or by health care personnel, and partly because they fear for their privacy being violated. Many LGBT, especially transgender persons, prefer to use private clinics or hospitals where they feel more comfortable and have more privacy.

- **Transgender persons tend to have more difficulties than other groups in accessing healthcare** due to their legal identity being incongruent with the physical appearance, as well as prejudices and insensitivity towards their transgender identity, bureaucratic red tape, and inflexible hospital rules.
- **Often the national identity card is not sufficient to prove their identity at government hospitals.** Other documents are demanded before being granted access to services, for instance house registration or birth certificate. Sometimes a parent is required to verify their identity. **Hospital officials take time checking the identity of transgender patients, resulting in delay in obtaining services.** The cumbersome identity investigation process, coupled with insensitive treatments from hospital officials, nurses and doctors, discourage transgender persons to seek health services at government hospitals. Although not practiced in all hospitals, officials at some government hospitals tend to call out patients' names with legal titles, for instance, a MTF transgender would be called Mr so and so, causing embarrassment in front of fellow patients who laugh or giggle.<sup>137</sup>
- Some also reported that when they came to a hospital or clinic for health advice because of illness, they **don't always receive appropriate medical advice.** Attending physicians tend to assume that common illnesses, such as a sore throat, are sex-related. Often, instead of being asked health-related questions, they are **asked intrusive questions about their sexuality** such as when and why they became a transgender, if they have had a sex change, if their family approved, etc.
- **MTF transgenders are often treated in male wards because of their male legal identity and their male sexual organs.** Some transgender respondents reported being violated by health officials. For example, in one case a doctor simply put his hand down the patient's pants to check the sexual organ instead of asking the patient or checking for the ID.<sup>138</sup>

<sup>137</sup> Focus group, Sisters, Center for Transgenders – Pattaya, 5 Sep. 2012. However, some transgender respondents in Chiang Mai and Lamphun said that they were well treated at public hospitals, where officials call patients by name only without the gender title or using the generic Khun. All agreed that treatments are better at private (but more expensive) hospitals. Focus group with six MTF transgenders, Mplus+, Chiang Mai, 20 Oct. 2012, and focus group with 4 rural MTF transgenders, Lamphun, 21 Oct. 2012.

<sup>138</sup> Focus group, Thai Transgender Alliance (TGA), Bangkok, 12 Oct. 2012.

- There is a concern with regard to the **quality and safety of health practices among transgender persons, both FTM and MTF.**
- Most transgenders interviewed often **obtain medical advices from non-professional sources and self-treat, particularly in respect of hormone treatments, cosmetic enhancement procedures and sex reassignment surgeries.** Many MTF transgenders start treating themselves with female hormones when they are in their early teens. More FTM transgenders are now starting their transition process with hormone treatments without professional advice. Their main sources of medical information are friends, the Internet and pharmacists at drug stores.
- While professional medical information and services are relatively widely available for MTF transgenders, similar information for FTM transgenders is not yet widely available in Thailand, with respect to male hormone treatments and sex reassignment.
- There have been reported cases of medical malpractice as well as risky unprofessional services involving transgenders, but legal coverage and official regulation in this area is still limited in the country.

#### 4.4.2 Employment and social security benefits

LGBT respondents feel that they are **deprived of their right to access the full benefits due to lack of legal recognition of same-sex partnership under Thai law.** Hence they are currently campaigning for same-sex civil partnership law.

- Same-sex partners are not entitled to health, pension and other spousal benefits like heterosexual partners from the spouse's employment.
- Without legal recognition of the same-sex partnership status, the lack of the spousal right to make medical decisions on behalf of the partner can mean the difference between life and death.
- The life partner of a low-level lesbian civil servant was in a major road accident and was seriously injured. The hospital refused to allow her to sign the medical consent form necessary for treatment as only blood relations and spouse are allowed to do so. She had to buy a plane ticket for a relative of her partner to fly across the country to sign the consent form for the hospital, and was not entitled to reimbursement of hospital charges for the treatment of her partner because Thai civil service regulations do not cover same-sex partners in social security benefits.<sup>139</sup>

<sup>139</sup> C. Boonprasert (ed.): *Violated lives*, op. cit., p. 19

- Same-sex couples cannot apply for joint bank loans, even though unmarried male-female couples are often granted bank loans. Several LGBT respondents have personally experienced this problem, putting some who are self-employed or small business owners at a disadvantage when seeking capital for investment.
- Insurance companies do not issue life insurance policies with a same-sex partner as beneficiary because same-sex partners are not considered “natural heirs,” defined as blood relations or relations through marriage under Thai law. Again, insurance companies commonly allow non-married partners as beneficiaries in male-female couples only.<sup>140</sup>

### 4.4.3 Job security and life security

**Most LGBT respondents do not have a strong sense of job security or life security in general due to the discrimination and stigma they face in many aspects of life and work.** Lack of a legal identity that matches their gender identity limits work and life choices for transgender and intersex persons. Deep-rooted prejudices in the rural areas also present multiple challenges for LGBT. In particular, rural transgenders who tend to have lower education and socio-economic status, struggle to find coping strategies to sustain their livelihoods at the margin of the rural informal economy.

#### a) Job security

- Because many LGBT workers are excluded from or opt out of formal, mainstream jobs, their **employment in the informal, often lower-paid jobs** afford them **less job security than most other workers**.
- Often even when they enter formal, mainstream employment, they still enjoy less security due to resistance and pressure based on personal and institutional prejudices against their gender identity. They face barriers in recruitment even when they are already in professional training (as in the case of the transgender trainee teacher in Box 4.2). They have **fewer prospects in job advancement** due to lack of appropriate legal title (see Box 4.6), or are pressured to leave the job from unfair treatment (see Box 4.5).
  - Gay workers have been fired because of their homosexuality. A gay respondent had a young acquaintance who was teaching in a reputable school in Bangkok. He was a good teacher and very well-liked by students. However, as soon as the school management was aware that he was gay, his job was terminated. The reason given was he was not a suitable role model for students.<sup>141</sup> Even in the private sector, gay employees can also be fired for their sexuality (see Box 4.8).

<sup>140</sup> Ibid, p. 11.

<sup>141</sup> Chuwit Thongbai, email interview, 8 Jan. 2012.

#### Box 4.8

### Real estate manager fired for having 'two genders'

Mr Pitsanu Khosaphokin, president of Hotel and Serviced Apartments Reception Managers Association of Thailand, was fired by his employer, Urbana Estate Ltd., after five years of employment with the company. The reason for termination given by the employer was that he was "a person with two genders who abused his power and tried to gain acceptance from others." The notice of termination was posted on the company's public notice board causing profound humiliation to Mr Pitsanu, who sought redress from his employer but received no cooperation.

Mr Pitsanu then made his case public and sought assistance from rights agencies, including the National Human Rights Commission of Thailand (NHRC), to seek redress from the company. He filed a complaint with the labour court for unlawful termination in January 2012. With the NHRC's intervention, the case ended in mid-2012 in a settlement with the employer making an apology to Mr Pitsanu and paying him seven-months severance and one-month salary.

Sources: *Daily News*, "Gay Nathee took person of two genders to parliament," 5 June 2012, <http://www.dailynews.co.th/politics/7796> [accessed 15 May 2013]; Nikorn Arthit, personal interview, 23 Sep. 2012.

#### b) Life security

- **Lack of legal recognition for transgender identity** is a major barrier to many opportunities for transgender persons throughout their lives. They are deprived of chances to advance in education, in job and in life because they do not have an appropriate legal title that matches their chosen gender identity. Some have been denied scholarships, job promotions and opportunity to travel because of it. They also can not legally marry their (often heterosexual) partners or adopt children.
- **Legal identity is also a problem for intersex persons.** Thai law allows intersex persons to change their legal title, but only after they have decided to choose one sex and have completed the sex selective surgical operations. The requirement to choose either the male or female sex to be legally recognized is a great difficulty for intersex persons who are not sufficiently certain about their sexuality to make a decision. The overemphasis on the clinical aspect of the legal definition of intersex identity (such as an intersex person must have both testes and a womb) also leaves those who do not have both unqualified for a legal change of gender identity. Moreover, excessive clinical testing and the tendency in the medical community to treat intersex persons as abnormal subjects also discourage intersex persons to reveal themselves. Therefore they remain hidden and are left with little support and often assumed to be transgender. An intersex rights advocate calls for the Thai medical and scientific community to change the attitudes and way of thinking with regards to intersex persons.<sup>142</sup>

<sup>142</sup> Nada Chaiyajit, comment shared at the Thailand PRIDE Research National Workshop, Bangkok, 4 June 2014.



- Life security for LGBT persons is often tied to their ability to plan together with their life partners. Again, **lack of legal recognition of same-sex partnership is an obstacle in future planning in terms of buying property, sharing resources, building a family together.**
- While most young LGBT respondents are not focused on their long-term plans, some older LGBT persons have more concerns for their future.
  - An older MTF transgender person who worked as a cabaret performer in Pattaya said she saved enough to buy properties as a safety net in her old age, as a means to ensure that her younger relatives would take care of her (in hope of inheritance).
  - Some younger transgenders plan to return to live with and take care of their parents and have a small business in their home village. There is a strong sense of obligation among some transgenders to provide for their parents, partly because of a Thai cultural obligation to parents.
- The **cultural prejudice against LGBT can be strong in rural communities** which views divergent sexuality as a result of bad karma—an idea that many LGBT themselves also internalize. Being gay or *katoey* is seen as an affront to the beautiful culture, so families with LGBT children tend to get undue attention from the community, causing the family to have a negative attitude towards LGBT children. As a result, LGBT in rural areas face multiple issues, from fewer opportunities compared to siblings and less access to education and family inheritance, to less access to jobs, livelihood and capital. Some are pressured to leave home.
- Means of livelihood available to rural poor LGBT is working in family farms, as hired help for neighbours, or any other odd jobs. Organizing LGBT does not enjoy support in rural communities, and LGBT groups are often overlooked and excluded from access to local government funding (such as microcredit from village funds) and from positions in the local political structure.<sup>143</sup>
- However, **some transgenders in poor rural communities find ways to sustain their livelihood and gain acceptance and social status** that affords them not only a job with material benefits but also a psychological sense of security and self-worth. For example:
  - Rural *katoeys* in northern Thailand found niche jobs such as tree climbing and fruit picking (which requires tree climbing). Traditionally men would climb ladders and pick fruits for women waiting with baskets to catch the fruits as they were not permitted to climb trees according to rural customs. *Katoeys* can do both jobs so they are generally the preferred workers. They, reportedly, get paid higher than women and but less than men. Some joined local housewife groups to access work and micro credit.<sup>144</sup>

<sup>143</sup> Yukonthorn Kaewchaochom, director of Gender for Health and Equality Network (GEN), panelist at the Thailand PRIDE Research National Workshop, Bangkok, 4 June 2014.

<sup>144</sup> Pongthorn Chanlearn, coordinator of M-plus+, panelist at the Thailand PRIDE Research National Workshop, Bangkok, 4 June 2014.

- Other *katoeys* in the rural North have found an alternative working as spiritual mediums which provides them with income and some acceptance and respect in the community (see Box 4.9).

#### Box 4.9

### Rural transgenders become spiritual mediums as a new niche occupation

Many *katoeys* in rural areas in Northern Thailand have recently become spiritual mediums. They are a new phenomenon known as *katoey maa-khii*, who take on a deity or ancestral “spirit” that has real or make-believe connection with their local community. Most of the *katoey* spiritual mediums are not highly educated (less than university education). They have had few job opportunities and have a low social status.

A focus group was conducted with four *katoeys* in a rural village in Lamphun province near Chiang Mai, three of whom have become spiritual mediums. While being spiritual mediums does not prevent them from being ridiculed or discriminated against in the community, the new status of spiritual mediums gives them new acceptance, especially among the older generation. People who never paid them attention or rejected them before now pay them respect and come to them for healing of ailments and advice on various things including relationship, jobs, and most often a winning lottery number.

The spiritual medium *katoeys* use this new occupation as a new support network, in which they generate income and can engage in group-affirming activities. Most *katoeys* involved in the spiritual mediums network provide related, value-added services such as flower arrangements and handicrafts (as offerings to the deity/spirit), and event organization (finding entertainment, food and beverages, etc.).

- Many (MTF) transgender persons choose to enter sex work due to the exclusion from mainstream life. Sex work provides a means for self-improvement for transgenders who want to transform their identity, which includes costly sex reassignment. They also yearn for acceptance by working to earn income to provide for their family to prove their worth. Yet, in sex work transgenders still face discrimination. In particular, they become a target of police harassment and extortion more so than female or male sex workers (see section 4.3.3). While understanding that sex work is criminalized in Thailand, many transgender sex workers only want to be allowed to work without so much harassment.<sup>145</sup>

<sup>145</sup> Thitayanun Nakpor, director of Sisters, Center for Transgenders – Pattaya, panelist at the Thailand PRIDE Research National Workshop, Bangkok, 4 June 2014.

## 4.5 HIV and AIDS

According to **UNAIDS, 440,000 people are estimated to be living with HIV in Thailand, with an overwhelming majority (430,000) of working age** (15 years and older) and women making up 43 per cent (190,000) of the total. These represent an HIV prevalence rate of 1.10 per cent among adults aged 15 to 49.<sup>146</sup>

According to **Thai National AIDS Committee**, HIV has continued to spread in the general population in the 2000 decade, with **troubling trends in the key affected populations**, including men who have sex with men (MSM), female sex workers (FSW), and people who inject drugs (PWID).<sup>147</sup>

**Infection rates are high (20 per cent) among MSM.** From surveys in 2010 in three major tourist cities, Bangkok, Chiang Mai and Phuket, it was found that HIV prevalence among MSM at 20.0 per cent was higher than **17.7 per cent among male sex workers (MSW)** and **10.4 per cent among MTF transgenders**. Prevalence was **highest (32 per cent) among MSM aged 25-29**, compared to 12.10 per cent in the 15-24 age group.<sup>148</sup>

In 2013, 8,134 new infection cases were recorded. The main reason for new infections is **unprotected sex. Of all new infections, 41 per cent were among MSM, MSW and MTF transgenders, and 12 per cent in FSW and their clients.**<sup>149</sup>

Infection rates among freelance, non-venue-based FSWs are higher than those of their venue-based counterparts according to surveys conducted in 2007 and 2010 in tourist cities, Chiang Mai, Chon Buri and Phuket.<sup>150</sup> However, the infection rates among FSWs remain small: 2.6 per cent among FSWs under 25, and 1.8 per cent overall. As high as 95.7 per cent of FSWs reported using condoms with their last customers, although only 45.4 per cent did so with their husbands or lovers.<sup>151</sup>

<sup>146</sup> UNAIDS: *HIV and AIDS estimates (2013)*, <http://www.unaids.org/en/regionscountries/countries/thailand/> [accessed 30 Sep. 2014]. Due to rigorous AIDS prevention campaigns in the 1990s, the overall HIV prevalence has fallen among Thai adults, from 1.3 per cent in 2009, 1.4 per cent in 2007, 1.8 per cent in 2003 and over 2 per cent a decade earlier.

<sup>147</sup> Thai National AIDS Committee: *Thailand AIDS response progress report 2012: Reporting period 2010-2011*, [http://www.unaids.org/en/dataanalysis/knowyourresponse/countryprogressreports/2012countries/ce\\_TH\\_Narrative\\_Report\[1\].pdf](http://www.unaids.org/en/dataanalysis/knowyourresponse/countryprogressreports/2012countries/ce_TH_Narrative_Report[1].pdf) [accessed 20 June 2013].

<sup>148</sup> Ibid.

<sup>149</sup> Thai National AIDS Committee: *Thailand ending AIDS: 2014 Thailand AIDS response progress report*, p. 8, [http://www.unaids.org/en/dataanalysis/knowyourresponse/countryprogressreports/2014countries/THA\\_narrative\\_report\\_2014.pdf](http://www.unaids.org/en/dataanalysis/knowyourresponse/countryprogressreports/2014countries/THA_narrative_report_2014.pdf) [accessed 30 Sep. 2014].

<sup>150</sup> Ibid, p. 6.

<sup>151</sup> Thai National AIDS Committee: *Thailand AIDS response progress report 2012*, op. cit.

## 4.5.1 Access to HIV and AIDS prevention information and services

During 2010-11, the Royal Thai Government through collaboration with civil society and the private sector increased the **expansion of HIV prevention interventions targeting high-risk populations**, with measures to provide treatment, care and support. The CHAMPION Project with support from the Global Fund to Fight AIDS, Tuberculosis and Malaria has been implemented in 30 provinces since late 2000. Awareness raising and condom distribution campaigns have also been strengthened in 47 provinces outside the CHAMPION target areas by local NGOs with support from the Department for Disease Control (DDC), Ministry of Public Health (MOPH).<sup>152</sup>

According to the Thailand AIDS response progress report 2012, during 2008-2010 the **majority of FSWs (81 per cent) were tested for HIV and knew the results**, a significant improvement from 57 per cent during 2004-07. However, this higher rate of testing does not reflect any improvement in knowledge about HIV and AIDS, as less than 40 per cent of FSWs could answer the five key HIV and AIDS knowledge questions correctly and this has not changed over the prior five years.

**Among men, rates of testing and knowing the results are comparatively much lower** compared to female sex workers, with the highest rate among **male sex workers (51.4 per cent)** and the **lowest rate among MSM (29.2 per cent)**. The rate for **MTF transgenders was less than half (41.3 per cent)**. However, MSM reported the highest rate (84.5%) of condom use at the last sexual encounter in the past six months, while MTF transgenders reported the highest rate (70 per cent) of receiving condoms and lubricant.<sup>153</sup>

- Due to interest of funding agencies' in MSM as the main target group in focus of HIV and AIDS prevention efforts, gay and MTF transgender organizations have received funding for HIV and AIDS prevention activities.
- In the interviews and focus groups conducted for this Thailand PRIDE research, **most gay and MTF transgender respondents said access to information about HIV and AIDS was easily accessible to them**, and that they were well informed about the risks and how to protect themselves. These two groups noted that the **problem with risk of HIV infection in their own communities, however, was due less to poor access or lack of information but more to behavioural factors** that cause well-informed gays, MSM and transgenders to have risky unprotected sex, including:
  - The carefree attitude or the "in-the-moment" feeling.
  - The fear of violating a perception of "trust" if using condoms with a partner, and the mistaken belief that sex with partners should be safe.

<sup>152</sup> Ibid.

<sup>153</sup> Ibid.

- Male or transgender sex workers will sometimes have unprotected sex with clients if paid high enough or when clients are scarce.
- **Lesbian women both *toms* and *dis* generally have little interest in HIV and AIDS.** They do not actively seek out information on the subject because they feel that they are not at-risk groups.
- **Fear of stigma** is a factor that discourages most people, including LGBTs, to freely seek information and consultation about HIV and AIDS, or take free condoms.

#### 4.5.2 Stigma and discrimination against persons living with HIV (PLHIV)

Stigma and discrimination against PLHIV has been well recorded. A report submitted annually to UNAIDS by NGOs in 2010, based on surveys in many countries, showed that close to half (**43 per cent**) **reported loss of employment**, while **38 per cent faced exclusion in the workplace** and more than a quarter (**28 per cent**) **at school**. PLHIV also encountered other types of rights violations, including involuntary disclosure of HIV status by health staff, government officials, or the press (32 per cent). One in six PLHIV (**18 per cent**) **faced forced disclosure of HIV status for employment**. In Asia and the Pacific discrimination against PLHIV remains widespread.<sup>154</sup>

Thailand was among 49 countries that have conducted a national survey on stigma and discrimination against PLHIV. As part of this global **PLHIV Stigma Index Survey**, the **Thai Network of People Living with HIV/AIDS (TNP+)** conducted a survey with 233 HIV-positive persons in 2009.<sup>155</sup> The 2009 survey results show **different aspects of employment-related discrimination against PLHIV in Thailand** as follows:

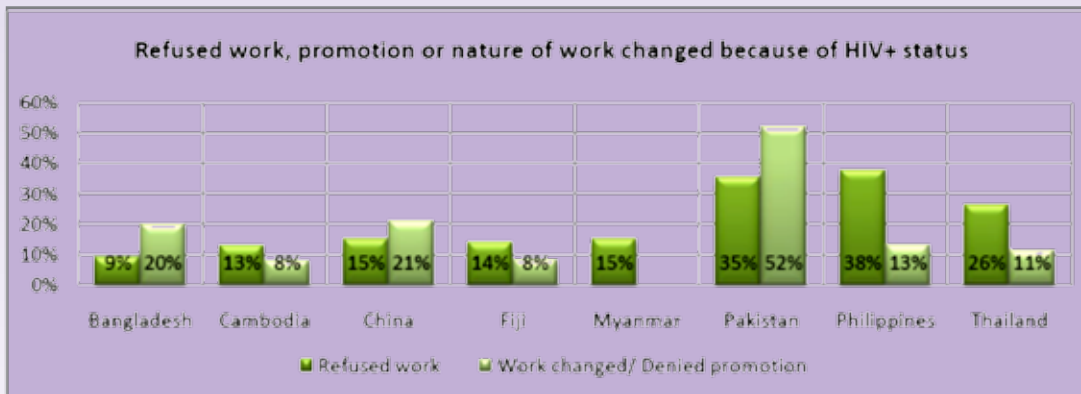
- **Access to employment, career advancement and job security** – About a quarter (26 per cent) of Thai respondents reported having been denied work and 11 per cent denied promotion or given a change in work assignment due to HIV-positive status (see Box 4.10).

<sup>154</sup> NGO Delegation to the UNAIDS PCB: "Stigma and discrimination against people living with HIV remains widespread in Asia and the Pacific, report shows," 29 Aug. 2011, <http://unaidspcbngo.org/?p=14706> [accessed 20 Nov. 2011].

<sup>155</sup> Global Network of People Living with HIV (GNP), International Community of Women Living with HIV/AIDS (ICW Global); International Planned Parenthood Federation (IPPF); UNAIDS: *People living with HIV stigma index, Asia Pacific regional analysis 2011*. The report is a synthesis of nine country studies conducted across the Asia and the Pacific region, including Bangladesh, Cambodia, China, Fiji, Myanmar, Pakistan, Philippines, Sri Lanka, and Thailand, and provides the first large-scale regional comparison of standardized HIV-related stigma indicators.

#### Box 4.10

### Percentages of Thai PLHIV denied work and promotion compared to PLHIV in other Asia-Pacific countries (2009)



Source: Global Network of People Living with HIV (GNP), International Community of Women Living with HIV/AIDS (ICW Global), International Planned Parenthood Federation (IPPF) & UNAIDS: People Living with HIV Stigma Index, Asia Pacific Regional Report 2011 (28 Mar. 2011), p. 37.

- **Loss of job and income** – About one in three (32 per cent) also reported loss of job or other form of income during the 12 months prior to the 2009 survey (compared to 27 per cent in Myanmar, 38 per cent in the Philippines, 40 per cent in China and 50 per cent in Cambodia). Many respondents attributed their loss of employment or income to poor health. However, discrimination at work was also a key factor in PLHIV leaving their jobs. Nearly one-third (31 per cent) of Thai respondents said they left their job because of discrimination only, and an additional 14 per cent said they left due to the combination of discrimination and poor health. These figures are higher than those in China, Myanmar, Pakistan, and Fiji, but lower than those in the Philippines (see Box 4.11).

**Box 4.11****Discrimination as factor in PLHIV leaving their employment in Thailand compared to PLHIV in other Asia-Pacific countries (2009)**

Left employment as a result of:	'Discrimination' only (%)	'Discrimination' and 'Combination of Discrimination & Poor Health' (%)
China	22	39
Fiji	19	31
Myanmar	24	33
Pakistan	11	25
Philippines	38	63
<b>Thailand</b>	<b>31</b>	<b>45</b>

Source: Global Network of People Living with HIV (GNP); International Community of Women Living with HIV/AIDS (ICW Global); International Planned Parenthood Federation (IPPF); UNAIDS: *People living with HIV stigma index, Asia Pacific regional report 2011* (28 Mar. 2011), p. 36.

- **Access to healthcare and other services** – Twenty per cent of respondents in the 2009 survey said they were denied health services (compared to 4 per cent in Cambodia, 8 per cent in the Philippines, 9 per cent in Myanmar, 12 per cent in China, and 33 per cent in Pakistan). About the same percentage (21 per cent) reported having been denied health or life insurance (compared to 4 per cent in Cambodia and the Philippines, 7.5 per cent in Pakistan, and 12 per cent in China).
- **Involuntary testing** – Fourteen per cent reported having been coerced to undergo media/health procedure including, HIV testing.
- **Social exclusion and harassment** – About a quarter (26 per cent) reported having been excluded from social gathering (compared to 31 per cent in Myanmar, 11 per cent in the Philippines, 10 per cent in Sri Lanka, 5 per cent in China, and 4 per cent in Cambodia), primarily due to HIV status. The minority of PLHIV in the survey also reported being excluded due to sexual orientation, or being sex workers or injected drug users. The main stigma experienced by Thai respondents was through gossip (62 per cent), and a small minority (6 per cent) had experienced physical assaults.

In the findings in this research, stigma and discrimination remains a big issue for PLHIV in Thailand. While many respondents agreed that stigma has lessened in recent years, it still prevails at all levels of society. The biggest impact of the stigma for PLHIV is that it affects the access to and **quality of service** they receive, and the rights of PLHIV are still infringed by some continuing discriminatory practices at many workplaces as follows:

#### a) HIV-screening at work and confidentiality

- Many respondents said that many workplaces still practice HIV-screening. Many companies, particularly in the private sector, still require job applicants to undergo HIV-blood tests. Some gay respondents simply avoided companies that had HIV-screening in the job application.
- According to staff members of The Poz Home Center Foundation (The Poz), a Bangkok-based NGO supporting PLHIV, **HIV-screening remains common, in factories, businesses in the service sector including retail, hospitality (hotels) and even sales, as well as, and especially, major businesses and state enterprises.** Although compulsory testing is less of a problem now than before, it still remains a problem.<sup>156</sup>
- **Confidentiality is problematic in HIV-testing** according to The Poz and the National Congress Private Industrial of Employees (NCPE):
  - **Involuntary testing** - Sometimes workers are tested for HIV without their knowledge and consent. There was a case of a medical student's blood was taken for HIV testing without his knowledge. The result was positive and he was not allowed to continue his studies. Nursing students have also been subject to HIV-testing and HIV-positive students are not allowed to continue their studies as work as nurses (see Box 4.12).

#### Box 4.12

##### Mandatory HIV-screening for nursing students and retail employees

Three third-year nursing students are prohibited from having an internship by Christian University in Bangkok following an HIV screening. The students were told to change their field of study or be suspended. With assistance from an NGO, Aids Access Foundation, they filed a complaint with the National Human Rights Commission.

In another case, the household furniture retailer HomePro employs mandatory HIV screening with employees. Aids Access has been negotiating on behalf of the students and the employees with the university and the retailer.

Source: Aids Access Foundation, Bangkok, Aug. 2012.

<sup>156</sup> Somchai Phromsombat and Raksakul Buajoom, founder and manager of The Poz Home Center, personal interviews, 28 Jan. 2013.



- **Employers are known to leak results of HIV tests** and let the identities of the HIV-positive be known by other employees. This revelation usually results in the **HIV-positive persons leaving the job due to stigma and gossips at work**. Moreover, sometimes HIV-testing is done for the employees suspected of being HIV-positive without their knowledge. Usually this is done together with random drug tests.<sup>157</sup>
- **Employers are also sometimes tipped off by hospitals about their workers' HIV-positive status**, and this also often ends in **job termination** for the employees.<sup>158</sup>

#### b) Access to treatment and discrimination

- **Over the past decade access to HIV treatment, care and support has steadily improved for PLHIV in Thailand.** The Government has expanded access to antiretroviral services through initiatives including free access to HIV-related care, including treatment, and decentralization of care and treatment services.
  - **PLHIV in Thailand have antiretroviral (ART) treatment** financed by one of the three governmental health security schemes: (1) universal health coverage; (2) social security; and (3) civil servant medical benefit schemes.
  - Foreign migrant workers with work permits are entitled to access medical care through social security coverage, but many are unable to in practice. Migrant workers living with HIV tend to face discrimination by hospital staff due to their HIV-status in addition to their migrant status. Treatment coverage for foreign migrant populations has been supported mainly by the Global Fund through local NGOs, such as the Aids Access Foundation, the Raks Thai Foundation and The HIV Foundation.
  - For Thais, organizations such as The Poz help HIV-positive persons find access to ART treatment and needed care by locating appropriate hospitals which they persons can access through one of the applicable schemes.
  - Although the access issue may be largely resolved for Thai nationals, HIV-positive persons often get low quality service through government hospitals due to the number of patients for some hospitals and/or the attitudes of the care providers. There is a common practice in hospitals of putting HIV-positive persons last in the queue even though they may come early.
  - Many healthcare units and hospitals refuse to provide HIV-related care to sex workers and homeless people.<sup>159</sup>

<sup>157</sup> Thawatchai Pholcharoen, director of coordination, National Congress Private Industrial of Employees, personal interview, 22 Jan. 2013.

<sup>158</sup> "Migrant workers have most to lose when tested positive," in *The Nation*, 1 Dec. 2012, <http://www.nationmultimedia.com/national/Migrant-workers-have-most-to-lose-when-tested-posi-30195386.html> [accessed 16 Mar. 2013].

<sup>159</sup> Chulalart Saengpassa & Pongphon Sarnsamak: "Stigma is worse than the disease itself," in *The Nation*, 30 Nov. 2012, <http://www.nationmultimedia.com/national/Stigma-is-worse-than-the-disease-itself-30195320.html> [accessed 6 Dec. 2012].

### 4.5.3 Protection against PLHIV discrimination at work

There is no law in Thailand prohibiting discrimination in employment on the ground of HIV status. There are only a non-binding ministerial code of practice and guidelines. The **Ministerial Code of Practice on Prevention and Management of HIV/AIDS in the Workplace (2005)** issued by the Department of Labour Protection and Social Welfare (DLPSW), Ministry of Labour (MOL), with technical support from the ILO, **prohibits discrimination on the ground of HIV status in the workplace** (Sec. 5.1.1).<sup>160</sup>

In August 2009, the National AIDS Prevention and Alleviation Committee issued a national guideline that applies to all public and private workplaces. The **2009 national guideline on the prevention and management of HIV/AIDS in the workplace requires as a minimum standard** all workplaces to have both a **policy on HIV at the workplace and a plan of operation**.

The **guideline aims at reducing stigma and discrimination and ensuring rights of HIV-positive workers in the workplace through a workplace policy** directed at:

- The eradication of unjust discrimination against PLHIV.
- Prohibition of HIV screening as a requirement for hiring.
- Provision of equal opportunity for PHLIV in employment and job advancement.
- Ensuring confidentiality of personal data.
- Establishment of HIV prevention services (e.g. free condoms, voluntary testing).
- Support for PLHIV's right to standard HIV treatment.

In 2011 the MOL issued an updated **guideline**<sup>161</sup> for the prevention and management of HIV and AIDS for enterprises aimed at promoting workers' rights, equality and non-discrimination against HIV-positive workers. Also, the Ministry of Labour and the Ministry of Public Health jointly developed an **AIDs-response Standard Organization (ASO) for enterprises standards** in Thailand. Enterprises are ASO-certified if they have the following four policies:

- No compulsory HIV-screening of job applicants.
- No compulsory HIV-testing for employees.
- No job termination due to HIV-positive status.
- HIV education for employees.

<sup>160</sup> ILO and International Organization of Migration (IOM): *Mandatory HIV testing for employment of migrant workers in eight countries of South-East Asia: From discrimination to social dialogue* (Bangkok, 2009).

<sup>161</sup> ประกาศกระทรวงแรงงาน เรื่อง แนวทางการป้องกันและบริหารจัดการด้านเอดส์และวัณโรคในสถานประกอบกิจการ ๒๕ กรกฎาคม พ.ศ. ๒๕๕๔ [Ministry of Labour Notice "Guidelines for HIV/AIDS and tuberculosis prevention and management for enterprises, 25 July 2011"].

While these guidelines and standards are useful, implementation is not highly effective as they are voluntary and there are no punishments for employers that do not follow the guidelines.

## 4.6 Awareness about LGBT rights and social dialogue

### 4.6.1 Awareness and understanding about LGBT rights

LGBT respondents and their organizations tend to focus on specific issues in their specific group (such as legal title change for transgenders, and right to legal partnership for gays and lesbians). **All LGBT respondents are aware and some feel strongly about discrimination and stigma and violations of LGBT rights in general.** However, while they are also aware that their labour rights are sometimes infringed, they **do not yet have a clear understanding of rights at work and job discrimination.** This is likely because the concept of job discrimination is relatively new and workers' education and organization is extremely limited in Thai society.

- A half-day session on job discrimination was conducted with the lesbian organization **Anjaree**, and other **LGBT organizations are keenly interested to learn more about labor rights and discrimination in detail.**
- Transgender and lesbian organizations in particular view that discrimination in employment and occupation is a very grave concern that deserves serious policy action. By comparison, the concerns about labour rights and job discrimination are less strong in the gay community.

By and large, **government, employers' and workers' organizations have limited understanding about LGBT issues.** While some individuals in the organizations are open to learn more, others find the issue not important.

- Employers interviewed said they were "surprised" that ILO treats gender diversity as a serious issue.
- Some employers and government officials consider that LGBT rights are **not a priority** for Thailand because Thai society is "already very open" to people of diverse sexualities. However, even conservative constituents who tend to hold a stereotypical view of LGBT persons as "different" or having "unique talents" recognize that they should not be viewed as "mentally ill." Some see no problem with recognizing same-sex partnership in the law while others cannot understand why LGBT people should demand this right.
- Large and established workers' organizations are not very well informed about LGBT rights movement but are open to learn more about LGBT issues.

**Among civil society organizations, LGBT rights issues remain largely remote and marginal.** A few gender and civil society organizations are aware of LGBT issues but do not explicitly include them in their work.

- LGBT organizations do not enjoy much attention or support from women's rights organizations in the country, perhaps because many traditional Thai women's rights advocates are still operating within the male-female traditional gender equality framework, lacking the sexual orientation and gender identity dimensions.

## 4.6.2 Social dialogue

Virtually all LGBT respondents felt that society at large, the government and the authorities still lack understanding and interest about LGBT issues and concerns in Thailand. There has been **still limited discussion on labour issues among organizations advocating LGBT rights, and even less among government, workers' and employers' organizations.**

- **There is still a very limited social dialogue between LGBT organizations and the ILO constituents on labour rights of LGBT workers,** even though employment discrimination is one of the major complaints within the LGBT communities, and even if no LGBT organization in this study works actively to promote labour rights for LGBTs.
- The last few years have seen increased media coverage of stigma, prejudices and discrimination against LGBT persons and more attention on the same issues in a limited circle of government and civil society organizations. However, the focus has been largely on transgenders in the personal, family, education and social contexts, and so far, there has been little discussion about employment discrimination.

**LGBT organizations have recently begun to work with some government agencies on rights issues, but have done very little work on labour issues with workers' and employers' organizations.**

- Many organizations in the LGBT network have traditionally worked with the Ministry of Public Health primarily on HIV and AIDS prevention and the National Human Rights Commission (NHRC) on some LGBT rights violations, Notably, since early 2013 through the NHRC they have worked with the Parliament House Committee and the **Department of Rights and Liberties Protection (DRLP), Ministry of Justice (MOJ)**, on the same-sex partnership bill.

#### Box 4.13

LGBT network and National Social Welfare Promotion Commission (NSWPC) collaborated on drafting the November 2012 NSWPC regulation



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Representatives of LGBT network with the staff of the National Social Welfare Promotion Commission in 2012.

- In 2012 the LGBT networks worked with the **National Social Welfare Promotion Commission (NSWPC)** on the November 2012 NSWPC regulation which aims to promote access to social welfare services among 13 special groups, among them persons of diverse sexualities. The measures to promote equality in access include, among others, to increase equal opportunity in employment and education among the LGBT target group, and to reform existing discriminatory measures, rules, regulations, laws and policies (see Box 4.13).
- **A few NGOs in the LGBT networks have started to expand their original health-HIV and AIDS focus to promoting better livelihood among rural workers in the informal economy:** the Chiang Mai-based Mplus+, the Rainbow Sky Association of Thailand, and the Gender for Health and Equality Network based in Tak and Ratch Buri.

- **Mplus+** through the local chapter of the **Rainbow Sky Association of Thailand (RSAT)** have since late 2012 begun to support rural MTF transgenders to form groups on a small scale in three villages in Lamphun province, with a view to improve the livelihood of poor *katoeys* in rural villages through forming village-based savings groups.<sup>162</sup>
  - Among the three groups of MTF transgenders (about 12-13 in each village with a population of a few hundred), one group is made up of working-age factory workers in the industrial estate in Lamphun, and two other groups comprise older and younger transgenders who are mostly homeworkers under subcontract in the textile industry supply chain paid per day or per piece, subsistence farmers and general day labourers.
- **Gender for Health and Equality Network (GEN)** is a newly established NGO (October 2012) that promotes labour rights of the disadvantaged populations in the rural areas as part of its mission (in addition to gender justice and other basic human rights, including education, health, civil and community rights). GEN's target groups include LGBTIQ populations, stateless and homeless persons, and individuals facing basic human rights violations.<sup>163</sup>
  - GEN currently has about 120 members in its network with diverse LGBT representations (estimated roughly 25 per cent gay, 25 per cent *katoeys/sao praphet song*, 25 per cent *tom-di* lesbians, and 25 per cent heterosexual women and men). GEN has started to help organize these **informal workers who work as farmers, day labourers, own-account workers such as hairdressers, petty traders, small business owners, and taxi drivers**. The main aims of this informal organization are: (1) to provide support and advice on government social security benefits for informal workers, access to healthcare including HIV and AIDS care and support, and how to forge alliances with mainstream occupation groups/organizations; and 2) to create a safe space and a community for LGBTs to combat stigma, discrimination and other problems.
  - GEN is aiming to promote: (1) occupational safety and health at the village level where many are working at the bottom of manufacturing supply chains, and savings and health insurance groups at the sub-district level; and (2) education and vocational training appropriate for the changing job market and local livelihoods.
- **Teeranat Kanjanauksorn Foundation (TKF)**, an NGO advocating gender justice, has worked on **sexual harassment policy development and implementation with three state-enterprise trade unions** (Thai Airways International Union, The Transport Company Limited Labour Union, and Bangkok Mass Transit Authority Union). Yet, the gender diversity dimension is not explicitly addressed,

<sup>162</sup> Pongthorn Chanlearn, coordinator of Mplus+, additional interview by telephone, 26 June 2013.

<sup>163</sup> Yukhonthorn Kaewchaochom, director of Gender for Health and Equality Network (GEN), personal, telephone and email interviews, 19-21 June 2013.

although it is recognized that there are LGBT workers in the organizations. According to TKF, LGBT members of large trade unions tend not to reveal their gender identity let alone make an issue of it in their workplace and unions.<sup>164</sup>

- **No major trade unions** in Thailand that liaise with the ILO **mention gender diversity or LGBT rights on their websites.**
- The **State Enterprise Workers Relations Confederation of Thailand (SERC)** confirmed that the perspective of gender equality promotion within state enterprise organizations is still largely within the traditional heterosexual male-female model without the gender diversity dimension. According to a SERC information officer,<sup>165</sup> there is as yet **no specific information and no data collection about LGBT workers** within SERC and “no one” from the dozens of state-enterprise unions under SERC has mentioned LGBT issues at any meeting.
  - Lack of the gender diversity dimension in state-enterprise organizations is partly due to the fact that state enterprise organizations are semi-official and have many rules and regulations governing employees not unlike government agencies, although somewhat more flexible. Still, the organizational culture tends to be more formal and conservative than in companies in the private sector.
  - However, SERC supports rights protection of all population groups and is interested in having more information about LGBT labour issues in helping to close the gaps in rights protection for LGBT workers.
- The **National Human Rights Commission of Thailand (NHRC)** has served as the only agency that LGBT organizations have turned to in practice in times of need, including when the grievances concern violation of education and labour rights. (See Box 4.14.) However, the NHRC faces some challenges.
  - The NHRC has **limited resources** to conduct due diligence and process complaint cases in a comprehensive manner, and **lacks effective mechanisms** to help the complainants seeking redress. Besides conducting due diligence, pointing the complainants to seek redress from the appropriate agencies, and facilitating discussion among the relevant parties, the NHRC has **limited authority** to intervene or demand cooperation from relevant parties.
  - A NHRC respondent mentioned that if labour dispute cases reach the Labour Court in Thailand, the general tendency of the Court is to arbitrate and encourage a settlement between the parties. This often puts workers at a disadvantage.

<sup>164</sup> Chanjira Boonprasert, coordinator, Teeranat Kanjanauksorn Foundation (TKF), 19 June 2013.

<sup>165</sup> Manop Kuarat, information officer, State Enterprise Workers Relations Confederation of Thailand (SERC), telephone interview, 24 June 2013.

**Box 4.14**

Transman shared experience about discrimination at the National Human Rights Commission of Thailand (NHRC) (September 2012)



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Kritipat Chotitanitsakul, 29-year old media professional was the first transman to have publicly come out in Thailand. In the picture above (on the screen) at the National Human Rights Commission Office in a public seminar in September 2012 on legal title change for transgender persons, Kritipat was sharing his experience being discriminated against in education, at work and in life. His coming out inspired other Thai transmen to come out.



## CONCLUSIONS AND RECOMMENDATIONS

### 5.1 Conclusions

There is a common perception that Thailand is a very open and accepting society towards people of diverse sexualities. This perception has been proven incorrect in this research which found that people of diverse sexual orientations and gender identities are still not fully accepted in Thai society due to persistent and prevalent prejudices, misconceptions and lack of understanding about different sexual orientations and gender identities. Some are rejected by their own families.

- 1) **Persistent stigma and discrimination in society** – LGBT persons in Thailand still face stigma and many forms of discrimination in many areas in life, including in employment and education. Different groups of people of different sexual orientation and identity experience varying degrees of social acceptance, but people with more different gender expressions, in particular transgender persons—*katoeys*, *sao praphet song*, transwomen and transmen—as well as *toms* (masculine lesbians) and intersex persons face the strongest and most extensive discrimination and exclusion by mainstream society, and as a result are deprived of many opportunities in education, work and life.

**2) Hetero-normative pressure and exclusion of transgender persons** – Discrimination and exclusion against LGBT people is an extension of the larger gender inequality that still exists in society based on heterosexual normative values, which perpetuate and reinforce the clear distinction and expectations of masculine and feminine gender roles and behaviors. Those who do not conform to the traditional male/female, masculine/feminine norms are censured, marginalized or excluded for being different.

- These traditional gender norms are reinforced by social conditioning at home, at school and in the workplace, and sanctioned through laws, rules and regulations that govern the behaviours of girls and boys, women and men. The male vs. female school and workplace uniforms are a clear example of this reinforcement, which has been a source of difficulties for many transgender persons in the country.
- While many in Thai society seem to accept or at least tolerate transgender persons who have had a full transformation to the preferred sex and live fully as women or men, there is less tolerance for those whose gender identity is ambiguous, neither “man” nor “woman.” For this reason, *katoeys* and *toms* tend to face the strongest discrimination and violence among all LGBT populations. Many gay, lesbian and bisexual people tend to keep their sexuality hidden and play the heterosexual roles in fear of rejection and harassment, and loss of privileges accorded to heterosexual people.

**3) Legal protection of LGBT rights** – Thai law does not criminalize homosexuality or explicitly ban discrimination on the grounds of sexual orientation and gender identity. In general the Thai legal system strictly and explicitly identifies persons in the law only by the male and female genders. Laws and regulations that discriminate against LGBT persons still exist even if there have been some positive legislative developments in recent years to ensure equal rights between men and women and to recognize the rights of LGBT people under Thai law. Still, legal protection of LGBT persons remains limited as there is as yet no major Thai legislation that specifically ensures equality for persons of diverse sexualities. There is also no specific anti-discrimination law covering employment and occupation.

- Section 30 of the Constitution of Thailand B.E. 2550 (2007) which guarantees equality for all persons under Thai law prohibits discrimination on the ground of sex but does not specifically include “sexual orientation” and “gender identity” among the twelve prohibited grounds. Instead, protection against discrimination on the grounds of “sexual identity,” “gender,” and “sexual diversity,” is annotated as inclusive in the ground of “sex” in the accompanying Intentions of the Constitution which provides guidelines for application.
- LGBT people can also be protected under other laws and regulations. For example, Labour Protection Act B.E. 2551 (2008) which guarantees equal treatment for male and female workers in the private sector prohibits sexual harassment against both female and male workers. The Criminal Code Amendment Act (No. 19) B.E. 2550 (2007) has expanded the definition of rape to cover raping of people of all sexes and all types of sexual penetration. The Ministry of Labour Regulation on

Thai Labour Standards, Social Responsibility of Thai Businesses B.E. 2547 (2007) prohibits discrimination against workers on sex as well as personal sexual attitude.

- Certain discriminatory provisions have been revised such as the Ministry of Defense Regulation under which transgender males were previously described as “mentally ill” (in Sor Dor 43) for reserve military service exemption. The wording “permanent mental disorder” commonly recorded on Sor Dor 43, an important legal document often required for job application for Thai men, has been ordered removed by the Central Administrative Court in 2012, and is now replaced by the new wording “gender identity disorder” which still suggests some psychological abnormality.
- The November 2012 National Social Welfare Promotion Commission (NSWPC) regulation under the 2007 amendment of the Social Welfare Promotion Act B.E. 2546 (2003) that aims to ensure access to social services of disadvantaged populations, identifies “persons of diverse sexualities” as one of the 13 target groups, making it Thailand’s first legal recognition of LGBT people as a population group.

#### **4) The largest gaps in legal protection of LGBT rights concern the lack of legal recognition of transgender identity and same-sex partnership.**

- While sex change is legal in Thailand, transgender persons who have had a sex change are not allowed to change their legal title compatible with their new sex. On the other hand, intersex persons can apply for a legal title change after they have chosen one sex and completed the required surgical procedures. However, some intersex persons are discouraged from seeking an appropriate legal title due to the strict clinical requirements for intersex identity (such as an intersex person must have both testes and a womb), extensive clinical testing, and the intersex persons’ uncertainty about their own sexuality. As a result intersex persons tend to be hidden and are lumped together with transgenders, experiencing the same difficulties in being subject to discrimination and harassment and denied opportunities in work and in life due to lack of appropriate legal identification.
- Same sex partners are not allowed to legally register their partnership or marry. These legal gaps deprive many transgender and intersex persons of employment opportunities and same-sex partners of employment, pension, health and others benefits enjoyed by opposite-sex married couples under the current family law.

#### **5) Rights at work and discrimination at all stages of employment** – The majority of LGBT respondents in the research have experienced discrimination in many aspects and at all stages of employment, **starting from education and training, to access to employment, career opportunity and advancement, as well as in access to pension and other social security benefits.**

- Transgenders more than other groups reported being pressured at home and by teachers to choose “soft” subjects and fields of study (such as communication, humanities and social science) and discouraged from others, often high status, fields such as teaching, psychology, medicine,

and engineering. Transgender university students, both MTF and MTF, are sometimes barred from examination and training courses due to strict dress code. Some transgender respondents reported having been denied scholarship due to their transgender identity.

- Some gay and transgender students experience harassment and violence, from verbal abuse to bullying and physical assaults from peers and teachers, resulting in school dropout or change of school, even attempted suicide.

**6) Narrower access to employment opportunities and equal treatment at work for transgenders and toms** – Transgenders and lesbian tomboys often face the biggest barrier to access to employment, especially in public institutions and large private companies. They tend to be denied jobs at the interview stage once their legal gender title is known to be different from their physical gender appearance and expression. In a case that went to the Labour Court in Bangkok, a MTF transgender person was already hired by the Thai office of a multinational company but the hiring was retracted because of her “cross-dressing.”

- Transgender and *tom* job applications are sometimes not seriously treated in the job or scholarship interview and asked questions about their sexuality in the interview (and subsequently fail it).
- With repeated rejections many are no longer actively looking for salaried jobs in the formal sector, but go into NGO or informal sector jobs. Many tend to set up small or micro business, or become unemployed or underemployed. Recent positive changes in new acceptance for transgender workers in some jobs (such as flight attendant, elected local government official) remain exceptions rather than a real change on a larger scale.
- Masculine gay men and feminine lesbians have more or less the same access to jobs as heterosexual men and women. However, gay men who are not very masculine or are openly gay will face some barriers to employment.

**7) Ghettoization of employment for transgenders** – Often denied jobs in the formal sector, most transgenders, including those highly qualified, are left with limited stereotypical job choices where they are more accepted, for example, in entertainment as cabaret performers or beauty pageants, in the beauty industry as make-up artists and sale persons in cosmetic department, and in a few service jobs such as public relations. Many MTF transgenders resort to sex work. Transgenders in poor rural communities also find themselves at the margin of the rural informal economy as family workers, irregular hired labourers, home-based workers at the bottom of the manufacturing supply chains, or even as spiritual mediums.

**8) Differential preference for tomboy factory workers** – During the past decade or so *toms* have become workers in demand by factories in the manufacturing industry which have traditionally employed a large number of women. A recent study suggests that toms have become desirable workers over women and men because they are perceived to have combined feminine and masculine qualities (“nimble” and “detailed oriented” like women and “strong” like men).

**9) Some tolerance but limited acceptance of gender diversity in the workplace** – Many gay and lesbian workers tend to play heterosexual roles to avoid possible rejection, gossips and anti-LGBT comments that can amount to a hostile work environment (unless they work in an LGBT-specific organization). Generally, homosexual men and women hide their sexuality in the early stages of their career and only come out later after they feel some security in their job. This largely depends on the workplace culture and the profession. Non-heterosexual gender identity is perceived to damage credibility in leadership and some traditional high-status jobs, such as lawyer and judge.

- Access to toilets is an issue for transgender employees, both MTF and FTM. Often neither male co-workers nor female co-workers like *katoeys*, *sao praphet song* or *toms* and transmen to use their restrooms. Very few workplaces in Thailand have special restrooms for transgenders.
- Again, transgenders and *toms* face more discrimination at work. They are often not fairly treated in terms of recognition for their work. Although *toms* are accepted in some jobs such as factory and construction and some enjoy job promotion, others are pressured to resign from their job as a result for harassment and unfair treatments. On the other hand, incongruous legal identity poses a problem in career advancement for some transgender workers.

**10) Opting out of mainstream jobs** – Often due to repeated rejections, a hostile work environment, limited freedom of gender expression at work, and limited career advancement opportunities, many LGBT persons opt out of formal employment in large public or private organizations to seek jobs in which they can express themselves more freely in smaller enterprises and non-government organizations, or they set up their own business. Others choose jobs that allow them to go outside of the workplace such as sales or become freelance workers in various fields such as computer programming, architect, interior design, etc.

**11) Lower job security and limited access to social protection** – Because many LGBT people are discriminated in or excluded from formal mainstream jobs, they find themselves in the informal, often lower-paid jobs which afford them less job security, often with lower pay and fewer benefits. Even gay men do not have job security like heterosexual men. A real estate manager was fired after five years on the job for being gay. Most LGBT respondents do not feel a strong sense of job or life security, in a large part due to the lack of the legal right to marry. Hence they cannot access many benefits and rights enjoyed by heterosexual couples. Poor LGBT with lower education and social status in the rural areas struggle to sustain their livelihoods amid strong cultural prejudices and have little access to regular employment, credit, capital, and social security.

**12) Discrimination in access to health and other services** – Many LGBT respondents complained about discrimination in accessing health and other services, in particular health and life insurance and bank loans.

- Transgender persons tend to have more difficulties than other groups in accessing healthcare due to their legal identity being incongruent with their physical appearance, as well as prejudices

and insensitivity towards transgender identity, bureaucratic red tape, and inflexible hospital rules. Sometimes they do not receive appropriate medical care, and are subject to intrusive questions about transgender identity.

- People of diverse sexualities, presumed to have a “risky lifestyle” with a higher risk of contracting HIV, are often required to pay higher insurance premiums. Some insurance companies refuse to sell insurance policies to gay and transgender persons.
- Same-sex partners do not have the right to make medical decisions for their partners like heterosexual couples, or to take out bank loans for investment (even though applications for bank loans by unmarried male-female couples are often granted). Identifying a same-sex partner as the beneficiary of a life insurance plan is also not legally enforceable because same-sex partners can not legally be the “natural heir” under Thai law.

**13) Sexual harassment and violence** – Many members of all LGBT groups reported having experienced various forms of gender-based harassment and violence at school and at work, from mild teasing, taunting, gossips, slurs and insults, groping, to more serious forms of physical and sexual violence, including hazing, bullying, physical assaults and rape.

- The most hostile work environment most commonly experienced by LGBT workers includes gossips and slurs, insensitive jokes (such as jokes about transgenders and *toms* being raped or gang raped), sexual comments or intrusive questions about their private lives and sexuality. Lesbian women complain about male co-workers watching pornographic films at work and making suggestive comments about homosexual acts.
- Transgenders are subject to a higher degree of harassment and violence than other groups. *Katoey* and gay male students face harassment, humiliation, bullying and assaults in school by peers as well as by teachers, while *katoeys* also face sexual harassment and rape or attempted rape in reserved military conscription and training. Some respondents reported rape of tomboy lesbians by male friends and co-workers, rape and attempted gang rape of intersex persons because of their ambiguous gender identity, and rape of transgenders in male prisons. There have also been media reports of rape and murder of *toms* and lesbians that fit the definition of hate crime.

**14) Double stigma and discrimination for people living with HIV (PLHIV)** - There is no law in Thailand prohibiting discrimination in employment on the ground of HIV status. There are only a non-binding ministerial code of practice and guidelines. PLHIV have been found to be denied employment or not be eligible for promotion, more often due to discrimination than poor health. Although there have been significant improvements in access to antiretroviral treatment, PLHIV continue to face problems with involuntary HIV screening and confidentiality being violated by employers and hospitals.

- HIV-screening in job application remains common in factories, businesses in the service sector including retails, hospitality (hotels) and sales, as well as in major businesses and state enterprises. Employees in some workplaces have been tested for HIV without their knowledge and consent.
- Although there are codes of practice for employers, some employees' HIV status is sometimes revealed by employers and hospitals without their knowledge or consent, often resulting in the employees being forced to leave the job.

**15) Discrimination and harassment of transgender sex workers** – Transgender sex workers are routinely harassed and extorted by police in red light districts popular with foreign tourists in Bangkok, Pattaya, Chiang Mai, and Phuket. Compared to freelance female sex workers, freelance or street-walking transgender sex workers are much more vulnerable to being arrested and “fined” for solicitation. Police often cite “bad image” (for Thai tourism and culture) as the reason for cracking down on transgender sex workers, while transgender sex workers in this research said they were perceived to make “more money” and hence have more to pay “fines.” Sometimes even transgenders not involved in sex work are arrested for solicitation when found on the streets in red light districts.

**16) Increasing but limited social dialogue** – So far there has been limited discussion on labour issues among organizations advocating LGBT rights but even less among government, workers and employers organizations, although discrimination in employment is one of the major complaints within the LGBT communities. No LGBT organizations in this study works actively to promote labour rights for LGBTs, and LGBT rights are not a priority issue in employers' and workers' organizations. However, LGBT organizations have recently begun to coordinate with some government agencies on LGBT rights issues, specifically on legal same-sex partnership and access to social services.

- In general, LGBT respondents in this study are aware of their rights and some feel strongly about the stigma and discrimination of LGBT rights. However, many need more information about rights and discrimination at work. On the other hand, government, companies, employers and workers and their organizations still have limited understanding of LGBT issues. Among civil society organizations, LGBT rights issues remain largely remote and marginal.
- NGOs in the LGBT networks have evolved to become more rights oriented from their original HIV prevention focus. A few have started limited work in promoting rights protection and better livelihood among rural LGBT workers in the informal economy.

**17) No dedicated agency to tackle employment discrimination** – The National Human Rights Commission of Thailand (NHRC) has served as the de facto agency that LGBT organizations turn to in times of need, including when the grievances concern labour rights. However, the NHRC has limitations in resources and mechanisms to ensure timely and effective redress.

In summary, given extensive discrimination in virtually all aspects of employment and occupation Thai LGBT people still lack some fundamental rights and equal opportunity and treatment at work. There are few good practices in terms of employment promotion for LGBT populations in a meaningful and systematic way. Gays and lesbians are tolerated when they conform to hetero-normative gender roles expected by society, but transgender people with more visible different gender expressions as well as feminine gays and *toms* face severe barriers to equal opportunity and treatment in employment. As a result they are unable to reach their potential and make a full contribution to society.

Due to discrimination, exclusion and marginalization in employment and occupation, LGBT workers, especially transgenders and *toms*, are not enjoying social protection in many areas. There is insufficient information about LGBT workers in the informal economy, especially in the poor, rural areas. Further research is needed about this group of workers. More information is also needed on good practices and perspectives of companies and of employers and workers' organizations on LGBT discrimination. Despite a recent increase in interest about LGBT rights among LGBT and civil society organizations, as well as some government agencies, there needs to be more social dialogue that focuses on discrimination against LGBT people in employment and ways to prevent and redress it.

## 5.2 Recommendations

Full rights can not be exercised and full participation is not possible, unless society accepts all members as equal and entitled to the same human and workers' rights. As this report has shown, Thai society appears to be accepting of LGBT people but in reality it merely tolerates them. The difference between tolerance and acceptance is that tolerance still allows hate but acceptance means no more exclusion or violation.<sup>166</sup> So the goal is acceptance of LGBT as full and equal members of Thai society, not as second-class citizens tolerated with restrictions on the exercise of rights and freedom on the margin.

Language is an important vehicle in making positive change. For instance, Thai LGBT have introduced the term *rak phet diew kan* ("loving the same sex") to replace the old pejorative term *rak ruam phet* which has a strong sexual tone and connotation that LGBT people are only concerned about sex. There are also other new and more neutral terms such as *chai rak chai* for gay, *ying rak ying* for lesbian, and *khon kham phet* for transgender persons. However, effective language to communicate LGBT issues is still lacking. Current Thai terminology concerning LGBT and sexual orientation and gender identity (SOGI) is still not easily understood. More positive and more accessible Thai terms are needed for more effective communication and a better perception of LGBT.<sup>167</sup>

<sup>166</sup> Kritaya Achavanichkul, Institute for Population and Social Research, Mahidol University, comments made at the Thailand PRIDE Research National Workshop, Bangkok, 4 June 2014, attributing the comments to Professor Peter A. Jackson, an Australian academic who has written extensively on modern Thai cultural history, with particular interests in religion, gender and sexuality.

<sup>167</sup> Kritaya Achavanichkul, *ibid*, and Vitit Muntarbhorn, Distinguished Scholar and Professor of Law, Chalongkorn University, comments made at the Thailand PRIDE Research National Workshop, Bangkok, 4 June 2014.



The gap in legal protection of SOGI rights requires further policy mobilization to include LGBT in the full protection against discrimination under Thai law, including in the Labour Protection Act. And the lack of anti-discrimination legislation specific to employment and occupation can be remedied by seeking useful guidance in international instruments and good practice examples from other countries. Professor Vitit Muntarbhorn, Member of ILO Committee of Experts on Conventions and Recommendations and Co-Chairperson of the drafting committee of the Yogyakarta Principles on Sexual Orientation and Gender Identity suggested a rights and equality checklist for effective action against discrimination of LGBT at the workplace:<sup>168</sup>

- Responsive laws – including legal reform to recognize transgender identity.
- Responsive policies – Ensure that SOGI is included in Thailand’s Human Rights Action Plan, as well as in policies by employers and industry.
- Responsive practices – Highlight good practice examples and success cases against discrimination.
- Responsive mechanisms and human resources – Make use of existing mechanisms such as the National Human Rights Commission and NGO networks, as well as any new mechanisms to be proposed.
- Information and monitoring – Build knowledge base with SOGI-disaggregated statistics; work with the National Statistical Office.
- Education and capacity building that includes SOGI.
- Partnership and participatory process – Build alliance and work with the “unconverted.”
- Social capital and spiritual input – Build emotional resources.

Following are specific legislative and policy recommendations for government, employers’ and workers’ organizations, LGBT organizations and civil society, to promote rights, diversity and equality for workers of diverse sexual orientations and gender identities in employment and occupation in Thailand.

## 5.2.1 Government

### 1) Ensure protection of LGBT rights in national laws and policies.

- **Apply existing mechanisms to combat discrimination against all workers, including LGBT, in employment and occupation.** Improve implementation of labour inspection, law enforcement and judicial mechanisms to be more responsive to complaints. Provide discrimination and gender diversity training to relevant officials to improve awareness, sensitivity, and efficiency in dealing with LGBT people.

<sup>168</sup> Vitit Muntarbhorn, *ibid.*

- **Adopt a national law and policy to promote equal opportunity and treatment in employment and occupation that explicitly includes SOGI as prohibited grounds of discrimination**, among other grounds.
- **Integrate SOGI in the promotion of gender equality and diversity in national plans and policies**, in particular the Labour Master Plan and the Human Rights Action Plan, and in national statistics by the National Statistical Office.

**2) Ensure equality in legal rights for LGBT people aligned with international standards.**

- **Ratify the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111).**
- **Develop new legislation to recognize transgender identity and LGBT right to marriage equality.** Allow transgender persons a legal title change. Allow same-sex couples to legally register their civil partnership or marriage to enable them to access the same rights and benefits as other couples.
- **Issue a national directive to revise existing policies, administrative rules and regulations currently applied in educational and public institutions that are discriminatory** and in contradiction to the equality and non-discrimination principles to ensure equality for all regardless of sexual orientation or gender identity.

**3) Develop anti-discrimination legislation specific to employment and discrimination** with effective implementation mechanisms to ensure compliance and provide redress in cases of discrimination:

- **Consider developing an Equality and Non-Discrimination in Employment and Occupation Act** that aims to:
  - Specifically address direct and indirect discrimination in employment and occupation at all stages of employment and promote equality of opportunity and treatment among all sectors and population groups in the workforce, including LGBT workers.
  - Prohibit discrimination in laws, regulations, rules, policies and practices concerning employment and occupation by institutions, enterprises and employers in both the public and private sectors.
- **Consider establishing an independent Equal Employment Opportunity Commission (EEOC)** to function as an advisory and monitoring body as well as a complaint mechanism at the national level with sufficient power, authority and resources. The Commission, comprising tripartite members of all genders with sufficient employment and gender expertise, shall have the duties to monitor discrimination in employment and occupation and make policy recommendations to the government.

- 4) **Promote social dialogue with LGBT, workers' and employers' organizations** towards proactive and sustained cooperation to ensure equality and rights protection for LGBT people.
- 5) **Promote national education about gender diversity and LGBT rights.**
  - **Include gender equality and gender diversity in Thai education at all levels.** Remove existing stigma and prejudices against LGBT people in school curricula. Ensure equal opportunity for people of all sexual orientations and gender identities in all fields.
  - Support a comprehensive national campaign to raise awareness about gender equality and diversity and non-discrimination principles in employment and occupation in all sectors of society.

## 5.2.2 Employers' and workers' organizations

- 1) **Promote awareness about LGBT rights among individuals and organizations within the networks of employers' and workers' organizations.**
- 2) **Develop a knowledge base about LGBT workers.**
  - Gather information and conduct research to identify key issues facing LGBT workers in the respective organizations within the workers' and employers' networks. Encourage collaboration between LGBT organizations and research institutions in learning about issues facing LGBT communities and developing research tools.
  - Identify good practice examples of employers promoting gender diversity and LGBT workers' rights and success cases against discrimination.
- 3) **Promote gender equality in the workplace and acceptance for gender diversity** by preventing and eliminating a hostile work environment and violence at work for people of all sexual orientations and gender identities in all workplaces.
- 4) **Work with LGBT rights advocates and organizations to protect LGBT workers from discrimination and all forms of violence in the workplace.**
- 5) **Promote dialogue between workers and employers and representatives of LGBT workers** towards proactive and sustained cooperation to ensure equality and rights protection for LGBT people.

## 5.2.3 LGBT and civil society organizations

- 1) **Promote awareness about labour rights in LGBT communities and share experiences across different groups** to increase understanding of the issues and undertake joint action to represent and promote LGBT interests, human and workers' rights in society and in workplaces.

- 2) **Improve the existing knowledge base about discrimination in employment against LGBT workers** through systematic data collection and research.
- 3) **Build alliances and promote dialogue with government, workers' and employers' organizations** towards proactive and sustained cooperation to ensure equality and rights protection for LGBT people.
- 4) **Step up legislative and policy advocacy to combat all forms of employment discrimination and violence against LGBT people at work and in society.**
- 5) **Promote awareness and understanding about gender equality and diversity, LGBT rights and discrimination among civil society and media organizations, and society at large.** Encourage the positive role of the media in supporting the rights of LGBT, and acceptance for gender diversity in society.

Discrimination is a constant challenge and eliminating discrimination is work in progress. It is hoped that this study will inspire the government, employers' and workers' organizations, LGBT and civil society organizations, as well as the judiciary and the academe to have a constructive debate and take positive actions to address existing discrimination against people of diverse sexual orientations and gender identities in Thailand. Combating discrimination and promoting equality in opportunity and treatment will enable all people to contribute to the development of the society to the fullest of their potential.

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### List of interviews, focus groups, meetings and seminars for the research

(July 2012 - June 2013)

No.	Date	Interviews	Description (* position at the time of the interview)
1	19 July '12	Anjana 'Tang' Suvarnananda	Co-founder of Anjaree Group, NGO advocating rights of lesbians and people of diverse sexualities
2	26 July '12	1) Jetsada 'Note' Taesombat 2) Timo Ojanen	Committee members of FOR-SOGI (Foundation for SOGI Rights and Justice), and 1) transgender activist and coordinator of Thai Transgender Alliance (TGA); 2) researcher, Center for Health Policy Studies, Mahidol University
3	8 Aug. '12	Narupon 'Toon' Duangwises	Head of Academic Department of the Princess Maha Chakri Sirindhorn Anthropology Center (SAC), researcher and expert on gay culture, gender diversity issues, and gender-based violence in Thailand
4	18 Aug. '12	Thitiyanun 'Doi' Nakpor	Transgender activist and director of Sisters, Center for Transgenders, a support group for MTF transgenders and transgender sex workers in Pattaya
5	31 Aug. '12, 26 June '13	Pongthorn 'Tor' Chanlearn (personal and phone interviews)	Coordinator of Mplus+, NGO supporting MSM against HIV and AIDS in Chiang Mai
6	10 Sep. '12	Kosol 'Owie' Chuenchomsakulchai	Programme manager of Rainbow Sky Association of Thailand (RSAT), NGO supporting gay, MSM and people of diverse sexualities against HIV and AIDS
7	16 Sep. '12	Kritipat 'Jin' Chotithanitsakul	One of the first persons coming out on Thai media as a transman in Thailand
8	18 Sep. '12	Surang Janyam	Founder and director of SWING (Service Workers In Group), community-based NGO providing support to male, female and transgender sex workers in Patpong (and other areas in Bangkok, Pattaya and Samui)
9	23 Sep. '12	Nikorn Arthit	Founder and director of Bangkok Rainbow Organization (BRO), NGO supporting gay men
10	7 Nov. '12	1) Naiyana 'Lek' Supapung	Former member of National Human Rights Commission (NHRC) sub-committee on gender equality promotion, and director of Teeranat Kanjanauksorn Foundation (TKF), NGO advocating gender justice
11	13 Dec. '12	Chantalak 'Lek' Raksayu (email interview)	Founder of Sapaan (advocacy and support network for lesbians and LGBTs); Recipient of Female Human Rights Defender Award (2007) from Thai NHRC



No.	Date	Interviews	Description (* position at the time of the interview)
12	14 Dec. '12	Nattaya 'Phueng' Boonpakdee	Founder of Women's Health Advocacy Foundation (WHAF), NGO promoting understanding about sexual health and rethinking gender roles in Thai society; Ashoka Fellow (2012)
13	26 Dec. '12	Dr Taejing Siripanich	NHRC member and chairman of sub-committee overseeing LGBT rights
14	26 Dec. '12 28 May '13	Kitiporn 'Golf' Boon-am	NHRC's Human Rights law expert, who worked with the previous sub-committee on gender equality promotion and is currently serving the sub-committee overseeing LGBT rights
15	15 Jan. '13	1) Siriwan Romchatthong 2) U-krit Kanjanaket, 3) Kornchai Kaewmahawong	Employers Confederation of Thailand (ECOT): 1) General Secretary; 2) Acting Director; and 3) Special Project Director respectively
16	22 Jan. '13	Patom Pechmanee	Director of Labour Protection Bureau, Ministry of Labour (MOL)
17	22 Jan. '13	Thawatchai Pholcharoen	Director of Coordination, National Congress Private Industrial of Employees (NCPE)
18	28 Jan. '13	1) Somchai Phromsombat 2) Raksakul 'Tohng' Buajoom 3) Tuss 'Mac' Abdulloh	1) Founder, 2) Manager and 3) project coordinator of The Poz Home Center, Bangkok-based NGO supporting men who love men living with HIV and AIDS
19	19 June '13	2) Chanjira 'Joy' Boonprasert	Coordinator, Teeranat Kanjanauksorn Foundation (TKF)
20	19-21 June '13	Yukhonthorn 'Kluay' Kaewchaochom (personal, phone and email interviews)	Director, Gender for Health and Equality Network (GEN), NGO advocating human rights, labour rights, gender equality and self-reliance among disadvantaged informal economy workers in the rural areas
21	24 June '13	Manop Kuarat	Information officer, State Enterprises Workers' Relations Confederation of Thailand (SERC)
22	11 Feb. '13	1) Chalida Thacharoen 2) Kitiprasert Nopparat 3) Patcharee Sae-ew	1) Director and 2) & 3) project officers of People's Empowerment Foundation, NGO responsible for drafting UPR for Thailand from NGO perspective

No.	Date	Interviews	Description (* position at the time of the interview)
23	15 Feb. '13	Meeting at National Social Welfare Promotion Commission (NSWPC), Bangkok. 2-hour consultation on how to implement measures to promote the rights and access to social services for LGBTs as provided in the November 2012 NSWPC regulation and how to build alliance for effective implementation. Participants: 1) Chinchai Checharoen, expert and deputy director, NSWPC 2) Nithinant Khowrungruang, social worker, NSWPC 3) Orapin Sak-iam, director, mechanisms development unit, Office of Welfare Promotion, Protection and Empowerment of Vulnerable Groups (OPP) 4) Praphimporn Suwankoot, special social development expert, OPP 5) Danai Linjongrat, director, Rainbow Sky Association of Thailand (RSAT), representative of LGBT network 6) Theerakan Kaewmak, project coordinator, RSAT 7) Sumalee Tokthong, policy coordinator, Women's Health Advocacy Foundation (WHAF)	
No.	Date	Focus Groups, Organizations	Description
24	5 Sep. '12	Male-To-Female transgender persons, Sisters, Center for Transgenders, Pattaya	Nine members of Sisters ('sao prophet song' and 'katoey'), aged 21 to 47, from all regions of Thailand, primary school to post-graduate education; half are sex workers and the other half are staff members and volunteers of Sisters, several with experience in low-income jobs
25	24 Sep. '12	Transwomen, Thai Trans Female Association of Thailand (TFAT), Bangkok	Four members of TFAT (who identify themselves as transwomen), aged 27 to 34, all university educated; professionals and business owners
26	29 Sep. '12	Lesbian women, Anjaree Group, Bangkok	Nine Anjaree members, lesbian women ('toms', 'dis' and bisexuals) from various regions of Thailand, aged 26 to 54, most university educated and in white-collar jobs
27	14 Oct. '12	Male-To-Female transgendered persons, Thai Transgender alliance (TGA), Bangkok	Five MTF transgendered persons, who identify themselves as 'katoey', aged 22 to 30, all university educated; student, academics, activists
28	19 Oct. '12	Gay men and men who have sex with men (MSM), Mplus+, Chiang Mai	Five gay men and MSM, aged 20 to 29, vocational school to university education; employees, self-employed persons, entertainment workers
29	20 Oct. '12	Male-To-Female transgender persons, Mplus+, Chiang Mai	Six MTF transgendered persons, who identify themselves as 'katoey', aged 22 to 28, university educated; two sex workers, a student, two business employees, an Mplus+ staff member
30	20 Oct. '12	Men who have sex with men (MSM), Mplus+, Chiang Mai	Three MSM, aged 21 to 26, vocational school graduate and drop-outs; two sex workers and one own account worker

No.	Date	Focus Groups, Organizations	Description
31	21 Oct. '12	Male-To-Female transgender persons, Lamphun	Four MTF transgendered persons in a rural village, aged 21 to 32, 9 <sup>th</sup> grade to vocational school education, underemployed and have become spiritual mediums (as means of self-empowerment and a niche source of income)
32	21 Nov. '12	Gay men, Rainbow Sky Association of Thailand (RSAT), Bangkok	Six gay men from several provinces now living in Bangkok, aged 20 to 36, vocational school to university education; students, NGO workers and volunteers, with experience in entertainment, manufacturing, sales and hospitality industries
33	6 Jan. '13	Female-To-Male transgender persons, self-identified as transmen, Bangkok	Three FTM transgender persons in transition to become transmen, aged 24 to 29, university education; private sector employees
No.	Date	Email Interviews (Supplementary)	Description
34	13 Dec. '12	Lesbian women, Sapaan (published email interviews)	10 lesbian women interviewed by Chantalak Raksayu, aged in the 20's to 40's, vocational to university education in various jobs (source: <a href="http://sapaan.org/?cat=4">http://sapaan.org/?cat=4</a> )
35	8 Jan. '13	Gay men, Bangkok Rainbow Organization (BRO) (email interviews)	Two gay men, aged in the 30's and 40's; public sector employees
No.	Date	Seminars	Description
36	15 Aug. '12	Seminar "Partnership and family for women who love women, toms and dis", Asia Hotel, Bangkok	Full-day seminar organized by Anjaree Group participated by 40-50 Anjaree members and others in Thai LGBT network; Objectives: To raise awareness on the need and benefits of legal recognition of same-sex partnership for LGBTs, share experience, and develop demands for LGBT rights protection
37	11 Sep. '12	Seminar "When desired sex is different from birth sex, does one have a right to change one's legal title?," National Human Rights Commission (NHRC), Bangkok	Half-day seminar organized by NHRC and Teeranat Kanjanauksorn Foundation, participated by 120 people, including LGBTs, students and academics, government officials, media, private sector and civil society workers, and the general public. Focus: introducing and brainstorming on legal title change for intersex and transgender persons for further policy recommendation

No.	Date	Seminars	Description
38	28 May '13	Brainstorming session "Principles for drafting a people's civil partnership bill," Thai Journalists Association (TJA), Bangkok	Half-day brainstorming session organized by FOR-SOGI Foundation and Teeranat Kanjanauksorn Foundation and funded by Health Promotion Foundation. The objectives: To discuss and establish core principles as a foundation for developing a people's draft bill for civil partnership for LGBT and all couples. The session was attended by 40 people, including legal experts, LGBT rights advocates and legal rights advocates.
39	19 June '13	Research presentations at Faculty of Law, Thammasat University: 1) "Persons of diverse sexualities in [Thai] legal system" by Somchai Preechasilapakul 2) "Partnership and making family for LGBT: Meaning, needs and violence" by Ronnaphoom Samakkikarom and Jetsada Taesombat	Full-day event organized by Foundation for Sexual Orientation and Gender Identity Rights and Justice (FOR-SOGI) and Teeranat Kanjanauksorn Foundation (TKF), and funded by the Health Promotion Network. The three organizations also supported and funded the two research projects. The event was attended by about 50-60 people, including some legal experts, LGBT rights advocates and legal rights advocates from throughout Thailand.

**Focus group consent form**

At .....

Day ..... Month ..... Year .....

I .....Age ..... years

Address .....

Phone ..... Email .....

hereby agree to participate in the Thailand PRIDE research in the Gender Identity and Sexual Orientation: Promoting Rights, Diversity and Equality in the World of Work (PRIDE) Project of the International Labour Organization conducted by Dr. Busakorn Suriyasarn as the leader researcher.

This research aims to identify the extent and forms of discrimination in the workplace faced by LGBT workers in the employment cycle. The information obtained in this research will be used to inform the larger process to combat discrimination against LGBT workers and promote gender equality, diversity and LGBT rights in employment and occupation in Thailand’s world of work.

I acknowledge that the researcher has explained to me and I understand the rationale, aims and process, as well as the risks and benefits of this research. I voluntarily consent to participate in a focus group discussion/ meeting for this research and to any audio, video, photographic and text recording of the activity.

I sign below in front of a witness and acknowledge that I will receive a copy of this document.

Signature.....

(.....)

Researcher

Signature.....

(.....)

Participant

Signature.....

(.....)

Witness

**List of key Thai LGBT organizations online**

Anjaree Group กลุ่มอัญจารี:

[www.facebook.com/anjaree/info](http://www.facebook.com/anjaree/info)

Bangkok Rainbow Association (BRO) บางกอกเรนโบว์:

[www.facebook.com/bangkokrainbow](http://www.facebook.com/bangkokrainbow)

[www.bangkokrainbow.org](http://www.bangkokrainbow.org)

For SOGI Rights and Justice (FOR-SOGI) มูลนิธิเพื่อสิทธิและความเป็นธรรมทางเพศ:

[www.facebook.com/forsogi](http://www.facebook.com/forsogi)

[www.forsogi.org/](http://www.forsogi.org/)

Mplus+ Thailand มูลนิธิเอ็มพลัส:

[www.facebook.com/Mplus+.msm](http://www.facebook.com/Mplus+.msm)

[www.Mplus+thailand.com/](http://www.Mplus+thailand.com/)

Narupon Duangwises, queer anthropologist:

[www.facebook.com/narupon.duangwises.1](http://www.facebook.com/narupon.duangwises.1)

Rainbow Sky Association of Thailand (RSAT) สมาคมฟ้าสีรุ้งแห่งประเทศไทย:

[www.rsat.info/index.php](http://www.rsat.info/index.php)

Lady RSAT สมาคมฟ้าสีรุ้งแห่งประเทศไทย(หญิงรักหญิง):

[www.facebook.com/LadyRsat](http://www.facebook.com/LadyRsat)

Sapaan – Alternative Media for SOGI Rights: กลุ่มสร้างสื่อเพื่อสนับสนุนส่งเสริมสิทธิหญิงรักหญิง

และความหลากหลายทางเพศ: <http://sapaan.org/Sisters>, Center for Transgenders, Pattaya:

[www.facebook.com/sistersthailand](http://www.facebook.com/sistersthailand)

[www.sistersthailand.com/th/](http://www.sistersthailand.com/th/)

SWING – Service Workers in Group Foundation มูลนิธิเพื่อพนักงานบริการ:

[www.facebook.com/swingthailand.org](http://www.facebook.com/swingthailand.org)

[www.swingthailand.org/](http://www.swingthailand.org/)

Teeranat Kanjanauksorn Foundation (TKF) มูลนิธิธีรนาถกาญจนอักษร:

<https://www.facebook.com/pages/มูลนิธิธีรนาถกาญจนอักษร-Teeranat-Foundation/253593891345012>

Thai Transgender Alliance (Thai TGA) เครือข่ายเพื่อนกะเทยไทย:

[www.facebook.com/thaitga/info](http://www.facebook.com/thaitga/info)

[www.thaitga.com](http://www.thaitga.com)

Thailand Queer Network:

[www.facebook.com/thqnnetwork](http://www.facebook.com/thqnnetwork)

The Poz Home Center Foundation (PozHome) มูลนิธิ เดอะพอส โฮมเซ็นเตอร์:

[www.facebook.com/callcarethepozhome](http://www.facebook.com/callcarethepozhome)

[www.thepoz.org/](http://www.thepoz.org/)

Trans Female Association of Thailand (TFAT) สมาคมสตรีข้ามเพศแห่งประเทศไทย:

[www.facebook.com/tf101](http://www.facebook.com/tf101)

[www.tf101.com/](http://www.tf101.com/)

## Thailand PRIDE Research National Workshop Programme

Pinklao Hall, SD Avenue Hotel, Bangkok, 4 June 2014

9.00 – 9.30	<p><b>Opening remarks</b></p> <ul style="list-style-type: none"> <li>• <b>Nelien Haspels</b>, Senior Specialist on Gender, Equality and Diversity, ILO Regional Office for Asia and the Pacific, Bangkok</li> <li>• <b>Chantalak Raksayu</b>, Advisor to Foundation for SOGI Rights and Justice (FOR-SOGI)</li> <li>• <b>Steven Kraus</b>, Regional Director, UNAIDS, Asia and the Pacific</li> </ul> <p><b>Introduction to PRIDE Thailand project and objectives of the workshop</b></p> <ul style="list-style-type: none"> <li>• <b>Richard S. Howard</b>, Senior Specialist on HIV and AIDs, ILO</li> </ul>
9.30 – 10.30	<p><b>Presentation of Thailand PRIDE research</b></p> <ul style="list-style-type: none"> <li>• <b>Busakorn Suriyasarn</b>, Independent researcher and author of the report</li> </ul> <p><b>Comments by Associate Professor Kritaya Achavanichkul</b>, Institute for Population and Social Research, Mahidol University</p> <p><b>Qs &amp; As</b></p>
10.30 – 10.45	Refreshment break
10.45 – 12.00	<p><b>Panel 1: LGBT discrimination in Thailand’s mainstream job market</b></p> <p><b>Panelists:</b></p> <ul style="list-style-type: none"> <li>• <i>Fired for being gay, opportunities and pressure on gay men in mainstream jobs</i> – <b>Nikorn Arthit</b>, Founder and Director of Bangkok Rainbow Organization (BRO)</li> <li>• <i>Women who love women: Hiding gender identity at home and at work</i> – <b>Chumaporn Taengkliang</b>, Independent pro-democracy and LGBT rights activist, Together for Equality Action (TEA Group)</li> <li>• <i>Harassment, violence and hostile work environment for toms</i> – <b>Parit Chomchun</b></li> <li>• <i>Transgender identity and discrimination against transmen in education and in employment</i> – <b>Kaona Saowakun</b>, Anjaree Volunteer and Co-chair of ILGA Asia</li> <li>• <i>Transgender identity’s impact on job advancement for transwomen</i> – <b>Benja Supahathaiwan</b></li> </ul> <p><b>Moderator: Naiyana Supapung</b>, Director of Teeranat Kanjanauksorn Foundation and Advisor to FOR-SOGI</p> <p><b>Qs &amp; As – Comments &amp; Discussion</b></p>
12.00 – 13.00	Lunch break



13.00 – 14.15	<p><b>Panel 2: LGBT discrimination in Thailand’s informal economy and access to social security</b></p> <p><b>Panelists:</b></p> <ul style="list-style-type: none"> <li>• <i>Marginalization of rural transgenders and their coping strategies</i> – <b>Pongthorn Chanlearn</b>, Coordinator of Mplus+, Chiang Mai</li> <li>• <i>Discrimination against LGBTs in the informal economy in the rural area</i> –</li> <li>• <b>Yukonthorn Kaewchaochom</b>, Director of Gender for Health and Equality Network (GEN), Ratchaburi</li> <li>• <i>Katoeys in sex work</i> – <b>Thitiyanun Nakpor</b>, Director of Sisters, Center for Transgenders - Pattaya</li> <li>• <i>Discrimination against people living with HIV in employment and access to social security</i> – <b>Somchai Phromsombat</b>, Founder of The Poz Home Center, Bangkok</li> </ul> <p><b>Moderator: Busakorn Suriyasarn</b>, Independent researcher</p> <p><b>Qs &amp; As - Comments &amp; Discussion</b></p>
14.15 – 15.00	<p><b>Comments</b></p> <ul style="list-style-type: none"> <li>• <b>Professor Vitit Muntarbhorn</b>, Distinguished Scholar, Faculty of Law, Chulalongkorn University,</li> </ul> <p><b>Report validation</b></p> <ul style="list-style-type: none"> <li>• <b>Open floor for comments</b> on Thailand PRIDE report</li> <li>• <b>Validation</b> of the report findings (questionnaire)</li> </ul>
15.00 – 15.15	Refreshment break
15.15 – 16.45	<p><b>Way forward</b></p> <ul style="list-style-type: none"> <li>• <b>Good practice example</b> by employers (Accor Hotel Group VDO)</li> <li>• <b>Employment discrimination, Thai national dialogue</b> – <b>Rashima Kwatra</b>, LGBT Human Rights Officer, UNDP Asia-Pacific Regional Centre</li> <li>• <b>Group discussion on legislative and policy recommendations</b> to address discrimination against LGBT workers and to promote LGBT workers’ rights and gender diversity at the workplace for government, employers’ and workers’ organizations, LGBT organizations and civil society in groups by type of organization.</li> <li>• <b>Group presentations</b></li> </ul>
16.45 – 17.00	<p><b>Closing remarks</b></p> <ul style="list-style-type: none"> <li>• <b>Danai Linjongrat</b>, Director of Rainbow Sky Association of Thailand (RSAT), representative of LGBT networks</li> <li>• <b>Nelien Haspels</b>, Senior Specialist, representative of the ILO</li> </ul>

**Masters of ceremony:**

**Ronnapoom Samakkeekarom**, Health Science Faculty, Thammasat University

**Jetsada Taesomebat**, Committee Member, FOR-SOGI





# Gender identity and sexual orientation in Thailand

People of diverse sexual orientations and gender identities face significant discrimination and violence in all aspects of their lives. Lesbian, gay, bisexual and transgender (LGBT) workers face employment discrimination that limits access to skills, jobs, opportunities to advance, and social security.

The ILO is committed to eliminating discrimination, promoting diversity, and achieving decent work for all women, men, transgender and intersex people. This report on Thailand is part of a series of country studies that examines the discrimination faced by LGBT people at work and identifies approaches and good practices to promote equality in workplaces for all.

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DECENT WORK

A better world starts here.

