

Laws and Policies Impacting Young People's Sexual and Reproductive Health and Rights in the Asia-Pacific Region: 2020 Update

Legal and Policy Developments 2013-2020: Country Case Studies

The country case studies are a supplement to the report, *Young People and the Law: Laws and Policies Impacting Young People's Sexual and Reproductive Health and Rights in the Asia-Pacific Region: 2020 Update*, which provides a broad overview of whether countries in the Asia and Pacific region recognize the evolving capacities of adolescents in their laws and policies on the age of access to contraceptives, abortion services - where legal, HIV testing services, and age of consent to sex.

The case studies in *Laws and Policies Impacting Young People's Sexual and Reproductive Health and Rights in the Asia-Pacific Region: 2020 Update. Legal and Policy Developments 2013-2020*, illustrate how policy development concerning the sexual and reproductive health and rights of young people have proceeded in six diverse country contexts. They provide insight into the challenges of securing the sexual and reproductive health and rights of young people and the mechanisms of positive change.

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Sexual and reproductive health awareness flash mob at International Condom Day 2020 by We For Change, a youth-led non-governmental organization in Nepal.

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India Case Study

India has made strong advances in the development of policies supporting sexual and reproductive health and rights (SRHR) of young people. However, programme implementation remains challenging due to overarching socio-cultural factors. Socio-cultural pressures such as maintaining honour for girls have influenced practices relating to delivery of SRH services and the rights of adolescent girls. Attitudes of some health service providers can also impede access to services, such as judgmental views that result in reluctance or refusal to provide abortion services to unmarried women.¹

India's RMNCH+A Strategy and National Adolescent Health Strategy

The Ministry of Health and Family Welfare launched the Reproductive, Maternal, Newborn Child plus Adolescent Health (RMNCH+A) Strategy in 2013. The RMNCH+A Strategy is built upon the continuum of care concept and includes adolescence as a distinct life stage. It promotes access to SRH information and services, including access to contraceptives and safe abortion services, delivered in an adolescent-friendly environment. The RMNCH+A Strategy commits to make services in adolescent health clinics available to married and unmarried girls and boys.

India's National Adolescent Health Strategy (Rashtriya Kishor Swasthya Karyakram, or 'RKSK') was launched in 2014. The National Adolescent Health Strategy addresses SRH, as well as nutrition, mental health, injuries, gender-based violence, substance misuse and non-communicable diseases.² The Strategy recognizes that policies and programmes focusing on the rights and well-being of adolescents are required to achieve a decline in the fertility rate, which will in turn contribute to economic growth. The RKSK programme promotes universal coverage of health information and services for adolescents, including for out of school and unmarried adolescents. It comprises facility-based and community-based activities with a focus on adolescent participation, peer education and youth leadership. Non-government organizations play a key role in supporting implementation of the Strategy, working with the Ministry of Health and Family Welfare.

¹ S. Pyne and T. Ravindran, "Availability, Utilization, and Health Providers' Attitudes Towards Safe Abortion Services in Public Health Facilities of a District in West Bengal, India", *Women's Health Reports* 1(1), Apr. 2020, 80-88.

² Sapna Desai, Adolescent health: Priorities and opportunities for Rashtriya Kishor Swasthya Karyakram (RKSK) in Uttar Pradesh: Policy brief (New Delhi, Population Council, 2017).

Young people's access to safe abortion services

The Medical Termination of Pregnancy (MTP) Act, 1971 was enacted to enable women's access to safe abortion. The Act lays down specific conditions when a pregnancy may be terminated by registered medical practitioners. The Act enables girls aged under 18 to access abortion services, with the consent of a parent or guardian.

Amendments have been proposed to the MTP Act to improve access to abortion services. The Medical Termination of Pregnancy (Amendment) Bill, 2020 was passed by the lower house of parliament (Lok Sabha) in March 2020. The Bill proposes to extend the upper limit for permitting abortions from 20 weeks to 24 weeks under special circumstances. The proposed amendment seeks to increase the gestational limit for termination of pregnancy for women and girls in certain vulnerable situations including survivors of rape or incest, minors, and differently-abled women. The upper gestation limit will not apply in cases where substantial foetal abnormalities are diagnosed by a Medical Board. Under the Bill, every state government is required to constitute a Medical Board.

Under the 1971 Act, if any pregnancy occurs as a result of failure of any device or method used by a married woman or her husband to limit the number of children, such an unwanted pregnancy may constitute a grave injury to the mental health of the pregnant woman and she may access abortion services to avoid that grave injury. The 2020 Bill amends this provision to replace 'married woman or her husband' with 'woman or her partner', thereby supporting unmarried women and girls to access abortion services in such cases of unwanted pregnancy. The Bill also states that no registered medical practitioner will be allowed to reveal the name and other particulars of a woman whose pregnancy has been terminated, except to a person authorised by law.

Raising the age of sexual consent to 18 years

The Protection of Children from Sexual Offences Act, 2012 (POCSO Act) defines a child as a person below the age of 18 years. The Act criminalizes sexual conduct with persons below the age of 18 years. To remove inconsistency between this Act and the Indian Penal Code, the age of consent to sex for unmarried women was increased from 16 to 18 years by the Criminal Law (Amendment) Act, 2013, and as a result, sexual intercourse with a woman under the age of 18, with or without her consent was defined as rape. However, the age of consent for married women remained at 15 years until a Supreme Court judgement removed this inconsistency in 2017.³

As a result of these changes to the criminal law, sexual contact between two adolescents below 18 years is now illegal in India, regardless of the adolescent's consent or being of a similar age. Criminalization of consensual sex between adolescents who are aged under 18 years stigmatizes sexual conduct and is likely to deter many from accessing SRH services due to fear of prosecution.

In 2019, the Madras High Court acquitted a boy who had been punished with 10 years of rigorous imprisonment by a lower court on alleged charges of abducting a 17 year-old girl and having sexual relations with her. The High Court stated that consensual relationships between adolescents aged 16 to 18 years should be excluded from the purview of the POCSO Act. The Court also suggested that

³ Section 375 of the Indian Penal Code deals with rape. The section included an exception that stated that sexual intercourse by a man with his own wife would not constitute rape if the wife was above 15 years of age. In 2017, the Supreme Court found this exception to be unconstitutional on the grounds of discrimination and in the interests of protecting the bodily integrity and reproductive choices of girls, in the case: *Independent Thought v. Union of India*, Supreme Court, 11 October 2017.

the definition of 'child' under the Act should be fixed at 16 years instead of 18; that the Act should consider age-proximity between consenting individuals when both are above 16 years; and that the Act needs to distinguish between cases of adolescent relationships after 16 years from the cases of sexual assault on children below 16 years.⁴

Intersections between the MTP Act and the POCSO Act

There are intersections between the MTP Act and POCSO Act that have a bearing on young people's access to SRH services. The POCSO Act treats any sexual activity between adolescents below 18 years as a sexual assault, and under Section 19, mandates that anyone who has knowledge or apprehension of the commission of a sexual offence against a child, which includes healthcare providers, needs to report the abuse. This mandatory reporting obligation contradicts the confidentiality and privacy protections under the MTP Act. Mandatory reporting can deter adolescent girls from accessing safe abortion services, in a number of contexts, such as if the pregnancy is a result of consensual sex, as well as non-consensual situations where the perpetrator is a family member.⁵ The Code of Criminal Procedure also requires reporting by hospitals regarding sexual offences under the Indian Penal Code. Under these circumstances, adolescent girls may hesitate to seek appropriate and timely SRH services and their access to safe and legal abortion may be compromised.

Child marriage and adolescent sexuality

Child marriage is common and declining very slowly in India. The prevalence of child marriage in India, measured in terms of the percentage of women in the age group 20-24 years who were married before the age of 18 years, has declined from 47 per cent in 2005-2006 to 27 per cent in 2015-2016. Yet at least 1.5 million girls under 18 get married, which makes India home to the largest number of child brides in the world.⁶

Child marriage in India is more likely to occur among poor households, those with lesser education and in rural areas. Factors that are strongly associated with reduction in the prevalence of child marriage range from macro level drivers such as economic development and growing urbanization, to increased years of schooling for girls, and increased awareness about the adverse consequences of child marriage and its illegality at the household level. There are numerous state and national initiatives that aim to end child marriage and promote empowerment of adolescents, including 'Beti Bachao, Beti Padhao' ('Save the daughter, Educate the Daughter') and the Scheme for Adolescent Girls.

The Prohibition of Child Marriage Act, 2006 prohibits marriages of girls under 18 years and boys under 21 years. The Act prescribes punishment for anyone performing, conducting or abetting child marriage, including parents or guardians of the child, and the groom if he is above 18 years of age. The Act does not render child marriages void from the outset. Rather, it makes child marriage voidable at the option of the bride or groom.⁷ The Prohibition of Child Marriage Act 2006 prevails over the personal status laws of each religious community.

⁴ Sabari v. The Inspector of Police et al, Madras High Court, 26 April 2019.

⁵ Dipika Jain, Brian Tronic, "Conflicting abortion laws in India: Unintended barriers to safe abortion for adolescent girls", Indian Journal of Medical Ethics, 11 October 2019.

⁶ UNICEF data available from: <http://www.unicef.org/india/what-we-do/end-child-marriage>

⁷ Under Section 3 of the Prohibition of Child Marriage Act, 2006, both the bride and groom can file a petition in the district court for annulling a child marriage, until two years after attaining majority. If the petitioner is a minor, the Act enables the petition to be filed through a guardian or next friend along with the Child Marriage Prohibition Officer. The state of Karnataka in 2016 introduced an amendment that makes all child marriages void ab initio.

Intersections between the Prohibition of Child Marriage Act and POCSO Act influence young people's sexual autonomy and agency to form consensual relationships. Provisions of these Acts and the Indian Penal Code have been used in a number of instances by parents and relatives to exert control over the choices young people may make, and as a tool for retribution and moral policing, failing to acknowledge the evolving capacities of adolescents and youth.⁸

Young people's access to HIV testing

Indian law requires young people aged under 18 years to obtain parental consent to access an HIV test. This inflexibility may deter some young people from accessing an HIV test due to reluctance to disclose to their parents that they have been sexually active. The HIV and AIDS (Prevention and Control) Act, 2017 promotes principles of non-discrimination, informed consent and confidentiality. However, the Act requires HIV testing to comply with national government HIV testing guidelines which require the consent of a parent or guardian to be obtained to an HIV test on a minor.⁹ The National AIDS Control Organization (NACO) issued two guidelines in 2016:

- ▶ The National HIV Counselling and Testing Services (HCTS) Guidelines, which state: "If the adolescent is below 18 years of age, informed consent of the parent/guardian needs to be obtained for HIV testing."¹⁰
- ▶ The National Guidelines for HIV Testing, which state that HIV testing of a minor or of an incompetent patient can be undertaken with a guardian's consent.¹¹

Decriminalization of homosexual conduct

Of great significance to the region, in 2018 a landmark judgment of the Supreme Court of India partially struck down section 377 of the Indian Penal Code, which criminalized "carnal intercourse against the order of nature."¹² This provision was inherited from the colonial era and is replicated in the penal codes of other former British colonies in Asia and the Pacific. The Supreme Court declared that criminalization of any consensual sexual relationship between two adults violates the constitutional rights to equality, freedom of expression and privacy. In its decision, the Supreme Court excluded consensual acts in private between adults from the criminal offence of "unnatural" intercourse.

8 Partners for Law and Development India, *Why Girls Run Away to Marry: Adolescent Realities and Socio-Legal Responses in India: Adolescent Sexuality and Early Marriage Series, Volume 1*, 2019; Partners for Law and Development India, *Grassroots Experiences of Using The Prohibition of Child Marriage Act, 2006: Adolescent Sexuality and Early Marriage Series, Volume 2*, 2019; *Implementation of the POCSO Act, 2012 by Special Courts: Challenges and Issues*, Centre for Child and the Law (Bangalore, National Law School of India University, 2018). Forthcoming (2020) study by Partners for Law in Development, based on a qualitative review of 83 cases from the District, High and Supreme Courts of India, from 2008-2017.

9 India, HIV and AIDS (Prevention and Control) Act 2017, Section 5(1) Subject to the provisions of this Act (a) no HIV test shall be undertaken or performed upon any person; or (b) no protected person shall be subject to medical treatment, medical interventions or research, except with the informed consent of such person or his representative and in such manner, as may be specified in the guidelines.

10 National AIDS Control Organisation, *National HIV Counselling and Testing Services (HCTS) Guidelines* (NACO, 2016), p.23,

11 NACO, *National Guidelines for HIV Testing* (2016), p.73.

12 Navtej Singh Johar & Ors v. Union of India, Supreme Court, 6 September 2018.

Laws and police practices affecting transgender people and sex work

The Immoral Trafficking Prevention Act, 1956 (ITPA), public nuisance and anti-beggary laws are often used by police to harass transgender people, especially those involved in sex work and begging. Criminalization increases their vulnerability to poverty and makes it difficult for health services to reach them with HIV and SRHR interventions. This enhances vulnerability to HIV and other STIs as transgender people are forced to engage in sex work due to lack of other employment options.

Transgender people also face stigma and discrimination in accessing health care services. Enforcement of the ITPA means that sex workers are vulnerable to police harassment, abuses and extortion. The ITPA criminalizes soliciting and living off the income of sex work and the enforcement of these offences drives sex workers underground, making it difficult to HIV and SRH services to reach them.

An important development for transgender people is the enactment of the Transgender Persons (Protection of Rights) Act, 2019. The Act prohibits the discrimination against a transgender person, including by denial of services or unfair treatment including in healthcare, education and employment. The Act also enables people to be legally recognized as transgender on a 'certificate of identity' based on self-identification as transgender.¹³ Such a certificate will be proof of their identity as 'transgender' and confer rights and benefits under the Act. However, to register a change of gender from male to female, or female to male, requires evidence of medical procedures.

¹³ See: India, Draft of Transgender Persons (Protection of Rights) Rules, 2020.

Nepal Case Study

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National Adolescent Health and Development Strategy

The first National Adolescent Health and Development Strategy was launched by Nepal's Ministry of Health and Population (MoHP) in 2000. Under the umbrella of the Strategy, the national adolescent SRH programme has been implemented since 2010. The MoHP updated the National Adolescent Health and Development Strategy in 2018. The Strategy aims to increase access to and utilization of adolescent-friendly, quality health and counselling services.

Key activities of the national SRH programme include:

- ▶ adolescent-friendly services in public health facilities
- ▶ comprehensive sexuality education in schools
- ▶ the Rupantaran programme for out-of-school adolescents and community interventions for key stakeholders.

The SRHR agenda is gaining momentum but implementation of the SRH programme has been slow, despite being a policy priority. Reviews of the programme conducted in 2013 and 2014 identified a range of barriers to implementation, including poor ownership at the local level and the need for greater integration with other health programmes.¹⁴ In Nepal's federal system, implementation is challenging because primary health-care is a local government responsibility. Other ongoing challenges include:¹⁵

- ▶ Stigma and discrimination act as key barriers preventing young people from accessing SRH facilities, particularly abortion services. Socio-cultural norms, the constraints of the caste system and judgmental attitudes about female sexuality deter adolescent girls from seeking SRH services. There is stigma associated with adolescent sexual activity. In one study, adolescents reported being afraid of bringing shame to their families if they visited SRH services.¹⁶

¹⁴ Shiva Raj Mishra, "Reaching adolescents with health services in Nepal", *Bulletin of the World Health Organization*, 2017; 95:90-91.

¹⁵ Deepak Thapa and Sohela Nazneen, *Policy and legal analysis notes: A review of the National Adolescent Health and Development Strategy in Nepal* (London, Gender and Adolescence Global Evidence, 2018).

¹⁶ Pushp Pandey, Holly Seale, Husna Razee, "Exploring the factors impacting on access and acceptance of sexual and reproductive health services provided by adolescent-friendly health services in Nepal", *PLoS ONE* 14(8), August 2019.

- ▶ Conservative social norms also limit the influence of government, donors and health experts on the delivery of sex education in schools and resistance occurs at implementation level.
- ▶ Health workers are not adequately trained, and lack resources to upgrade facilities to ensure privacy.
- ▶ There is a need to respond to the diversity of the adolescent population including those living in remote rural areas as well as urban adolescents who are more likely to be reachable through the internet and social media. There is a huge disparity in the accessibility and availability of services between urban and rural areas. Remote areas have limited health services and transport options are often very limited.
- ▶ Funding remains a major barrier and there is over-reliance on external partners for funds, which undermines sustainability.
- ▶ There is a lack of coordination between line ministries and lack of clarity of roles and responsibilities. There are tensions between the Ministry of Health and Population and the Ministry of Education over who will pay the salary of nurses in schools, and their respective roles in menstrual hygiene management.

Right to Safe Motherhood and Reproductive Health Act 2075 (2018)

Nepal's Right to Safe Motherhood and Reproductive Health Act is one of the most progressive laws addressing SRHR in the region. The Act recognizes reproductive health as a fundamental human right. It emphasizes reaching hidden populations and addressing the existing disparities in access to SRH services affecting young people and other groups.

The Act requires unbiased, non-judgemental SRH services to be provided to adolescents and that SRH services be disability-friendly. The Act aims to expand and improve the quality of reproductive health care services and prohibits discrimination against persons accessing reproductive health care. The Act requires provision of free reproductive health services from the government and addresses the right to safe abortion.

The Act demonstrates the political commitment of the government of Nepal to reproductive health and rights and supports Nepal to attain the goal of universal access to abortion care and other reproductive health services.

While the introduction of this legislation represents a significant step forward for SRHR in Nepal, the Act has some limitations. For example, it does not address rights in relation to sexual health and sexuality, and it does not address gender-based violence including health care and other services for survivors of sexual violence and other forms of gender-based violence. Further measures are required to address the harm caused by the judgmental attitudes of some health care workers towards unmarried adolescents attending SRH services.¹⁷

The MoHP is developing a Reproductive Health Regulation which will support implementation of the Act. Delays in finalising the Regulation have led to delays in implementing the Act at the local level.

¹⁷ Ibid.

Improvements to safe abortion rights

Abortion has been legal in some circumstances in Nepal since 2002 and is available in all 75 districts of the country.¹⁸ The Abortion Law of 2002 allows abortions for unmarried adolescents. However, although abortion has been decriminalized, many barriers obstruct access to abortion services including cost, lack of services in remote areas, lack of information about services and lack of knowledge that abortion is legal. One survey found that only 39.8 per cent of adolescents aged between 15–19 years know that abortion is legal in Nepal and unmarried pregnant girls often resort to unsafe abortion to avoid stigma.¹⁹ A study conducted in 2014 found that fewer than half of all abortions in Nepal were provided legally in government-approved facilities, noting that “the remainder were clandestine procedures provided by untrained or unapproved providers or induced by the pregnant woman herself.”²⁰

The Right to Safe Motherhood and Reproductive Health Act, 2018, expanded the categories of circumstance in which abortion is legal. Abortion is permitted with consent of the pregnant woman up to 12 weeks’ gestation and is permitted up to 28 weeks’ gestation in cases of rape or incest, if the woman is HIV positive or has an incurable disease, in cases of foetal malformation, and to save the life of the woman. It also requires that all levels of government ensure funding is available to fulfil the government’s mandate to provide free abortion care in public health facilities.



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18 IPAS, “A big step toward full reproductive rights in Nepal”, 26 October 2018, available from <https://www.ipas.org/News/2018/October/a-big-step-toward-full-reproductive-rights-in-nepal>

19 Nepal Demographic and Health Survey 2011 (MoHP, 2012); WHO and Ministry of Health, Adolescent Sexual and Reproductive Health Programme to Address Equity, Social Determinants, Gender and Human Rights in Nepal: Report of the Pilot Project (WHO, 2017).

20 Center for Research on Environment, Health and Population Activities (CREHPA) and Guttmacher Institute, Abortion and unintended pregnancy in Nepal (Kathmandu and New York, 2017).

Expanding the availability of HIV testing for young people

The MoHP issued Guidelines in 2017 confirming that the age of consent to HIV testing is 16 years. The Guidelines have been disseminated nationally. To support implementation of the Guidelines, orientation sessions have been provided to service providers including lay providers and organizations working on HIV in Nepal. The age of consent to testing of 16 was restated in updated HIV Testing and Treatment Guidelines issued in 2020.

Nepal has set the age of independent consent to HIV testing at a lower age than the age of consent to sex, which is 18 years. This recognizes the reality that many young people aged under 18 have sex during adolescence, which may place them at risk of HIV. It is important from a public health perspective that sexually active adolescents are able to know their HIV status and can access HIV testing without the need for parental consent. Parental consent can be a barrier to some young people who might be fearful of the consequences of disclosure of their sexual conduct.

The updated HIV Testing and Treatment Guidelines also introduced new approaches to support expanded uptake of HIV testing by young people. These include HIV self-testing and online outreach to hidden key populations and other people at risk of HIV through a web application and social media. The HIV epidemic in Nepal is mostly concentrated among key populations at higher risk such as people who inject drugs, men who have sex with men, transgender people, sex workers and male labour migrants. Adoption of HIV testing delivered by lay providers²¹ at community sites has also resulted in increased access by young key populations.

²¹ A lay provider is a person who performs functions related to health-care delivery and has been trained to deliver specific services but has not received a formal professional certificate or tertiary education degree.



Thailand Case Study

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The Adolescent Pregnancy Act

In recent decades, adolescent birth rates have been increasing in Thailand. Babies born to teenage mothers account for 16 per cent of the annual total.²² In 2018, an average of 199 women under 20 years of age gave birth every day, 7 of whom were less than 15 years old. The actual number of pregnant adolescents is likely to be larger, but there are no figures on how many of these pregnancies end in abortion. The increase in adolescent motherhood has occurred even though Thailand's economy has grown rapidly, and women have gained more educational and vocational opportunities.

The factors contributing to adolescent pregnancy are complex. One explanation is the unmet need for family planning, which is 12 per cent among teenagers aged 15 to 19 years. Social determinants of adolescent pregnancy include poverty, place of residence and low education levels. Girls in poorer and rural areas with less education are more likely to live in a union or be married before the age of 18 years. In a survey conducted in 2015, 22.5 per cent of Thai women aged 20-24 years reported that they were married or in a union before the age of 18 years.²³

The Adolescent Pregnancy Act (2016)²⁴ responded to this problem by providing a legal framework for improving young people's SRHR in Thailand. The law supports the rights of all adolescents below 20 years of age to make their own decisions, receive information and SRH services without discrimination, and enjoy confidentiality and privacy. The law enables pregnant adolescents to access care and social support and to remain in school or receive vocational training.

The government has introduced a National Strategy to Prevent and Reduce Teenage Pregnancies, as required by Articles 6 to 10 of the Act. The Strategy mobilizes people from across society to tackle the issue, including authorities across the five implementing ministries of government, policymakers, the private sector, parents and young people.

²² The Office of the National Economic and Social Development Council (NESDC), Ministry of Public Health (MOPH), Ministry of Social Development and Human Security (MSDHS), Thailand Science Research and Innovation (TSRI) and UNFPA, Population and Development for a Sustainable Future in Thailand: 25 Years After the ICPD (Bangkok, UNFPA, 2019); World Bank, Thailand Economic Monitor: Inequality, Opportunity and Human Capital (Vol. 2) (Washington, D.C., World Bank Group, 2019).

²³ Thailand National Statistics Office and UNICEF, Thailand Multiple Indicator Cluster Survey, 2015-2016.

²⁴ The Prevention and Solution of the Adolescent Pregnancy Problem Act BE 2559 (2016).

An indication of progress is that Thailand's adolescent birth rate has declined from 53 per 1,000 live births in 2016, to 36 per 1,000 live births in 2019. Evidence is needed to confirm which interventions contributed to this reduction. Availability of safe abortion as part of Thailand's Universal Health Coverage scheme may have contributed to the declining adolescent birth rate. The provision of free long-acting contraceptives (intrauterine devices (IUDs) and implants) to young people aged below 20 years may have also contributed to the decline. To address low uptake of long-lasting contraceptives, the Ministry of Public Health, together with the National Health Security Office, launched a programme in 2014 to provide IUDs and implants to adolescents aged under 20. This programme is also included in the Universal Health Coverage Scheme and provides free access to contraceptives for adolescents through public and private hospitals.

Another factor is that the condom use rate among students has increased, as recorded in the annual sexual behaviour survey. There has also been a focus on Comprehensive Sexuality Education in schools and, following the introduction of the Act, the Ministry of Education has provided e-learning to strengthen knowledge and skills of teachers on Comprehensive Sexuality Education.

The Act requires an integrated approach to reproductive health across government. Implementation requires coordination between the five line-ministries responsible for the Act. There has been strong collaboration among the responsible ministries led by the Ministry of Health acting as secretariat of the National Committee to implement the Act. Responsible line ministries have issued a ministerial order for implementation with budgetary allocations to fund the work. In accordance to the draft order of Ministry of Interior, it is proposed that all local administrative offices throughout the country will be required to provide information, counselling and support to address teenage pregnancies. This will help advance implementation of the National Adolescent Pregnancy Strategy to community level in a decentralized approach.

Implementation is also supported by Children and Youth Councils. The Children and Youth Promotion Act (2017) requires Children and Youth Councils to be established at municipal level. These Councils provide a mechanism to advance SRHR advocacy for adolescents according to Article 5 of the Adolescent Pregnancy Act. There are 8,000 Children and Youth Council Sub-districts throughout the country. The Councils also provide a platform for youth engagement to implement the Child Protection Law, which addresses child sexual exploitation and abuse.

Some of the ongoing challenges in implementing the Adolescent Pregnancy Act include:²⁵

- ▶ Although 80 per cent of health facilities throughout the country have provided youth friendly health services (YFHS), these services are often under-utilised. There is a need for more YFHS to be provided in alternative community sites outside of the health facility context. This could be achieved through collaboration with non-government organizations to design and deliver YFHS.
- ▶ Thailand continues to benefit from a high contraceptive prevalence rate, which has been close to 80 per cent among married women for over two decades. However, there are concerns about the quality of contraceptive methods, with low usage of long-acting contraceptives.
- ▶ The Act states that pregnant students can continue their education. The Adolescent Pregnancy National Committee requires schools to ensure that pregnant students can continue education without being forced to change schools so their educational opportunities will not be shortened due to early pregnancy. However, the compliance of schools with this requirement is not consistent. In reality, many pregnant students are transferred to other schools or non-formal education.

²⁵ UNFPA Country Office submission.

- ▶ There is a plan to evaluate the implementation of the Act. To support an evaluation there is a need to review indicators to track implementation of the Act including monitoring of the right holders according to Article 5 of the Act.
- ▶ There is a need for data linkage across line ministries to provide seamless support to adolescents. The Ministry of Public Health and Ministry of Education have a Memorandum of Understanding to link their databases to support implementation of the Act.
- ▶ The Act applies to Thai citizens only. However, there are more than 20,000 births each year from non-Thai mothers, so the needs of this group of parents have been neglected.

Reform of Thailand's abortion law

Under Section 301 of the Thai Criminal Code, women who seek an abortion face up to three years imprisonment and a fine of up to 60,000 baht, or both. Legally permissible circumstances for abortion include cases of rape or incest, necessity due to the physical or mental health of the pregnant woman, foetal disability, or high risk of severe genetic disease. The law also allows girls aged under 15 to have an abortion.

Abortion is socially controversial and has significant socio-cultural and religious implications. As a result, many physicians and nurses still refuse to provide abortions. Women and girls often seek to hide attempts to terminate an unplanned or unwanted pregnancy. Medical abortion products are available throughout the country from the internet but at significant cost.²⁶ It has been found that allowing women to use medical termination of pregnancy at home is supported by many women because it enabled them to manage the procedure in a private place.²⁷

To reduce stigmatization, there have been calls for medical terminations of pregnancy to be integrated into the Reproductive Health and Family Planning Clinic of each health facility.²⁸ There are indications that the Ministry of Health supports promoting safe abortion with telemedicine and is planning to develop a protocol for this.²⁹

In February 2020, Thailand's Constitutional Court ruled that the Criminal Code offence for abortion is unconstitutional and must be redrafted within 360 days. The Constitutional Court ruled that Section 301 violates Sections 27 and 28 of the Charter, which enshrine the enjoyment of equal rights and freedoms while prohibiting discrimination based on gender. The ruling is being viewed as an opportunity to advocate for a more liberal abortion law by some pro-choice civil society groups. However, it is unclear whether the Court's concern was focused instead on gender discrimination in the penalties that the law imposes on women. Article 301 states that any woman who terminates her own pregnancy or allows others to terminate her pregnancy may receive a prison sentence of up to three years or a fine of 60,000 baht or both. It has been suggested that the Court wants the law amended so that men face the same penalty as women seeking to terminate a pregnancy.³⁰

In response to civil society concerns, the Ministry of Health has on-going consultations to inform the drafting of the new abortion law. It is hoped that the amended law will improve young people's access to safe abortion services aligned with Article 5 of the Adolescent Pregnancy Act.

²⁶ Kittipong Saejeng, Unnop Jaisamrarn, Wanapa Naravage, "Women's experiences and acceptability of medical termination of pregnancy: Results of an introductory study in Thailand" *Journal of Health Research* 33(2), (2018), 127-137.

²⁷ Ibid.

²⁸ Ibid.

²⁹ International Campaign for Women's Right to Safe Abortion, "Thai pro-choice activists handed in the petition calling for access to safe abortion with telemedicine", 2 June 2020.

³⁰ "Abortion laws to be amended by court ruling", *Bangkok Post*, 20 February 2020.

Young people's access to HIV testing

The rate of new HIV infections has increased among young Thais, particularly young men who have sex with men (MSM). According to the Department of Disease Control 50 per cent of patients with a new HIV diagnosis identify as MSM, and 55 per cent of new patients are less than 25 years old.

A Thai Medical Council Clinical Practice Guideline issued in 2014 states that a person under 18 years of age who requests HIV testing no longer requires parental consent. This guideline has been implemented since 2014 as a measure to increase the early diagnosis of HIV cases among young people so that people can be referred to antiretroviral treatment, which has both therapeutic and preventive benefits. While the Thai Medical Council Clinical Practice Guideline is progressive and does allow for testing of HIV for those under 18 years, it does not allow for HIV treatment to be provided without parental consent.

HIV self-testing kits have been made available since 2019, when the Food and Drug Administration of Thailand approved over-the-counter sales of HIV home-test kits from pharmacies.³¹ Previously, HIV test kits could only be sold to medical professionals. By offering an easy and anonymous alternative to visiting a clinic for testing, it is hoped that more young people will be able to detect the virus at an earlier stage, seek treatment and avoid passing HIV on to others. Allowing the sale of over-the-counter home HIV test kits can help identify undiagnosed HIV patients who might have been reluctant to visit a hospital and can help curb the spread of HIV by directing patients to treatment.

Child marriage

The minimum age of marriage is 17 under the Commercial and Civil Code, section 1435. However, there are conflicting provisions in the Criminal Code. The CEDAW Committee expressed concern in its 2017 Concluding Observations on Thailand that girls aged as young as 13 who are sexually abused can still be legally married to the perpetrator of abuse under section 277 of the Criminal Code, and that child marriages continue to take place, particularly in rural and remote areas. The Committee recommended that Criminal Code be amended to ensure that the minimum age of marriage is established as 18 years for both girls and boys and to take all necessary measures to eliminate child marriage and forced marriage in practice.³²

³¹ HIV test kits good step, Bangkok Post, 22 April 2019.

³² CEDAW Committee, Concluding observations on the combined sixth and seventh periodic reports of Thailand, 21 July 2017, CEDAW/C/THA/CO/R.6-7.



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Papua New Guinea Case Study

Addressing adolescent pregnancy has emerged as a policy priority

Papua New Guinea (PNG) has high rates of adolescent fertility, early childbearing, unintended pregnancy and abortion among young women.³³ Adolescent pregnancy is a priority in the PNG Population Policy³⁴ and the PNG Youth and Adolescent Health Policy.³⁵ PNG's Youth and Adolescent Health Policy highlights the prevention of adolescent pregnancy as a national priority but notes the lack of strategic information to guide implementation.

While adolescent pregnancy is a policy priority, there is a lack of funding for implementation of services. PNG still lacks youth-specific sexual, reproductive and maternal health services and community-based outreach programmes. There is a need for youth-friendly health services and outreach programmes focused on prevention of adolescent pregnancy. Young women and men are rarely consulted about strategies to prevent or mitigate the harmful impacts of pregnancy at a young age.³⁶

The National Department of Health has developed a five-year National Action Plan to improve access to contraceptives. The five-year National Action Plan's goal is to achieve 50 per cent contraceptive prevalence rate with modern family planning methods (mCPR), with 55 per cent implants in the method mix by 2020.³⁷ The National Action Plan include interventions to strengthen family planning services in hospitals, clinics, and primary care facilities, including adolescent-friendly health facilities.

33 Stephen Bell, Elissa Kennedy, Kirsten Black, et al., "Youth-centred research to help prevent and mitigate the adverse health and social impacts of pregnancy amongst young Papua New Guineans", *Reproductive Health Matters*, 26:54 (2018), 5-12.

34 PNG Department of National Planning and Monitoring, *National Population Policy 2015–2024* (Port Moresby, PNG Government, 2015)

35 PNG National Department of Health, *PNG youth and adolescent health policy* (Port Moresby, National Department of Health 2014).

36 Stephen Bell, Elissa Kennedy, Kirsten Black, et al. (2018).

37 WHO, *Papua New Guinea Actions for scaling up long-acting reversible contraception* (World Health Organization Regional Office for the Western Pacific, 2017).

Demographic and Health Survey reveals slow progress in addressing SRHR for young people

In 2019, the PNG National Statistical Office released the Demographic and Health Survey (DHS) 2016-2018 key indicators report.³⁸ The findings of the DHS illustrate the ongoing challenges for PNG in addressing SRHR.

The DHS Report notes that the issue of adolescent fertility is important for both health and social reasons. Children born to very young mothers are at increased risk of sickness and death, and teenage mothers are often constrained in their ability to pursue educational and employment opportunities.

Teenage childbearing in PNG has declined from 13.9 per cent of teenagers in 1996 to 12.5 per cent in 2016-18. 10 per cent of girls aged 15-19 reported that they had a live birth. Rural teenagers tend to start childbearing earlier than urban teenagers (13 per cent versus 10 per cent).

Overall, 37 per cent of currently married women use a method of family planning, with 31 per cent using a modern method and 6 per cent using a traditional method. Among currently married women, the most popular methods are injectables and implants (each used by 9 per cent), followed by female sterilization (used by 8 per cent). The contraceptive prevalence rate (CPR) among married women varies with age, rising from 18 per cent among women age 15-19 to a peak of 42 per cent among women age 30-39 before declining to 33 per cent among women age 45-49. Women in urban areas are more likely to use a contraceptive method than women in rural areas (50 per cent and 35 per cent, respectively).

Eighteen per cent of sexually active unmarried women use a method of contraception, with 16 per cent using a modern method. Eleven per cent of sexually active unmarried women in urban areas use condoms, as compared with only 3 per cent of their rural counterparts. This is a concern both in relation to preventing teenage pregnancy and HIV.

Legislating to prohibit child marriage

Child marriage is common in PNG, particularly in rural and remote communities where customary marriages are common.

The Marriage Act 1963 sets the minimum age of marriage at 18 years for men and 16 years for girls. Judges can approve marriages of boys aged 16 years and girls aged 14 years. The Marriage Act 1963 also recognizes customary marriages as valid and excludes them from the statutory requirements regarding minimum age.³⁹ Customary laws vary across the country. It is common for customary law to recognise the marriage of children, provided that both the bride and groom have reached puberty.⁴⁰ Eligibility for customary marriages is dictated by physical maturity rather than age. Girls as young as 13 may enter into customary marriages arranged by family members or village chiefs on behalf of the families.⁴¹

³⁸ PNG National Statistical Office, Demographic and Health Survey 2016-18 Key Indicators Report, 2019; DevPolicy, New health statistics for PNG, 2019, available from <https://devpolicy.org/new-health-statistics-for-png-20191031/>

³⁹ PNG, Marriage Act 1963, ss. 3 and 6.

⁴⁰ Joshua Goa, Social issues surrounding child marriage in Papua New Guinea (2014).

⁴¹ CEDAW Committee, PNG State Report (combined initial second and third) submitted to the CEDAW Committee, May 2009 for consideration by the Committee at its 46th Session, 22 May 2009 (CEDAW/C/PNG/3).

In 2015, legislation was passed to criminalize people who arrange child marriages. The Lukautim Pikinini Act 2015 defines a child as a person under 18 years of age and imposes a maximum penalty of five years imprisonment for facilitating a child marriage. However, the Marriage Act 1963 is yet to be amended to reflect this, so customary marriages of children are still recognized as legally valid. There have been proposals for further law reform to address this problem. Amendment to the Marriage Act were proposed in 2016⁴² to set a new standard minimum age for all marriages at 18 years.

Criminal laws impede HIV prevention efforts

Male-to-male sex is criminalized under the Penal Code and is highly stigmatized in PNG, impeding uptake of HIV services by men who have sex with men and transgender people. Sex work is also criminalized.

An integrated bio-behavioural survey (IBBS) of women and girls who sell and exchange sex (FSW) and men who have sex with men and transgender women (MSM/TGW) was conducted in the cities of Port Moresby, Lae, and Mt. Hagen in 2016-2017.⁴³ The survey provides insights into the barriers to HIV and SRH services faced by these stigmatized populations and the specific vulnerabilities of young people.

Findings in relation to FSW included:

- ▶ About two in five FSW first sold or exchanged sex as adolescents between the ages of 10 and 19 years (40.2 per cent, 40.0 per cent and 44.7 per cent) in Port Moresby, Lae and Mt. Hagen respectively.
- ▶ Almost one in two (45.2 per cent) FSW in Port Moresby, over one in five (23.0 per cent) in Lae and one in four (25.3 per cent) in Mt. Hagen felt the need to hide from health services the fact that they sell or exchange sex.
- ▶ HIV prevalence among FSW was 14.9 per cent in Port Moresby, 11.9 per cent in Lae and 19.6 per cent in Mt. Hagen.

Findings relating to MSM and TGW included:⁴⁴

- ▶ Upwards of 45 per cent of MSM and TGW first had sex with another MSM or TGW before age 20.
- ▶ Condom use was limited (26.9 per cent in Port Moresby, 26.3 per cent in Lae, and 32.5 per cent in Mt. Hagen).
- ▶ Exposure to sexual violence in the last 12 months is high and was comparable across all three cities (9.9 per cent in Port Moresby, 5.4 per cent in Lae, and 8.0 per cent in Mt. Hagen).
- ▶ Less than half of MSM and TGW had ever tested for HIV and of those who had, over half tested more than six months ago.

⁴² USA Law Library of Congress, "Papua New Guinea: Changes to Marriage Laws to be Introduced", 23 August 2016; Review Marriage Act: Kesenga, Post Courier, 7 August 2019.

⁴³ A. Kelly-Hanku, B. Willie, D. Weikum, et al., Kauntim mi tu : Multi-Site Summary Report from the Key Population Integrated Bio-Behavioural Survey, Papua New Guinea (Papua New Guinea Institute of Medical Research and Kirby Institute, UNSW Sydney, 2018).

⁴⁴ A. Hakim, K. Coy, S. G. Badman, et al. "One size does not fit all: HIV prevalence and correlates of risk for men who have sex with men, transgender women in multiple cities in Papua New Guinea", BMC Public Health 19, 623 (2019).

- ▶ Almost half of MSM/TG in Port Moresby and Lae felt the need to hide their sexual practices and/or gender identity when accessing health services (44.9-48.0 per cent), and one in three reported feeling ashamed of themselves based on their sexual practices or gender identity (29.8-32.7 per cent)
- ▶ HIV prevalence among MSM and TGW was 8.5 per cent in Port Moresby and 6.9 per cent in Lae, and 1.8 per cent among survey participants in Mt. Hagen.

The Report called for continued efforts to achieve law reform to create an enabling legal environment for key populations at risk of HIV.



The Philippines Case Study

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Adolescents in the Philippines face many legal and policy barriers to their full enjoyment of SRHR, putting them at risk of unplanned pregnancy, abortion, sexually transmitted infections and HIV. An increasing proportion of adolescents and young people have early sexual encounters prior to marriage. In 2013, one in three young people reported having premarital sex and the prevalence of early sexual encounters has increased over the last 20 years.⁴⁵

The 2017 National Demographic and Health Survey (NDHS) reported that the adolescent fertility rate was 47 live births per 1,000 women aged 15-19 years old.⁴⁶ There are some indicators of progress in reaching adolescents with SRHR information and services. For example, there were fewer young Filipino women aged 15-19 years who had begun child-bearing in 2017 (8.6 per cent) compared to 2013 (10 per cent) based on the NDHS. The unmet need for family planning decreased slightly from 17.5 per cent (2013) to 16.7 per cent (2017). Adolescents aged 15-19 have better access to family planning, as indicated by the increase of the age-specific modern contraceptive prevalence rate (mCPR) from 20.6 per cent in 2013 to 29.7 per cent in 2017. However, in 2017 unmarried and sexually active women still had a substantially higher unmet need for family planning than currently married women (49 per cent versus 17 per cent).

In 2017, UNAIDS declared that the Philippines had the fastest growing HIV epidemic in the Asia and the Pacific region with new HIV infections increasing from an estimated 4,300 in 2010 to 10,500 in 2016. The Department of Health reports that the majority of new infections are among young men who have sex with men (MSM) and transgender women aged 15 to 24 years old.⁴⁷ From 1984 to June 2020, a total of 78,559 people had been diagnosed with HIV in the Philippines. Among these, 29 per cent were among 15 to 24 years old. The proportion of HIV positive cases in the 15-24 year age group nearly doubled in the past ten years, from 17 per cent in the period 2000 to 2009 to 29 per cent in the period 2010 to 2019.⁴⁸

⁴⁵ Philippines Department of Health, Adolescent Health and Development Program, see: <https://www.doh.gov.ph/Adolescent-Health-and-Development-Program>

⁴⁶ Philippine Statistics Authority (PSA) and ICF, Philippines National Demographic and Health Survey 2017: Key Indicators (Quezon City, Philippines, and Rockville, Maryland, USA, PSA and ICF, 2018).

⁴⁷ Philippine Department of Health, "Philippines addresses rising trend in new infections", available from: <https://www.doh.gov.ph/node/10649>

⁴⁸ Philippine Department of Health, Epidemiology Bureau, HIV/AIDS and ART Registry of the Philippines, April-June 2020.

Risk behaviour for HIV starts early while protective behaviour starts late among key populations in the Philippines. A study conducted in 2018 found that the median age for first sex is 16 years among MSM and transgender women, and 18 years among female sex workers. The median age for first condom use is much later at 19 years among MSM and transgender women, and 20 years among female sex workers. Moreover, their first HIV test occurs much later, at a median age of 21 years.⁴⁹

National policies on adolescent health

The Department of Health (DOH) Administrative Order No. 2013-0013 established the National Policy and Strategic Framework on Adolescent Health and Development in 2013. The framework has three main strategies: health education and health promotion; life skills building; and provision of prevention and case management medical services. The Strategy mandates Local Government Units to deliver reproductive health care services and distribute family planning goods and supplies as part of an essential information and service delivery package.

In 2016, the DOH Administrative Order 2016-005 issued the National Policy on the Minimum Initial Service Package for SHR in Health Emergencies and Disasters. It provides the guidelines for responding to SRH needs in emergency situations, covering prevention of sexual violence, prevention and management of STIs and HIV, and provision of maternal and newborn healthcare.

In 2017, the DOH, with support from the World Health Organization, developed a Manual of Operations as a guide for programme managers on the implementation of the National Policy and Strategic Framework on Adolescent Health and Development. The Manual highlights the importance of respect for the privacy of adolescents when delivering SRH services, as follows:⁵⁰

Privacy and confidentiality give adolescents the confidence to reveal a history to their health care provider. For example, ...revealing other health related information—such as that an adolescent is pregnant, has had an abortion, or has a sexually transmitted infection—can place the adolescent at risk of violence if that information is shared with family, friends or employers without permission... confidentiality is particularly important when adolescents experience early pregnancy, violence or within any HIV related concerns, because breaches of confidentiality can have life-threatening consequences for adolescents living in situations of early pregnancy, violence and HIV.

An ongoing challenge is to ensure an appropriate governance mechanism for the Adolescent Health and Development Programme. Currently, there is no specific governance structure that oversees planning and implementation. A multi-stakeholder Technical Working Group co-convened by the DOH and the National Youth Commission was initially established for this purpose, but it is no longer active. Governance of the Programme requires strong partnerships between DOH and youth-led community organizations.

⁴⁹ Philippine Department of Health, Epidemiology Bureau, 2018 Integrated HIV Behavioral and Serologic Surveillance (IHBS) Factsheets.

⁵⁰ Department of Health, Adolescent Health and Development Programme Manual of Operations (WHO and Department of Health 2017).

Another challenge is to generate better evidence to inform the Programme. The Programme and the National Policy and Strategic Framework require updating based on epidemiological and behavioural research data on adolescents and youth. The Young Adult Fertility and Sexuality Survey was last conducted in 2013 and DOH plans to conduct it again in 2021.

The Reproductive Health Act

The Responsible Parenthood and Reproductive Health Act (RPRH Act), RA 10354, was introduced in 2012. The Act provides the legislative basis for the national SRH programme, including family planning and comprehensive sex education. The Act guarantees “universal access to medically-safe, non-abortifacient, effective, legal, affordable, and quality reproductive health care services, methods, devices, supplies.” The Act’s Implementing Rules and Regulations require all public health facilities to provide contraceptive information and services that are “age and development appropriate.” These must be available to all clients regardless of “age, sex, gender, disability, marital status, or background.”⁵¹

Section 7 of the Act and Rules 4.06 and 4.07 of the Implementing Rules and Regulations state that no person shall be denied information and access to family planning information and services, whether natural or artificial, provided that minors are given written consent from their parents or guardians. The minor must then be given age-appropriate SRH counselling, with health facilities dispensing health products and performing procedures for family planning.

Following the mandatory review of the RPRH Act in 2018, several bills on teenage pregnancy are being discussed in the Congress and Senate.⁵²

Supreme Court challenges to Reproductive Health Act

The evolution of SRHR laws and policies in the Philippines has been influenced by ongoing debates between conservative religious bodies and progressive SRHR advocates. This is illustrated by a series of legal challenges considered by the courts.

Groups that oppose reproductive rights issued a series of legal challenges in the Supreme Court which have created obstacles to the RPRH Act’s implementation. In a landmark decision handed down in 2014, the Supreme Court upheld most of the provisions of the RPRH Act as constitutional.⁵³ However, the Supreme Court imposed the following restrictions on implementation of the RPRH Act:

- ▶ Health services can exercise “conscientious objection” to providing SRH services and there is no obligation for private health facilities, non-maternity specialty hospitals, and hospitals run by religious groups to refer women seeking modern contraceptives to alternative health care providers.
- ▶ The Court clarified the requirement for parental consent for adolescents to access contraceptives. Consent requirements Section 7 of the RPRH Act states that minors (persons aged under 18 years) require written parental consent to access family planning services including contraceptives. The original version of the Act did not require parental consent if the adolescent had a prior

⁵¹ Philippines, Revised implementing rules and regulations (IRR) of the Responsible Parenthood and Reproductive Health Act of 2012 (R.A. No. 10354) (2017).

⁵² House Bill 4231: Incorporating Lessons on Teenage Pregnancy Prevention and Population Education in the Curriculum of Basic Education; Senate Bill 1482: Prevention of Adolescent Pregnancy Act; House Bill 337: Teen Pregnancy Prevention, Responsibility and Opportunity.

⁵³ James M. Imbong and Lovely-Ann C. Imbong v. Hon. Paquito N. Ochoa, Jr. and Others (Supreme Court, 8 April 2014).

pregnancy. However, the Court removed the parental consent exception for minors with a prior pregnancy. The Court's decision therefore requires all minors to have written parental consent to access contraceptive services from public facilities. However, the Court recognized that parental consent is not required for access to SRH services in emergency cases.

The imposition of parental consent requirements has been criticised as severely restricting informed choice and limiting the privacy rights of young people.⁵⁴ The RPRH Act also requires a married person to obtain spousal consent to access contraceptives. The Department of Health Family Planning Clinical Practice Guidelines, issued after the Supreme Court ruling, require spousal consent prior to undergoing permanent surgical contraceptive methods.⁵⁵ Providers may refuse to carry out reproductive health procedures such as ligation or vasectomy for married individuals on the ground of lack of spousal consent.⁵⁶

As a result of another Supreme Court challenge to the RPRH Act, the Court issued a restraining order in 2015, which caused shortages in supplies of contraceptives and prevented use of progestin implants by public clinics until the ban was lifted in 2017.⁵⁷

National Policy on Post-Abortion Complications

Abortion is criminalized in the Philippines.⁵⁸ The RPRH Act confirmed the prohibition on abortion while mandating the treatment of post-abortion complications in a humane, non-judgmental and compassionate manner.

In 2018, the Department of Health updated its policy on post-abortion care (National Policy on the Prevention of Illegal and Unsafe Abortion and Management of Post-abortion Complications).⁵⁹ The Policy specifically recognizes the needs of adolescents.

The Policy requires health staff in public and private facilities providing family planning and maternal health services to provide accurate information and make family planning services available to adolescents in accordance with the RPRH Act and to provide non-judgmental, non-threatening counselling to adolescents and their parents. It also requires staff to educate adolescents about the legal status of abortion, the complications of unsafe abortion as well as the benefits of family planning in the prevention of unintended pregnancies and saving women's lives.

The Policy requires data to be reported as part of the National Safe Motherhood Program on the number of women or girls who were managed at hospitals for post-abortion care and number who

⁵⁴ J. Melgar, A. Melgar, M. Festin, et al. "Assessment of country policies affecting reproductive health for adolescents in the Philippines" *Reproductive Health*, 15(1), (2018) 205.

⁵⁵ The Philippine clinical standards manual on family planning (2014 edition) (Department of Health; 2014); and see: J. Melgar, *ibid.*

⁵⁶ Catholics for Reproductive Health, Center for Reproductive Rights, Filipino Freethinkers, Philippine Safe Abortion Advocacy Network, WomanHealth Philippines, Women's Global Network for Reproductive Rights, CEDAW Committee submission, 3 August 2018.

⁵⁷ Alliance for The Family Foundation Philippines (ALFI), and Others., v. Department of Health, and Others (G.R. No. 217872, 26 April 2017).

⁵⁸ The Philippine abortion law does not expressly allow abortion to be performed to save the life of a woman and there are no exceptions for pregnancies arising from rape or incest, or those involving foetal impairment. Although there is a strong legal argument that the doctrine of necessity as applied by the Revised Penal Code allows abortion to be performed to save a woman's life, in practice there is no consensus among clinicians that abortion can be performed to save a life.

⁵⁹ Department of Health, National policy on the Prevention of illegal and unsafe abortion and management of post-abortion complications, Administrative Order No. 2018-0003 (Philippines, Department of Health, 2018).

died as a result of post-abortion complications. Importantly, these numbers must be disaggregated according to age: 10-14 years old; 15- 19 years old; 20- 35 years old; 36 - 49 years old. Reporting of data disaggregated by age enables the planning of SRHR services that respond appropriately to the different needs of adolescents and adults.

Advocates have called for the policy to be strengthened by addressing the SRHR issues that were included in the Department of Health's previous post-abortion care policy, which was issued in 2016.⁶⁰ The 2016 policy clarified that health care workers were not obliged to report women who have abortions to the authorities and that providers of post-abortion care are not exposed to liability for aiding and abetting an illegal abortion. These issues are not addressed in the 2018 Policy.⁶¹

The adverse impacts of COVID-19 on SRHR

The COVID-19 pandemic has disrupted delivery and access to SRH services in the Philippines. The community quarantines and travel restrictions implemented since March 2020 have affected the work force, supplies, demand and access to SRH services. A jump in adolescent pregnancies is expected as a result of community lockdowns and rising levels of poverty and unemployment. Community quarantines are expected to have adverse impacts on SRHR in terms of increases to unintended pregnancies, the unmet need for family planning, and maternal mortality.⁶²

According to the Philippine Commission on Population and Development (POPCOM), the impacts of COVID-19 on SRHR will lead to an additional 214,000 unplanned births in the Philippines, and 10 per cent of these births will be among women below 20 years of age.⁶³ It is estimated that there will be a 6.3 per cent increase in teenage pregnancies due to lockdowns and quarantine measures.

These estimates are based on a study conducted by the University of the Philippines Population Institute (UPPI) and UNFPA. The study revealed that an additional 590,000 women aged 15 to 49 years will have an unmet need for family planning due to the impacts of COVID-19 on SRHR, bringing the total to 3,688,000 women with an unmet need, which represents a 19 per cent increase. The unmet need for family planning among adolescents aged between 15 and 19 years old will increase by almost 10 per cent, increasing from 163,000 to 178,000 as a result of the lockdowns. The contraceptive prevalence rate for modern family planning methods is projected to decline by 2.2 per cent. This means over 400,000 women are expected to drop out of the country's family planning programme.

⁶⁰ Department of Health, National policy on the Prevention and Management of Abortion Complication, Administrative Order No. 2016-41. (Philippines, Department of Health, 2016).

⁶¹ See: Christelyn Sibugon, Marevic Parcon, Exploring Medical, Nursing, and Midwifery Students' Knowledge and Attitudes towards Abortion in the Philippines (Women's Global Network for Reproductive Rights, 2019); Melissa Upreti and Jihan Jacob, "The Philippines rolls back advancements in the postabortion care policy", *International Journal of Gynecology and Obstetrics* 142 no.2 (May 2018); Melissa Upreti and Jihan Jacob, "The Philippines' New Post-Abortion Care Policy (2018)". *International Journal of Gynecology and Obstetrics* 141 no. 2 (May 2018): 268-275.

⁶² University of the Philippines Population Institute (UPPI), Presentation for Population Day 2020.

⁶³ Philippine Commission on Population and Development (POPCOM), Pandemic may increase live births in PHL to almost 2M with FP efforts hampered, thousands of teens also projected to give birth (POPCOM, 2020).

National HIV legislation

In an important innovation to promote access to HIV testing for adolescents, the Philippine HIV and AIDS Policy Act of 2018⁶⁴ provides that a child may consent to an HIV test independent of a parent if the child is aged 15 or over. If the child is under 15, the consent of a parent or guardian is not required if the child is pregnant or engaged in high risk behaviour and the test is with the assistance of a licensed social worker or health worker. If the child is under 15 and parental consent is refused, or a parent or guardian cannot be found to provide consent, then consent can be provided by a social worker or health worker with the child's agreement ('assent'). Under the previous AIDS Law, young people aged below 18 years needed written consent to access an HIV test.

The Act was signed into law in December 2018, but its Implementing Rules and Regulations were not completed until mid-2019. The law has been disseminated through the agencies involved in the development of the law. The government agencies and civil society organizations that are members of the Philippine National AIDS Council (which was re-constituted by the Act) have disseminated the information to their respective stakeholders.

Judgmental attitudes of some local government officials and service providers who are not responsive to the needs of young people can be a challenge in implementing the HIV legislation. Since the Philippines has devolved responsibilities for implementing most health programmes, implementation of the legislation across the country is uneven. HIV programmes are mainly the responsibility of local government units, which have varying resources and priorities.

Age of consent to sex

The age of consent to sex in the Philippines is 12 years, which is widely considered to be problematic as it may expose children to risk of sexual violence or abuse. As at July 2020, there were five bills in the House of Representatives proposing to increase the age of consent from 12 to 16 by amending the Revised Penal Code and Anti-Rape Law,⁶⁵ and one bill proposes to increase the age to 18.⁶⁶ There are also five Bills before the Senate proposing to raise the age of sexual consent.⁶⁷

The Committee on the Revision of Laws has organized a series of technical working group meetings and members have agreed that, regardless of consent, sex with a person below the age of 16 should be classed as statutory rape. The Committee is currently drafting the substitute bill. The technical working group has agreed on a fixed four-year close-in-age exception to the age of consent, which would permit adolescents of a similar age to engage in consensual sexual conduct if their age difference is less than four years.

⁶⁴ Republic Act 11166, article 29.

⁶⁵ Five bills: House Bill (HB) 210-Puno, HB 1689-Villafuerte, HB 4160-Romualdez & Romualdez, HB 5795-Benitez, and HB 6073-Lim.

⁶⁶ One bill: HB 2707-Cuaresma.

⁶⁷ Senate Bill (SBN) 305-Zubiri; SBN 762-Binay, SBN 1258-Zubiri; HB739-Gatchalian; SBN 163-Hontiveros.

Child marriage⁶⁸

The Family Code sets the minimum age of marriage at 18 years. Yet 15 per cent of young women aged 20-24 are married before they reached the age of 18. Many adolescent brides are exposed to early repeated pregnancies before they become physically mature and psychologically ready for motherhood.

The Code of Muslim Personal Laws applies to Muslim communities in Mindanao. It sets a lower age as the minimum age for marriage – 15 for males compared to 12 for females, as long as she has attained puberty. To address child marriage in Mindanao, UNFPA is supporting the Panginam project, which is a youth-led initiative providing livelihood opportunities, life skills and psychological support to young couples who are at risk of or involved in child marriage.

UNFPA has also provided technical assistance to the Department of Health and POPCOM in the development of a Fatwa (a legal opinion on a point of Islamic law) on the Model Family in Islam, which discourages early marriages. This Fatwa is being integrated in the programme on Comprehensive Gender and Health Education for Youth in the Bangsamoro Autonomous Region in Muslim Mindanao. UNFPA is advocating for the increase of the minimum age of marriage with the newly established Bangsamoro Transition Authority. At the national level, UNFPA is supporting a Bill which proposes to criminalize child marriage by penalizing solemnizing officers and parents who arrange and consent to a child marriage.

⁶⁸ Adapted from: UNFPA Philippines, Empowering Maranao girls against child marriage, 11 October 2019.



Viet Nam Case Study

Viet Nam is experiencing a period of demographic dividend. The proportion of the total population who are young people is at the highest level ever recorded. According to the National Census of 2019, there were 20.4 million young people aged 10-24, accounting for 21 per cent of the population. The 2016 National Survey on Sexual and Reproductive Health of Vietnamese Youth reported that the average age for first sexual intercourse was 18.7 years. According to the study, among females aged 15-24, the modern contraceptive use rate was 50.5 per cent. The unmet need for modern contraceptives was around 30 per cent, reaching 48.4 per cent among never-married females aged 15-24.⁶⁹

More than one third of young people lack access to contraceptive measures as well as information. Access to family planning services remains limited, especially for unmarried young women, migrant women and women living in mountainous and isolated areas. The adolescent pregnancy rate is rising,⁷⁰ and more than 6 per-cent of women aged between 15 and 19 give birth.⁷¹ The abortion rate among adolescents and young people has increased over the last decade, and accounts for more than 20 per cent of abortion cases.

There are an estimated 230,000 people living with HIV in Viet Nam, with approximately 160,000 of these people receiving antiretroviral therapy in 2019. The HIV epidemic is concentrated among key populations of men who have sex with men (MSM), transgender people, sex workers and people who inject drugs and their partners. HIV prevalence among MSM is 12.2 per cent⁷² (with higher prevalence among young MSM) and among people who inject drugs is 14.2 per cent.⁷³ The 2016 National Survey on Sexual and Reproductive Health of Vietnamese Youth showed only 26.8 per cent of respondents demonstrated comprehensive correct knowledge of HIV, far below the national target for comprehensive knowledge of HIV/AIDS in 50 per cent of the population aged 15-49 by 2015 and 80 per cent by 2020, as stated in the National HIV Strategy.⁷⁴

⁶⁹ Ministry of Home Affairs and UNFPA, Report on Vietnamese youth in the period of 2015 – 2018 (Hanoi, Ministry of Home Affairs, 2019)

⁷⁰ Ministry of Health, Report by the Maternal and Child Health Department (Hanoi, Ministry of Health, 2014).

⁷¹ General Statistics Office of Viet Nam (GSO) and UNICEF, Viet Nam Multiple Indicator Cluster Survey 2014 (GSO and UNICEF, 2015).

⁷² Viet Nam HIV Sentinel Surveillance Plus (HSS+), 2017.

⁷³ Viet Nam HIV Sentinel Surveillance Plus (HSS+), 2019.

⁷⁴ Viet Nam, Prime Minister Decision No. 608/QĐ-TTg, of May 25, 2012, approving the National Strategy on HIV/AIDS Prevention and Control through 2020 with a vision to 2030.

SRHR in national legislation and policy

Viet Nam has introduced several progressive laws and policies on SRH and the rights of adolescents. Viet Nam has committed to achieve universal access to SRH services as a component of Sustainable Development Goal 3 and there are commitments to provide SRH services to adolescents in the National Population and Reproductive Health Strategy in 2011-2020, Article 21 of the National Youth Law⁷⁵ and the Viet Nam Youth Development Strategy 2011-2020.⁷⁶ The Youth Development Strategy 2011-2020 established the target that at least 80 per cent of Vietnamese young people will be equipped with sound life skills and awareness of gender equality, reproductive health, building a happy family, and domestic violence control by 2020.

Viet Nam is implementing the second phase of the National Population and Reproductive Health Strategy with the goal of ensuring all women of reproductive age have convenient access to contraceptives by 2030. The government has finalized its Costed Implementation Plan for family planning, which promotes a rights-based approach to family planning for all women.⁷⁷ It is also developing a National Action Plan on Adolescent Reproductive Health 2019-2025 with a focus on addressing adolescent pregnancy.⁷⁸

The national guideline framework on Comprehensive Sexuality Education (CSE), approved in 2019, ensures inclusion of CSE in the national education programme and curriculum, from pre-school to upper secondary school level, in line with international technical guidelines on CSE.

Although there is a strong focus on SRHR in national legislation and policy, there are concerns that some vulnerable populations are not yet being reached by SRH services, particularly young people from poor families, ethnic minority youth, young people living in remote areas, young migrants and young people with a physical or intellectual disability, LGBTIQ⁷⁹ young people, those living with HIV and young sex workers.⁸⁰

Youth Law

A revised Youth Law was approved in June 2020. Article 5 of the Youth Law confirms that the rights and obligations of young people are recognized, respected, protected, and enforced. The Youth Law states that it is the responsibility of the State, organizations, educational institutions, families, and individuals to enable young people to exercise their rights and obligations as prescribed in the Constitution and legislation. The Youth law includes specific policies supporting children aged over 16, who are not addressed by Viet Nam's Law on Children of 2016, to ensure their rights are protected consistent with the Convention of the Rights of the Child.

Age of consent to contraceptives and HIV testing

The issue of age of consent to health products and services in Viet Nam is complex and requires consideration of how different laws and policies work together.

⁷⁵ Viet Nam, Youth Law, Law No. 53/2005/QH11.

⁷⁶ Government of Viet Nam, Voluntary National Review on the Implementation of the Sustainable Development Goals (Hanoi, June 2018).

⁷⁷ Viet Nam Ministry of Health, Costed Implementation Plan for family planning, 2018-2020 (Hanoi, Ministry of Health, 2018).

⁷⁸ See: Family Planning 2020 Viet Nam country report, available from: <https://www.familyplanning2020.org/viet-nam>

⁷⁹ Lesbian, bisexual, transgender, intersex, queer.

⁸⁰ UNFPA, Evaluation of UNFPA's 8th Programme of Cooperation in Vietnam Technical Report (UNFPA, June 2016).

In relation to contraceptives, the National Guidelines for Reproductive Health Care Services⁸¹ provide that a person aged between 10-19 years is entitled to access contraceptive services, including contraceptive commodities and has the right to make decisions on matters in connection with their own reproductive and sexual health. These National Guidelines stipulate that adolescents have rights:

- ▶ to be fully and accurately informed about reproductive health and sexual health
- ▶ to access reproductive health services and sexual health services of consistent quality
- ▶ to equal treatment and respect, without coercion or violence
- ▶ to make decisions and take responsibility for their own decisions in matters relating to reproductive health and sexual health.

These provisions need to be interpreted alongside the Civil Code of 2015. The Civil Code recognizes that individuals aged 6 years or older have civil act capacity with respect to their daily-life needs. For such daily-life needs, the law does not stipulate any requirements for parental consent. However, the Civil Code states that parental consent is required for a child aged under 18 to undergo surgery, medical testing or to receive medical therapies.

There is a need for clarification of how these Civil Code consent requirements apply in the context of contraceptive information, products and services so as to support the enjoyment by adolescents of their rights as stipulated by the National Guidelines for Reproductive Health Care Services.

In relation to HIV testing, article 27 of the Law on HIV/AIDS Prevention and Control 2006 sets the age of consent to testing at 16. This appears to be an exception to the general rule imposed by the Civil Code which requires parental consent for medical tests for children under 18. The existence of different rules in relation to age of consent to medical tests may give rise to inconsistent practices when adolescents attend a clinic for an HIV test. This indicates the importance of educating health care workers on the rationale for setting an age of consent for HIV at a lower age than for other medical tests, in recognition that many children are sexually active at this age but may be deterred from accessing HIV testing if it requires disclosure of their sexual conduct to their parents.

Viet Nam is also rapidly expanding access to pre-exposure prophylaxis (PrEP) services for HIV prevention especially among MSM and transgender women, with regular screening of STIs. A National Action Plan on PrEP for 2021-2025 is under development aiming to make PrEP available at both public and private clinics in all provinces.

Minimum age of marriage

The Law on Marriage and Family, the Law on Children and the Penal Code prohibit child marriage. The minimum age of marriage is 20 for males and 18 for females. In 2014, the National Assembly passed a new Law on Marriage and Family,⁸² which maintained these minimum ages of marriage as set by previous versions of the Marriage and Family Law that have applied since the 1980s.⁸³ Under the Law on Children of 2016, a child is defined as under 16.⁸⁴ The cultural and legal notion that childhood ends at 16 partly explains the practice of child marriage and its acceptability in communities.⁸⁵

⁸¹ Viet Nam, Minister of Health Decision No. 4620/QĐ-BYT dated 25 November 2009.

⁸² Viet Nam, Marriage and Family Law No.52/2014/QH13.

⁸³ Viet Nam, Marriage and Family Law, 29 December 1986, No. LHNGD; Marriage and Family Law, No. 22/2000/QH10.

⁸⁴ Viet Nam, Law No. 102/2016/QH13 Hanoi, April 05, 2016. Article 1: A child is a human being below the age of 16.

⁸⁵ UNFPA and UNICEF, Understanding child marriage in Viet Nam (UNFPA and UNICEF, 2018).

In 2015, the CEDAW Committee recommended that the Government of Viet Nam set the same minimum age of marriage for women and men, consistent with the CEDAW Committee's general recommendation No. 21 on equality in marriage and family relations.⁸⁶

The Government's approach to reducing child marriage focuses on communication and education to change attitudes and beliefs related to child marriage. There is growing recognition of the need to also invest in interventions that address other cultural and economic factors that contribute to child marriage.⁸⁷ Such factors include gender norms, poverty, lack of access to education and limited life opportunities. Child marriage closely relates to dropping out of school and childbirth at an early age. It is often the outcome of the lack of life choices of adolescents from poor communities. Child marriage is common among ethnic minorities and in mountainous areas, although it is not practiced in all ethnic minority cultures. The rate of early marriage (Tảo hôn) amongst the ethnic minorities in 2018 was 21.9 per cent.⁸⁸ Some ethnic minority cultural practices contribute to child marriage, but ethnic cultures can also play a positive role in the prevention of the practice. For example, ethnic minority community leaders can play key roles in responding to girls' needs and changing gender norms.⁸⁹

⁸⁶ CEDAW Committee, Concluding observations on the combined 7th and 8th periodic reports of Viet Nam, 29 July 2015, (CEDAW/C/VNM/CO/7-8), para. 41(a).

⁸⁷ UNFPA, Strategic Direction Paper: UNFPA 9th Country Programme Viet Nam (2017 – 2021) (Hanoi, UNFPA, 2016).

⁸⁸ Viet Nam Government Statistics Office (GSO), Socio-economic survey amongst 53 ethnic minority population in 2019 (Hanoi, GSO and Ethnic Minority Committee, 2020).

⁸⁹ UNFPA and UNICEF, Understanding child marriage in Viet Nam (UNFPA and UNICEF, 2018).



These country case studies are a supplement to the report, **Young People and the Law: Laws and Policies Impacting Young People's Sexual and Reproductive Health and Rights in the Asia-Pacific Region: 2020 Update**, which provides a broad overview of whether countries in the Asia and Pacific region recognize the evolving capacities of adolescents in their laws and policies on the age of access to contraceptives, abortion services - where legal, HIV testing services, and age of consent to sex.

The case studies in **Laws and Policies Impacting Young People's Sexual and Reproductive Health and Rights in the Asia-Pacific Region: 2020 Update. Legal and Policy Developments 2013-2020**, illustrate how policy development concerning the sexual and reproductive health and rights of young people have proceeded in six diverse country contexts. They provide insight into the challenges of securing the sexual and reproductive health and rights of young people and the mechanisms of positive change.

This review is a joint effort between UNFPA, UNESCO, UNAIDS, UNICEF, UNDP, Youth Lead and Y-Peer Asia Pacific Center.