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PRIDE at work

A study on discrimination at work
on the basis of sexual orientation
and gender identity in Thailand



Gender,
Equality
and Diversity
Branch
(GED)

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Busakorn Suriyasarn

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Preface

Discrimination and violence against people of diverse sexual orientation and gender identity remains a serious problem around the world. Lesbian, gay, bisexual and transgender (LGBT) workers face discrimination in the labour market throughout the employment cycle because of their perceived or actual sexual orientation. They may be denied access to employment, to training and promotion, and access to social security. Since LGBT workers are rarely well-represented in government structures, or employers' and workers' organizations, their particular interests are rarely the subject of social dialogue or collective agreements. Consequently, when they encounter discrimination, harassment or bullying, the avenues for workplace dispute resolution may be scarce.

The International Labour Organization (ILO) is committed to eliminating 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 is primarily a workers' rights issue. However, promoting equality also makes good business sense, as liberating employment practices from bias allows companies to improve their talent pool and increase their access to markets.

In order to deliver effectively upon its mandate to end discrimination in the world of work 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. The research seeks to investigate challenges and identify good practices implemented by government, employers' and workers' organizations, civil society, and within workplaces.

This report reflects findings and recommendations from Thailand, considered relatively progressive in advancing the rights of LGBT workers. However, LGBT persons still continue to face widespread discrimination at work and in everyday life. Thai law does not explicitly cover sexual orientation and gender identity as prohibited grounds of discrimination. Neither the Constitution nor the Labour Protection Act makes reference to LGBT. Moreover, the Thai Government has not ratified the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

The ILO stands ready to support constituents and other stakeholders in making equality and non-discrimination for all a reality. In the words of the ILO Director-General on the occasion of the International Day against Homophobia and Transphobia 2014, "The ILO reaffirms its commitment to promoting decent work for all women and men, regardless of sexual orientation and gender identity. Decent work can only exist in conditions of freedom and dignity. It means embracing inclusion and diversity. It requires us to stand up against all forms of stigma and discrimination... and to the insidious role of homophobia and transphobia in fostering discrimination".

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Executive summary

Despite the common perception that Thailand is open to diverse sexualities, the PRIDE Project found that LGBT persons are not fully accepted by Thai society due to persistent prejudices and lack of understanding about diverse sexual orientations and gender identities. Extensive discrimination throughout the employment cycle means that LGBT persons do not enjoy equal opportunities and treatment at work. Many gay men and women hide their sexuality to avoid discrimination, especially in the early stages of their career. While some lesbian and gay persons reveal their sexual orientation at work, this depends on the workplace culture and the profession, as being gay, lesbian, or bisexual is perceived to damage credibility in leadership and in high-status jobs.

There are some positive steps to report in promoting the rights of lesbian, gay, bisexual and transgender (LGBT) persons under Thai law such as the recognition of “persons of diverse sexualities” as a population group needing assistance to access social services. However, at the time of writing, no Thai law specifically outlaws discrimination against LGBT in employment and occupation, or elsewhere, and there is no dedicated agency to tackle employment discrimination. While the National Human Rights Commission of Thailand has served as the de facto agency through which grievances pertaining to education and employment are addressed, the Commission has limitations in resources and mechanisms to ensure timely and effective redress.

At the workplace, LGBT persons often have to tolerate jokes, gossip and insensitive comments. Transgender persons and toms (masculine lesbian women) are particularly subjected to intrusive questions about their private lives, and to insinuations, and slurs and insults about their sexuality. LGBT persons face many forms of violence including taunting and bullying, to other forms of physical and sexual violence, including groping, physical assault, and rape.

Transgender persons are even more marginalized and excluded from formal employment than lesbian, gay, and bisexual persons. As they are not allowed to change their legally recognized sex, they are often excluded from employment opportunities during interviews once their legally recognized sex is found to be different from their physical appearance and gender expression.

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 and seek jobs where they can express themselves more freely, i.e. in smaller, informal enterprises or non-government organizations. Others become freelance workers or set up their own businesses. In many cases these jobs have less job security, lower pay and fewer benefits.

Most transgender persons, despite their qualifications, 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. Transgender persons in poor rural communities struggle to sustain their livelihood through home-based work at the bottom of the manufacturing supply chains and even as spiritual mediums. Many find better income and better working conditions in sex work.

LGBT persons living with HIV face added discrimination. People living with HIV continue to face involuntary HIV screening in job applications and during employment, as well as violation of confidentiality at work and job termination due to HIV-positive status. Though Thailand has no law prohibiting discrimination on the ground of HIV status, there are non-binding codes of practice and guidelines.

LGBT rights do not appear to be a priority issue for employers' and workers' organizations, and conversely LGBT-rights organizations have limited involvement in labour issues. However, LGBT organizations have begun to work with government agencies on legal same-sex partnership and access to social services.

List of acronyms

AIDS	Acquired immunodeficiency syndrome
AHRD	ASEAN Human Rights Declaration
Anjaree	Anjaree Group
ART	Antiretroviral treatment
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)
HIV	Human immunodeficiency virus
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
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)
SOGI.....	Sexual orientation and gender identity
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

1. Introduction

1.1 Rationale for LGBT research

Deeply rooted stereotypes and prejudice combined with inadequate legal protection against discrimination on the grounds of sexual orientation and gender identity leave many lesbian, gay, bisexual and transgender (LGBT) persons exposed to rights violations and discrimination.¹

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.²

As of 2015, consensual same-sex relationships are criminalized in 76 countries.³ Some countries have begun implementing laws to protect LGBT persons against discrimination and at the same time, make certain rights, such as the right to marry, accessible. As of 2014, 32 countries and 47 sub-national entities recognize same-sex unions.⁴ While some countries have adopted legal provisions prohibiting discrimination against LGBT persons, the vast majority of countries have not, and anti-discrimination institutions in most countries do not specifically cover sexual orientation as a basis for discrimination.⁵

1.2 LGBT persons in the world of work

In the workplace, LGBT persons face discrimination throughout the employment cycle. Workers who have same-sex partners rarely enjoy the same benefits as married couples, as in most countries these partnerships are not legally recognized. LGBT workers lack the right to include partners in company health insurance plans, medical leave guarantees and other benefits shared by other workers. LGBT workers may not be represented in government structures, employers' organizations and trade unions, and as a consequence their particular interests are rarely the subject of social dialogue or collective bargaining agreements. Consequently when they encounter harassment and bullying, the avenues for workplace dispute resolution around such issues may be limited.

¹ 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.

² 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, p. 6 [accessed 24 May 2013].

³ UNOHCHA: Born free and equal, op. cit., p. 7.

⁴ Lesbian and gay rights in the world, ILGA, 2014, http://old.ilga.org/Statehomophobia/ILGA_Map_2014_ENG.pdf, [accessed 16 April 2015].

⁵ ILO: Equality at work - Tackling the challenges (Geneva, ILO, 2007), pp. 42-43.

There is a growing concern within governments and international trade union federations regarding violations of the rights of LGBT persons around the world.⁶ 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, where research began in 2012 were Argentina, Hungary, South Africa and Thailand. As of 2015 research is also on-going in Costa Rica, France, India, Indonesia, and Montenegro. The project seeks to identify patterns of discrimination in these countries and establish how discrimination affects LGBT persons differently in the world of work in these respective countries.

1.3 The PRIDE Project in Thailand

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 persons under the four strategic objectives of the ILO's Decent Work Agenda: fundamental principles and rights at work, employment promotion, social protection, and social dialogue. The study also includes a fifth pillar on HIV and AIDS since LGBT persons living with HIV tend to face multiple discrimination based on their gender identity and sexual orientation as well as their HIV-status. Specifically, the study aims to:

Analyze the gaps and shortcomings in legal provisions and their application, which leads to discrimination in the world of work for LGBT persons, and record legal provisions protecting and promoting the rights of LGBT workers (fundamental principles and rights).

Identify "good practice" workplaces where diversity and tolerance for LGBT persons is promoted (employment promotion).

Consider to what extent Social security services such as medical care, pension entitlements and other benefits are available to LGBT workers 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).

Consider the degree to which LGBT persons face challenges in relation to HIV and AIDS in the world of work due to their sexual orientation and gender identities.

1.4 Research methodology

The Thailand PRIDE study has two main components, a desk review of secondary sources and field research. The research commenced in June 2012 and ended in June

⁶ Education International (EI); Public Services International (PSI); International Trade Union Confederation (ITUC): Equal rights dignity and respect for all workers, 17 May 2011.

2013. It was conducted in close collaboration with ILO constituents and LGBT networks; inputs were actively sought from leading experts on LGBT issues and individuals and organizations advocating LGBT rights in Thailand, and from government, employers' and workers' organizations.

1.4.1 Desk review

The desk review was conducted in June 2012 in two main parts: a literature review and a review of existing Thai laws. The literature review explains key principles and concepts of equality and non-discrimination on the basis of sexual orientation and gender identity in international instruments, and terminology related to gender diversity in international and Thai contexts (section 2). The review of existing Thai national laws, regulations and policies reveals both the gaps in legal protection for LGBT rights, and recent legislative and policy changes to promote gender equality and LGBT rights (section 3).

1.4.2 Field research

The field research was conducted between July 2012 and February 2013. It involved interviews and focus group discussions with ILO constituents, individuals and organizations within Thailand's LGBT networks, academics, and civil society. 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 developments.⁷

The interviews and focus groups were conducted 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 between March and June 2013.

Twenty-one in-depth interviews were conducted with 26 individuals, including representatives of relevant government agencies; civil society, workers' and employers', and academics specialized in gender and LGBT issues. Ten 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,

⁷ See Annex 1 for a list of interviews, focus groups, meetings and seminars for the research and Annex 2 for a list of key Thai LGBT organizations online.

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 of developments in Thai LGBT legislative and rights protection. The early meetings and seminars were useful for snowball sampling and as a means of identifying LGBT groups and organizations for interviews and focus groups.

The data collection process received good cooperation from ILO constituents and LGBT networks, including 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. nine LGBT organizations, two organizations supporting sex workers, one organization supporting men living with HIV, and four research and civil society organizations.

The Thai LGBT community is burgeoning and very diverse; it comprises many sub-groups with divergent perspectives and focused interests. Moreover during the period of the research many Thai LGBT organizations have become markedly more active in 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.

Effort was made to obtain balanced data and perspectives from respondents with various educational and social backgrounds. The focus groups were conducted in four provinces and 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, and less educated, unemployed/underemployed persons in rural and urban areas.

The numbers of LGBT respondents in the focus groups are broken down as follows:

- Nineteen lesbian and bisexual women (in one focus group and a set of 10 supplementary email interviews);⁸
- Thirteen gay men (in two focus groups and two email interviews);
- Fifteen 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);

⁸ A few self-identified bisexual persons were included in these groups. There are no organizations for bisexuals in Thailand.

-
- Three men who have sex with men (MSM) (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, 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.

1.4.3 Limitations

It is important to stress what the report is not. Evidently the sample size is too small to enable the research to make conclusive, generalizable findings concerning the world-of-work experiences for LGBT workers in Thailand. While, as outlined above, efforts were made to obtain diverse perspectives from within the Thai LGBT networks, there remain some limitations in the data, namely:

- Age profile: Younger LGBT persons tend to be most active in LGBT organizations, in particular LGBT persons in their twenties thirties, and (to a lesser extent) forties. Effort was made to include persons older than 40 years in the focus groups but they remained a small minority. 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.
- Urban dwellers: 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 respondents. While the age representation among the lesbian respondents ranges 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). One focus group was conducted with four MTF transgendered persons living in a rural village in Lamphun. And supplementary data was 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.⁹
- Workplace: While there is diversity in terms of types of employment and occupation among the respondents, there is an over-representation of those working in LGBT and non-governmental organizations.
- Ethnicity: 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, effort was made to include some Thai-Muslim LGBT

⁹ R. Chailangka: การสร้างอัตลักษณ์ทางเพศในแบบหญิงรักหญิง: จากชีวิตที่แตกต่างหลากหลายของกลุ่มแรงงานหญิง 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).

respondents who, it was found, face additional religious and cultural constraints in their lives.

- Sex workers: 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.
- Employers' perspectives: No concrete good practice examples on promoting employment of LGBT workers and gender diversity by Thai employers were reported by the respondents. While efforts were made to obtain inputs from representatives of employers' organizations, the perspectives of employers are limited in this study.

1.4.4 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, 26 representatives of relevant government agencies, workers' and employers' organizations, over 80 members of LGBT community from across Thailand, 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 experiences in two moderated discussion panels. Participants discussed and identified legislative and policy measures to address existing discrimination and to promote rights, diversity and equality for LGBT workers in Thailand and discussed what role government, workers' and employers' organizations, LGBT organizations and civil society could play (see Annex 4: Thailand PRIDE Research National Workshop).

Workshop participants largely confirmed the draft 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. 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. 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.

Overall, the participants at 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. Participants suggested that further

studies be conducted on awareness and attitudes of employers and relevant state officials whose work deals with LGBT, and proposed 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.

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 workers are pressured to hide their diverse gender identities in order to ensure that their career progresses.

2. Key principles, concepts, and terminology

2.1 Equality and non-discrimination principles and concepts

The principle of equality is enshrined in the ILO Constitution, written in 1919, and thereafter in the Declaration of Philadelphia in 1944.¹⁰ Thereafter, the principle of non-discrimination has been established in various international human rights treaties and international labour standards.¹¹

In regards to 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). Thailand ratified Convention No. 100 in 1999 but has yet to ratify Convention No. 111.

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;

(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.¹²

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. Consequently it not only requires the prohibition of discrimination but a proactive, positive approach towards the promotion of equality in opportunity and treatment in employment and occupation.

¹⁰ The Peace Treaty of Versailles of 1919 spelled out the nine objectives for the ILO, including the principle of equal remuneration for women and men for work of equal value and equitable economic treatment for all workers lawfully resident in any country. 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.” ILO

¹¹ 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.

¹² Article 1(1), ILO Convention No. 111.

2.2 Application of human rights to sexual orientation and gender identity

2.2.1 Recognition of sexual orientation and gender identity as prohibited grounds of discrimination

The rights to freedom from discrimination, equality and protection before 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.¹³

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".¹⁴

Recent developments within the United Nations (UN) have led to increased focus on the prevalence of discrimination on grounds of sexual orientation and gender identities. On 17 June 2011 the UN Human Rights Council passed the first ever resolution affirming the right to non-discrimination of LGBT persons, regardless of their gender identity and sexual orientation.¹ The UN Secretary-General and the High Commissioner for Human Rights have spoken out to protect people from violence and discrimination on the basis of their sexual orientation.² The UN human rights treaty bodies have consistently held that States have a legal obligation under existing treaty provisions to protect people from violence and discrimination on the basis of their sexual orientation.³ In addition, the UN Political Declaration on HIV and AIDS⁴ adopted in June 2011 notes that "many national HIV prevention strategies inadequately focus on populations [...] at higher risk, specifically men who have sex with men [...]".

Discrimination at the workplace has been recognised by the Yogyakarta⁵ Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity. Principle 12 states "Everyone has the right to decent and productive work, to just and favourable conditions of work and to protection against unemployment, without discrimination on the basis of sexual orientation or gender identity."

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 donors.

The Principles have become the principal instrument cited by human rights monitoring bodies at international, regional and national levels. Domestic courts and

¹³ 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), 15th Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions, Bali, Indonesia, 3-5 Aug. 2010, pp. 11-18.

¹⁴ 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.

tribunals have referenced the Yogyakarta Principles in Australia, India, Nepal, and the Philippines.¹⁵

“The ILO Recommendation (200) concerning HIV and AIDS and the World of Work, 2010 (No. 200) calls on ILO member States to promote involvement and empowerment of all workers regardless of their sexual orientation and whether or not they belong to a vulnerable group.” Furthermore, the ILO Committee of Experts on the Application of Conventions and Recommendations has acknowledged the steps taken by a number of countries to include sexual orientation in the context of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), with the first observations dating back to 1996.

However, it was not until 2011 that recognition of LGBT rights 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.¹⁶ Thailand was among 23 countries that voted for this historic resolution. Nineteen countries voted against, and three abstained.

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: protect individuals from homophobic and transphobic violence; prevent torture and cruel, inhuman and degrading treatment of LGBT persons; decriminalize homosexuality; prohibit discrimination based on sexual orientation and gender identity; and respect freedom of expression, association and peaceful assembly for LGBT and intersex people.¹⁷

2.3 Terminology on diverse sexual orientations and gender identities

It is important to note at the outset that many of the definitions in LGBT discourse are essentially contested terms, and individuals are free to define their sexual orientation and gender identity in a way that is consistent with their own views and definitional landscape. Broadly, sexual orientation refers to each person’s capacity for profound emotional, 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.¹⁸

Besides these two terms, the term “gender expression” is also often used in discussions about gender diversity. Gender expression refers to the manifestation of each

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

¹⁶ UNOHCHR: Human rights, sexual orientation and gender identity, A/HRC/RES/17/19.

¹⁷ UN: OHCHR: Born free and equal, op. cit.

¹⁸ UNAIDS: Terminology guidelines 2011.

person's gender identity. 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.¹⁹

Throughout the paper, the acronym LGBT, which stands for lesbian, gay, bisexual, and transgender persons is used as an umbrella term to refer to persons that are not heterosexual and/or do not identify with the gender affiliated with their sex at birth. A gay man is a man who is attracted to men. A lesbian is a woman who is attracted to women. A bisexual person is someone who is attracted to both men and women.

A person is transgender if they are born anatomically with a certain sex, but identify with a gender that is not aligned with their sex at birth (i.e. a person is born anatomically male but self-identifies as a woman).²⁰ The umbrella term, transperson, is an inclusive 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: 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 masculine or feminine, and who express their gender through their choice of clothes, presentation or body modifications, including undergoing multiple surgical procedures.

Female-to-male (FTM) is an acronym most commonly used to refer to a transperson who was born female but identifies himself as a man or a "transman". Male-to-female (MTF) is an acronym most commonly used to refer to a male-to-female transperson or a "transwoman". Someone is transsexual if they emotionally and psychologically feel that they belonging to a different sex and who choose to live in a different gender role. A transsexual person's choice may include sex reassignment surgeries or hormonal therapy. A transvestite/cross-dresser is someone 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.

Though not included in the acronym LGBT, an alternative acronym "LGBTI" is used to include intersex persons. A person is intersex if they are born with a reproductive or sexual anatomy that does not fit typical definitions of female or male reproductive or sexual anatomy or if they are born with both male and female sexual organs.

¹⁹ 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 [accessed 20 Dec. 2012].

²⁰ Typically, transperson is 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: 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 masculine or feminine, and express their gender through their choice of clothes, presentation or body modifications, including undergoing multiple surgical procedures. Female-to-male (FTM) is an acronym most commonly used to refer to a transperson who was born female but identifies himself as a man or a "transman". The 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.)

2.3.1 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 Thai women who are attracted to 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

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 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 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 attracted to women.

กะเทย Katoey – a person who was born male but has an appearance, expression and behavior perceived to be 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 “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.

3. Legal review

3.1 Protection of LGBT rights in Thai law

At the time of writing, there are no Thai laws explicitly prohibiting discrimination on the grounds of sexual orientation and gender identity, in the workplace or anywhere else. Persons of diverse sexual orientations and gender identities are generally not recognized in the Thai legal system, as the law strictly and explicitly identifies persons as male and female only.²¹

Section 30 of the Constitution of Thailand prohibits discrimination on the ground of sex, along with 11 other grounds, including: difference in origin, race, language, sex, age, disability, physical or health condition, personal status, economic or social standing, religious belief, education or constitutionally political opinion.²² During the drafting process of the 2007 Constitution, Thai LGBT advocates lobbied but failed to have ‘sexual diversity’ included explicitly as a protected category.²³ However the Constitution Drafting Assembly’s ‘Intentions of the Constitution of the Kingdom of Thailand 2007’ notes that the term “sex” should be read to include “sexual identity,” “gender” and “sexual diversity”.²⁴ And in 2009, section 30 of the Constitution and the was indeed cited in an 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.²⁵

The National Social Welfare Promotion Commission (NSWPC) Regulation issued under the 2007 amendment of the Social Welfare Promotion Act B.E. 2546 (2003) represents Thailand’s first clear legal recognition of LGBT people as a separate population group. It identifies “persons of diverse sexualities” among 13 target population groups deemed “facing difficulties” (i.e., disadvantaged or facing discrimination) and requiring special assistance to access social services.²⁶ Under the

²¹ S. Preechasilapakul: “บุคคลหลากหลายในระบบกฎหมาย” [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.

²² Constitution of Thailand B.E. 2550 (2007), (sec. 30, para. 2). This constitution was abrogated by the 22 May 2014 coup d’état.

²³ “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].

²⁴ 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.

²⁵ 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].

²⁶ 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 กลุ่มบุคคลเพศที่สามในคณะอนุกรรมการพัฒนาคุณภาพชีวิต และกลุ่มเป้าหมายเฉพาะ คณะกรรมการส่งเสริมการจัดการสวัสดิการสังคมแห่งชาติ ครั้งที่ ๒/๒๕๕๔.

regulations each 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.

The regulation empowers the NSWPC to work with LGBT persons 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.²⁷ It sets out three key priorities, all of which have a resonance to the world of work: a) to promote pride and value in gender diversity and correct prejudices in social values, tradition and belief systems that devalue the human dignity of persons of diverse sexualities; b) to increase opportunity and options in employment, education, health for equal rights and protection of persons of diverse sexualities; and c) to systematize social services and participation in policymaking and governance, and revise measures, rules, regulations, laws and policies that discriminate against persons of diverse sexualities.²⁸

3.2 Employment laws and protection for LGBT persons

Thai regulations on payment of wages, provision of benefits, opportunity for training and development, job grading or promotion, employment termination or age of retirement, includes (among other grounds) the term “personal sexual attitude” in its guidelines to enterprises for non-discriminatory treatment of workers.²⁹

While there is increasing attention to legal rights of LGBT persons and new laws and regulations to protect the LGBT rights in the workplace and elsewhere are being developed, some discriminatory provisions remain in existing laws and regulations. The Civil Service Act prohibits applicants from people who are “morally defective to the extent of being socially objectionable”³⁰ thus creating the pace for arbitrary interpretation for those with prejudice against LGBT persons to reject LGBT candidates. Besides official laws and regulations, discrimination against transgender persons in Thailand is sanctioned by institutional policies and rules that impose 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 employment.

3.2.1 Military Service

Unless they have attended at least three years of reserved military training during upper secondary school, have obtained a special postponement in case of pursuing further studies or official duties, or are considered unfit to serve, all 21-year-old Thai men must partake in a lottery to determine whether they will become military conscripts: red cards mean they will spend two years in reserved military service while black cards mean they will not be drafted.

²⁷ Ibid.

²⁸ “ข้อกำหนดคณะกรรมการส่งเสริมการจัดการสวัสดิการสังคมแห่งชาติ ว่าด้วยการกำหนดบุคคลหรือกลุ่มบุคคลเป้าหมาย เป็นผู้รับบริการสวัสดิการสังคม พ.ศ. ๒๕๕๕”.

²⁹ Regulations on Thai Labour Standards, Social Responsibility of Thai Businesses B.E. 2547 (2007).

³⁰ (Sec. 36, B(4)), the Civil Service Act B.E. 2551 (2008).

While Thailand allows gay men to serve in the military, transgender/transsexual women receive a markedly different treatment since 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: person with normal physique, person whose physique is unlike persons in the previous category, person whose illness cannot be cured within 30 days, and person whose illness is incompatible with military service.

Healthy MTF transgender/transsexual persons have typically been classified in the second category and are automatically rejected and given an exemption document known as the “Sor Dor 43”. Prior to 2006, they were classified in the fourth and the Sor Dor 43 exemption documents were stamped with the wording “permanent mental disorder” or similar variations in wording.³¹ 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.

Change came in 2006 as a result of heavy lobbying by the LGBT networks of the Ministry of Defence to discontinue certifying the Sor Dor 43 documents with the “mental disorder” wording. In March 2006, the military agreed to change the wording but refused to revise Sor Dor 43 papers that were already issued.³²

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.³³ In its ruling the court described the wording as “inaccurate” and “unlawful” and ordered the Ministry of Defence to stop labelling transgender persons as having a “permanent mental disorder” and to retroactively 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.³⁴ On 11 April 2012, new regulations were issued under the 1954 Military Service Act³⁵ to use the term “gender identity disorder” in military service exemption. Following this, transgender persons can request a new Sor Dor 43 with the new wording.

3.2.2 Lack of legal recognition of transgender identity

Despite the high visibility of transgender people in Thailand, the Thai legal system does not recognize transgender identity. Legally, Thai citizens are either male or female according to their sex registered at birth. Thai law does not allow for legal sex change.

³¹ Common terms used include: โรคจิตถาวร ผู้วิกลจริต โรคจิตวิปริตถาวร โรคจิตประเภท๔ จิตวิปริตอย่างรุนแรงถาวร (“permanent mental disorder,” “mentally ill person,” “permanent mental deviancy,” “type 4 mental illness,” “severe permanent mental disorder”).

³² 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” (ตรวจอกผิดปกติ ลักษณะไม่พึงประสงค์ทางทหาร).

³³ 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].

³⁴ “Thai court to military: transsexuals not ill,” in *The Huffington Post*, 13 Sep. 2011 <http://www.huffingtonpost.com/huffwires/20110913/as-thailand-transsexuals/> [accessed 13 Oct. 2011].

The equivalent Thai term is “ภาวะเพศสภาพไม่ตรงกับเพศกำเนิด”, literally “current gender state is inconsistent with birth sex.”

³⁵ Ministerial Regulation No. 75 B.E. 2555 (2012)

Sex reassignment surgeries are permissible by law in Thailand for those aged 18 and above, but transgender persons who have had sex reassignment surgeries are not allowed a legal title change.³⁶ 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.³⁷

3.2.3 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 same-sex couples to marry or register in a civil partnership. Although there have been more same-sex couples recently who have married in cultural or religious ceremony, they cannot be the 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.³⁸ Without legal recognition of the union, same-sex partners in Thailand are deprived of many legal spousal entitlements and benefits such as the right to co-manage spousal assets, tax benefits, alimony, social security benefits for spouses through the employer and the state, and life insurance benefits.³⁹

3.3 Recent legislative and policy developments to promote the rights of LGBT workers

In recent years, there have been concerted efforts, in particular by LGBT networks, academics and the National Human Rights Commission of Thailand (NHRC) to push for legislative reform to ensure the protection of LGBT rights. There has been some success in some issues such as the military service exemption issue mentioned above. However, other challenges remain.

3.3.1 Gender Equality Bill

A significant recent development is the proposed Gender Equality Bill, which is, at the time of writing, awaiting approval by the Senate. When enacted, it will be Thailand’s first piece of legislation purposefully dedicated to gender equality. The Bill, sponsored by the Ministry of Social Development and Human Security (MSDHS) and approved by Cabinet in April 2012, aims to provide “measures to protect persons suffering from unfair gender discrimination and to prevent unfair gender discrimination”.⁴⁰ “Unfair gender discrimination” is defined as:

“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

³⁶ 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.

³⁷ 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.

“การขอแก้ไขเปลี่ยนแปลงรายการในเอกสารทะเบียนราษฎร กรณีขอเปลี่ยนแปลง คำนามหน้าของบุคคลที่มีภาวะกำกวมมาตั้งแต่กำเนิด.”

³⁸ 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.

³⁹ S. Preechasilapakul: “บุคคลหลากหลายในระบบกฎหมาย” [Persons of diverse sexualities in [Thai] legal system], op. cit.

⁴⁰ “ต้นกม. คู่สมรสจัดแต่ทุกเพศทำเทียมผ่านกรม.แล้วก็ถกกันทางพศออกกม.เอาผิด,” in Thai Post, 4 Apr. 2012, <http://thailawwatch.org/2012/04/20120404034/> [accessed 29 June 2012].

expression different from his/her birth sex, except in cases which have an academic, religious, or public interest reason.”⁴¹

While the Bill uses a sex/gender definition that includes sex/gender diversity, critics have raised concerns that such exceptions are too broad and subject to arbitrary interpretation, which may enable discrimination to continue.⁴² 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.⁴³

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.⁴⁴

3.3.2 Civil Partnership Bill

In 2012 prominent Thai gay rights activist Mr Natee Theerarojananupong and his partner of 19 years were denied a marriage registration in Chiang Mai province. They were told their request for marriage registration did not comply with the conditions of marriage which state that marriage can only take place between a man and a woman.⁴⁵ Mr Natee filed a complaint with the NHRC for human rights violation.⁴⁶

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 of the Ministry of Justice to review the matter. This led

⁴¹ (Sec. 3, para. 1), Content in the draft bill submitted to parliament on 24 April 2011. Unofficial translation by author.

⁴² 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 คัดค้านก.ม.เสมอภาคระหว่างเพศ ปช.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].

⁴³ 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 [accessed 13 Dec. 2012].

⁴⁴ 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].

⁴⁵ The Civil Code B.E. 2533 (1990) (amendment, 10th ed.), (sec. 5, art. 1448 and 1458).

⁴⁶ 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].

to the drafting of a (same-sex) civil partnership draft bill.⁴⁷ If passed into law, this 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 and other rights currently still inaccessible to LGBT couples.⁴⁸ At the time of writing the House Committee's civil partnership draft bill has gone through four rounds of public hearings in four provinces and a public discussion at the NHRC among those involved in the drafting process and LGBT representatives.⁴⁹

If this bill is passed, it would be the first in Asia.⁵⁰ 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, there is a higher minimum age requirement for same-sex couples to register their partnership and does not allow for adoption of children.⁵¹ 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.⁵² Meanwhile, LGBT advocates are developing their own draft bill for civil partnership for all people, heterosexual as well as same-sex couples, as an alternative to the existing marriage law.

3.3.3 Discussion on legal title change legislation

A public forum was held at the NHRC in September 2012 on legal title change for intersex and transgender persons. The first legal title change for an intersex person, from Mr to Miss, was recorded in August 2012.⁵³ Meanwhile different groups of transgender persons (including transwomen who have had sex reassignment and saoraphet 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. As a result, there has been little development concerning this legislation.

⁴⁷ “ร่าง พ.ร.บ. คู่ชีวิต” (Civil Partnership Bill - “partnership” refers only to same-sex partnership), downloadable on iLaw: “ตั้งไปร่างพ.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].

⁴⁸ “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]; iLaw: “สิทธิตามกฎหมายที่ถูกรกเขี้ยวเลสเบี้ยนเข้าไม่ถึง” [Inaccessible legal rights for lesbians] 8 February 2013, <http://ilaw.or.th/node/1841> [accessed 11 Mar. 2013].

⁴⁹ The public hearing was held in Chiang Mai, Khon Kaen, Songkla and Bangkok, in February and early March 2013.

⁵⁰ 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].

⁵¹ 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.

⁵² Brainstorming session on “Principles for drafting a People's Civil Partnership Bill” (“หลักการเพื่อพิจารณา ร่างพระราชบัญญัติคู่ชีวิต 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.)

⁵³ “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].

3.3.4 NHRC sub-committee on LGBT rights

In 2002, the NHRC established a sub-committee to investigate cases of LGBT rights violations and to raise public awareness. It 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, and has disseminated the Yogyakarta Principles with key stakeholders, including the LGBT community, sex-worker groups, educators, government officials, and law enforcement officers. More recently the NHRC sub-committee has responded to complaints about the strict dress code which affects both MTF and FTM transgender students, the lack of legal identity for transgender persons and the lack of marriage equality.

However, the NHRC commissioner and staff serving in the sub-committee reveal that, at the time of writing there has been one single case concerning discrimination on the grounds of sexual orientation and gender identity. In fact, despite the creation of the sub-committee, there is no separate complaint category for LGBTs within the NHRC system.⁵⁴

In this one case, a MTF transgender person was hired and then denied employment due to her gender identity. In 2007, she filed a complaint with the NHRC claiming that she has been discriminated against on the basis of her gender identity. She had been hired for a sales position with a laboratory equipment company. After the employment contract was drawn and four days before her starting date, she received a telephone call informing her that the company would like to cancel the employment contract because the regional office in Hong Kong had disapproved of the hiring because she cross-dressed as a woman.

She filed a suit with the Central Labour Court in Bangkok (Black Docket Case No. 6097/2550) demanding that the company either honour the contract or pay THB216,000 in compensation for breach of contract. The Central Labour Court recommended arbitration and the case was eventually resolved through 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 the company had no official policy to reject cross-dressing job applicants and (after the resolution) notified Sartorius that denial of employment based on gender identity and cross-dressing was a prohibited form of discrimination. It also requested the Ministry of Labour, and workers' and employers' organizations to inform public and private agencies that discrimination against persons of diverse sexualities was prohibited under the 2007 Constitution of Thailand.⁵⁵

In many instances, LGBT-related complaints come through informal channels and are dealt through personal networks and hence not formally registered. When cases are filed formally, there are issues regarding collecting information and due diligence in the investigation. Other times, the aggrieved person could be unwilling to pursue a formal complaint. While the NHRC has the authority to receive, review and investigate

⁵⁴ “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].

⁵⁵ NHRC Case No. 426/50.

complaints about human rights violations, it lacks adequate personnel and resources to handle a large number of cases.

In its report to the Asia Pacific Forum in 2009, the NHRC highlighted the lack of a national policy and plan to promote LGBT rights. It reported that there was no mention of LGBT rights in the Government Policy Statement on gender mainstreaming.⁵⁶

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 the principles of fairness and equality. The “people-centred” Tenth National Economic and Social Development Plan (2007-2011) contained 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.⁵⁷

⁵⁶ ACJ report: Human rights, sexual orientation and gender identity (APF 15), op. cit., p. 4.

⁵⁷ 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].

4. Perception versus reality: no real acceptance of LGBT persons

4.1 Acceptance in Thai society

Acceptance of one's identity by one's family and by wider society has very strong world-of-work implications. One's workplace does not exist in a vacuum and, before examining the workplace more specifically, it is therefore necessary to look at how LGBT persons are accepted in Thai society more broadly, and in particular within the family and in education, so as to provide the context for and background to attitudes in the workplace.

A 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. A May 2013 survey by the National Institute of Development Agency (NIDA) revealed that the majority of poll respondents disagreed with granting the right to legal title change for transgender persons (44 per cent disagreed and 42 per cent agreed) and the right to register same-sex partnership for LGBT couples (53 per cent disagreed, 34 per cent agreed, and 13 per cent were not sure).

In 2002 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”.⁵⁸

Compared to previous generations, young people are aware of gender diversity and are more comfortable with their sexuality.⁵⁹ LGBT people are more visible compared to a generation ago, for instance, young tom-di couples and transgender persons are more prominent in public, and more young gay men have come out and are more open about their sexuality.⁶⁰ However, many gay men and lesbians still feel the need to hide their true sexuality at home, at school and in the workplace.

An overwhelming majority of the respondents in personal interviews and focus groups reported feeling that people of diverse sexual orientations and gender identities are not fully accepted in Thai society. And while all experience discrimination to some

⁵⁸ 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.

⁵⁹ 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 [accessed 21 Apr. 2013].

⁶⁰ 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].

degree, the research shows that lesbians, gay men, bisexual men and women, and transgender persons experience it to differing degrees.

MTF transgender persons feel that the perception that Thai society is open to people of diverse sexualities because transgender persons are highly visible and well-known internationally is based on an illusion. In their view, because there is no legal recognition of their identity, there is no real acceptance. One extreme example given is a sign in front of a restaurant in Pattaya, reading: “Dogs, Katoeys and Durians Are Not Allowed.”

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 transgender persons in Thai society where they can express themselves freely.

A person’s gender identity is still largely defined by distinctly masculine or feminine expression such as dress, speech, body language, and mannerisms. 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-between”.

Expectations of traditional gender roles are the most pronounced in formal and 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 sexual identity and behave within social norms. As a result many transgender persons tend to avoid, or opt out of formal society.

4.2 Acceptance at home

The national poll conducted by the National Institute of Development Agency (NIDA) revealed that 88 per cent accept LGBT friends and colleagues in the same workplace, while 99 per cent do not.⁶¹ However, respondents’ acceptance decreases if the LGBT person is someone in the family: 78 per cent say they can accept an LGBT family member, while 17 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.”⁶²

A 2012-1013 survey involving 868 LGBT respondents from eight provinces in four regions of Thailand revealed that 27 per cent had experienced violence based on their

⁶¹ 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.” 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].

⁶² NIDA Poll: “สังคมไทยคิดอย่างไรกับเพศที่ 3” [What does Thai society think of the third sex?], op. cit.

sexual orientation and gender identity in the family, with the highest percentage (38 per cent) among MTF transgender persons (katoey and sao praphet song), followed by gay men (14 per cent), toms and transmen (13 per cent), feminine lesbians (12 per cent), bisexual women (6 per cent), and bisexual men (5 per cent).⁶³

The focus group discussions and interviews validated the findings of the national poll. 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, who are 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.

Mothers are generally 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.⁶⁴ 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 or 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 a monastery. 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. An 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.

LGBT persons face many forms of violence at home include being forced to enter psychological treatments, to dress according to birth sex, to behave as mentally ill, and to study certain disciplines. They suffer from 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, sexual harassment, molestation and rape by family members, friends and relatives. However, most did not report the violence to authorities.

⁶³ 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.

⁶⁴ 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.

4.3 Access to education and training

Respondents report having experienced many differential treatment and forms of discrimination, such as limited education choices, strict uniform codes, and exclusion from certain fields of studies and professional training. Transgender persons seem to have experienced more direct and indirect discrimination than other groups. 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 for their education after revealing their gender identity and sexuality.

Many families with transgender children do not support their education and discourage them from high-status fields such as medicine, law or engineering, expecting them to be rejected in such jobs. Some transgender respondents were encouraged by family to choose “softer” fields of study (humanities and social science). Some parents of transgender children see better opportunities in entertainment and service jobs for them, and some encouraged them to learn 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 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. 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 because they were considered “unsuitable for the students”.⁶⁵

Some respondents referred to cases of university professors in medical school discouraging transgender students from becoming surgeons and recommending that they study pharmacy instead because being a surgeon requires a “normal” mental state, and other reported being 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 transgender persons 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, and requires no educational or professional qualifications.

Katoey and gay students reported encountering difficulties 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

⁶⁵ “‘เกย์นที’ เล็งขึ้น 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 โรงเรียนตั้งไม่รับสาวประเภทสอง” [Student teacher cries foul school rejects transgender persons], in MThai, 31 May 2012, <http://news.mthai.com/general-news/168142.html> [accessed 15 Mar. 2013].

arrangement, and event organization. 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, they also felt it they could not refuse. Some felt their academic performance was compromised as a result.

Students identified as gay or katoey often face teasing and sometimes bullying, and physical and sexual assaults by peers as well as by teachers at school. To avoid differential treatment, 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. However, most respondents who were katoey students in boy schools and tom students in girl schools reported positive experiences in school life.

Many LGBT persons, especially transgender persons, encounter further issues in schools because of the school uniform requirement at all levels of education, including colleges and universities up to the undergraduate level. 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 the few universities or colleges that were more relaxed about dress code or allowed 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 (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. 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 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. For instance, a tom university student reported that because she was wearing trousers while submitting a term paper, which indicated the title "Ms" in front of her name on the title page, she was reprimanded in front of the entire class and was told to wear a female uniform. Otherwise the paper would not be graded.⁶⁶ Many respondents reported similar targeting by some teachers and professors.

⁶⁶ C. Boonprasert (ed.): *Violated lives: Narratives from LGBTIQs and international human rights law*, Bangkok: Teeranat Kanjanauaksorn Foundation; Rainbow Sky Association of Thailand; GFATM, 2011, pp. 34-35.

Students found to have violated the dress code reported having points deducted in class. This occurs both at the secondary school and tertiary levels.⁶⁷ 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.

During the interviews, a MTF transgender respondent was forbidden to wear female uniform to her teacher’s training course. The university threatened not to allow her to graduate if she insisted on wearing a female uniform. She was told that if she insisted, she would not be allowed to be in the teacher’s training programme and would not be allowed to graduate.⁶⁸

At graduation ceremonies, university graduates must wear “correct” uniform. 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.⁶⁹

Sometimes, discrimination in the educational institutions is direct to the point where LGBT persons are deprived outright an opportunity to continue studying. Three MTF transgender respondents reported that they competed for scholarships 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”.⁷⁰

4.4 Harassment and bullying in education

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). While some katoey or gay

⁶⁷ 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. 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.

⁶⁸ 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.

⁶⁹ “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].

⁷⁰ 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.

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 assault and results in the katoey or gay students dropping out of school entirely or changing their study course or school to avoid violence. A twenty-five year old gay man, attending a technical school in Bangkok, studying industry logistics 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 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 he was and wanted to make him "a man." 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, and he reported being happy at the new school where there were more female students.⁷¹

Because of the treatment of gay students by their colleagues, many 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.⁷² 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 involves physical assaults.

There are many instances of teachers humiliating their gay students publicly, for example, a katoey student reported being often rounded up by a PE teacher along with other katoey students to perform Thai boxing as entertainment in the PE class.⁷³ Similarly, a gay boy scout was singled out in 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 had not made 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.⁷⁴ A transman told the panel at a conference at the NHRC 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".⁷⁵

In some cases, parents have filed complaints against schoolteachers. For instance, in July 2012, the Thai media reported that a 14-year-old boy attempted suicide after having

⁷¹ Focus group, Rainbow Association of Thailand (RSAT), Bangkok, 21 Nov. 2012.

⁷² Ibid.

⁷³ Focus group, Sisters, Center for Transgenders – Pattaya, 5 Sep. 2012.

⁷⁴ Focus group, Rainbow Sky Association of Thailand (RSAT), Bangkok, 21 Nov. 2012.

⁷⁵ 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.

been humiliated in front of the school assembly by the headmaster and insulted by two other 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" and threatened to strip him naked if he did not obey his order. The boy told his mother he had suffered this kind of treatment for three years.⁷⁶

Such discrimination, assaults, violence, harassment and bullying of LGBT students can have profound consequences in later working life. Not being accepted by ones family, teachers and classmates undermines ones confidence and leads one to assume that it will continue throughout one's life, including ones working life. And all too often it does.

⁷⁶ "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]; "ค.ช. วัย 14 ถิ่นขาม่าตัวตาย หลังครูใหญ่สั่งให้เลิกเป็นตุ๊ด" [Fourteen-year-old boy overdosed in attempted suicide after headmaster's order to stop being a fag], in K@pook!, <http://hilight.kapook.com/view/73415> [accessed 17 Mar. 2013].

5. Opportunity and treatment of LGBT persons in the world of work

5.1 Access to employment

The majority of LGBT respondents reported experiencing discrimination in various aspects and stages of employment and occupation. They face discrimination in education and training in addition to encountering barriers to access employment, career advancement, as well as social security benefits.

This finding is consistent with the NHRC's report to the APF in 2009, which identified the lack of opportunity and prejudice in education and in employment among other human rights issues facing persons of diverse sexual orientations and gender identities. The report stated that in many instances, discriminatory practices were rooted in institutional policies and rules or negative attitudes among officials towards alternative sexualities.⁷⁷

While it is commonplace for LGBT persons to face discrimination in accessing employment, there are different barriers for gay, lesbian, bisexual, and especially transgender persons. 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 non-heterosexuality is evident are commonly given psychological tests not given to other applicants.

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 transgender workers feel they do not enjoy the same benefits as heterosexual workers, and they are unwilling to change their own gender identity so drastically to conform to the heterosexual norms.

5.1.1 Access to employment for transgender persons

Even when some have passed both the written examination and the job interview, transgender applicants can still be rejected after their legal identity is known to be inconsistent with their outward appearance. Furthermore, when self-declared transgender persons get hired, they often must often observe a dress code of their birth sex with which they no longer identify.⁷⁸

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.

⁷⁷ 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.

⁷⁸ 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.

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 recognized as male. As a result, many unwilling to follow the dress code are deprived of the opportunity to secure employment in the public sector.

During the interviews, a transgender government social worker shared her experience on applying for a job in the civil service:

“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.”⁷⁹

Similarly, 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, because of having to wear skirts to job interviews and to work, and as he was generally ground down by the possibility of facing another unfriendly workplace.⁸⁰

Most transgender respondents 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.⁸¹ 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 during the interview process. They passed the written examination but were turned down after the job interview. 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.

According to transgender activists, the change of wording on the military service exemption document (Sor Dor 43) issued to transgender persons in military conscription has helped improve the perception of transgender persons in society. Surprisingly

⁷⁹ 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.

⁸⁰ Kaona Saowakun, Anjaree volunteer and co-chair of ILGA Asia, panelist at the Thailand PRIDE Research National Workshop, Bangkok, 4 June 2014.

⁸¹ Focus group, Sisters, Center for Transgenders, Pattaya, 5 Sep. 2012.

however, none of the transgender respondents in the focus groups thought that the change of wording had any positive impact in their lives personally. 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 transgender persons 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. And 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.

There is more acceptance of transgender persons in a handful of occupations, largely driven by stereotypes and prejudice. For example, transgender persons are able to find work in the entertainment industry as cabaret performers or beauty pageant contestants, in the beauty industry as make-up artists, in cosmetics t, 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.

Other occupations are becoming more open to transgender candidates. In January 2011 a Thai start-up charter airline PC Air made international headlines after it announced its policy to hire transgender flight attendants.⁸² In May 2012, a transgender politician was elected for the first time in Thailand to Nan provincial administrative office.⁸³ And, also for the first time, a transgender film director was elected to be the president of the Film Directors Association of Thailand for 2012.⁸⁴

Because of the extent of discrimination at work in the formal sectors, many LGBT persons have decided to earn income through other means. 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. Some set up their own business.⁸⁵ Similarly, A Muslim MTF transgender in her late twenties also made the same choice. She left a salaried job in the private sector

⁸² Transgender respondents reported that only transgenders who have had sex reassignment got the job.

⁸³ “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].

⁸⁴ 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.

⁸⁵ Nikorn Arthit, advisor to Bangkok Rainbow Organization, personal interview, Bangkok, 23 Sep. 2012.

because she saw little chance of professional advancement and set up her own company.⁸⁶

Some transgender persons 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. Traditionally, men would climb ladders and pick fruits for women waiting with baskets below, 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.⁸⁷

Other katoeys in the rural North have found an alternative working as spiritual mediums. They are known as katoey maa-khii, who take on a deity or ancestral “spirit” that has real or make-believe connection with their local community. Three katoeys reported that being spiritual mediums does not prevent them from being ridiculed or discriminated against in the community, the new status of being a spiritual medium 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).⁸⁸

Several transgender sex workers said that they entered into 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.” One way to prove them wrong is to provide for the family, and sex work is a ready option.

5.1.2 Access to employment for toms

The 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, and being subsequently denied the job.

Many tom lesbians with university education have been unable to find jobs and became discouraged from repeated rejections, so that they are no longer actively looking for salaried jobs. Others who obtained employment found the hostile work environment

⁸⁶ Focus group, Trans Female Association of Thailand (TFAT), Bangkok, 24 Sep. 2012

⁸⁷ Pongthorn Chanlearn, coordinator of M-plus+, panelist at the Thailand PRIDE Research National Workshop, Bangkok, 4 June 2014.

⁸⁸ Focus group with local transgenders aged 21-32, Lamphun, 21 Oct. 2012

intolerable and were unable or unwilling to stay on the job. Many choose to set up a small or micro business selling products or services.

Toms who are deemed 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.

Decisions to hire can be arbitrary, depending on individuals with decision-making power to hire. For instance, 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. And since 2000 Thailand has indeed seen an increase of tom factory workers in the country.

5.1.3 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 deemed gay-friendly or after they feel some security in their job.

In the civil service, men and 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 they are 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 reported facing 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. 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.⁸⁹ Due to such a workplace culture, some gay men choose to also opt out of mainstream jobs in large public or private institutions, or hide their sexual orientation at work.

5.2 Acceptance and treatment at work

Many gay and lesbian respondents reported playing heterosexual roles to avoid possible rejection at work (unless they work in an LGBT-specific organization). And 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.

⁸⁹ A participant who asked to remain unnamed at the Thailand PRIDE Research National Workshop, Bangkok, 4 June 2014.

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 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, gendered dress codes pose a problem for feminine gay men, toms, and transgender persons. Lesbian toms must still wear skirts, and gay men (indeed all men) must refrain from wearing make-up. Some tom 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 uniforms, but only on a case-by-case basis. Usually, this is after they have employed for some time or have enough leverage to “push the envelope”. For instance, 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 a female uniform at work. A former beauty queen, she is considered highly feminine and beautiful, but even she faces criticisms from some quarters. She explains that she chooses to wear skirts as a “political statement”.⁹⁰

The courage to break the rules depends on individual self-confidence, status, as well as the culture and flexibility of the workplace. For example, a lesbian Muslim lawyer working in southern Thailand, already facing difficulties being accepted as a woman in a male-dominated profession reported that for her to come out as lesbian would put her career in jeopardy, affect her social acceptance, and perhaps even putting her safety at risk.⁹¹

5.3 Tom Factory Workers

A study on the construction of the lesbian tom identity among female factory workers in the industrial estate in Lamphun province 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, and changing perceptions regarding the perceived benefits of their gender identity. 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.⁹²

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

⁹⁰ Focus group, Trans Female Association of Thailand (TFAT), Bangkok, 24 Sep. 2012.

⁹¹ Focus group, Bangkok, Sep. 2012.

⁹² R. Chailangka: Lesbian identity construction: Different life styles of female workers in Northern Region industrial estate Lamphun Province, *op. cit.*, pp. 112-113, 144.

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 an 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 a confined 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 to work harder. Once 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.⁹³

5.4 Career opportunities for LGBT workers

Many LGBT respondents in white-collar jobs reported that their credibility diminished once their sexuality was revealed. For instance, 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.⁹⁴

As such, some lesbian, gay, and bisexual persons keep their sexual orientation secret at work to avoid losing credibility and risking job advancement. A lesbian activist in her fifties with experience in academia related that she was keeping her sexuality a secret because she did not want to lose certain privileges. She told a story of a lesbian academic being passed over for a college dean position many times, 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. She was ignored, and was never asked to join any committee. As a result, she decided to stop working in academic institutions.⁹⁵

⁹³ Ibid.

⁹⁴ C. Boonprasert (ed.): *Violated lives*, op. cit., p. 33.

⁹⁵ Focus group, Anjaree Group, Bangkok, 29 Sep. 2012.

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. 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 headquarters 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, her title in all of her Thai identity documents remains “Mr” and this has also created confusion and complications for work-related travel in Thailand.⁹⁶ For example, for business trips the company usually assigns employees of the same sex to share hotel rooms and while she is usually assigned to share a room with a female co-worker, and 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”.⁹⁷

Prejudice leading to a difference in pay between heterosexual and non-heterosexual workers has led to some LGBT persons leaving their place of work. 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. 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 a 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 of some of the men had actually been done by her. She finally left the job.⁹⁸

There are instances where gay workers were unfairly dismissed because of their sexual orientation. 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.⁹⁹

There are, however, positive experiences for some LGBT workers. A tom lesbian in her late forties who had a mid-level position in a construction company reported feeling that she had good opportunities at work, as her bosses focused more on the ability of employees. While she did not talk about her sexuality, it was clear to everyone because of her “tomboy” appearance. As a tom, she often went on field assignments alone, when

⁹⁶ 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, transgender persons 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.

⁹⁷ Pitchaya Wong-anusorn, focus group, Thai TransFemale Association of Thailand (TFAT), Bangkok, 24 Sep. 2012.

⁹⁸ “Putty,” email interview by Chantalak Raksayoo, 20 Sep. 2012, <http://sapaan.org/?p=95> [accessed 13 Dec. 2012].

⁹⁹ 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.

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”, i.e. on some level sexist prejudice had worked in her favour.¹⁰⁰

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”, 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.¹⁰¹

5.5 Violence in the employment cycle

5.5.1 Harassment and violence at work

LGBT respondents reported facing acts of violence and sexual harassment including teasing, taunting, slurs and insults, physical assaults such as slapping and kicking, sexually suggestive or derisive comments, bullying, inappropriate touching (from both men and women), groping (by health officials), and rape or attempted gang rape. Many gay and lesbian workers face gossiping, the speculation, 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”. Those who work at LGBT NGOs are asked questions such as, “why do you work there,” “are you HIV-positive,” “do you have AIDS?”

Lesbian women are confronted by suggestive comments from their male colleagues at work. Many lesbian women said 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”.¹⁰² Similarly, a young Muslim lesbian lawyer working in southern Thailand felt unsafe due to comments from male colleagues (“sexy,” “pretty,” “why still single”, etc.), especially accompanied by threatening body language (e.g., crowding, coming physically too close).

Sometimes, the harassment can extend from the workplace into the private life. A tom employee in a private company received derisive, homophobic comments from co-workers and supervisors at work. A male co-worker who was also aware of her sexuality told a story and joked about a tom lesbian friend having being gang-raped by male friends. A co-worker who was well aware of her sexuality asked a supervisor in her presence if one of the Buddhist precepts on adultery included lesbianism and proceeded to make disapproving comments of lesbianism.¹⁰³

¹⁰⁰ Focus group, Anjaree Group, Bangkok, 29 Sep. 2012.

¹⁰¹ R. Chailangka: Lesbian identity construction, op. cit., pp. 117.

¹⁰² Focus group, Anjaree Group, Bangkok, 29 Sep. 2012.

¹⁰³ C. Boonprasert (ed.), Violated lives, op. cit., pp. 40-41.

Many transgender persons, toms and lesbian women among the respondents reported having experienced sexual harassment and rape at work.¹⁰⁴ 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 plan. Lesbian respondents related stories of toms they knew being raped by male friends and co-workers and being forced into marriage. Rape of lesbian women by male friends and co-workers tends to happen during socialization outside working hours and often involves drinking.¹⁰⁵

5.5.2 Harassment and sexual assault in military service

Katoey and gay respondents who attended military reserve training during three years of upper secondary school reported differential treatments and demands of sexual favours by military personnel.¹⁰⁶ 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.

Katoey and 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. They are either relegated as a group to do “women’s” work, such as cooking, cleaning and left 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.

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.

However, the experience is not always bad, and some katoey military reserve trainees preferred such differential treatment, where they were not treated as men and in effect avoided rough training. Responding to many complaints, the Teeranat Kanajauksorn 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. The finding shows that transgender persons face many rights violations in military service.

The report states that many transgender persons were being forced to strip naked along with men reporting for the conscription although the body of the transgender

¹⁰⁴ 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 do not take the complaints seriously.

¹⁰⁵ Focus group, Anjaree Group, Bangkok, 25 Sep. 2012.

¹⁰⁶ Focus group, Thai Transgender Alliance (TGA), Bangkok, 12 Oct. 2012; focus group, Rainbow Sky Association of Thailand (RSAT), Bangkok, 21 Nov. 2012.

person is already in the female form, and subjected to the men’s ogling, cheering and humiliation. Military personnel inappropriately groped and touched them. In addition, military personnel have teased and verbally harassed transgender persons, including inspecting military physicians. They also have been demanded by military personnel for inappropriate favours, such as massages and serving drinks to military officers during or after the conscription process. Some have been asked for sex in exchange for exemption.¹⁰⁷

5.5.3 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. Most transgender sex workers in Pattaya said part of their work is avoiding the police. Even though more women than transgender persons are engaged in sex work, they reported that 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 Forces) 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.

In 2012, the media have reported more cases of MTF transgender sex workers facing theft and robbery from foreign clients. Police responded by telling the media that transgender sex workers give a “bad image” to Thailand.¹⁰⁸

¹⁰⁷ Teeranat Kanjanauksorn Foundation and Sexual Diversity Network: “สิทธิมนุษยชนของผู้มีร่างกายไม่สอดคล้อง กับเพศกำเนิดชาย ประเด็นการพิจารณา ร่างแก้ไขกฎกระทรวงกลาโหม 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.

¹⁰⁸ See, for example, recent arrests of transgender sex workers in Chiang Mai. “กะเทยประตูท่าแพกระเจิง! ถอดส้นสูงแผ่น-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].

6. Employment and social protection for LGBT workers and their families

6.1 Employment and social security benefits

Social protection for LGBT workers is intrinsically linked to the marriage equality and civil partnerships, as without legal recognition of the same-sex partnership status, same-sex partners are not entitled to health, pension and other spousal benefits arising from their spouse's employment. They are also denied the spousal right to make medical decisions on behalf of the partner. In one instance, 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.¹⁰⁹

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, it was reported that officials at some government hospitals tend to call out patients' names with legal titles, for instance, a MTF transgender would be called Mister, causing embarrassment in front of fellow patients.¹¹⁰

Same-sex couples cannot apply for joint bank loans, even though unmarried heterosexual 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.

LGBT organizations have recently begun to work with some government agencies on rights issues. Many organizations in the LGBT network have worked with the Ministry of Public Health primarily on HIV and AIDS prevention and the NHRC on some LGBT rights violations. Since early 2013, through the NHRC, LGBT groups have been working with the Parliament House Committee and the Department of Rights and

¹⁰⁹ C. Boonprasert (ed.): *Violated lives*, op. cit., p. 19

¹¹⁰ 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.

Liberties Protection on the same-sex partnership bill. Similarly, in 2012, the LGBT networks worked with the NSWPC regulation which aims to promote access to social welfare services to 13 specified 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.¹¹¹

6.2 Life security and planning for the future

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, and building a family together. For example, insurance companies will 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 heterosexual couples only.¹¹²

Some younger transgender persons 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 transgender persons to provide for their parents, partly because of a Thai cultural obligation to parents.

¹¹¹ Pongthorn Chanlearn, coordinator of Mplus+, additional interview by telephone, 26 June 2013.

¹¹² *Ibid.*, p. 11.

7. LGBT rights and social dialogue

7.1 Knowledge and awareness among ILO constituents

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.

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.

While some individuals in the constituent organizations are open to learn more, others find the issue unimportant. In fact, some employers interviewed said they were surprised that ILO treats gender diversity as a serious issue. Many employers and government officials said that LGBT rights are not a priority for Thailand because Thai society is "already very open" to people of diverse sexualities. Meanwhile workers' organizations, by their own admission, are not very well informed about LGBT rights movement but are open to learn more. Many reported viewing LGBT persons as "different" or having "unique talents", and did make a point of saying 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.

No major trade unions in Thailand 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 confines of traditional gender roles without the gender diversity dimension. According to a SERC information officer, 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.¹¹³

7.2 Civil Society

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. This is 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.

However, LGBT groups are beginning to provide training on discrimination at the workplace. A lesbian organization, Anjaree, provided a day session on job discrimination. Other LGBT organizations are keenly interested to learn more about labour rights and

¹¹³ Manop Kuarat, information officer, State Enterprise Workers Relations Confederation of Thailand (SERC), telephone interview, 24 June 2013.

discrimination. While transgender and lesbian organizations view that discrimination in employment and occupation is a very grave concern that deserves serious policy action, the gay community seems less concerned about employment issues.

Though their focus is primarily on HIV and rights violations, NGOs in the LGBT networks have started working with employers' and workers' organizations to promoting better livelihood among rural workers in the informal economy, among them 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 transgender persons 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.

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 LGBT populations, stateless and homeless persons, and individuals facing basic human rights violations. 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 informal workers who work as farmers, day labourers, and own-account workers such as hairdressers, petty traders, small business owners, and taxi drivers to organize as a means to access their rights as workers. The organization aims to provide support and advice on government social security benefits for informal workers, access to healthcare including HIV and AIDS care and support, forge alliances with mainstream occupation groups/organizations; and to create a safe space and a community for LGBTs to combat stigma, discrimination and other problems. GEN promotes 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. In addition, the organization provides education and vocational training appropriate for the changing job market and local livelihoods.¹¹⁴

¹¹⁴ Yukhonthorn Kaewchaochom, director of Gender for Health and Equality Network (GEN), personal, telephone and email interviews, 19-21 June 2013.

8. Multiple discrimination: being LGBT and living with HIV

The HIV prevalence in Thailand stands at just over 1 per cent and women make up 43 per cent of all people living with HIV in the country.¹¹⁵ According to the Thai National AIDS Committee, HIV has declined steadily over time yet it remains a generalised epidemic 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).¹¹⁶ Access to HIV prevention services has improved, including through the world of work, but is still insufficient as the incidence of infections among these populations has not declined as much as intended.

From surveys in 2010 in three major tourist cities, Bangkok, Chiang Mai and Phuket, it was found that the HIV prevalence among MSM was higher among male sex workers (MSW) at 18 per cent, and 10 per cent among male-to-female transgender people. Prevalence was highest among MSM aged 25-29 at 32 per cent, compared to 12 per cent in the 15-24 age group. Of all new HIV infections, 41 per cent were among MSM, MSW and MTF transgender people. The main reason for new HIV infections is unprotected penetrative sex.¹¹⁷

While the intersection between HIV and LGBT is seen to perpetuate stigma and discrimination in workplaces, the research also makes clear that because of this heightened level of discrimination, HIV positive LGBT persons are often highly marginalized from the formal labour market and have few avenues to find an income than in the informal economy. In particular, transgender people face serious obstacles in accessing the formal labour market and are thus often forced to undertake work sex work and which includes a heightened HIV-risk.

8.1 Access to HIV and AIDS prevention, information and services

During 2010-11, the Thai Government, through collaboration with civil society and the private sector, increased the expansion of HIV prevention through targeting high-risk and key affected populations, with treatment, care and support services. 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 male and female 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).¹¹⁸

In the interviews and focus groups conducted for this Thailand PRIDE research, most gay and male-to-female 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. Both groups noted that the problem with risk of HIV

¹¹⁵ 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.

¹¹⁶ Thai National AIDS Committee: Thailand AIDS response progress report 2012: Reporting period 2010-2011, [http://www.unaids.org/en/dataanalysis/knownyourresponse/countryprogressreports/2012countries/ce_TH_Narrative_Report\[1\].pdf](http://www.unaids.org/en/dataanalysis/knownyourresponse/countryprogressreports/2012countries/ce_TH_Narrative_Report[1].pdf) [accessed 20 June 2013].

¹¹⁷ Ibid.

¹¹⁸ Ibid.

infection in their own communities, however, was less as a result of poor access or lack of information than more to behavioural factors that cause well-informed gay men, MSM and transgender persons to have risky unprotected sex.

For male or transgender sex workers, they will sometimes have unprotected sex with clients if paid high enough or when clients are scarce. Because of the fear of stigma, many respondents reported being discouraged from approaching service providers to seek information about HIV or taking free male or female condoms in formal and informal workplace settings.

8.2 Stigma and discrimination against persons living with HIV (PLHIV)

Stigma and discrimination against PLHIV is well documented in Thailand. 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 from the workplace and more than a quarter (28 per cent) at schools. 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 the Asia and the Pacific region, discrimination against PLHIV remains widespread.¹¹⁹ A minority of PLHIV in the survey also reported being excluded due to sexual orientation.¹²⁰

In the findings in this PRIDE research, stigma and discrimination remains a big issue for PLHIV in Thailand and is perceived to be heightened within the LGBT community living with HIV. While many respondents agreed that the 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 the service they receive in all sectors of society. The rights of PLHIV are still infringed by prevailing discriminatory practices in the labour market and at workplaces. Many respondents said that many workplaces still practice HIV-screening – contrary to what is recommended by international law on the subject matter. Many companies, particularly in the private sector, still require job applicants to undergo HIV testing. This is in contrast to ILO's HIV and AIDS Recommendation, 2010 (No. 200) that articulates that "HIV testing or other forms of screening for HIV should not be required of workers, including migrant workers, jobseekers and job applicants."¹²¹ Consequently, some gay respondents stated that they 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, major businesses and state enterprises. Although compulsory testing is less of a problem now than before, it still remains a problem and

¹¹⁹ 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].

¹²⁰ 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.

¹²¹ ILO. Recommendation concerning HIV and AIDS and the World of Work, 2010 (No. 200).

major obstacle to decent work.¹²² For example, three third-year nursing students were prohibited from an internship by the Christian University in Bangkok following HIV-screening. The students were told to change their field of study or be suspended. In another case, the household furniture retailer HomePro has put in place mandatory HIV screening of employees.¹²³

8.3 Protection against discrimination on the basis of HIV status

There is no law in Thailand prohibiting discrimination in employment based on HIV status. There is simply a Ministerial Code of Practice on Prevention and Management of HIV/AIDS in the Workplace (2005), which prohibits discrimination on the ground of HIV status in the workplace.¹²⁴

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

¹²² Somchai Phromsombat and Raksakul Buajoom, founder and manager of The Poz Home Center, personal interviews, 28 Jan. 2013.

¹²³ Aids Access Foundation, Bangkok, Aug. 2012.

¹²⁴ 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).

9. Conclusion and recommendations

9.1 Main findings of the PRIDE Project in Thailand

There is a common perception that Thailand is a very open and accepting society towards people of diverse sexualities. However the PRIDE research found that people of diverse sexual orientations and gender identities suffer persistent and prevalent prejudices, largely due to misconceptions and lack of understanding about different sexual orientations and gender identities. LGBT persons face persistent stigma and discrimination in society, including in employment and education. People of different sexual orientation and identity experience varying degrees of social acceptance. In particular transgender persons (katoeys, sao praphet song, transwomen and transmen), toms (masculine lesbians) and intersex persons face the strongest and most extensive discrimination and exclusion.

Although Thai law does not criminalize same-sex relations, there is no law prohibiting discrimination on the basis of sexual orientation and gender identity. The Constitution of 2007 does guarantee equality for all persons and prohibits discrimination on the ground of sex. This 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 and has been used in practice.

LGBT persons have sought protection under other laws and regulations. For example, the Labour Protection Act (2008) guarantees equal treatment for male and female workers in the private sector and prohibits sexual harassment. Similarly, the Ministry of Labour Regulation on Thai Labour Standards, Social Responsibility of Thai Businesses (2007) prohibits discrimination against workers on sex as well as “personal sexual attitude”.

There have been positive steps in reducing discriminatory provisions. One clear example is the revision of the Sor Dor 43 (for military service exemption) in which the wording “permanent mental disorder” has been changed to “gender identity disorder”. Though still suggestive of a psychological abnormality, it is less offensive. And as of 2012, the NSWPC, which aims to ensure access to social services for disadvantaged populations, identifies “persons of diverse sexualities” as one of its 13 target groups, making it Thailand’s first legal recognition of LGBT people as a population group.

Recognition of one’s sex on legal documents is a major barrier preventing transgender persons from accessing employment. 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. By contrast, intersex persons can apply for a legal title change after they have chosen one sex and completed the required surgical procedures.

While many seem to accept or at least tolerate transgender persons who have had a full transformation to the preferred sex, there is less tolerance for those whose gender identity is ambiguous. For this reason, katoeys, toms, and transgender persons who have not had surgery tend to face the strongest discrimination and violence among the LGBT populations. In comparison, many gay, lesbian and bisexual people tend to keep their

sexuality hidden in fear of rejection, harassment, and loss of privileges. As many respondents have noted, identifying as non-heterosexual would damage their credibility and reputation at work.

At work, LGBT persons encounter physical and sexual violence. Many LGBT persons suffer mild teasing, taunting, gossip, slurs and insults, groping, to more serious forms of physical and sexual violence, including bullying, physical assaults and rape. Hostility most commonly experienced by LGBT workers includes gossips and slurs, insensitive jokes (such as jokes about transgender persons and toms being raped or gang raped), sexual comments or intrusive questions about their private lives and sexuality. Transgender persons are subject to a higher degree of harassment and violence than other groups.

In terms of career advancement, many LGBT persons report that less qualified colleagues have been promoted before them because they are heterosexual. In addition, some LGBT persons said they are paid less than their heterosexual colleagues. In some extreme cases, LGBT persons have been unfairly dismissed once their sexual orientation is revealed.

Such discrimination and harassment forces many many LGBT workers to opt out of formal employment in large public or private organizations to seek jobs in which they can express themselves more freely, often lower-paid jobs which afford them less job security, often with lower pay and fewer benefits. Many transgender persons enter into sex work as they find they have better pay and are treated better.

LGBT persons living with HIV have to endure additional forms of discrimination. There is no law in Thailand prohibiting discrimination in employment on the ground of HIV status. PLHIV have been found to be denied employment or not be eligible for promotion, more often due to discrimination than poor health. PLHIV continue to face problems with involuntary HIV screening and confidentiality being violated by employers and hospitals. 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.

There has been limited discussion on labour issues among organizations advocating LGBT rights and even less among government, workers and employers organizations, although discrimination in employment is one of the major complaints within the LGBT communities. No LGBT organization contacted through this study works actively to promote labour rights for LGBT workers, and LGBT rights are not a priority issue in employers' and workers' organizations. However, this is changing and some 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. 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.

In summary, given extensive discrimination in virtually all aspects of employment and occupation, Thai LGBT workers lack equal opportunity and treatment at work. There are few good practices in terms of employment promotion for LGBT populations being implemented in a meaningful and systematic way. Due to discrimination, exclusion and marginalization in employment and occupation, LGBT workers, especially transgender persons and toms, do not access social protection on the same terms as heterosexual workers. The absence of marriage equality, civil-partnership, and joint-adoption for same-sex couples deprive many LGBT persons the same rights as heterosexual partners in accessing pension, health and other benefits for their families.

9.2 Recommendations

The gap in legal protection of SOGI and PLHIV rights requires further policy mobilization to include LGBT and PLHIV in the full protection against discrimination under Thai law, including in the Labour Protection Act. 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:

- 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 in employment and occupation;
- Responsive mechanisms and human resources – Engage ILO constituents more actively and make use of existing mechanisms such as the National Human Rights Commission and NGO networks;
- Information and monitoring – Build a knowledge base with SOGI-disaggregated statistics; work with the National Statistical Office;
- Education and capacity building that includes SOGI;
- Partnership and participatory process – Build alliances;
- Social capital and spiritual input – Build emotional resources.

Based on the checklist and adding a PLHIV perspective to it, the following are specific legislative and policy recommendations for government, employers’ and workers’ organizations, LGBT and PLHIV organizations and other civil society networks and organisations, to promote rights, diversity and equality for workers of diverse sexual orientations and gender identities in employment and occupation in Thailand.

9.2.1 Government

To prevent discrimination at the workplace, the Government should:

- Ensure protection of LGBT and PLHIV rights in national laws and policies by applying existing mechanisms to combat discrimination against all workers, including LGBT persons and persons living with HIV, in employment and occupation;
- Provide discrimination and gender diversity training to relevant officials to improve awareness, sensitivity, and efficiency in dealing with LGBT people;
- Adopt a national law and policy to promote equal opportunity and treatment in employment and occupation that explicitly includes SOGI as well as real or perceived HIV status 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;
- 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, gender identity and real or perceived HIV status;
- Specifically address direct and indirect discrimination in employment and occupation and promote equality of opportunity and treatment among all sectors and population groups in the workforce, including LGBT and PLHIV 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), a tripartite organization, to function as an advisory and monitoring body as well as a complaint mechanism at the national level to monitor discrimination in employment and occupation and make policy recommendations to the government;
- Ensure equality in legal rights for LGBT people and PLHIV aligned with international standards; and,
- Ratify the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111).
- Follow-up on the implementation of the key principles of the ILO Recommendation concerning HIV and AIDS and the World of Work, (No. 200), 2010

To ensure that LGBT persons have access to the same rights as heterosexual persons, the Government ought to:

- Develop new legislation to recognize transgender identity;
- Institutionalize marriage equality and civil-partnerships for LGBT persons;
- Allow same-sex couples to adopt children;
- Develop legislation which extends social security benefits to same sex partners;
- Promote social dialogue with LGBT, workers' and employers' organizations and PLHIV networks towards proactive and sustained cooperation to ensure equality and rights protection for LGBT people;
- 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; and,
- 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.

9.2.2 Employers' and workers' organizations

The employers' and workers' organizations are responsible for promoting awareness about LGBT and PLHIV rights among individuals and organizations within the networks of employers' and workers' organizations. The employers' and workers' organizations should:

- Encourage LGBT persons to become involved in the unions; similarly, have a representative in the employers' organizations working on LGBT issues;
- 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 good practices in addressing discrimination;
- 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;

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- Promote the implementation of the principles of the ILO Recommendation concerning HIV and AIDS and the World of Work, (No. 200), 2010 at the workplace levels to counter stigma and discrimination at work.
 - Work with LGBT rights advocates and organizations to protect LGBT workers from discrimination and all forms of violence in the workplace; and,
 - Promote dialogue between workers' and employers' organizations and representatives of LGBT workers towards proactive and sustained cooperation to ensure equality and rights protection for LGBT people.

9.2.3 LGBT and civil society organizations

LGBT and civil society organizations also have a role to play in advancing the rights of LGBT persons in the workplace. They should:

- Promote awareness about labour rights in LGBT and PLHIV communities and share experiences across different groups to increase understanding of the issues and undertake joint action to represent and promote LGBT interests, human rights, including workers' rights, in society and in workplaces;
- Improve the existing knowledge base about discrimination in employment against LGBT workers through systematic data collection and research;
- Build alliances and promote dialogue with the Government, workers' and employers' organizations towards proactive and sustained cooperation to ensure equality and rights protection for LGBT people;
- Step up legislative and policy advocacy to combat all forms of employment discrimination and violence against LGBT people at work and in society; and,
- 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 a constant 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 academia to have a constructive debate and take proactive measures 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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Annex 1

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

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 Jun '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

No.	Date	Interviews	Description (* position at the time of the interview)
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
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 Jun '13	2) Chanjira 'Joy' Boonprasert	Coordinator, Teeranat Kanjanauksorn Foundation (TKF)
20	19-21 Jun '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 Jun '13	Manop Kuarat	Information officer, State Enterprises Workers' Relations Confederation of Thailand (SERC)

No.	Date	Meetings	Description (* position at the time)
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
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 Cheecharoen, 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)	

Annex 2

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

Annex 3

List of key Thai LGBT organizations online:

Anjaree Group กลุ่มอัญจารี:

www.facebook.com/anjaree/info

Bangkok Rainbow Association (BRO) บางกอกเรนโบว์:

www.facebook.com/bangkokrainbow

www.bangkokrainbow.org

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

www.facebook.com/forsogi

www.forsogi.org/

Mplus+ Thailand มูลนิธิเอ็มพลัส:

www.facebook.com/Mplus+.msm

www.Mplus+thailand.com/

Narupon Duangwises, queer anthropologist:

www.facebook.com/narupon.duangwises.1

Rainbow Sky Association of Thailand (RSAT) สมาคมฟ้าสีรุ้งแห่งประเทศไทย:

www.rsat.info/index.php

Lady RSAT สมาคมฟ้าสีรุ้งแห่งประเทศไทย)หญิงรักหญิง :(www.facebook.com/LadyRsat

Sapaan – Alternative Media for SOGI Rights: กลุ่มสร้างสื่อเพื่อสนับสนุนส่งเสริมสิทธิหญิงรักหญิงและความหลากหลายทางเพศ :<http://sapaan.org/>

Sisters, Center for Transgenders, Pattaya:

www.facebook.com/sistersthailand

www.sistersthailand.com/th/

SWING – Service Workers in Group Foundation มูลนิธิเพื่อพนักงานบริการ :

www.facebook.com/swingthailand.org

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

www.thaitga.com

Thailand Queer Network:

www.facebook.com/thqnnetwork

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

www.facebook.com/callcarethepozhome

www.thepoz.org/

Trans Female Association of Thailand (TFAT) สมาคมสตรีข้ามเพศแห่งประเทศไทย:

www.facebook.com/tf101

www.tf101.com/

Annex 4

Thailand PRIDE Research National Workshop Programme

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

9.00 – 9.30

Opening remarks

Nelien Haspels, Senior Specialist on Gender, Equality and Diversity, ILO Regional Office for Asia and the Pacific, Bangkok

Chantalak Raksayu, Advisor to Foundation for SOGI Rights and Justice (FOR-SOGI)

Steven Kraus, Regional Director, UNAIDS, Asia and the Pacific

Introduction to PRIDE Thailand project and objectives of the workshop

Richard S. Howard, Senior Specialist on HIV and AIDs, ILO

9.30 – 10.30 Presentation of Thailand PRIDE research

Busakorn Suriyasarn, Independent researcher and author of the report

Comments by Associate Professor Kritaya Achavanichkul, Institute for Population and Social Research, Mahidol University

10.45 – 12.00

Panel 1: LGBT discrimination in Thailand's mainstream job market

Panelists:

Fired for being gay, opportunities and pressure on gay men in mainstream jobs – Nikorn Arthit, Founder and Director of Bangkok Rainbow Organization (BRO)

Women who love women: Hiding gender identity at home and at work – Chumaporn Taengkliang, Independent pro-democracy and LGBT rights activist, Together for Equality Action (TEA Group)

Harassment, violence and hostile work environment for toms – Parit Chomchun

Transgender identity and discrimination against transmen in education and in employment – Kaona Saowakun, Anjaree Volunteer and Co-chair of ILGA Asia

Transgender identity's impact on job advancement for transwomen – Benja Supahathaiwan

Moderator: Naiyana Supapung, Director of Teerarat Kanjanauksorn Foundation and Advisor to FOR-SOGI

Qs & As – Comments & Discussion

13.00 – 14:15

Panel 2: LGBT discrimination in Thailand's informal economy and access to social security

Panelists:

Marginalization of rural transgenders and their coping strategies – Pongthorn Chanlearn, Coordinator of Mplus+, Chiang Mai

Discrimination against LGBTs in the informal economy in the rural area –

Yukonthorn Kaewchaochom, Director of Gender for Health and Equality Network (GEN), Ratchaburi

Katoeys in sex work – Thitiyanun Nakpor, Director of Sisters, Center for Transgenders - Pattaya

Discrimination against people living with HIV in employment and access to social security – Somchai Phromsombat, Founder of The Poz Home Center, Bangkok

Moderator: Busakorn Suriyasarn, Independent researcher

Qs & As - Comments & Discussion

14.15 – 15.00 Comments

Professor Vitit Muntarbhorn, Distinguished Scholar, Faculty of Law, Chulalongkorn University,

Report validation

Open floor for comments on Thailand PRIDE report

Validation of the report findings (questionnaire)

15.15 – 16.45

Way forward

Good practice example by employers (Accor Hotel Group VDO)

Employment discrimination, Thai national dialogue – Rashima Kwatra, LGBT Human Rights Officer, UNDP Asia-Pacific Regional Centre

Group discussion on legislative and policy recommendations 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.

Group presentations

16.45 – 17.00

Closing remarks

Danai Linjongrat, Director of Rainbow Sky Association of Thailand (RSAT), representative of LGBT networks

Nelien Haspels, Senior Specialist, representative of the ILO

Masters of ceremony:

Ronnapoom Samakkeekarom, Health Science Faculty, Thammasat University

Jetsada Taesomebat, Committee Member, FOR-SOGI

¹ Resolution A/HRC/RES/17/19.

² The Yogyakarta Principles: http://www.yogyakartaprinciples.org/principles_en.htm (accessed 9 April 2012).

³ UN Human Rights Office: *Tackling discrimination on the grounds of sexual orientation and gender identity* (2010).

⁴ UN: *Political Declaration on HIV/AIDS: Intensifying our Efforts to Eliminate HIV/AIDS*, General Assembly, 65th Session, Geneva, 8 June 2011, A/65/L.77, <http://daccess-dds-ny.un.org/doc/UNDOC/LTD/N11/367/84/PDF/N1136784.pdf?OpenElement>

⁵ In 2006, in response to well-documented patterns of abuse, a distinguished group of international human rights experts met in Yogyakarta, Indonesia to outline a set of international principles relating to sexual orientation and gender identity. The result was the Yogyakarta Principles: a universal guide to human rights which affirm binding international legal standards with which all States must comply. They promise a different future where all people born free and equal in dignity and rights can fulfil that precious birth right.