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HIV and the Law in South-East Asia

United Nations Development Programme Bangkok Regional Hub

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This report is intended to summarize HIV-related laws in South-East Asia as at January 2014. While every effort has been made to ensure accuracy at the time of writing, readers should note that the law is complex and constantly changing. The report should not be used as a substitute for legal advice.

Glossary of acronyms and terms

AIDS	Acquired Immunodeficiency Syndrome
APCOM	Asia Pacific Coalition on Male Sexual Health
ASEAN	Association of Southeast Asian Nations
AusAID	Australian Agency for International Development
CBO	Community-based organization
CHED	Commission on Higher Education (Philippines)
DECS	Department of Education, Culture, and Sports (Philippines)
ESCAP	Economic and Social Commission for Asia and the Pacific
GWL-INA	National Network of MSM and Transgender People (Indonesia)
HIV	Human Immunodeficiency Virus
ICW	International Community of Women Living with HIV/AIDS
IDLO	International Development Law Organization
ILO	International Labour Organization
IOM	International Organization for Migration
IPPF	International Planned Parenthood Federation
MOEC	Ministry of Education and Culture (Indonesia)
MMT	Methadone maintenance therapy
MSM	Men who have sex with men
NGO	Non-governmental organization
OHCHR	Office of the High Commissioner for Human Rights

OST	Opioid substitution therapy
PCPI	Police Community Partnership Initiative
STI	Sexually transmitted infection
TESDA	Technical Education and Skills Development Authority (Philippines)
UN	United Nations
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
USAID	United States Agency for International Development
WHO	World Health Organization

Definitions of key terms

Key populations / Key populations at higher risk of HIV exposure

The term 'key populations' refers to those who are most likely to be exposed to HIV or to transmit it, and whose engagement is critical to a successful response. In Cambodia, the National AIDS Authority prefers the term 'most-at-risk populations'. The term 'key populations' includes people living with HIV and their partners. In most settings, men who have sex with men, transgender people, people who inject drugs, and sex workers and their clients are at higher risk of HIV exposure than other people. These populations are not mutually exclusive. Many people have multiple factors that may contribute to HIV risk and vulnerability, e.g., a person may be transgender, sell sex, and inject drugs.

MSM (men who have sex with men)

'MSM' refers to all males who have sex with other males, regardless of their sexual identity or sexual orientation, and regardless of whether they also have sex with women. MSM refers to a behaviour rather than a single identifiable community. MSM includes sexually active men who identify as homosexual, gay, or bisexual, or who identify with a community of feminized males. The term MSM also includes men with masculine characteristics who are not perceived as homosexuals and do not self-identify as homosexual or gay, but who have sex with other males. For the purposes of this report, 'men' (in the term MSM) refers to males regardless of age.

Sex worker

In this report the term 'sex worker' is used to refer to all adults (persons over 18 years) who sell or exchange sex for money, goods, or services. The term is used to refer to consenting adult female, male, and transgender people who receive money or goods in exchange for sexual services, either regularly or occasionally. The term is used to refer to people who sell or exchange sex even if they do not identify as sex workers, or consider the activity to be 'work'. 'Indirect' sex workers usually do not rely on selling sex as their first source of income. They may work as waitresses, hairdressers, massage girls, street vendors, or beer promotion girls and supplement their income by selling sex. They generally do not identify as 'sex workers'. In Cambodia and the Philippines, these workers are commonly referred to as 'entertainment workers' rather than 'sex workers'.

Prostitution/prostitute

Prostitution is a term that was commonly used in legislation enacted in the nineteenth and twentieth centuries to refer to sex work or the practice of selling sex. The terms 'prostitution' and 'prostitute' have negative connotations that can be stigmatizing. This report only uses the term 'prostitution' when quoting from specific legislative provisions or the works of other authors that use the term. In most cases, the term 'sex work' is preferred in this report.

Transgender

Transgender is a term used to describe individuals whose gender expression or gender identity differs from conventional expectations based on the physical sex into which they were born. The term 'transgender people' in this report refers primarily to people who were born biologically male but who identify as female, or who have characteristics that are usually considered female. There are transgender people in all countries, and in some ASEAN countries there are specific transgender or 'third gender' groupings that have unique cultural identities. Most countries have their own terms to refer to culturally specific sub-populations that include feminized men, third gender, and/or male-to-female transgender people (e.g., *waria* in Indonesia, *mak nyah* in Malaysia, *transpinay* in the Philippines, and *kathoey* in Thailand).

Legal systems of South-East Asia

Common law: Common law legal systems combine laws made by or under the authority of parliament and laws defined by judges' decisions. The former British colonies still use or are strongly influenced by common law traditions that derive from English case law. Common law is part of the law of Brunei Darussalam, Malaysia, Myanmar, and Singapore.

Civil law: Civil law legal systems are derived from continental Europe and rely on codified collections of legislation. Countries with civil law systems include Cambodia, Indonesia, Lao PDR, Thailand, Timor-Leste, and Viet Nam. Viet Nam's legal system combines French civil law and socialist law.

Customary law: Customary law refers to traditional legal systems developed in pre-colonial times.

Sharia law: Sharia law is Islamic religious law. Principles of Sharia law apply in Brunei Darussalam and to Muslim communities to varying extents in Malaysia, parts of Indonesia (e.g., Aceh), and in the Muslim Personal Laws that apply in family matters, wills, and estates in Mindanao (the Philippines).

Mixed legal systems: Some countries have mixed legal systems that draw on common law and/or civil law traditions, mixed with customary or religious laws. For example, the Philippines has a strong civil law tradition and elements of common law and religious law.

1



Introduction

This report was prepared for the United Nations Development Programme (UNDP) Bangkok Regional Hub and the Association of Southeast Asian Nations (ASEAN) Taskforce on AIDS as part of the ASEAN Cities Getting to Zero Initiative, to produce evidence on the legal environments affecting HIV responses among key populations in ASEAN states and Timor-Leste. Information was obtained from a literature review conducted in 2013, updating previous reviews conducted for UNDP Bangkok Regional Hub in the period 2009–2013.¹

Objectives

The objectives of this study were to:

- i Describe the diversity of laws and police practices that affect HIV responses among people living with HIV and other key affected populations (in particular sex workers, men who have sex with men (MSM), transgender people, and people who inject drugs) in the 10 member countries of ASEAN (Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Viet Nam) and Timor-Leste; and
- ii Provide options for strengthening legal responses to HIV for consideration by governments and civil society partners conducting reviews of HIV-related national laws, policies, and practices.

This report provides a regional overview and summary of laws, police practices, and related policies. The report includes examples of protective laws and good practices from each country that can inform efforts to improve the legal environment for HIV responses. In addition, ten individual country summaries were prepared as part of this study, which were shared as internal working documents with ASEAN Task Force on AIDS focal points and members of the United Nations Country Teams working on HIV and AIDS in the ten ASEAN countries.

Rationale

This report applies a human rights-based approach to the analysis of the impact of laws on HIV responses. People living with HIV and other key populations are entitled to legal protections of their human rights, consistent with international law and human rights norms. International human rights law requires states to take measures to respect, protect, and fulfil the human rights of people living

1 UNDP (2010), *Legal environments, human rights and HIV responses among men who have sex with men and transgender people in Asia and the Pacific*, Bangkok: UNDP; UNDP (2012), *Sex work and the law in Asia and the Pacific*, Bangkok: UNDP; UNDP (2013), *Legal protections against HIV-related human rights violations: Experiences and lessons learned from national HIV laws in Asia and the Pacific*, Bangkok: UNDP.

with HIV and other key populations to equality, non-discrimination, privacy, and the highest attainable standard of health.²

The enactment of laws to protect the human rights of people living with HIV and other key populations is essential to creating an enabling environment for HIV responses. Protective laws are essential to combat stigma and discrimination. There are continuing widespread reports of stigma and discrimination affecting people living with HIV and key populations across the region. For example, the *People Living with HIV Stigma Index, Asia Pacific Regional Analysis* found that HIV-related stigma and discrimination are evidenced across all areas of life, including in the key areas of employment and health care.³

HIV responses are more effective in contexts where the human rights of people living with HIV and other key populations are protected by laws and policies. With legal and policy protections of human rights in place, key populations are more likely to cooperate in prevention efforts and come forward for testing, treatment, and care. HIV services can operate more effectively when key populations can access services without fear of adverse legal or personal consequences. Legal protections also enable key populations to participate more openly in advocacy and planning, managing, and delivering HIV services without fear of reprisals. This helps to ensure that the services are effective, accessible, and acceptable to their communities.

The study is intended to assist countries to respond to resolutions of the UN Economic and Social Commission for Asia and the Pacific (ESCAP). ESCAP *Resolution 66–10* (2010) calls on member states to ground universal access in human rights and to address legal barriers to HIV responses. ESCAP *Resolution 67–9* (2011) requires countries to initiate reviews of national laws, policies, and practices to enable the full achievement of universal access targets with a view to eliminating all forms of discrimination against people living with HIV and key affected populations. *Resolution 67–9* also requires countries to establish strategic and operational partnerships among representatives of public health agencies, law enforcement agencies, civil society, and key populations to scale-up high-impact HIV interventions for key populations.

The study supports ASEAN states to fulfil commitments made in the *ASEAN Declaration of Commitment: Getting to Zero New HIV Infections, Zero Discrimination, Zero AIDS-Related Deaths* (2011), which commits member states to scaling-up HIV-prevention programmes for key populations, including people who use drugs, sex workers, MSM, and transgender people.

- 2 See Office of the High Commission for Human Rights (OHCHR) and Joint United Nations Programme on HIV/AIDS (UNAIDS) (2006), *International Guidelines on HIV/AIDS and Human Rights*, Geneva: OHCHR & UNAIDS; OHCHR & UNAIDS (2007), *Handbook on HIV and Human Rights for National Human Rights Institutions*, Geneva: OHCHR & UNAIDS; Jurgens, R. et al. (2007), *Taking action against HIV and AIDS: Handbook for Parliamentarians*, Geneva: UNAIDS, UNDP and the Inter-Parliamentary Union; and Global Commission on HIV and the Law (2012), *HIV and the Law: Risks, rights and health*, New York: UNDP.
- 3 The Asia Pacific Stigma Index report analysed findings from Bangladesh, Cambodia, China, Fiji, Myanmar, Pakistan, the Philippines, Sri Lanka, and Thailand. GNP+, ICW, IPPF, UNAIDS (2011), *People Living with HIV Stigma Index, Asia Pacific Regional Analysis 2011*, Geneva: UNAIDS.

The study can be used by ASEAN states in efforts to better comply with the *ASEAN Human Rights Declaration (2012)*, which provides:

Article 29.

- 1 *Every person has the right to the enjoyment of the highest attainable standard of physical, mental and reproductive health, to basic and affordable health-care services, and to have access to medical facilities.*
- 2 *The ASEAN Member States shall create a positive environment in overcoming stigma, silence, denial and discrimination in the prevention, treatment, care and support of people suffering from communicable diseases, including HIV/AIDS.⁴*

The study will also assist countries to implement the recommendations of the Global Commission on HIV and the Law (2012), which focused attention on the need to address the legal status of key populations under criminal laws because of the harms to public health and human rights associated with some punitive legislative and law enforcement approaches (see 10.1). The Global Commission on HIV and the Law also emphasized the need to strengthen implementation and enforcement of protective laws by providing key populations with prompt and affordable access to legal redress in cases of human rights violations.⁵

Each country needs to define its own priorities in relation to law reform and changes to law enforcement practices and policies, informed by a participatory process of consultation with communities and relevant sectors of government. It is critically important that people living with HIV and other key populations are centrally involved in efforts to reform HIV-related laws and improve legal environments. Community-based organizations and networks should be supported to participate in developing recommendations and making decisions on national priorities for law reform and other actions to improve the legal environment for HIV responses.

Structure of this report

Chapters 2–7 provide key findings and conclusions from a regional perspective for each of the populations considered by the study (people living with HIV, sex workers, MSM, transgender people, people who inject drugs, young people, and migrants).

Chapter 8 provides a summary of laws, law enforcement practices, and related policies that are *helpful* or *harmful* to HIV responses.

4 Article 29, *ASEAN Human Rights Declaration*, 21st ASEAN Summit, Phnom Penh, 19 November 2012.

5 Global Commission on HIV and the Law (2012), *op cit.*, p. 18.

Chapter 9 provides examples of protective legal provisions from the countries reviewed in the areas of discrimination, confidentiality, and voluntary testing.

Chapter 10 reproduces recommendations published elsewhere for consideration by governments. These include:

- 1 Recommendations of the Global Commission on HIV and the Law;
- 2 Recommendations from a UNDP study of national HIV laws in Asia and the Pacific;
- 3 Recommendations of the Joint United Nations Programme on HIV/AIDS (UNAIDS) and the International Organization for Migration (IOM) on HIV-related travel restrictions;
- 4 The joint statement of UN agencies on drug detention and rehabilitation centres; and
- 5 Recommendations of the UN Special Rapporteur on Torture relating to drug detention centres.

2



People living with HIV

Universal access to HIV services is supported by the enactment of legal protections for people living with HIV in at least the following key areas:

- Protection from discrimination in employment, education, and access to health care and other services;
- Protection from breach of confidentiality; and
- Protection from coerced or non-consensual HIV testing.

The laws of the eleven countries under review provide varying levels of legal protection in these key areas (Table 1), and chapter 9 provides examples of their protective legal provisions.

Anti-discrimination provisions

In relation to legal protection from discrimination, five countries reviewed have specific provisions that prohibit discrimination on the ground of HIV: Cambodia, Indonesia, Lao PDR, the Philippines, and Viet Nam. All of these countries prohibit some forms of workplace discrimination, and have specific prohibitions against HIV-related discrimination in health care. Further, Cambodia, Lao PDR, the Philippines, and Viet Nam have specific prohibitions against HIV-related discrimination in education. The Philippines and Viet Nam also have specific provisions addressing discrimination in the provision of burial or cremation services. The text of these anti-discrimination provisions is reproduced in chapter 9.1. Some of these provisions extend to protect people suspected of having HIV or people affected by HIV due to their relationship with a person living with HIV (Cambodia, Lao PDR, the Philippines, and Viet Nam).

The laws of Lao PDR and Viet Nam prohibit conduct that stigmatizes a person living with or affected by HIV. The law in Viet Nam defines stigmatization against an HIV-infected person as an attitude of contempt or disrespect towards another person because of the awareness or suspicion that the person is infected with HIV or has a close relationship with an HIV-infected person or a suspected HIV-infected person.⁶

Some countries have legal protections against discrimination that are worded more broadly than HIV, such as laws prohibiting discrimination on the grounds of a person's health or physical condition (e.g., Cambodia,⁷ Thailand,⁸ and Timor-Leste⁹). These laws would in effect cover many cases of HIV-related discrimination.

6 *Law on HIV/AIDS Prevention and Control 2006*, article 2 (Viet Nam); and see *HIV/AIDS Law 2010* (Lao PDR) article 52.

7 *Criminal Code 2009*, article 266.

8 *Constitution of the Kingdom of Thailand*, BE 2550 (2007), section 30.

9 *Constitution of the Democratic Republic of Timor-Leste*, article 16 (physical or mental condition).

TABLE 1

HIV-related legal protections

Country	Law or regulations prohibiting discrimination on the ground of HIV	Law or regulations prohibiting discrimination on the ground of health	HIV-specific confidentiality law or regulation	Law or regulation prohibiting compulsory HIV testing
Brunei Darussalam			✓	
Cambodia	✓	✓	✓	✓
Indonesia	✓		✓	✓
Lao PDR	✓		✓ employment only	✓ employment only
Malaysia				
Myanmar				
Philippines	✓		✓	✓
Singapore			✓	
Thailand		✓		
Timor-Leste		✓	✓ employment only	✓ employment only
Viet Nam	✓		✓	✓ except defence and security personnel and flight crew

Countries with comprehensive national HIV laws

Cambodia, Lao PDR, the Philippines, and Viet Nam have enacted the following comprehensive national HIV laws that provide human rights protections for people living with HIV:

- Cambodia: *Law on the Prevention and Control of HIV/AIDS of 2002*;
- Lao PDR: *Law on HIV/AIDS Control and Prevention of 2010*;
- Philippines: *Philippine AIDS Prevention and Control Act of 1998* (Republic Act 8504); see also *Revised Philippine HIV and AIDS Policy and Program Act of 2013* (House Bill 1593);
- Viet Nam: *Law on HIV/AIDS Prevention and Control, 2006*.

These comprehensive national HIV laws address a wide range of issues, including:

- Public health requirements (such as regulation of HIV testing and safety of the blood supply);
- Civil and political human rights and fundamental freedoms of people living with HIV (such as rights to non-discrimination, equality, liberty, security of the person, and privacy/confidentiality);
- Social and economic human rights of people living with HIV (such as the right to health and the right to information and education); and
- Roles and responsibilities of national agencies in the HIV response.

All of these national laws state that HIV-related discrimination and breach of confidentiality regarding HIV status are unlawful (subject to exceptions). In most cases, coerced or compulsory HIV testing is also prohibited (subject to exceptions) and informed consent is required prior to HIV testing.

These national HIV laws also state the responsibilities of people living with HIV, such as not to engage in risky behaviours¹⁰ and the responsibility to disclose their status to their spouse or sexual partners.¹¹

Some of these laws also establish an enforceable right to HIV treatment and prevention services. For example, article 26 of Cambodia's *Law on the Prevention and Control of HIV/AIDS of 2002* provides that the state shall ensure that all persons with HIV/AIDS shall receive primary health care services free of charge from public health networks.

These laws include criminal or administrative penalties that apply to persons who violate rights, and some laws also explicitly enable individuals to seek legal redress such as compensation through the courts. Enforcement of these laws generally relies on individuals making complaints to police, prosecutors, the court system, or government offices in the event that their rights are violated. The law may then be enforced either by an individual launching an administrative or civil court action in the individual's own name or by a prosecutor or police officer launching a criminal prosecution against the wrongdoer on behalf of the state. In some countries, cases may be handled as administrative complaints without necessarily resorting to the courts (e.g., the Philippines and Viet Nam).

People living with HIV face a range of practical challenges in enforcing their legal rights under these protective laws. Barriers to accessing the justice system to enforce legal rights may include lack of access to independent legal advice and legal aid services, the cost and complexity of legal proceedings, lack of confidence and trust in the formal legal system, and concerns regarding disclosure of identity or health status during legal proceedings.

¹⁰ *Law on HIV/AIDS Control and Prevention of 2010*, article 52 (Lao PDR).

¹¹ *Philippine AIDS Prevention and Control Act 1998*, section 34; Viet Nam, *Law on HIV/AIDS Prevention and Control 2006*, article 4.

A well-drafted national HIV law can define a consistent human rights-based approach to HIV informed by an explicit statement of principles. For example, the Lao PDR *HIV/AIDS Law (2010)* states the principle that HIV control and prevention should be carried out “ensuring that equality, justice, compassion, and non-discrimination and non-stigmatization principles are respected” and “ensuring the principles of confidentiality and privacy for people living with HIV/AIDS.”¹²

The *Philippine AIDS Prevention and Control Act of 1998* is also prefaced with a statement of principle, as follows:

AIDS is a disease that recognizes no territorial, social, political and economic boundaries for which there is no known cure. The gravity of the AIDS threat demands strong State action... discrimination, in all its forms and subtleties, against individuals with HIV or persons perceived or suspected of having HIV shall be considered inimical to individual and national interest.¹³

The statement of principles in Viet Nam’s national HIV law refers to principles of multisectoral collaboration, social mobilization, integration of HIV-prevention and control activities into socio-economic development programmes, harm reduction intervention measures in the prevention of HIV transmission, elimination of stigma and discrimination, and the facilitation of HIV-infected people and their family members to participate in prevention and control.¹⁴

Enactment of these laws has been important in providing a rights-based legal framework for the HIV responses of these countries. However, to ensure that these laws continue to play a role in shaping their country’s national HIV response, it is important that steps are taken such that people living with HIV are aware of their rights under the law and how to take action to enforce their rights, and that the laws are periodically reviewed and updated to take account of developments in the epidemic and the country context. For example, a proposed new national HIV law is due to be considered by Congress in the Philippines in 2014 (*Revised Philippine HIV and AIDS Policy and Program Act of 2013*) as a result of an extensive review of the *Philippine AIDS Prevention and Control Act of 1998*.

Countries without comprehensive national HIV laws

Brunei Darussalam, Indonesia, Malaysia, Myanmar, Singapore, Thailand, and Timor-Leste do not have comprehensive national HIV laws. In these countries there are some legal protections for people living with HIV provided by constitutional human rights provisions, general human rights laws, labour laws, and/or public health laws.

12 Article 6, *HIV/AIDS Law* (Lao PDR).

13 Section 2, *Philippine AIDS Prevention and Control Act of 1998* (RA 8504).

14 Article 3, *Law on HIV/AIDS Prevention and Control 2006* (Viet Nam).

For example, legal protections in Indonesia are provided by ministerial decrees and regulations relating to HIV in employment and health care, as well as general human rights protections under the national human rights law (*Law Concerning Human Rights*, No. 39 of 1999) and the Constitution. An employment decree requires employers and workers to protect workers with HIV from discriminatory conduct. The *Decree of the Minister of Manpower and Transmigration on HIV/AIDS Prevention and Control in the Workplace*¹⁵ draws on the *International Labour Organization (ILO) Code of Practice on HIV/AIDS and the World of Work (2001)*, and includes a prohibition on compulsory testing and a broad obligation to protect workers from discrimination. Indonesia's *Health Ministerial Regulation No. 21/2013 on the HIV and AIDS Response* prohibits discrimination in the provision of health care and requires health programmes to actively engage key populations while adhering to principles of respect for human dignity, justice, and gender equality.

In Timor-Leste the law does not address HIV-related discrimination specifically, but offers protections to all citizens under broader non-discrimination provisions. The Constitution prohibits discrimination on the grounds of "physical condition,"¹⁶ and the *Labour Law (2012)* offers protections to all citizens under the broader prohibition on discrimination on the grounds of health or disability in employment or in applying for employment.¹⁷ The *Labour Law* also prohibits compulsory workplace HIV testing.¹⁸

National human rights institutions, such as the human rights commissions in Indonesia, Myanmar, the Philippines, and Thailand, also provide an avenue for seeking redress for HIV-related human rights violations. For example, although HIV-specific rights protections are not yet in place in Myanmar, people living with HIV who experience rights violations may lodge a complaint with the National Human Rights Commission under its general mandate to address human rights.

Similarly, in Thailand any citizen—including people living with HIV—may lodge a petition to the National Human Rights Commission to complain of a human rights violation.¹⁹ The Commission accepts complaints relating to human rights protected by the Constitution, Thai law, or treaties to which Thailand is a party. Thailand's Constitution prohibits discrimination based on health conditions.²⁰ Further, Thailand's *Disabled Persons Promotion and Development Life Quality Act (2007)* prohibits disability discrimination, and therefore may provide legal protection to some people living with HIV if they have a disability as defined by the Act—for example, a visual impairment resulting from an opportunistic infection.²¹ To address workplace discrimination, the National Committee for HIV Prevention and AIDS Alleviation issued a *Code of Practice for HIV Prevention and Management in the Workplace* in 2009.

15 No: Kep. 68/Men/2004.

16 *Constitution of the Democratic Republic of Timor-Leste*, article 16 (physical or mental condition).

17 Article 6(2).

18 Article 72.

19 *National Human Rights Commission Act 1999* (Thailand), section 23.

20 *Constitution of the Kingdom of Thailand*, BE 2550 (2007), section 30.

21 The Act defines a disabled person as someone limited in participating in daily life or social activities due to a defect in vision, hearing, movement, communication, or in mind, emotion, behaviour, or intelligence, including those who have difficulties in all such aspects and need assistance to perform their daily activities or participate in social activities.

Public health laws also affect the rights of people living with HIV. Some public health laws provide confidentiality protections to people living with HIV, such as the *Infectious Diseases Act* in Brunei Darussalam and in Singapore. In some cases, public health laws enable governments to restrict the rights of people living with HIV if they are considered a risk to others, or to prosecute people living with HIV for transmitting the disease, not disclosing their HIV status to their sexual partners, or placing other people at risk of HIV.²² In Myanmar, the *Prevention and Control of Communicable Diseases Law 1995* categorizes AIDS along with such highly infectious diseases as cholera and plague, with the result that isolation and quarantine powers apply. Similarly, HIV is listed as an infectious disease in the schedule of Malaysia's *Prevention and Control of Infectious Diseases Act 1988*. Provisions relating to isolation and quarantine are inappropriate for HIV because it cannot be transmitted through casual contact.

National health laws and regulations can also provide a framework for access to treatment for people living with HIV. For example, Thailand's *National Health Security Act (2002)* provides the legal basis for the National Health Security Office's universal health coverage scheme, under which people living with HIV can access free treatment, including antiretroviral therapies. In Indonesia, *Health Minister Regulation No. 21/2013 on HIV/AIDS Control* provides that care and treatment costs for people living with HIV who are poor are to be borne by the state,²³ and health services are prohibited from rejecting treatment and care to people living with HIV.²⁴

Compulsory HIV testing

Six of the countries reviewed have legislated to prohibit compulsory testing in certain contexts: Cambodia, Indonesia, Lao PDR, the Philippines, Timor-Leste, and Viet Nam. However, mandatory or compulsory HIV testing exists for some purposes in some ASEAN countries. For example:

- Brunei Darussalam, Malaysia, and Singapore require HIV testing of migrants (see chapter 7).
- HIV testing of prisoners is mandatory in Malaysia.²⁵
- Premarital HIV testing is required for Muslims in Malaysia. Malaysia's Department of Islamic Development imposed premarital HIV-screening requirements for prospective Muslim couples through state-level regulations introduced over several years beginning in 2001.²⁶

22 See, e.g., *Infectious Diseases Act*, section 24 (duty to disclose to sexual partners) (Brunei Darussalam); *Prevention and Control of Infectious Diseases Act 1988*, section 12 (doing an act likely to lead to spread of infectious disease/HIV) (Malaysia); *Infectious Diseases Act*, section 23 (duty to disclose to sexual partners)(Singapore).

23 Article 46.

24 Article 30(1).

25 Wickersham, J. et al. (2013), Implementing methadone maintenance treatment in prisons in Malaysia, *Bulletin of World Health Organization*, 91:124 129, p. 124.

26 The premarital HIV screening programme for Muslim couples was introduced in Johor in 2001 by the Johor State Religious Department; Malacca, Perlis, and Selangor states introduced compulsory testing in 2005 and were followed by several other states.

- In Viet Nam, although compulsory testing is generally prohibited, exceptions exist under the law for certain occupations for which job applicants or employees may be required to undergo tests, e.g., flight crew and special occupations in the security and defence domains.²⁷

Prosecutions for HIV transmission, exposure, or non-disclosure of HIV status

Prosecutions of people living with HIV for transmitting disease, not disclosing their HIV status to their sexual partners, or exposing other people at risk of HIV are possible under public health laws or criminal laws.²⁸ The national HIV laws of Cambodia and Lao PDR criminalize intentional transmission of HIV.²⁹

In Cambodia intentional transmission of HIV attracts a penalty of between 10 and 15 years imprisonment.³⁰ In 2006 a man was sentenced to 10 years' imprisonment under this provision for having sex with his wife without using a condom.³¹

In Singapore three men have been convicted and sentenced to terms of imprisonment ranging from one year to 18 months for non-disclosure of HIV status to their male sexual partners, in violation of the *Infectious Diseases Act*.³² These cases included one-off incidents of oral sex involving extremely minimal risk of HIV transmission.³³

The Global Commission on HIV and the Law has recommended that countries not enact laws that explicitly criminalize HIV transmission, exposure, or non-disclosure, because HIV-specific offences are stigmatizing and counter-productive to public health. Where exceptional cases of deliberate HIV transmission arise, these should be dealt with under general criminal laws, such as assault offences in penal codes.³⁴

27 Decree No. 108/2007/Nd-Cp of June 26, 2007, Detailing the Implementation of a Number of Articles of the Law On HIV/AIDS Prevention And Control, article 20.

28 See, e.g., Brunei Darussalam: *Infectious Diseases Act*, section 24 (duty to disclose to sexual partner); Malaysia: *Prevention and Control of Infectious Diseases Act 1988*, section 12 (doing an act likely to lead to spread of HIV); Singapore: *Infectious Diseases Act*, section 23 (duty to disclose to sexual partner).

29 *Law on the Prevention and Control of HIV/AIDS 2002*, articles 18 and 50 (Cambodia); *HIV/AIDS Law*, article 69 (Lao PDR). See also Viet Nam: *Law on HIV/AIDS Prevention and Control 2006*, article 8 (penalty not specified).

30 Articles 18 and 50.

31 See www.irinnews.org/report/60180/cambodia-court-ruling-under-hiv-aids-law-upholds-women-s-rights.

32 Singapore Man Jailed for Keeping Mum on HIV Status, *Straits Times*, 4 February 2012; and Man jailed for not telling boy of risk in first HIV case, *Straits Times*, 14 July 2008.

33 See criminalhivtransmission.blogspot.com.au/search/label/Singapore.

34 Global Commission on HIV and the Law (2012), op cit., p. 25.

3



Sex workers

Sex work is illegal in Brunei Darussalam, Lao PDR, Malaysia, Myanmar, the Philippines, Thailand, and Viet Nam. In Cambodia, Singapore, Timor-Leste and many parts of Indonesia there is no specific prohibition on selling sex in private; however, sex workers may be arrested for other offences relating to soliciting, immoral conduct, or public disorder.

Regulation of sex work, brothels, and entertainment establishments

In Indonesia, the Philippines, Singapore, and Thailand there is a degree of official toleration of sex work conducted in 'red light' areas, including regulation of venues in certain zones to address public health and security concerns. Several countries have introduced licensing or registration of brothels, entertainment establishments, sex businesses, or individual sex workers.

Examples of attempts to regulate the sex industry include:³⁵

- 1 Regulation of brothel complexes (*lokalisasi*) in "prostitution toleration zones" under district or municipal bylaws or local regulations in Indonesia.
- 2 Legal requirements under city HIV/AIDS ordinances in the Philippines, which do not explicitly refer to sex work but in effect provide health protection for sex workers through regulation. For example, some cities have imposed regulations requiring that entertainment establishments must:
 - a ensure workers attend clinics for regular tests for sexually transmitted infections (STIs);
 - b make condoms available within the establishment and provide proper guidelines on correct and consistent condom use;
 - c have information materials on STI and HIV prevention and control available in the establishment and provide such information materials when requested by customers, including guidance on the correct and consistent use of condoms;
 - d make educational posters visible within their premises, particularly in toilets and dressing rooms; and/or
 - e have at least one trained peer educator.³⁶
- 3 Police requirements for sex workers operating in brothels in Singapore's Designated Red Light Areas to attend regular medical examinations and to carry health cards;³⁷

35 UNDP (2012), *Sex work and the law in Asia and the Pacific*. Bangkok: UNDP.

36 Natividad, J., Trinidad, A., Billedo, C., and Templonuevo, J. (2011), *Sex Work in the time of HIV: Risks and Vulnerabilities in the Philippine Setting*. Quezon City: Social Sciences and Philosophy Research Foundation, Inc., p. 9.

37 Sex business is booming in Singapore, *Taipei Times*, 5 March 2011; Singapore Clients Will Face Charges if Prostitutes Under Age of 18, *Jakarta Globe*, 13 February 2012.

- 4 Regulation of 'entertainment' venues in Thailand requiring a minimum age for customers of 20 years and a minimum age for workers of 18 years.³⁸

Licensing or registration models may provide some health benefits to the part of the sex industry that is regulated, but they do not improve health outcomes for the broader population of sex workers. Typically, in countries that have introduced regulation of premises, or licensing or registration systems, the majority of sex workers operate outside the system.

Condom programming has sometimes been associated with compulsory measures, such as local government requirements for registration of sex workers and mandatory health checks. Condom programmes are more effective when they are based on peer-led approaches, rather than compulsory measures. Peer-directed interventions have proven effective in the long term due to their focus on improving the self-awareness and confidence of sex workers in negotiating consistent condom usage with their clients and non-client sexual partners.³⁹

Rehabilitation centres for sex workers

In Cambodia, Indonesia, and Myanmar, sex workers who are arrested for offences such as vagrancy or soliciting may be referred to rehabilitation centres.⁴⁰ In Cambodia, sex workers may be referred to Social Affairs Centres under the Ministry of Social Affairs, Veterans, and Youth Rehabilitation.⁴¹ In Indonesia, police may refer sex workers to a Social Rehabilitation Centre.⁴² In Myanmar, sex workers serving prison sentences for prostitution offences may be held at a Vocational Training Centre for Women, where skills training (usually limited to basic literacy, knitting, and basket-making) is provided prior to release.⁴³

Viet Nam has phased out compulsory detention for sex workers. Viet Nam's National Assembly passed the *Law on Administrative Sanctions* in 2012, which required authorities to release sex workers detained in rehabilitation centres by July 2013. Sex workers may be fined for administrative violations, but are no longer ordered to undergo detention or compulsory rehabilitation.

38 Fox, J. (2009), Sex laws in Thailand: Laws regulating commercial sex and entertainment places, *Thailand Law Forum*, at <http://www.thailawforum.com/sex-crimes-in-thailand-part2/?print=pdf>

39 ESCAP Secretariat (2011), *Overview of good practices in promoting multisectoral cooperation and enhancing national capacity in addressing policy and legal barriers to universal access to HIV prevention, treatment, care and support in the Asia-Pacific region*, Asia-Pacific High-level Intergovernmental Meeting on the Assessment of Progress against Commitments in the Political Declaration on HIV/AIDS and the Millennium Development Goals, Bangkok: ESCAP (E/ESCAP/HIV/IGM.1/2).

40 The Global Commission on HIV and the Law recommended that governments shut down all compulsory detention or rehabilitation centres for people involved in sex work or for children who have been sexually exploited. Instead, it recommended that governments provide sex workers with evidence-based, voluntary, community empowerment services. Global Commission on HIV and the Law (2012). *HIV and the Law: Risks, rights and health*, New York: UNDP, p. 43.

41 Keo, C. (2009), *Consultancy Report to Cambodian Alliance for Combating HIV/AIDS (CACHA) Hard Life For A Legal Work: The 2008 Anti-Trafficking Law and Sex Work*. CACHA.

42 LBh Masyarakat (Community Legal Aid Institute), Submission to UNDP Regional Office, January 2012.

43 UNAIDS (2014), *National HIV Legal Review Report*, Yangon (unpub.).

TABLE 2

Legality of adult sex work in South-East Asia

Country	Sex work in private	Soliciting	Brothels
Brunei Darussalam	Illegal	Illegal	Illegal
	<p>Sex work is illegal under section 294A of the <i>Penal Code 1951</i>, which was inserted by the <i>Penal Code (Amendment) Order 2013</i>. An offence is committed if a person:-</p> <ul style="list-style-type: none"> a Engages in, offers, or agrees to engage in sexual services with another person for consideration; or b Loiters or solicits in any place for the purpose of prostitution or for any other immoral purpose. <p>The <i>Women and Girls Protection Act</i> provides offences for selling or obtaining possession of any woman or girl for the purpose of prostitution; or procuring (section 3); living on the earnings or trading in prostitution (section 5); and brothel-keeping (section 6).</p>		
Cambodia	Legal in private	Illegal	Illegal
	<p>The Constitution prohibits exploitation by prostitution (article 46). The <i>Law on the Suppression of Human Trafficking and Sexual Exploitation, 2008</i> provides offences for a person to willingly solicit another in public for the purpose of prostituting himself or herself (article 24); procurement of prostitution (article 26); management of an establishment of prostitution (article 30); provision of premises for prostitution (article 32). Article 298 of the <i>Criminal Code</i> also punishes soliciting.</p>		
Indonesia	Illegal in some districts	Illegal in some districts	Local regulations apply. Illegal in some Districts.
	<p>There are no national prohibitions on sex work per se. The <i>Penal Code</i> prohibits trading in women (article 297) and living on the earnings of a female sex worker (article 506). Some local laws regulate quasi-legal brothels (<i>lokalisasi</i>). Some provinces or districts prohibit sex work under local bylaws (<i>Perda</i>).</p>		
Lao PDR	Illegal	Illegal	Illegal
	<p>The <i>Penal Code</i> provides offences for engaging in prostitution, assisting or facilitating prostitution, and generating income through procuring prostitution (articles 122–123).</p>		
Malaysia	Illegal for Muslims	Illegal	Illegal
	<p>The <i>Penal Code</i> provides offences for soliciting (section 372B) and keeping a brothel (section 373). State-level Sharia law operates to criminalize sex workers and their clients if they are Muslims (see prostitution offence, e.g., <i>Syariah Criminal Offences (Federal Territories) Act 1997</i> (section 21), or other Sharia offences of <i>khalwat</i> and <i>zina</i> for extra-marital relations).</p>		

Country	Sex work in private	Soliciting	Brothels
Myanmar	Illegal	Illegal	Illegal
	The <i>Suppression of Prostitution Act 1949</i> provides offences for soliciting or keeping brothels. Soliciting is defined broadly to include selling sex in private or public premises.		
Philippines	Illegal	Illegal	Illegal
	The <i>Revised Penal Code</i> provides offences for prostitution (article 202) and for engaging in the business of prostitution, profiting by prostitution, or enlisting the services of another person for the purpose of prostitution (article 341). The <i>Anti-Trafficking in Persons Act of 2003</i> provides an offence to maintain or hire a person to engage in prostitution.		
Singapore	Legal	Illegal	Illegal
	The <i>Women's Charter</i> provides offences for procuring (section 140), living on the earnings of prostitution (section 146), and managing a brothel (section 148). Soliciting is an offence under the <i>Miscellaneous Offences (Public Order and Nuisance) Act</i> (section 19).		
Thailand	Illegal	Illegal	Illegal
	The <i>Prevention and Suppression of Prostitution Act (1996)</i> provides offences for sex work if there is evidence of soliciting (article 5), pimping, advertising, or procuring sex workers (even with their consent) (article 9) and for managing sex work businesses (article 11).		
Timor-Leste	Legal	Legal	Illegal
	The <i>Penal Code 2009</i> provides offences for sexual exploitation of a third party (a person who makes a livelihood from, promotes, facilitates, or by any other means contributes towards engaging another person in prostitution) (article 174).		
Viet Nam	Illegal	Illegal	Illegal
	Sex work is illegal as an administrative offence under the <i>Ordinance on Prostitution Prevention and Control (2003)</i> ⁴⁴ and the <i>Decree on implementation of the Ordinance on Prostitution Prevention and Control (2004)</i> . ⁴⁵ Sex workers and persons found paying for sex may be fined. The <i>Penal Code</i> provides an offence for persons who "harbour prostitutes" (article 254).		

44 Article 23.

45 Decree 178/2004-CP of October 15, 2004 (Article 18).

Police practices

Obstacles to HIV prevention are created by law enforcement practices that deter sex workers or 'entertainment workers' from carrying or using condoms. Some countries have taken action to support HIV prevention by directing police not to confiscate condoms from sex workers to use as evidence against them. For example:

- In Myanmar, the Ministry of Home Affairs issued an Administrative Order in 2000 directing police not to use condoms as evidence in prosecutions of sex workers. Although this was a helpful initiative for HIV prevention, compliance with the order has reportedly been uneven.⁴⁶
- In Cambodia, the Ministry of Justice issued Explanatory Notes for the *Law on Suppression of Human Trafficking and Sexual Exploitation* in 2013 that clarified the rights of 'entertainment workers' to carry condoms.
- In the Philippines, progress has been made in some cities to change law enforcement practices that obstruct HIV prevention. For example, meetings have been held in Quezon City involving the Health Department, Quezon City Police Department, and entertainment venue owners to discuss how police practices can support HIV prevention and access to condoms.⁴⁷

The Philippines is proposing the following new legal provision to prevent confiscation of condoms by police:

Prohibition on the Use of Condoms and Other Safer Sex Paraphernalia as Basis for Raids and Similar Police Operations. It shall be unlawful to use the presence of used or unused condoms or other safer sex paraphernalia to conduct raids or similar police operations in sites and venues of HIV prevention interventions. The Department of Interior and Local Government shall establish a national policy to guarantee the implementation of this provision.⁴⁸

- In some countries the over-reach of anti-trafficking law enforcement efforts impedes HIV prevention. Police conduct in enforcing anti-trafficking laws against voluntary adult sex workers (rather than genuine victims of trafficking and sexual exploitation) creates obstacles to HIV prevention. Police 'raid and rescue' operations that fail to distinguish between sex workers and people who have been trafficked or sexually exploited can adversely affect outreach work and the provision of HIV prevention and support services for sex workers.⁴⁹

46 Order No.1048 (1/2000), issued by Police Brigadier Zaw Win; see Khin Ninn Lwin (2010), *Burmese sex workers dare not carry condom, fear of arrest*, at moemaka.org/index.php/current/news-brief/81-news/451-burmese-sex-workers-dare-not-carry-condom-fear-of-arrest.

47 Acaba, J. (2012), *Making multi-collaborative partnerships work and worth it: Experience in working with Philippine National Police and Quezon City Police Department to address the use of condoms as evidence of prostitution among sex workers*. XIX International Conference on AIDS, Washington, DC, July 2012, Oral Abstract Session.

48 *Revised Philippine HIV and AIDS Policy and Program Act of 2013* [House Bill 1593], section 17.

49 See RATS-W Team (2012), *Hit & run: The impact of anti trafficking policy and practice on sex workers human rights in Thailand*, Chiang Mai: Empower Foundation.



MSM and transgender⁵⁰

Countries that criminalize sex between men

Four of the countries reviewed have criminal sanctions for consensual sex between adult men: Brunei Darussalam, Malaysia, Myanmar, and Singapore. These countries have penal codes that are largely based on the nineteenth-century British Penal Code introduced during the colonial era, which includes offences for sodomy or unnatural sex (carnal intercourse “against the order of nature”).

Sharia law, which applies in Brunei Darussalam, to Muslims in Malaysia, and has been proposed in parts of Indonesia,⁵¹ also criminalizes the behaviours of MSM and transgender people.⁵²

Countries that do not criminalize sex between men

No laws specifically prohibit male-to-male sex between consenting adults in Cambodia, Indonesia, Lao PDR, the Philippines, Thailand, Timor-Leste, or Viet Nam. These countries were not British colonies and have legal systems significantly influenced by European civil law traditions.⁵³ In Cambodia⁵⁴, Lao PDR⁵⁵ and Thailand⁵⁶ the age of consent is 15 for both homosexual and heterosexual sex. In Viet Nam⁵⁷ the age of consent is 16 for both homosexual and heterosexual sex. In Timor-Leste⁵⁸ the age of consent is 17 for both homosexual and heterosexual sex.

Although male-to-male sex is not illegal in these countries, some MSM and transgender people may be targeted for harassment or arrest by law enforcement authorities under laws relating to public order or immoral conduct, particularly if they are suspected of involvement in selling sex. In Indonesia, the

50 See *Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity (2007)*, at www.yogyakartaprinciples.org. In relation to state obligations to decriminalize consensual sex between adult males, see Human Rights Committee, Communication No. 488/1992: Australia, U.N. Doc. CCPR/C/50/D/488/1992, *Nicholas Toonen v. Australia*, 4 April 1994. And in relation to state obligations to transgender people, see judgments of the European Court of Human Rights: *B. v. France* (25 March 1992), Series A no. 232-C; *I. v. the United Kingdom* [GC], no. 25680/94 (11 July 2002); *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, ECHR 2002-VI. See also UNDP (2013), *Discussion paper: Transgender health and human rights*, New York: UNDP.

51 E.g., under the draft Sharia criminal regulations (*Qanun Jinayat*) of Aceh province of Indonesia.

52 A codified form of Sharia law also operates in Mindanao, Philippines, which is understood not to criminalize homosexual conduct.

53 Sodomy offences were removed from the law of France by the codifiers of the *French Penal Code* in 1806. This affected the laws of French colonies and other nations whose legal systems were influenced by European civil law.

54 *Law on Suppression of Human Trafficking and Sexual Exploitation of 2008*, article 44; *Criminal Code*, article 239. See Ministry of Justice (2013), *Explanatory Notes for the Law on Suppression of Human Trafficking and Sexual Exploitation*, Phnom Penh: Ministry of Justice.

55 *Penal Code*, article 129.

56 *Criminal Code*, article 279.

57 *Penal Code*, article 115. Exceptions apply for sex where the parties are both between 14 and 16.

58 Article 177 provides that it is an offence to practice a sexual act on a minor aged under 14. Article 178 provides that it is an offence for a person who, being an adult, practices a sexual act with a minor aged between 14 and 16 years, taking advantage of the inexperience of the same. Other provisions of the Code refer to minors as being under 17 years (e.g., articles 144, 155, 163), suggesting the phrase between 14 and 16 in article 178 is inclusive of 14 and 16, i.e., 17 is the age of consent to sex (e.g., articles 144, 155, 163, 164).

TABLE 3

Legality of sex between men in South-East Asia

Country	Legality of male-to-male sex	Applicable laws
Brunei Darussalam	Illegal	<i>Penal Code</i> , section 377. Carnal intercourse against the order of nature. Penalty: fine or prison sentence up to 10 years. <i>Syariah Criminal Code 2013</i> , offence of <i>liwat</i> .
Cambodia	Legal	<i>Criminal Code</i> , article 239. Age of consent is 15 for heterosexual and homosexual sex.
Indonesia	Legal	Legal, except in some provinces or districts that have enacted local laws on public morality.
Lao PDR	Legal	<i>Penal Code</i> , article 129. Age of consent is 15 for heterosexual and homosexual sex.
Malaysia	Illegal	<i>Penal Code</i> , section 377A. Carnal intercourse against the order of nature. Punishment: whipping and up to 20 years' imprisonment. For less serious acts, section 377D criminalizes "gross indecency": maximum penalty two years in prison. State-level Sharia law operates to criminalize sexual relations between males (<i>liwat</i>), e.g., section 82, <i>Syariah Criminal Offences Enactment 1995</i> (Sabah); section 25, <i>Syariah Criminal Offences (Federal Territories) Act 1997</i> ; section 25, <i>Syariah Criminal Offences (State of Penang) 1996</i> . Penalties for these offences include fines, imprisonment, or whipping.
Myanmar	Illegal	<i>Penal Code 1860</i> , section 377. Carnal intercourse against the order of nature. Penalty: up to 10 years' imprisonment.
Philippines	Legal	Legal since 1823.
Singapore	Illegal	<i>Penal Code</i> section 377A. Act of gross indecency by male with another male person.
Thailand	Legal	Legal since 1956.
Timor-Leste	Legal	Legal since 1975.
Viet Nam	Legal	<i>Penal Code</i> , article 115. Age of consent to homosexual sex and heterosexual sex is 16 years.

*Law on Pornography*⁵⁹ defines homosexuality as a deviant form of behaviour, and some subnational laws prohibit sex between men or conflate homosexual conduct with prostitution.⁶⁰

Law enforcement practices

A review conducted in 2010 found numerous examples of law enforcement abuses against MSM and transgender people in South-East Asian countries, such as extortion and police harassment and violence, including in Cambodia, Indonesia, Malaysia, and Myanmar.⁶¹ Such incidents can deter MSM and transgender people from attending HIV services or disclosing their sexuality or gender identity to health services due to fear of discrimination.

Several initiatives have been taken to improve relations between police and MSM and transgender communities. In Cambodia, the Police Community Partnership Initiative is working to improve the relations between police and communities of MSM and transgender people (and other most-at-risk populations) in HIV 'hotspot' areas.⁶² In Ho Chi Minh City, Viet Nam, the Government's harm reduction programme has worked with a local community-based organization, the Blue Sky Club, to support health promotion efforts to reach MSM and transgender people. A series of meetings and discussion workshops involving community organizations and government departments—including representatives from the judiciary, law enforcement, health, and welfare agencies—have been held to explain the club's outreach and 'edutainment' work, and to seek their support in taking a 'hands off' approach to enforcement of the law for the sake of public health. As a result, MSM and transgender people are reported to face reduced threat of police harassment or detention for having condoms in their possession.⁶³

Protective laws and policies

Among ASEAN states, only the Philippines has taken action to provide legal protections to MSM and transgender people. Six cities in the Philippines have enacted local ordinances protecting people from discrimination on the grounds of their sexuality and/or gender identity.⁶⁴ Several national anti-

59 Law No. 44/2008.

60 See, e.g., *South Sumatra Provincial Regulation No. 13/2003 on Eradicating Immoral Acts in the Province of South Sumatra*; *Palembang City Regulation No. 2/2004*; and the draft Sharia criminal regulations (*Qanun Jinayat*) of Aceh province of Indonesia.

61 See UNDP (2010), *Legal environments, human rights and HIV responses among men who have sex with men and transgender people in Asia and the Pacific*, Bangkok: UNDP.

62 FHI 360 and Ministry of Interior (2012), *Baseline Survey on the Enabling Environment for Most at Risk Populations in Phnom Penh, Cambodia*. Phnom Penh: FHI 360.

63 UNDP, USAID, UNAIDS, AIDS Project Management Group (2011), *Towards Universal Access: Examples of municipal HIV programming for men who have sex with men and transgender persons in six Asian cities*, Bangkok: UNDP, p. 34.

64 Angeles City, Bacolod City, Cebu, Dagupan City, Davao City, and Quezon City. See Passage of Cebu's anti-discrimination law lauded, *Sun Star*, 18 October 2012; Ordinance to protect gay rights in Cebu up in next PB session, *Cebu Daily News*, 17 February 2013; and LGBT leaders renew push for anti-discrimination bill, local ordinances, *Outrage*, 27 July 2013.

discrimination bills have been filed addressing sexuality and gender identity rights, but the Government of the Philippines has not passed these bills into law.⁶⁵ Legislation enacted in 2007 provides legal protection from discrimination based on sexual orientation for public social workers employed by the Government of the Philippines.⁶⁶ Legislation enacted in 1998 prohibits discrimination on the basis of gender or sexual orientation in the Philippine National Police.⁶⁷

The Philippine *5th AIDS Medium Term Plan 2011–2016* includes a *Comprehensive Package of Services for Men who Have Sex with Men (MSM) and Transgender (TG) Populations*.⁶⁸ This package comprises five components: prevention; treatment, care, and support; enabling environment for prevention and care; strategic information; and supporting interventions. The enabling environment component is defined to include the following activities:

- Harmonize HIV policies with laws that impede the response.
- Reduce harassment, violence, and stigma.
- Ensure continuity and consistency of programmes and services.
- Support MSM and transgender community-based organizations and NGOs.
- Remove structural barriers to the use of services by MSM and transgender people.
- Address transgender issues, such as the ability to change one's name and gender identity in official documents, and the legal right to live as another gender, free from stigma and discrimination.

The Comprehensive Package included in the Philippine *AIDS Medium Term Plan* is based on a consensus document developed at a regional meeting convened by UNDP, WHO, UNESCO, and UNAIDS in partnership with ASEAN, USAID, and the Asia Pacific Coalition on Male Sexual Health (APCOM).⁶⁹

Viet Nam is the first ASEAN country to take steps towards legal recognition of same-sex relationships for some purposes. In 2013 the Government removed the fine that had existed for organizing or

65 "Lawmaker files bill vs discrimination of gays, lesbians," *The Philippine Star*, 5 July 2013.

66 *An Act Providing for a Magna Carta of Social Workers*, Rep. Act No. 9432, 11 April 2007, section 17(a).

67 10th Congress of the Philippines. Fifth Special Session, 1998, Republic Act No. 8551: *An Act Providing for the Reform and Reorganization of the Philippine National Police and for Other Purposes*, section 59.

68 Philippine National AIDS Council (2011), *5th AIDS Medium Term Plan*, Annex B, p. 73.

69 UNDP (2009), *Developing a Comprehensive Package of Services to Reduce HIV among Men who have Sex with Men (MSM) and Transgender (TG) Populations in Asia and the Pacific, Regional Consensus Meeting Report*. Bangkok: UNDP Asia Pacific Regional Centre.

participating in a same-sex marriage ceremony,⁷⁰ and it is considering proposals to recognize same-sex relationships in regulations relating to disputes regarding property and parental responsibilities.⁷¹

The Cambodian Ministry of Health has developed a *National Guideline for STI and HIV/AIDS Responses Among MSM, Transgender and Transsexual People*, which recognizes the rights of citizens to full and free expression of sexual identity. The guideline states that MSM, transgender, and transsexual people have the right to comprehensive access to HIV services free of stigma and discrimination. Although there is a supportive national policy, however, there are no administrative penalties or other prescribed sanctions against people who commit acts of discrimination.

The Government of Indonesia is addressing HIV issues affecting MSM and *waria* through the development of an MSM programme as a component of the *National HIV and AIDS Strategy and Action Plan 2010–2014*. The National AIDS Commission engages with the Indonesian national network of MSM and transgender people, GWL–INA, which participated in the development of the *Action Plan*. GWL–INA advocates for comprehensive HIV programming for MSM and transgender people, and for building community knowledge about health and rights. GWL–INA members represent the network in national consultations and is a member of the National AIDS Commission.

Legal recognition of transgender status

Legal recognition of transgender people is required to support their status as equal citizens. Transgender people are more likely to access HIV prevention, treatment, care, and support services if laws and policies recognize their gender identity rights. Further, the ability to be identified in legal documents according to a person's gender identity reduces the stigma associated with transgender status.

Notably, the laws of Indonesia and Singapore enable post-operative transgender people to change their gender on identity documents and to marry.⁷² However, transgender people are not given legal status in Brunei Darussalam, Cambodia, Lao PDR, Malaysia, Myanmar, Thailand, or Timor-Leste. Laws of the Philippines and Viet Nam enable post-operative intersex⁷³ people to change their legal gender, but this does not extend to male-to-female or female-to-male transgender people.⁷⁴

In Malaysia, in theory the National Registration Regulations enable post-operative transgender people to change their legal gender status with appropriate medical evidence. However, several court cases

70 *Decree No. 110/2013/ND-CP*, September 24, 2013. See also Human Rights Watch (2013), Vietnam: Give marriage rights to same-sex couples, at www.hrw.org/news/2013/11/20/vietnam-give-marriage-rights-same-sex-couples.

71 "Vietnam moves to decriminalize, not recognize gay marriage," *Thanh Nien News*, 16 November 2013.

72 See Indonesia *Law No. 23/2006 on Civil Registration*, articles 2 and 56(1); Singapore's *Women's Charter* was amended in 1996 to allow transgender people to marry after sex reassignment surgery.

73 An intersex person is born with sexual anatomy, reproductive organs, or chromosome patterns that do not fit the typical definition of male or female.

74 UNDP (2010), *op cit.*, pp. 77–78.

seeking to enforce a right to register a new gender have been unsuccessful in Malaysia.⁷⁵ Transgender people who are Muslim are prohibited by *fatwa* from undergoing sex reassignment surgery, and intersex people who are Muslim (*khunsa musykil*) are required to obtain a Syariah Court order to enable them to undergo a sex assignment operation.⁷⁶

In Thailand, the Thai Transgender Alliance was successful in working with the Thai military to end a discriminatory conscription policy that labelled transgender women as “mentally unstable” because they were unable to serve in the military. This label was entered into the permanent records of these individuals, which was an obstacle to employment and educational opportunities.⁷⁷

Cross-dressing offences

In Brunei Darussalam and some Malaysian states, transgender persons have been subject to prosecution under laws criminalizing cross-dressing.⁷⁸

In Pahang State, Malaysia, cross-dressing attracts penalties of up to one year in jail and a fine of 1,000 ringgit (approximately USD\$300) under the *Syariah Criminal Offences Enactment*, which applies to Muslims.⁷⁹ Some other Malaysian states have similar offences.⁸⁰

The *Syariah Penal Code Order 2013* of Brunei Darussalam includes the following offences:

Any man who dresses and poses as a woman or any woman who dresses and poses as a man in any public place without reasonable excuse is guilty of an offence and shall be liable upon conviction to a fine not exceeding \$1,000, imprisonment for a term not exceeding three months or both.

A man or woman dressing and posing as the opposite sex in a public place for immoral purposes is guilty of an offence, and liable for a fine not exceeding \$4,000, imprisonment for a term not exceeding one year or both.⁸¹

75 See Regulation 16(c), *National Registration Regulations 1990*; “Man fails in bid to be legally declared a woman,” *The Star*, 18 July 2011; and Honey Tan Lay Ean (2005), *Jeffrie Jessie: Recognising transsexuals*, Kuala Lumpur: Malaysian Bar.

76 “Only hermaphrodites can change sex,” *The Star*, 31 July 2011.

77 Klindera, K. (2013), *The GMT Initiative Blog*, 18 November 2013, at www.amfar.org/content.aspx?id=18888&blogid=1146.

78 See Equal Rights Trust (2012), “News: Malaysian High Court Upholds a Ban on Cross-dressing,” 26 October 2012, London: Equal Rights Trust.

79 “Cross-dressing outlawed in Pahang,” *Bangkok Post*, 27 December 2013.

80 See, e.g., *Syariah Criminal (Negeri Sembilan) Enactment 1992* (section 66).

81 A look into some Hadd punishments, BruDirect, 23 October 2013, at www.brudirect.com/national/national/national-headlines/9295-a-look-into-some-of-hadd-punishments.

5



People who inject drugs

Possession and/or use of drugs is illegal in all of the eleven countries reviewed. In Viet Nam, drug use is not a criminal offence but is an administrative violation, resulting in detention for compulsory detoxification for one to two years. In Cambodia, although drug possession is illegal, police are directed not to arrest people for possession of small quantities of drugs for personal use in HIV 'hot spot' areas (see discussion of the Police Community Partnership Initiative, chapter 8.1).

Effective responses to HIV among people who inject drugs require support from laws that facilitate harm reduction interventions, particularly legal frameworks for needle and syringe programmes and opioid substitution therapy (OST). Although the overall legal framework relating to illicit drugs in ASEAN states is informed by a 'war on drugs' approach in which drug possession and/or use is criminalized, laws and policies increasingly also support harm reduction approaches.

Cambodia, Indonesia, Malaysia, Myanmar, Thailand, and Viet Nam are implementing OST programmes, such as methadone maintenance therapy or buprenorphine maintenance. Needle and syringe programmes also operate in these countries, although the scale of these programmes varies. Cambodia, Lao PDR, the Philippines, and Thailand have only small-scale needle and syringe programmes. In Thailand, the pilot needle and syringe programme is implemented by PSI, an international NGO. Indonesia, Malaysia, Myanmar, and Viet Nam have well-established programmes that are being scaled-up as components of the national HIV response, supported by government policy.

Laws and law enforcement measures that support harm reduction programmes

Embedding harm reduction principles in police training can help change police attitudes towards people who inject drugs. Some countries have moved in this direction, including, for example:

- Harm reduction has been approved as part of the national police training curriculum in Cambodia.⁸²
- A harm reduction curriculum has been included in pre-service training in police academies in Viet Nam.⁸³ Authors of a recent study of ward-level policing of drug users in Viet Nam argue for increased access to harm reduction training for ward police.⁸⁴
- In Myanmar, harm reduction is included as part of a drug and HIV/AIDS awareness training at the Central Police Academy.⁸⁵

82 Sharma, M. and Chaterjee, A. (2012), Partnering with law enforcement to deliver good public health: the experience of the HIV/AIDS Asia Regional Program, *Harm Reduction Journal*, 9:24.

83 HIV/AIDS Asia Regional Program (n.d.), *Advocacy and Action Manual*, Bangkok: HLSP Institute, Mott MacDonald Group.

84 Jardine, M. et al. (2012), Harm reduction and law enforcement in Vietnam: Influences on street policing, *Harm Reduction Journal*, 9:27.

85 Sharma, M. and Chaterjee, A., op cit.

- Training on harm reduction for law enforcement officers is carried out through Malaysia’s police training academy and the prisons department.⁸⁶

Cambodia has included harm reduction principles in national law. Provisions of the Cambodian *Law on the Control of Drugs 2012* that address harm reduction measures to prevent HIV and other harms are:

- Article 100, which provides that the state shall ensure the provision of services and national policies to reduce health, social, and economic harms on individuals, communities, and societies due to drugs.
- Article 4, which defines “harm reduction service” as a service, programme, or any activity with the benefit of reducing harms caused by drug abuse to human health, communities, the economy, and society as a whole.
- Article 56, which provides a legal framework for authorization of needle and syringe programmes. Article 56 also makes it an offence for the keeping or transporting of equipment used for consumption of narcotics, with penalties of fines and/or imprisonment from one to five years. Article 56 specifies that the offence does not apply to the provision of health care services or harm reduction services for drug users authorized by a competent authority.

Indonesia introduced a legal framework for needle and syringe programmes through the *Decision of the Minister of Health Number 576 of 2006 regarding the Technical Guideline for Narcotics Harm Reduction and the Regulation of the Coordinating Minister on People’s Welfare Number 02 on Harm Reduction of 2007*. Further support was provided by the recognition of the treatment needs of people who use drugs in the *Narcotics Law 2009* and circulars issued by the Supreme Court to the judiciary supporting diversion of drug users to treatment rather than sentencing to imprisonment.⁸⁷

Since 2005 the Government of **Malaysia** has taken a series of measures to ensure the engagement of law enforcement personnel in the national harm reduction response. In 2005 a National Task Force on Harm Reduction was established to provide oversight of the national programme, with representatives from the National Anti-Drugs Agency, the Ministry of Health, Royal Malaysian Police, Prisons Department, academics, and NGOs. A standard operating procedure was developed between the Malaysian Ministry of Health and the Royal Malaysian Police to guide police in dealing with drug users attending methadone clinics and needle syringe exchange sites.⁸⁸ National *Needle and Syringe Exchange Programme Guidelines for Police* were issued in Malaysia in 2006, encouraging police to be

86 Kamarulzaman, A. (2009), Impact of HIV Prevention Programs on Drug Users in Malaysia, *Journal of Acquired Immune Deficiency Syndrome*, 52(S1), S17 19.

87 Supreme Court of Indonesia, Circular 4 of 2010 and Circular 3 of 2011.

88 Kamarulzaman, A., op. cit.

mindful not to carry out unwarranted patrols in the vicinity of needle and syringe programme sites that might discourage injecting drug users from attending these services.⁸⁹

Thailand's National Health Security Office has included methadone in the national drugs list under the national health insurance scheme so that people who inject drugs can access methadone maintenance therapy for minimal cost. Thailand's *Narcotic Addict Rehabilitation Act BE 2545 (2002)* provides alternatives to prison with the aim of diverting people convicted of minor drug offences into treatment programmes. Although the Office of Narcotics Control Board supports expansion of the country's pilot needle and syringe programme, there is no legal framework for needle and syringe distribution as a harm reduction approach. The Narcotics Law Reform Subcommittee of the Law Reform Commission of Thailand is assessing options for introducing a national harm reduction legal and policy framework.⁹⁰

In the **Philippines**, the proposed new *Revised Philippine HIV and AIDS Policy and Program Act of 2013 (House Bill 1593)* seeks to introduce harm reduction as a component of the national HIV response by inclusion of the following provisions:

- *'Harm reduction'* refers to evidence-based policies, programmes and approaches that aim to reduce the harmful consequences on health, social relations, and economic conditions that are associated with the use of psychoactive substances [section 3].
- *Harm reduction*: The Department of the Interior and Local Government and the Department of Health shall establish a human rights and evidence-based HIV prevention policy and programme for people who use and inject drugs [section 8(f)].

In **Viet Nam**, harm reduction is recognized by the *Law on HIV/AIDS Prevention and Control (2006)* and its implementing Decree.⁹¹ The law defines "harm reduction intervention measures" to include education, mobilization, the encouragement of the use of condoms and clean needles and syringes, substitution therapy for opiate addiction, and other harm reduction intervention measures in order to facilitate safe behaviours to prevent HIV transmission.⁹² To support implementation of this law, Decree 108 of 2007 defines the HIV prevention responsibilities of the Ministry of Health, the Ministry of Public Security, and the Government and Communist Party at the ward or commune level.⁹³ The People's Committee and police must be notified prior to the implementation of any harm reduction intervention in their jurisdiction, and these actors share responsibility for creating favourable conditions for programmes and projects to operate.

89 Denham, G. (2010), *Review of Published and Available Materials Related to Law Enforcement Policies on Prevention of HIV and Harms Associated with Injecting Drug Use Across 12 Countries*, ANEX Conference, Melbourne, October 2010.

90 Macdonald, V. and Nacapew, S. (2013), *Drug control and harm reduction in Thailand*, London: International Drug Policy Consortium.

91 *Government Decree No. 108/2007/Nd-Cp of June 26, 2007, Detailing the Implementation of a Number of Articles of the Law on HIV/AIDS Prevention and Control.*

92 Article 2.15.

93 *Government Decree No. 108/2007/Nd-Cp*, op. cit.

Provision of OST in prisons

Provision of methadone maintenance therapy (MMT) to prisoners with a history of drug dependence supports HIV prevention because treated prisoners inject drugs less often, leading to a reduction in HIV transmission. Indonesia and Malaysia have introduced prison MMT programmes, and a small pilot programme has been implemented in Fang Prison, in Thailand's Chiang Mai province.⁹⁴

Malaysia established MMT programmes in two prisons in the states of Kelantan (2008) and Selangor (2009). Standard operating procedures were established between the Prisons Department and Ministry of Health. Community-based MMT programmes were also established to integrate treatment activities after the prisoners' release. A study of Malaysia's prison MMT programme recommended that MMT should be provided throughout the period of incarceration to ensure continuity of care for programme participants, to ensure adequate MMT dosing before release from prison, and to avoid the risky injection of opioids within prisons. The study found that linking prisoners to MMT in the community requires strong relationships between prison clinics and community-based clinics and improved communication between prison and police authorities.⁹⁵

Kerobokan Prison in Bali, Indonesia, provides prisoners with access to condoms, MMT, antiretroviral therapy, and bleach to clean injecting equipment (in the absence of sterile needles and syringes).⁹⁶ MMT is available in at least four other prisons in Indonesia.⁹⁷

Laws that impede needle and syringe distribution

In some countries, possession of needles and syringes without authorization is a criminal offence (see Table 4). In Thailand, possession of needles and syringes can be used as evidence of the offence of instigating another person to use narcotics. These offences are an obstacle to implementation of needle and syringe programmes because they place people at risk of arrest for distributing or carrying clean injecting equipment.

94 Macdonald, V. and Nacapew, S., op cit.

95 Wickersham, J. et al., op cit.

96 Lai, G., Asmin, F., Birgin, R. (2013), *Drug policy in Indonesia*, London: International Drug Policy Consortium.

97 Sharma, M. (2010), *Situation Update: HIV epidemics among PWID in Southeast Asia Region and national responses*, 20th International Harm Reduction Conference, April 2009, Bangkok.

TABLE 4

Offences that criminalize possession of needles and syringes

Country	Offence
Brunei Darussalam	<i>Misuse of Drugs Act 1978</i> , section 7
Malaysia	<i>Dangerous Drugs Act 1952</i> , section 10
Myanmar	<i>Myanmar Excise Act 1917</i> , sections 13 and 33
Philippines	<i>Comprehensive Dangerous Drugs Act 2002 (RA 9165)</i> , section 12
Singapore	<i>Misuse of Drugs Act 1973</i> , section 9
Thailand	<i>Narcotics Act BE 2522 (1979)</i> , section 93

Compulsory detention and rehabilitation centres

Most ASEAN countries maintain centres in which people who use drugs may be held for a prescribed period for the purpose of detoxification, rehabilitation and/or treatment (Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Thailand, and Viet Nam). These centres are administered either through criminal law processes or administrative law (without trial), and may be operated by various government agencies, including the Ministry of Health, the Ministry of Social Affairs, the national drug control agency, or the police. In some countries the courts are encouraged to refer people who are convicted of drug use or drug possession offences to rehabilitation centres to divert them from the prison system.⁹⁸ Interventions are generally abstinence-based and restricted to detoxification. In Brunei Darussalam and the Philippines, drug rehabilitation centres apply a ‘therapeutic community’ programme approach to treatment.⁹⁹

In recent years some countries have undertaken legal and policy reforms in response to criticism of human rights abuses in some compulsory centres, lack of due process protections, recognition of

⁹⁸ In Thailand, diversion to treatment centres is provided by the *Narcotic Addict Rehabilitation Act 2002*. In Indonesia, courts are encouraged to refer people who use drugs to treatment and rehabilitation centres as an alternative to imprisonment under the *Narcotics Law (2009)*; see Supreme Court of Indonesia (2011), *Circular letter of the Supreme Court no 3/ 2011 on Referral of Drug Users to Medical and Social Rehabilitation*. In the Philippines, people who are convicted of a first offence of drug use are referred to a rehabilitation centre for a minimum of six months per the *Comprehensive Dangerous Drugs Act 2002 (Republic Act 9165)*, section 15.

⁹⁹ *Country report; Brunei Darussalam: The 6th Meeting of the AIPA Fact-Finding Committee (AIFOCOM) to Combat the Drug Menace*, Chiang Rai, 2009; and Peremne, G. (2011), *Treatment of drug dependents in the Philippines*, in United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI), *Resource Material Series No. 85*, Tokyo: UNAFEI, p. 36.

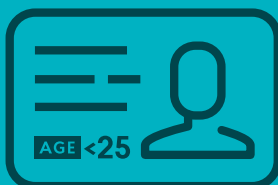
high relapse rates, and the greater cost-effectiveness of community-based treatment models.¹⁰⁰ Viet Nam's National Assembly passed a law in 2012 requiring district-level court hearings to decide compulsory detoxification detention cases rather than decisions being made by the local People's Committee, and providing people with a right to challenge an application for detention through their legal representative.¹⁰¹ A series of Regional Roundtables on Compulsory Centres for Drug Users have been held since 2010 to explore options for phasing-out compulsory centres in South-East Asia and for the introduction of more effective evidence-based policies and programmes (such as drug and HIV prevention, treatment, and harm reduction). Regional roundtable participants have included representatives from UN agencies as well as the governments of Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Thailand, and Viet Nam.¹⁰²

Malaysia is investing in evidence-informed, community-based treatment approaches through establishing voluntary 'Cure and Care Clinics' to replace compulsory centres. These clinics provide drug treatment alternatives and HIV-prevention, care, treatment, and support services. Cambodia is scaling-up community-based drug treatment, while maintaining some provisional drug treatment and rehabilitation centres. In Hanoi, Viet Nam, a pilot drug referral programme involves referral of some people who inject drugs to local community-based methadone programmes as an alternative to compulsory drug treatment centres.¹⁰³

In 2012 the United Nations called on governments to implement voluntary, evidence-informed, and rights-based health and social services to address drug use in the community. The *Joint UN Statement on Drug Detention Centres* and the recommendations of the UN Special Rapporteur on Torture relating to drug detention centres are reproduced in chapter 10.

- 100 Reviews have found an absence of targeted HIV-prevention interventions for drug users and lack of alignment with the principles of drug dependence treatment. Compulsory exercise or labour is often offered as "treatment". See Asia-Pacific Drugs and Development Issues Committee (2012), *Compulsory centres for drug users*, at apddic.ancd.org.au/component/content/article/28-compulsory-centres-for-drug-users.
- 101 National Assembly of the Socialist Republic of Viet Nam, *Law on Handling of Administrative Violations*, No.15/2012/QH13, articles 3(1) (e).103(3) (commenced operation 1st January 2014).
- 102 See UNODC, UNAIDS, ESCAP (2012), *Report of the Second Regional Consultation on Compulsory Centres for Drug Users in Asia and the Pacific*, 1–3 October 2012, Kuala Lumpur, Malaysia.
- 103 Monaghan, G. and Bewley-Taylor, D. (2013), *Modernising Drug Law Enforcement Report 1, Police support for harm reduction policies and practices towards people who inject drugs*, London: International Drug Policy Consortium, p. 12.

6



Young people

Right to independent medical decision-making

The UN Commission on the Rights of the Child issued a General Comment in 2013 recommending that governments consider empowering children under 18 years with the legal capacity to consent to certain medical treatments and interventions without the permission of a parent, caregiver, or guardian, such as HIV testing and sexual and reproductive health services, including education and guidance on sexual health, contraception, and safe abortion.¹⁰⁴ Laws enabling adolescents who have attained sufficient maturity to access health care services are important in the context of HIV. Adolescents may otherwise be reluctant to attend health services due to fear of disclosure of their sexuality, sexual conduct, drug use, or health status to their parents or guardians. In framing laws that empower children to consent to medical treatment, consideration needs to be given to children's evolving capacities and maturity to make decisions in their own best interests.

Some ASEAN countries have enacted laws recognizing the capacity of young people to consent to HIV testing without parental consent after they reach a prescribed age. Lao PDR allows minors aged 14 years and over to consent to an HIV test, and Viet Nam allows minors 16 years and over to consent to an HIV test. The Philippines is proposing to reduce the age of consent to an HIV test from 18 to 15 years for minors at higher risk of HIV. In Cambodia, HIV testing may be conducted with the minor's consent if the guardian's consent cannot be obtained and a test is in the minor's best interests.

Age restrictions on access to harm reduction services

There is often a lack of clarity about the legal rights of young people to access services related to drug use without parental involvement. At the same time, it is well understood that some young people will be deterred from accessing harm reduction services if they fear disclosure of their drug use to their parents or guardians.

In Viet Nam, these competing issues have been addressed by the 2007 *Decree on Implementation of the Law on HIV/AIDS Prevention and Control*, which states that treatment of addiction with substitution drugs is provided only to persons who voluntarily commit in writing to adhere to the treatment guidelines. For persons under 16 years, their parents or lawful guardians shall express their consent and commit in writing to adhere to the treatment guidelines.¹⁰⁵ Viet Nam's *Decree Regulating Substitution Treatment of Opioid Addiction* of 2012 provides further detail in relation to parental consent for OST for opiate dependent persons under 16 years.¹⁰⁶

104 Committee on the Rights of the Child (2013), *General Comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health* (article 24), CRC/C/GC/15.

105 Article 10(2) *Decree No. 108/2007/Nd-Cp of June 26, 2007, Detailing the Implementation of a Number of Articles of the Law on HIV/AIDS Prevention And Control*.

106 *Decree No. 96/2012/ND-CP*, articles 5, 7, and 8.

TABLE 5

Age of legal capacity to consent independently to an HIV test

Country	Age	Legal restrictions
Cambodia <i>Law on the Prevention and Control of HIV/AIDS (2002), article 19.</i>	18, subject to exception if in minor's best interest.	All HIV tests shall be done with voluntary and informed consent. For minors, written informed consent must be obtained from a legal guardian. If the guardian's consent cannot be obtained and a test is in the minor's best interests, testing may be conducted with the minor's consent. The National AIDS Authority's <i>Implementing Guidelines on the Law on Prevention and Control of HIV/AIDS</i> states: "the appropriate definition of a minor for the purposes of HIV testing is a person who is under the age of 18 years."
Indonesia <i>Health Ministerial Decree No. 1507/2005 on Guidelines for Voluntary Counselling and Testing for HIV and AIDS.</i>	18	Consent of a parent, guardian, or competent officer is required for an HIV test for persons under 18.
Lao PDR <i>HIV/AIDS Law 2010, article 18.</i>	14	Consent of a parent, guardian, or next of kin is required for the conduct of an HIV test on a person under 14 years.
Philippines <i>Philippine AIDS Prevention and Control Act of 1998, section 15.</i>	18	The state shall encourage voluntary testing for individuals with a high risk for contracting HIV, provided that written informed consent must first be obtained. Such consent shall be obtained from the person concerned if he/she is of legal age or from the parents or legal guardian in the case of a minor. The Act's <i>Implementing Rules and Regulations</i> define a minor as a person under 18.
Viet Nam <i>Law on HIV/AIDS Prevention and Control of 2006, article 27.</i>	16	HIV testing shall only be conducted on the basis of voluntariness of persons to be tested. Persons who voluntarily seek HIV testing must be 16 years or older and have full civil capacity. HIV testing of persons less than 16 years old or persons who have lost their civil act capacity may only be conducted when there is written consent of his/her parent or guardian.

TABLE 6

Age restrictions on access to harm reduction services

Country	Legal age restriction for accessing needle and syringe programmes	Legal age restriction for accessing OST services
Cambodia	No	18
Indonesia	Discretion may be exercised to provide access to persons under 18	18; persons under 18 years can access OST if supported by a second opinion from a medical professional (child specialist).
Malaysia	No	No
Myanmar	No	No
Philippines	Data unavailable	(No OST services exist)
Thailand	No	No
Viet Nam	18	16 (under 16 with parental consent)

Sources: For all countries except Indonesia and Viet Nam this table draws from data collated for *The Global State of Harm Reduction 2012* report, based on findings from a global survey of civil society organizations and researchers working in the harm reduction field. For Indonesia, see Larasati, A. (2012), "Harm reduction and young injecting drug users in Indonesia," *Caveat*, Sept–Oct 2012, p. 15.

School education

The national HIV laws of Cambodia, the Philippines, and Viet Nam and the ministerial decrees in Indonesia require the provision of HIV education through the school system.¹⁰⁷ Discrimination against students who are living with HIV within schools is also prohibited in some countries (Cambodia, Lao PDR, the Philippines, and Viet Nam; see 9.1). Key provisions include:

¹⁰⁷ See Cambodia, *Law on the Prevention and Control of HIV/AIDS of 2002*; Lao PDR, *Law on HIV/AIDS Control and Prevention of 2010*; Philippines, *Philippine AIDS Prevention and Control Act 1998 (Republic Act 8504)*; and Viet Nam, *Law on HIV/AIDS Prevention and Control, 2006*.

Cambodia

Article 3 of Cambodia's *Law on the Prevention and Control of HIV/AIDS (2002)* provides that:

The State shall...:

- 1 Integrate the knowledge on HIV/AIDS in subjects taught in schools. This subject shall include the causes, modes of transmission, means of prevention, consequences of HIV/AIDS, and fact about STIs, especially focusing on the life skills in accordance with promoting social value through introduction into the curriculum of all educational establishments, including non-formal education systems.
- 2 Organize workshops and trainings of trainers on HIV/AIDS prevention and control for teachers and other instructors who will be assigned to teach on the subject.
- 3 Mobilize communities, associations, and organizations for their involvement in the design and implementation of HIV/AIDS education and information dissemination programmes.

Indonesia

In 1997, Indonesia's Ministry of Education and Culture issued a decree on HIV education in schools requiring all levels of the education system to improve knowledge on HIV, to improve awareness of healthy and responsible behaviours, and to engage in activities to prevent the disease.¹⁰⁸ The decree further required HIV prevention education to be integrated into relevant subject matters in the curriculum of elementary to secondary education and through extra-curricular activities. The decree also recommended that teachers and education administrators be trained on HIV. However, since the Regional Autonomy Law of 1999 came into force, the education system has been decentralized, which has limited the impact of the 1997 decree. In 2008 a further decree was issued requiring HIV and drug abuse prevention as mandatory educational activities.¹⁰⁹

The Philippines

Section 4 of the *Philippines AIDS Prevention and Control Act of 1998 (RA 8504)* provides as follows:

HIV/AIDS Education in Schools:

¹⁰⁸ Ministry of Education and Culture, *Decree No. 9/U/1997 on HIV Prevention through Education*.

¹⁰⁹ Ministry of Education and Culture, *Decree No. 39 on Guidance and Supervision of Student Activities*. See also UNESCO (2012), *A Situation Analysis of the Education Sector Response to HIV, Drugs and Sexual Health in Brunei Darussalam, Indonesia, Malaysia, the Philippines and Timor-Leste, Synthesis Report*, Jakarta: UNESCO, p. 35.

The Department of Education, Culture and Sports (DECS), and the Technical Education and Skills Development Authority (TESDA), utilizing official information provided by the Department of Health, shall integrate instruction on the causes, modes of transmission and ways of preventing HIV/AIDS and other sexually transmitted diseases in subjects taught in public and private schools at intermediate grades, secondary and tertiary levels, including non-formal and indigenous learning systems; Provided, that if the integration of HIV/AIDS education is not appropriate or feasible, the DECS and TESDA shall design special modules on HIV/AIDS prevention and control; Provided, further, that it shall not be used as an excuse to propagate birth control or the sale or distribution of birth control devices; Provided, finally, that it does not utilize sexually explicit materials.

Flexibility in the formulation and adoption of appropriate course content, scope, and methodology in each educational level or group shall be allowed after consultations with Parent-Teachers-Community Associations, Private School Associations, school officials, and other interest groups. As such, no instruction shall be offered to minors without adequate prior consultation with parents who must agree to the thrust and content of the instruction materials.

All teachers and instructors of said HIV/AIDS courses shall be required to undergo a seminar or training on HIV/AIDS prevention and control to be supervised by DECS, Commission on Higher Education (CHED) and TESDA, coordination with the Department of Health, before they are allowed to teach on the subject.

Viet Nam

Articles 12 and 15 of Viet Nam's *Law on HIV/AIDS Prevention and Control, 2006* provides that:

- 12 The Ministry of Education and Training shall assume the prime responsibility for, and coordinate with the Ministry of Health, the Ministry of Labor, War Invalids and Social Affairs and concerned ministries and branches in, developing curricula and teaching contents on HIV/AIDS prevention and control; to combine HIV/AIDS prevention and control education with sex and reproductive health education; and direct education establishments within the national education system to provide education on HIV/AIDS prevention and control.
- 15 HIV/AIDS prevention and control in education establishments within the national education system: Education establishments shall be responsible for organizing education for students on HIV/AIDS prevention and control integrated with sex and reproductive health education, and for conducting other HIV/AIDS prevention and control activities at their establishments.



Migrants

Travel restrictions

HIV-related travel restrictions exist in Brunei Darussalam, Indonesia, Malaysia, and Singapore. These generally relate to applicants for permanent residence, work visas, or other long-term visas, or to people seeking to renew work visas.

TABLE 7

HIV-related travel or migration restrictions

Brunei Darussalam	HIV testing is required for long-term work visas and student visas. An HIV test is normally required prior to departure at an authorized facility in the sending country for new applicants and repeated upon arrival within a few weeks in Brunei Darussalam. An HIV test is required every two years for foreign workers. An application for a long-term work or student visa will be rejected and the visa may be cancelled if the HIV test is positive. Registered spouses and children of Bruneian citizens are exempted from this requirement. Foreigners who are known to have HIV are not restricted from visiting Brunei Darussalam on a short-term visa.
Indonesia	As of 2010, a drug test and HIV test may be required by the Education Department to obtain or renew a visa to work as a teacher, as required by Regulation 5(3) of the <i>Regulation of the Minister of Education Number 66/2009</i> .
Malaysia	According to the <i>Immigration Act 1959/63</i> (section 8), prohibited immigrants include “any person suffering from a contagious or infectious disease which makes his presence in Malaysia dangerous to the community” and any person who refuses to submit to a medical examination after being required to do so. There are no restrictions for entry for short-term visits. HIV tests are required for migrant workers. Migrant workers who want to work in Malaysia must present a negative HIV test result in their home country, and after their arrival in Malaysia they may be required to undergo a second test. Unskilled migrant workers are required to be tested for HIV annually. If the test is positive, the worker may be deported with three days’ notice.
Singapore	HIV testing is required for stays beyond 30 days, and applicants for the following visa types: Social Visit Pass, Employment Pass, Long Term Immigration Pass, and Permanent Residence. Prohibited immigrants are defined by the <i>Immigration Act 1959/1963</i> [section 8(3)(ba)] to include persons with HIV.

Protective measures

The *Philippine AIDS Prevention and Control Act 1998* makes it unlawful to refuse entry into the Philippines on the grounds of HIV. Section 48 of the Act (Restrictions on Travel and Habitation) provides:

HIV is not among the dangerous, loathsome or contagious diseases referred to in the Immigration Code (Section 29). The freedom of abode, lodging and travel of a person with HIV shall not be abridged. No person shall be quarantined, placed in isolation, or refused lawful entry into or deported from Philippine territory on account of his/her actual, perceived or suspected HIV status.

Cambodia's *Law on Prevention and Control of HIV/AIDS* (2002) states:

It is strictly prohibited to undertake compulsory HIV testing for the exercise of freedom of abode or travel (article 20).

A person with HIV/AIDS shall have full right to freedom of abode and travel. No person shall be quarantined, placed in isolation or refused abode, accompany or expulsion due to the actual, perceived or suspected HIV/AIDS status of that person or his/her family members (article 38).

Thailand does not impose HIV-related travel restrictions and provides universal health coverage. Thailand removed HIV from the list of prohibited diseases for long-term visas in 1992.¹¹⁰ In 2013, Thailand introduced a policy to provide health care services to migrant workers (including anti-retroviral drugs for people living with HIV). Migrant workers can apply for health insurance for an annual fee of 2,800 baht (about USD\$86). It is estimated that two to three million migrants, mainly from Myanmar, Cambodia, and Lao PDR, are living in Thailand.¹¹¹

There is no evidence that travel restrictions prevent HIV transmission or protect public health. UNAIDS and the International Organization for Migration have issued a joint *Statement on HIV/AIDS-related travel restrictions* to provide guidance to countries on recommended policy approaches (see chapter 10). Countries in Asia and the Pacific that have removed HIV-related travel restrictions in recent years include China,¹¹² Fiji,¹¹³ and Mongolia.¹¹⁴

110 *Ministerial Regulation No.14*, B.E. 2535 (1992).

111 IOM Thailand (2013). Migrant Information Note 21, Labour Migration Programme, IOM Thailand Office; and Migrants to be granted access to health care, *The Nation*, 6 September 2013.

112 See WHO statement at www.who.int/mediacentre/news/statements/2010/hiv_20100427/en/.

113 See UNAIDS Fiji press release at www.unaids.org/en/resources/presscentre/pressreleaseandstatementarchive/2011/august/20110826cfiji/.

114 See UNAIDS Mongolia press release at www.unaids.org/en/resources/presscentre/pressreleaseandstatementarchive/2013/january/20130131psmongolia/.

8



Conclusions

The following conclusions are drawn from this review of literature on HIV-related laws and policies. Laws, policies, and law enforcement practices that are helpful to HIV responses and protection of the human rights of people living with HIV and other key populations include:

Protective laws and policies

- i Comprehensive national HIV laws in Cambodia, Lao PDR, the Philippines, and Viet Nam provide people living with HIV with protection from discrimination, prohibition of compulsory testing, and rights to confidentiality. These national HIV laws also provide a framework for HIV prevention, including education and the prevention of mother-to-child transmission.¹¹⁵
- ii Some countries have developed national policies to address the needs and rights of specific key populations, such as Cambodia's *National Guideline for STI and HIV/AIDS Responses Among MSM, Transgender and Transsexual People* and the Philippines' *Comprehensive Package of Services for Men who have Sex with Men (MSM) and Transgender Populations*. Cambodia includes the needs of people living with HIV, orphans and vulnerable children, and key populations in national social protection policies. Cambodia's *National Social Protection Strategy for the Poor and Vulnerable (2011–2015)* includes home-based care and referral support for people living with HIV and a comprehensive package of care for vulnerable women and children, including poor female-headed households.
- iii Ministerial decrees in Indonesia protect people living with HIV from discrimination in the workplace and from health care services.¹¹⁶
- iv Legislation in Timor-Leste prohibits compulsory HIV testing and discrimination on the grounds of health status in the workplace.¹¹⁷
- v Legislation in Brunei Darussalam and Singapore provides protections to people living with HIV from breach of confidentiality in the context of health care.¹¹⁸

115 See Cambodia, *Law on the Prevention and Control of HIV/AIDS of 2002*; Lao PDR, *Law on HIV/AIDS Control and Prevention of 2010*; Philippines, *Philippine AIDS Prevention and Control Act 1998 (Republic Act 8504)*; and Viet Nam, *Law on HIV/AIDS Prevention and Control, 2006*.

116 *Decree of the Minister of Manpower and Transmigration on HIV/AIDS Prevention and Control in the Workplace*, No: Kep. 68/Men/2004; *Health Ministerial Regulation No. 21/2013 on the HIV and AIDS Response*.

117 *Labour Code (2012)*, articles 6(2) and 72.

118 *Infectious Diseases Act (Brunei Darussalam)*, section 26; *Infectious Diseases Act (Singapore)*, section 25.

- vi Legislation provides that young people can consent to an HIV test independent of their parents at the age of 14 in Lao PDR¹¹⁹ and 16 in Viet Nam.¹²⁰ The law in Viet Nam provides that persons under 16 can access OST with parental consent.¹²¹
- vii Legislation in Viet Nam requires the Government to implement harm reduction interventions, including needle and syringe programmes for people who inject drugs and condom programmes for key populations, and to protect outreach workers and peer educators from prosecution (see p.56 “*Legal protections of HIV educators and outreach workers*”).¹²² Viet Nam also regulates community availability of OST.¹²³
- viii In 2012, Viet Nam introduced a law to phase out compulsory detention of sex workers in rehabilitation centres by 2013.¹²⁴
- ix Malaysia is phasing out compulsory drug rehabilitation centres in favour of voluntary treatment as the preferred approach for managing drug dependence.
- x Some countries have introduced administrative measures to ensure law enforcement practices support condom programming. Myanmar’s Ministry of Home Affairs issued an Administrative Order in 2000 directing police not to use condoms as evidence in prosecutions of sex workers.¹²⁵ Cambodia’s Ministry of Justice issued *Explanatory Notes for the Law on Suppression of Human Trafficking and Sexual Exploitation* in 2013 that clarified the rights of ‘entertainment workers’ to carry condoms.
- xi Some countries provide anti-violence and social protection measures for sex workers. Cambodia’s *National Plan of Action on Violence Against Women* (2013) includes specific reference to the need to protect sex workers from violence. Rules of the Social Security Fund of Thailand enable sex workers to access state social security benefits for sickness, disability, and death, and a pension, if they make financial contributions.¹²⁶

119 *HIV/AIDS Law 2010*, article 18.

120 *Law on HIV/AIDS Prevention and Control of 2006*, article 27.

121 Article 10(2), Decree No. 108/2007/Nd-Cp of June 26, 2007, *Detailing the Implementation of a Number of Articles of the Law on HIV/AIDS Prevention And Control*; Decree No: 96/2012/ND-CP, articles 5, 7, and 8.

122 *Law on HIV/AIDS Prevention and Control (2006)*, and Government Decree No. 108/2007/Nd-Cp of June 26, 2007, *Detailing the Implementation of a Number of Articles of the Law on HIV/AIDS Prevention and Control*.

123 *Decree Regulating Substitution Treatment of Opioid Addiction No: 96/2012/ND-CP*.

124 *Law on Handling of Administrative Violations (2012)*, no. 15/2012/QH I 3.

125 Order No.1048 (1/2000), issued by Police Brigadier Zaw Win; see Khin Ninn Lwin (2010), *Burmese sex workers dare not carry condom, fear of arrest*, at moemaka.org/index.php/current/news-brief/81-news/451-burmese-sex-workers-dare-not-carry-condom-fear-of-arrest.

126 UNDP (2013), *Sex work and the law in Asia and the Pacific*, p. 163.

Legal aid services and legal empowerment of key populations

- i Community-based organizations have demonstrated the effectiveness of adopting a legal empowerment approach, based on community legal education, community mobilization, advocacy, and dialogue with police and legislators about law enforcement issues and law reform. Community-based organizations of MSM, transgender people, sex workers, and people who use drugs are educating their communities about the law and advocating their governments for law reform and improvements to law enforcement practices.
- ii A Community Legal Service has been established to provide legal assistance to entertainment workers/sex workers in Phnom Penh, Cambodia.¹²⁷
- iii LBH Masyarakat (Community Legal Aid Institute) is an NGO that provides legal education and assistance to key populations in Jakarta, Indonesia.¹²⁸
- iv The Equal Project in Myanmar provides HIV-related legal assistance to key populations in partnership with community-based networks of key populations in Yangon.¹²⁹
- v The Empower Foundation in Thailand advocates for labour protection measures to be extended to sex work as a legitimate occupation and protection of sex workers from police harassment or abuse.¹³⁰

Capacity building of police

i Cambodia

The Police Community Partnership Initiative (PCPI) of the Ministry of Interior of Cambodia and FHI 360 (an international non-profit health organization) works through teams comprised of community representatives, local authorities, law enforcement officials, health workers, paralegal workers, and local NGOs to ensure an enabling environment for HIV-prevention, treatment, care, and support services for entertainment workers, MSM, transgender people, and people who use drugs. PCPI creates partnerships through capacity building and facilitates dialogue during coordination meetings at the community level. Sensitization workshops and trainings for police are co-facilitated by government and FHI 360. Police conduct coordination meetings every two months at the post level and quarterly meetings at the sub-district and municipal levels to address barriers to HIV efforts.

127 UNAIDS (2013), *National HIV Legal Review Report* (unpub. draft).

128 International Development Law Organization (2010), *Stakeholder report: Rapid needs assessment of the legal needs of people living with HIV and key populations in Jakarta*, Rome: IDLO.

129 UNAIDS (2014), *National HIV Legal Review Report* (in print).

130 UNDP (2013), *Sex work and the law in Asia and the Pacific*, Bangkok: UNDP, p. 5.

In the HIV 'hot spot' areas where PCPI is implemented, police are directed not to arrest people for possession of small quantities of drugs for their personal use. Law enforcement efforts are focused on drug sale and supply, rather than possession of small personal quantities.

There is some evidence that PCPI has improved police attitudes towards key populations. Findings from pilot sites indicate that PCPI has reduced fear of police among most-at-risk populations.¹³¹ There has been an increase in the utilization of services, better communication between the police and community partners, and confidence among entertainment establishment owners to cooperate with NGO partners in providing condoms.¹³²

ii Thailand

The Royal Thai Police, Ministry of Justice, Ministry of Public Health, Foundation for AIDS Rights, and UNDP are supporting a police training programme to address HIV-related discrimination in Thailand.¹³³ The programme aims to sensitize law enforcement officers to issues concerning human rights and to provide general knowledge on HIV, such as modes of transmission and HIV prevention. The programme builds upon an initiative to educate junior police cadets that started in 2012. Higher-level police officers are also being targeted to ensure sustainable integration of HIV and related human rights issues into the police training curriculum.¹³⁴ To date, 40 police have been trained to provide training to junior police cadets, and focus group discussions were held with 60 commissioned police officers from multiple levels to inform the learning programme for senior police officers. The training package includes:

- Basic knowledge of HIV (e.g., epidemic overview, modes of transmission, voluntary counselling and treatment, prevention, key affected populations, etc.);
- Guidelines for police practices, HIV policy and management in the workplace, police practice, and the implementation of HIV prevention;
- Training toolkits.

Also in Thailand, the community-based sex worker organization SWING implements a police cadet internship programme and cadet training curriculum to educate new recruits about sex workers' health rights and expose police cadets to peer-based HIV prevention activities.¹³⁵

131 See Thomson, N. et al. (2012), The village/commune safety policy and HIV prevention efforts among key affected populations in Cambodia: Finding balance, *Harm Reduction Journal*, 9:31.

132 UNAIDS/UNDP submission to UN Community of Practice, July 2013.

133 The programme is known as the "Thai Police as Key Change Agents: The Innovative Learning Programme on HIV and Human Rights in the Context of Law Enforcement".

134 *Police as agents of change – An innovative learning programme on HIV and human rights in the context of law enforcement in Thailand*, 25 September 2013. See Global Commission on HIV and the Law, www.hivlawcommission.org.

135 Pact Thailand (2007), Turning an enemy into an ally: SWING's police cadet internships on HIV prevention among sex workers, at: www.pactworld.org/cs/reach_news_and_media_swing_story, and here: <http://www.unaids.org.cn/pics/20121220161701.pdf>

iii Myanmar

The Medicines du Monde (MDM) Police Force Engagement Initiative,¹³⁶ implemented in 2010, used dialogue to build cooperation between local police in Yangon and HIV-prevention programmes. The Police Chief Commander in Nay Pyi Taw approved the initiative before it commenced, which made local police officers more willing to participate in the initiative, which educated police on issues related to condoms, HIV prevention, and the welfare and health needs of key populations. An Advocacy Information Pack was developed for sex workers, MSM, and transgender people, and education was provided to key populations on their right to carry condoms. Partnerships between local police, communities, and health programmes were aimed to encourage condom use and to reduce HIV transmission in key populations.

Peer outreach workers assisted in educating police by describing examples of situations in which detention and arrest impeded HIV-prevention efforts and where good relationships with police assisted the distribution of condoms. The initiative resulted in increased communication between police and MSM, and some police even requested help to distribute condoms in their townships because sex workers had no access to condoms. Police agreed not to use condoms as evidence for arrest, and they acquired basic knowledge and skills in providing health and other referral information. Outreach staff reported less police harassment and more recognition of their work by police in the field.

136 See AIDS Project Management Group (2010), *MSM Transgender Six City Project: Reference Guide*, Bangkok: UNDP, p. 211.

Legal protections for HIV educators and outreach workers

Viet Nam

Viet Nam provides the following legal protections to outreach workers and peer educators:

Outreach workers are those who directly participate in implementing harm reduction intervention measures in the prevention of HIV transmission and are granted cards as provided by law. They include peer communicators and other volunteers. Outreach workers who participate in programs or projects on harm reduction interventions in the prevention of HIV transmission are entitled to:

- a Benefits and allowances from these programs and projects;
- b Protection by law when providing condoms, clean needles and syringes or treatment of addiction to opiate substances with substitution drugs for the following:
 - 1 Sex workers and their customers;
 - 2 Addicts to opiate substances;
 - 3 HIV-infected persons;
 - 4 Persons having homosexual relations;
 - 5 Mobile population groups;
 - 6 Persons having sexual relations with those specified above.

The Philippines

The Philippines is currently considering a bill that proposes to introduce the following provision:

Immunity for HIV Educators, Licensed Social Workers, and Other HIV and AIDS Service Providers. Any person involved in the provision of HIV and AIDS services including peer educators shall be immune from suit, arrest or prosecution, and from civil, criminal or administrative liability, on the basis of their delivery of such services (as provided by the Act), or in relation to the legitimate exercise of protective custody of children, whenever applicable. The Department of Justice, the Department of Interior and Local Government and the Philippine National Police, in coordination with the Philippine National AIDS Council, shall develop the mechanism for the implementation of this provision.

Sources: Viet Nam, *Government Decree No. 108/2007/Nd-Cp of June 26, 2007, Detailing the Implementation of a Number of Articles of the Law on HIV/AIDS Prevention and Control*, articles 2, 5 and 7; The Philippines, *Revised Philippine HIV and AIDS Policy and Program Act of 2013 (HB 1593)*, section 11.

Laws, policies, and law enforcement practices that are harmful to HIV responses and the human rights of people living with HIV and other key populations include:

i Criminalization of key populations

Criminalization of sex work, drug use and drug possession, possession of syringes and condoms, sex between men, and cross-dressing all work to deter key populations from accessing HIV and harm reduction services due to concerns about breach of privacy, discrimination, and potential prosecution.

ii Police abuses and punitive law enforcement practices

Allegations of police abuses of key populations, including harassment, extortion, unauthorized detention, and assaults, have been reported in many countries. Further, in some countries peer educators and outreach workers have also been harassed or arrested by police. Police violence against key populations contributes to HIV vulnerability and drives key populations underground, making them difficult for health services to reach them.

iii Confiscation of condoms and needles and syringes

Confiscation of condoms and/or needles and syringes by police as evidence of illegal conduct or to justify harassment and extortion is a widespread problem that denies key populations access to the vital means of HIV prevention.

iv Mandatory or compulsory testing

Mandatory or compulsory testing is generally inconsistent with a human rights-based approach to HIV because it violates the human rights to autonomy and privacy, and exposes people to the risk of discrimination. Laws and policies of several countries require HIV testing of migrants (Brunei Darussalam, Malaysia and Singapore). Premarital HIV testing is required of Muslim couples in Malaysia.

v Compulsory rehabilitation centres

Compulsory detention of sex workers and people who use drugs for the purpose of rehabilitation continues to be implemented in some countries. These centres are often stigmatizing, and detainees are vulnerable to human rights abuses, such as compulsory medical examinations and forced labour. There is generally very limited access to professional psychological support or HIV-prevention, treatment, care, and support services in these centres. Voluntary, community-based programmes are preferable to compulsory centres.

vi Lack of anti-discrimination laws

Brunei Darussalam, Malaysia, Myanmar, Singapore, Thailand and Timor-Leste do not have HIV-specific anti-discrimination laws. Only the Philippines has taken legislative action to address discrimination on the grounds of sexuality or transgender status, although this is limited to a few localities. Introduction of comprehensive discrimination protections for people living with HIV, and protections that also address discrimination on the grounds of sexuality and gender identity, would help to combat stigma and support increased access to health and HIV services.



Country examples of protective legislation

Law on the Prevention and Control of HIV/AIDS 2002

- Article 36** Discrimination in any form at pre- and post-employment, including hiring, promotion and assignment, or living in society based on the actual, perceived or suspected HIV/AIDS status of an individual or his/her family members is strictly prohibited. Any termination from work based on the actual, perceived or suspected HIV/AIDS status of an individual or his/her family members is unlawful.
- Article 37** No educational institution shall refuse admission or expel, discipline, isolate or exclude from gaining benefits or receiving services to a student on the basis of the actual, perceived or suspected HIV/AIDS status of that student or his/her family members.
- Article 38** A person with HIV/AIDS shall have full right to the freedom of abode and travel. No person shall be quarantined, placed in isolation or refused abode, accompaniment or expelled due to the actual, perceived or suspected HIV/AIDS status of that person or his/her family members.
- Article 39** Discrimination against any person with HIV/AIDS in seeking public positions is prohibited. The right to seek elected and appointed public positions shall not be refused to a person based on the actual, perceived or suspected HIV/AIDS status of that person or his/her family members.
- Article 40** Discrimination against persons with HIV/AIDS in access to all credit or loan services including health, accident and life insurance, if such concerned person meets all technical criteria as other uninfected citizens, is strictly prohibited.
- Article 41** Discrimination against persons with HIV/AIDS in the hospitals and health institutions is strictly prohibited. No person shall be denied to receive public and private health care services or be charged with higher fees on the basis of the actual, perceived or suspected HIV/AIDS status of the person or his/her family members.
- Article 42** A person with HIV/AIDS shall have the same rights as citizens as stated in the Chapter 3 of the Constitution of the Kingdom Cambodia.

9.1.2

Indonesia

Decree of the Minister of Manpower and Transmigration on HIV/AIDS Prevention and Control in the Workplace, No: Kep. 68/Men/2004

Article 2

In order to prevent and control the spread of HIV/AIDS in the workplace, employers and workers/ labourers are obliged to:

Develop policies on HIV/AIDS prevention and control in the workplace, which may be put into the Enterprise Regulations or Collective Bargaining Agreements.

Communicate efforts to prevent and control the spread of HIV/AIDS by disseminating information and organizing education and training.

Protect Workers with HIV/AIDS from discriminatory action and treatment.

Establish occupational safety and health schemes for HIV/AIDS prevention and control that is in accordance with valid regulations and standards.

Article 3

Workers with HIV/AIDS have the right to occupational health service and employment opportunity equal to that which other workers/ labourers are entitled.

Health Ministerial Regulation No. 21/2013 on the HIV and AIDS Response

Articles 30, 41, and 51 Health facilities are prohibited from denying treatment and care to people living with HIV, and the public must not discriminate against them.

9.1.3

Lao PDR

Law on HIV/AIDS Control and Prevention (2010)

Article 34

Non-discrimination and non-stigmatization

People living with HIV/AIDS as well as affected people are equal to other people in the society with regards to living in the society and daily life activities without stigmatization and discrimination.

Article 46

People living with HIV and AIDS have rights to protection from the Government in regards to employment and education and are entitled to the same rights as other people.

Article 51 **Prohibitions for health service providers**

Health service providers are prohibited from the following actions:

- 1 Take blood test for HIV without a consent from the concerned individual with an exceptional cases requested by law;
- 2 Inform or report positive blood test result if no confirmation is validated;
- 3 Disclose the HIV/AIDS status of people living with HIV/AIDS, unless required by law;
- 4 Give blood transfusion to a patient without blood screening for HIV;
- 5 Deny to provide treatment, care and support to people living with HIV/AIDS;
- 6 Use unsafe medical equipment for treating a patient;
- 7 Forge, withhold documents on HIV/AIDS;
- 8 Take opportunities on his/her position for taking bribes for himself/herself or on behalf of others;
- 9 Engage in any actions prohibited by relevant regulations and laws.

Article 52 **Prohibitions for individuals and other organizations**

Individuals and other organizations are prohibited from the following actions:

- Deny to treat, to provide care and support to people living with HIV/AIDS for whom they are responsible for, while they are able to perform the tasks;
- Discriminate, stigmatize, look down on, use violence, threaten and say bad things about people living with HIV and AIDS or affected people and health service providers;
- Expel a healthy HIV positive person from his/her jobs or refuse to employ him/her.

Philippine AIDS Prevention and Control Act of 1998 (RA 8504)

- Section 35** **Discrimination in the workplace**
Discrimination in any form from pre- employment to post-employment, including hiring, promotion or assignment, based on the actual, perceived or suspected HIV Status of an individual is prohibited. Termination from work on the sole basis, of actual, perceived or suspected HIV status is deemed unlawful.
- Section 36** **Discrimination in schools**
No educational institution shall refuse admission or expel, discipline, segregate, deny participation, benefits or services to a student or prospective student on the basis of his/her actual, perceived or suspected HIV status.
- Section 37** **Restrictions on travel and habitation**
The freedom of abode, lodging and travel of a person with HIV shall not be abridged. No person shall be quarantined, placed in isolation, or refused lawful entry into or deported from Philippine territory on account of his/her actual, perceived or suspected HIV status.
- Section 38** **Inhibition from public service**
The right to seek an elective or appointive public office shall not be denied to a person with HIV.
- Section 39** **Exclusion from credit and insurance services**
All credit and loan services, including health, accident and life insurance shall not be denied to a person on the basis of his/her actual, perceived or suspected HIV status: Provided, That the person with HIV has not concealed or misrepresented the fact to the insurance company upon application. Extension and continuation of credit and loan shall likewise not be denied solely on the basis of said health condition.
- Section 40** **Discrimination in hospitals and health institutions**
No person shall be denied health care service or be charged with higher fee on account of actual, perceived or suspected HIV status.
- Section 41** **Denial of burial services**
A deceased person who had AIDS or who was known, suspected or perceived to be HIV-positive shall not be denied any kind of decent burial services.

Section 42

Penalties for discriminatory acts and policies

All discriminatory acts and policies referred to in this Act shall be punishable with a penalty of imprisonment for six (6) months to four (4) years and a fine not exceeding Ten thousand pesos (P10.000.00). In addition, licenses, permits of schools, hospitals and other institutions, found guilty of committing discriminatory acts and policies described in this Act shall be revoked.

9.1.5

Viet Nam

Law on HIV/AIDS Prevention and Control 2006

Article 2

In this Law, the following terms are construed as follows:

- 3 *Stigmatization against an HIV-infected person* is an attitude of contempt or disrespect towards another person because of the awareness or suspicion that such person is infected with HIV or has close relationship with an HIV-infected or suspected HIV-infected person.

Discrimination against an HIV-infected person is an act of alienation, refusal, isolation, maltreatment, disgrace, prejudice or restriction of rights towards another person because of the awareness or suspicion that such person is infected with HIV or has close relationship with an HIV-infected or suspected HIV-infected person.

Article 8

Prohibited acts include:

- 3 Stigmatizing and discriminating against HIV-infected people.
- 9 Refusing to provide medical examination or treatment to a patient for knowing or suspecting that such person is infected with HIV.
- 10 Refusing to bury or cremate the corpses of dead persons for HIV/AIDS-related reasons.

Article 14

HIV/AIDS prevention and control in the workplace

- 1 The employer shall be responsible for:
 - a Organizing propaganda and education on HIV/AIDS prevention and control measures and anti-stigmatization and anti-discrimination against HIV-infected people in the agency, organization or people's armed force unit;

- b Arranging jobs suitable to the health and professional qualification of HIV-infected laborers;
 - c Facilitating employees' participation in HIV/AIDS prevention and control activities;
 - d Other responsibilities related to HIV/AIDS prevention and control according to the provisions of law.
- 5 The employer shall not be allowed to:
- a Terminate the labor or job contract of an employee or cause difficulties to this person in his/her work on the ground that such person is infected with HIV;
 - b Force a physically fit employee to change the job he/she has been doing on the ground that such person is infected with HIV;
 - c Refuse to give a salary raise to or to promote an employee, or fail to ensure his/her legitimate rights or benefits on the ground that such person is infected with HIV;
 - d Request a job applicant to have an HIV test or produce an HIV test result, or refuse to recruit a person on the ground that such person is infected with HIV, (except for the cases specified in Clause 3, Article 28 of this Law).¹³⁷

Article 15

Education establishments shall be responsible for organizing education for students and learners on HIV/AIDS prevention and control integrated with sex and reproductive health education, and for conducting other HIV/AIDS prevention and control activities at their establishments.

Education establishments shall not be allowed to:

- a Refuse to admit a student or learner on the ground that such person is infected with HIV;
- b Discipline or expel a student on the ground that such person is infected with HIV;
- c Separate, limit or forbid a student or learner from participating in the establishment's activities or services on the ground that such person is infected with HIV;

¹³⁷ This refers to flight crew and security and defence personnel: *Decree No. 108/2007/Nd-Cp of June 26, 2007, Detailing the Implementation of a Number of Articles of the Law On HIV/AIDS Prevention And Control*, article 20.

- d Request a student, learner or a candidate to have an HIV test or produce an HIV test result.

Decree No. 176/2013/ND-CP dated 14 November 2013 provides detail about penalties for discriminatory conduct in breach of Viet Nam's *Law on HIV/AIDS Prevention and Control 2006*.¹³⁸

9.2 Laws prohibiting breach of confidentiality

9.2.1 Brunei Darussalam

Section 26 of the *Infectious Diseases Act* provides that:

- 1 Any person who, in the performance or exercise of his functions or duties under the Infectious Diseases Act, is aware or has reasonable grounds for believing that another person has AIDS or HIV infection or is suffering from a sexually transmitted disease or is a carrier of that disease shall not disclose any information which may identify the other person except —
 - a with the consent of the other person;
 - b when it is necessary to do so in connection with the administration or execution of anything under this Act;
 - c when ordered to do so by a court;
 - d to any medical practitioner or other health staff who is treating or caring for the other person;
 - e to any blood, organ, semen or breast milk bank that has received or will receive any blood, organ, semen or breast milk from the other person;
 - f for statistical reports and epidemiological purposes if the information is used in such a way that the identity of the other person is not made known;
 - g to the victim of a sexual assault by the other person;

¹³⁸ Decree No. 176/ND-CP dated 14 November 2013 replaces Decree No. 69/2011/ND-CP dated 08/08/2011, which sets penalties for providing incorrect information about HIV, for preventing people from accessing treatment and care, for various forms of discrimination, and for violations of rights to testing, counselling, or privacy.

- h to the Controller of Immigration for the purposes of the Immigration Act;
- i to the next-of-kin of the other person upon the death of such person;
- j to any person or class of persons to whom, in the opinion of the Director-General, it is in the public interest that the information be given; or
- k when authorized by the Minister to publish such information for the purposes of public health or public safety.

Any person who contravenes Section 26 is guilty of an offence and liable on conviction to a fine not exceeding \$2,000, imprisonment for a term not exceeding three months, or both.

9.2.2

Cambodia

Law on the Prevention and Control of HIV/AIDS (2002)

- Article 33** The confidentiality of all persons who have HIV/AIDS shall be maintained. All health professionals, workers, employers, recruitment agencies, insurance companies, data encoders, custodians of medical records related to HIV/AIDS, and those who have the relevant duties shall be instructed to pay attention to the maintenance of confidentiality in handling medical information, especially the identity and personal status of persons with HIV/AIDS.
- Article 34** Medical confidentiality may be breached in the following cases:
- a When complying with the requirement of HIV/AIDS monitoring program, as provided in Article 30 of this law,
 - b When informing health workers directly or indirectly involved in the treatment or care to the persons with HIV/AIDS,
 - c When responding to an order issued by the court related to the main problems concerning the HIV/AIDS status of individuals. The confidential medical records shall be properly sealed by the custodian, after being thoroughly checked by the responsible person, hand delivered, and opened officially and confidentially by the judge in front of the legal proceeding.
- Article 35** All HIV/AIDS testing results shall be released to the following persons:

The person who voluntarily requests HIV/AIDS testing;

- a A legal guardian of a minor, who has been tested for HIV/AIDS;
- b A person authorized to receive such testing results in conjunction with HIV/AIDS monitoring programme as provided in Article 30 of this law; and
- c The requirement of the court, as provided in Article 34(c) of this law.

9.2.3

Indonesia

Decree of the Minister of Manpower and Transmigration on HIV/AIDS Prevention and Control in the Workplace, No: Kep. 68/Men/2004

Article 10

Any information obtained from counselling activities, HIV tests, medical treatment, medical care and other related activities must be kept confidential just like any medical records.

9.2.4

Lao PDR

Law on HIV/AIDS Control and Prevention (2010)

Article 35

Confidentiality

Medical professionals and people working in the area of HIV/AIDS control and prevention should strictly keep confidential all information concerning HIV/AIDS patients, still alive or already dead, unless there is a court order or a willingness of the person concerned.

9.2.5

Philippines

Philippine AIDS Prevention and Control Act of 1998 (RA 8504)

Section 30

Medical confidentiality

All health professionals, medical instructors, workers, employers, recruitment agencies, insurance companies, data encoders, and other custodians of any medical record, file, data, or test results are directed to strictly observe confidentiality in the

handling of all medical information, particularly the identity and status of persons with HIV.

Section 31 Exceptions to the mandate of confidentiality

Medical confidentiality shall not be considered breached in the following cases:

- a when complying with reportorial requirements in conjunction with the AIDSWATCH programs provided in Section 27 of this Act;
- b when informing other health workers directly involved or about to be involved in the treatment or care of a person with HIV/AIDS: Provided, That such treatment or care carry the risk of HIV transmission: Provided, further, That such workers shall be obliged to maintain the shared medical confidentiality;
- c when responding to a *subpoena duces tecum* and *subpoena ad testificandum* issued by a Court with jurisdiction over a legal proceeding where the main issue is the HIV status of an individual: Provided, That the confidential medical record shall be properly sealed by its lawful custodian after being double-checked for accuracy by the head of the office or department, hand delivered, and personally opened by the judge: Provided, further, That the judicial proceedings be held in executive session.

Section 32 Release of HIV/AIDS test results

All results of HIV/AIDS testing shall be confidential and shall be released only to the following persons:

- a the person who submitted himself/herself to such test;
- b either parent of a minor child who has been tested;
- c a legal guardian in the case of insane persons or orphans;
- d a person authorized to receive such results in conjunction with the AIDSWATCH programme as provided in Section 27 of this Act;
- e a justice of the Court of Appeals or the Supreme Court, as provided under subsection (c) of this Act and in accordance with the provision of Section 16 hereof.

Section 33 Penalties for violations of confidentiality

Any violation of medical confidentiality as provided in Sections 30 and 32 of this Act shall suffer the penalty of imprisonment for six (6) months to four (4) years, without prejudice to administrative sanctions such as fines and suspension or revocation of the violator's license to practice his/her profession, as well as the cancellation or withdrawal of the license to operate any business entity and the accreditation of hospitals, laboratories or clinics.

Section 34

Disclosure to sexual partners

Any person with HIV is obliged to disclose his/her HIV status and health condition to his/her spouse or sexual partner at the earliest opportune time.

9.2.6

Singapore

Section 25 of the *Infectious Diseases Act* states that:

- 1 Any person who, in the performance or exercise of his functions or duties under this Act, is aware or has reasonable grounds for believing that another person has AIDS or HIV Infection or is suffering from a sexually transmitted disease or is a carrier of that disease shall not disclose any information which may identify the other person except –
 - a with the consent of the other person;
 - b when it is necessary to do so in connection with the administration or execution of anything under this Act or when it is necessary to do so in connection with the provision of information to a police officer under section 22 or 121 of the Criminal Procedure Code;
 - c when ordered to do so by a court;
 - d to any medical practitioner or other health staff who is treating or caring for, or counselling, the other person;
 - e to any blood, organ, semen or breast milk bank that has received or will receive any blood, organ, semen or breast milk from the other person;
 - f for statistical reports and epidemiological purposes if the information is used in such a way that the identity of the other person is not made known;

- g to the victim of a sexual assault by the other person;
- h to the Controller of Immigration for the purposes of the Immigration Act;
- i to the next-of-kin of the other person upon the death of such person;
- j to any person or class of persons to whom, in the opinion of the Director, it is in the public interest that the information be given; or
- k when authorised by the Minister to publish such information for the purposes of public health or public safety.

Contravention of section 25 carries a fine of \$10,000, imprisonment for a term not exceeding three months, or both.

9.2.7

Viet Nam

Law on HIV/AIDS Prevention and Control (2006)

Article 4

Rights and obligations of HIV-infected people

- 1 HIV-infected people shall have the following rights: ...
 - d To have their privacy related to HIV/AIDS kept confidential.

Article 30

Notification of HIV-positive test results

- 1 Positive HIV test results shall only be informed to the following persons:
 - a Tested persons;
 - b Spouses of tested persons, parents or guardians of tested persons who are minor or have lost their civil act capacity;
 - c Staff who are assigned to directly provide counselling and inform HIV positive test results to tested persons;
 - d Persons who are responsible for providing care and treatment for HIV-infected people at medical establishments, including heads of medical departments or wards or chief convalescence workers at the establishments where the HIV-

infected people are being treated, health workers in medical establishments who are assigned to directly provide treatment and care for HIV-infected people;

- e Directors, medical officers and staff who are assigned to directly take care of HIV- infected people kept in medical treatment establishments, educational establishments, reformatories, social relief establishments, prisons or detention camps;
 - f Heads and authorized persons of agencies defined Clause 1, Article 28 of this Law.
- 2 Persons specified in Clause 1 of this Article shall be responsible for keeping confidential HIV positive test results, except for the case specified at Clause 1(a) of this Article.

Ministry of Health Circular No: 32/2013/TT-BYT, *Guidance on management and monitoring of treatment for people living with HIV and people exposed to HIV.*

Article 2(2) Principles: Provide directly to people living with HIV and people exposed to HIV all information on their rights and responsibilities during the process of management and monitoring of treatment. If the person living with HIV is under 16 year of age ...such information should be provided to his/her father, mother or a legal guardian and only provide direct information for this person when there is written consent of his/her father, mother or legal guardian.

9.3.1

Cambodia

Law on the Prevention and Control of HIV/AIDS (2002)

- Article 19 All HIV tests shall be done with voluntary and informed consent from the individual. For those who are minor, a written informed consent shall be obtained from his/her legal guardian. In case that such written consent could not be obtained from the legal guardian of the minor, and the test is considered to provide most interest to the individual, the test still can be performed only with an informed consent from the individual. The State shall be in charge of mentally incapacitated individuals.
- Article 20 It is strictly prohibited to undertake compulsory HIV testing to indicate pre or post conditions for employment, admission to educational institutions, or for the exercise of freedom of abode, travel, or the provision of medical services or other services.

9.3.2

Indonesia

Decree of the Minister of Manpower and Transmigration on HIV/AIDS Prevention and Control in the Workplace, No: Kep. 68/Men/2004

Article 5

- 1 Employers or officials are prohibited to perform HIV tests as part of recruitment requirements or working status of workers / labourers or as a compulsory regular medical check-up.
- 2 HIV tests can only be performed on the basis of a written agreement from workers / labourers concerned, with a condition that the result will not be used as mentioned in (1).
- 3 If an HIV test is needed as referred to under (2), the employer or the official must provide counselling service to workers/ labourers before and after the HIV test is performed.
- 4 HIV tests as mentioned in (2) should only be performed by specialized medical doctors in accordance with valid standard requirements and provisions.

9.3.3

Lao PDR

Law on HIV/AIDS Control and Prevention (2010)

Article 51

Prohibitions for health service providers

Health service providers are prohibited from taking a blood test for HIV without consent from the concerned individual, except for cases required by law.

9.3.4

Philippines

Philippines AIDS Prevention and Control Act 1998 (RA 8504)

Section 15

Consent as a requisite for HIV testing

No compulsory HIV testing shall be allowed, however, the State shall encourage voluntary testing for individuals with a high risk for contracting HIV: Provided that written informed consent must first be obtained. Such consent shall be obtained from the person concerned if he/she is of legal age or from the parents or legal guardian in the case of a minor or a mentally incapacitated individual. Lawful consent to HIV testing of a donated human body, organ, tissue, or blood shall be considered as having been given when:

- a a person volunteers or freely agrees to donate his/her blood, organ, or tissue for transfusion, transplantation, or research;
- b a person has executed a legacy in accordance with Section 3 of Republic Act No. 7170, also known as the "Organ Donation Act of 1991";
- c a donation is executed in accordance with Section 4 of Republic Act No. 7170.

Section 16

Prohibitions on compulsory HIV testing

Compulsory HIV testing as a precondition to employment, admission to educational institutions, the exercise of freedom of abode, entry or continued stay in the country, or the right to travel, the provision of medical service or any other kind of service, or the continued enjoyment of said undertakings shall be deemed unlawful.

Section 17

Exception to the prohibition on compulsory testing

Compulsory HIV testing may be allowed only in the following instances:

- a When a person is charged with any of the crimes punishable under Articles 264 and 266 as amended by Republic Act No. 8353, 335 and 338 of Republic Act No. 3815, otherwise known as the “Revised Penal Code” or under Republic Act No. 7659;
- b When the determination of the HIV status is necessary to resolve the relevant issues under Executive Order No. 309, otherwise known as the “Family Code of the Philippines”; and
- c When complying with the provisions of Republic Act No. 7170, otherwise known as the “Organ Donation Act” and Republic Act No. 7719, otherwise known as the “National Blood Services Act”.

Section 18

Anonymous HIV testing

The State shall provide a mechanism for anonymous HIV testing and shall guarantee anonymity and medical confidentiality in the conduct of such tests.

9.3.5

Timor-Leste

The *Timor-Leste Labour Code (Law 4 of 2012)* prohibits workplace HIV testing as follows:

Article 72

Medical examinations

- 1 The employer shall not require a job applicant or a worker to undergo medical tests, including HIV-detecting tests, save where such medical examinations are indispensable for the protection and security of the worker and with the written consent of the latter.
- 2 For the purposes of the preceding paragraph, the employer shall not exert pressure, either directly or indirectly, on the job applicant or worker to consent in writing to undergoing of such tests.
- 3 Any act by the employer through which a job applicant or a worker is compelled, either directly or indirectly, to consent to the medical tests shall be null and void.
- 4 The physician responsible for conducting the medical examinations shall only inform the employer whether the worker is fit or not fit to carry out the work.

- 5 The employer shall ensure the preservation of the confidential nature of the results of any medical examinations.

9.3.6

Viet Nam

Law on HIV/AIDS Prevention and Control 2006

Article 27 Voluntary HIV testing

- 1 HIV testing shall only be conducted on the basis of voluntariness of persons to be tested.
- 2 Persons who voluntarily seek HIV testing must be full 16 years or older and have full civil act capacity.
- 3 HIV testing of persons less than 16 years old or persons who have lost their civil act capacity may only be conducted when there is written consent of his/her parent or guardian.

Article 28 Compulsory HIV testing

- 1 Compulsory HIV testing shall be conducted in the case that there is an official request for judicial appraisal or a decision of an investigative body, a people's procuracy or a people's court.
- 2 The Minister of Health shall issue regulations on compulsory HIV testing in certain necessary cases for diagnosis and treatment purposes.
- 3 The Government shall issue a list of occupations and professions requiring HIV testing before recruitment.
- 4 Cost of HIV test in the cases mentioned in Clause 1 of this Article shall be covered by the state budget.



Recommendations for country consideration

Sex workers

Countries must:

- 1 Repeal laws that prohibit consenting adults to buy or sell sex, as well as laws that otherwise prohibit commercial sex, such as laws against ‘immoral’ earnings, ‘living off the earnings’ of prostitution, and brothel-keeping. Complementary legal measures must be taken to ensure safe working conditions to sex workers.
- 2 Take all measures to stop police harassment and violence against sex workers.
- 3 Prohibit the mandatory HIV and STI testing of sex workers.
- 4 Ensure that the enforcement of anti-human-trafficking laws is carefully targeted to punish those who use force, dishonesty, or coercion to procure people into commercial sex, or who abuse migrant sex workers through debt bondage, violence, or by deprivation of liberty. Anti-human-trafficking laws must be used to prohibit sexual exploitation, and they must not be used against adults involved in consensual sex work.
- 5 Enforce laws against all forms of child sexual abuse and sexual exploitation, clearly differentiating such crimes from consensual adult sex work.
- 6 Ensure that existing civil and administrative offences such as ‘loitering without purpose’, ‘public nuisance’, and ‘public morality’ are not used to penalize sex workers, and administrative laws such as ‘move on’ powers are not used to harass sex workers.
- 7 Shut down all compulsory detention or ‘rehabilitation’ centres for people involved in sex work or for children who have been sexually exploited. Instead, provide sex workers with evidence-based, voluntary, community empowerment services. Provide sexually exploited children with protection in safe and empowering family settings, selected based on the best interests of the child.

139 Global Commission on HIV and the Law (2012), *HIV and the Law: Risks, rights and health*, New York: UNDP. The Global Commission on HIV and the Law is an independent body, supported by UNDP.

MSM and transgender people

Countries must reform their approach towards sexual diversity. Rather than punishing consenting adults involved in same-sex activity, countries must offer such people access to effective HIV and health services and commodities.

- 1 Repeal all laws that criminalize consensual sex between adults of the same sex and/or laws that punish homosexual identity.
- 2 Respect existing civil and religious laws and guarantees relating to privacy.
- 3 Remove legal, regulatory, and administrative barriers to the formation of community organizations by or for gay men, lesbians, and/or bisexual people.
- 4 Amend anti-discrimination laws expressly to prohibit discrimination based on sexual orientation (as well as gender identity).
- 5 Promote effective measures to prevent violence against men who have sex with men.
- 6 Countries must reform their approach towards transgender people. Rather than punishing transgender people, countries must offer transgender people access to effective HIV and health services and commodities as well as repealing all laws that criminalize transgender identity or associated behaviours. Countries must:
 - Respect existing civil and religious laws and guarantees related to the right to privacy.
 - Repeal all laws that punish cross-dressing.
 - Remove legal, regulatory, or administrative barriers to the formation of community organizations by or for transgender people.
 - Amend national anti-discrimination laws to explicitly prohibit discrimination based on gender identity (as well as sexual orientation).
 - Ensure transgender people are able to have their affirmed gender recognized in identification documents, without the need for prior medical procedures such as sterilization, sex reassignment surgery, or hormonal therapy.

People who inject drugs

Countries must reform their approach towards drug use. Rather than punishing people who use drugs who do no harm to others, they must offer them access to effective HIV and health services, including harm reduction and voluntary, evidence-based treatment for drug dependence.

- 1 Shut down all compulsory drug detention centres for people who use drugs and replace them with evidence-based, voluntary services for treating drug dependence.
- 2 Abolish national registries of drug users, mandatory and compulsory HIV testing, and forced treatment for people who use drugs.
- 3 Decriminalize the possession of drugs for personal use, in recognition that the net impact of such sanctions is often harmful to society.

To ensure an effective, sustainable response to HIV that is consistent with human rights obligations, countries must ensure that in places of detention:

- 1 Necessary health care is available, including HIV-prevention and care services, regardless of laws criminalizing same-sex acts or harm reduction.
- 2 Such care includes provision of condoms, comprehensive harm reduction services, voluntary and evidence-based treatment for drug dependence, and antiretroviral therapy.
- 3 Any treatment offered must satisfy international standards of quality of care in detention settings. Health care services, including those specifically related to drug use and HIV, must be evidence-based, voluntary, and offered only where clinically indicated.

Migrants

To ensure an effective, sustainable response to HIV that is consistent with human rights obligations:

- 1 In matters relating to HIV and the law, countries should offer the same standard of protection to migrants, visitors, and residents who are not citizens as they do to their own citizens.
- 2 Countries must repeal travel and other restrictions that prohibit people living with HIV from entering a country and/or regulations that mandate HIV tests for foreigners within a country.
- 3 Countries must implement regulatory reform to allow for legal registration of migrants with health services and to ensure that migrants can access the same quality of HIV-prevention, treatment, and care services and commodities that are available to citizens. All HIV testing and STI screening for migrants

must be informed and voluntary, and all treatment and prophylaxis for migrants must be ethical and medically indicated.

Customary and religious law

Governments should work with the guardians of customary and religious law to promote traditions and religious practices that promote rights and acceptance of diversity and that protect privacy.

10.2 Recommendations of the UNDP study: “National HIV Laws in Asia and the Pacific”¹⁴⁰

1 National frameworks

- 1.1 National HIV strategies and plans should include specific targeted actions for law reform; increased access to justice for people living with HIV and key populations; and capacity development of parliamentarians, judiciary, police, and other key institutions to implement and enforce HIV-related human rights and protective laws.
- 1.2 Donors—including the Global Fund to Fight AIDS, Tuberculosis and Malaria—should support government and civil society programming on HIV-related human rights, including access to justice programmes.
- 1.3 Governments should support research to inform efforts to improve the legal environment for HIV responses, including the monitoring and evaluation of the impact of HIV-related laws and of capacity development, legal empowerment, and access to justice interventions. Governments should support participatory evaluations of HIV-related human rights legislation in partnership with people living with HIV organizations.

2 Law reform

- 2.1 Law reform should be informed by systematic legislative reviews that assess laws against the International Guidelines on HIV/AIDS and Human Rights. Governments should ensure comprehensive protective legislation is in place that addresses the following rights:
 - a Right to equality and protection from discrimination.

¹⁴⁰ UNDP (2013), *Legal protections against HIV-related human rights violations: Experiences and lessons learned from national HIV laws in Asia and the Pacific*, Bangkok: UNDP.

- b Right to protection from HIV-related vilification, stigmatization, and insult.
- c Right to protection from violence.
- d Right to privacy and confidentiality.
- e Right to voluntary and informed consent to HIV testing and treatment.
- f Rights of young people. This includes consideration of young people's rights to confidentiality and to consent to testing and treatment, independent of their parents.
- g Right to pre-test and post-test counselling.
- h Right to participation of people living with HIV and key populations in planning and delivering HIV programmes.
- i Right to access to the means of HIV prevention.
- j Right to education and information on HIV prevention, treatment, and care.
- k Right to the highest attainable standard of health, including access to antiretroviral drugs.
- l Sexual and reproductive health rights of people living with HIV and key populations.

2.2 Anti-discrimination laws should include a clear and comprehensive definition of conduct that constitutes unlawful HIV-related discrimination, including:

- a Discrimination in the areas of employment, health care, access to places, accommodation, education, childcare, insurance, funerals, and provision of other goods and services.
- b Discrimination on the grounds of HIV status and presumed or suspected HIV status, and discrimination against family members or other associates of people living with HIV.
- c Discrimination by public and private sector bodies.
- d Protective legislation should prevail over other legislation.

Protective laws should include provisions to make laws enforceable and accessible for people living with HIV and key populations, including:

- a Provisions empowering individuals to claim redress (such as compensation or reinstatement) through the courts, alternative dispute resolution processes, or other mechanisms;

- b Provisions establishing criminal and administrative offences and penalties for violation of provisions relating to non-discrimination, non-consensual testing, breach of confidentiality, and other human rights violations;
- c Provisions enabling people living with HIV to lodge complaints to courts and/or national human rights institutions or other bodies without risking public disclosure of their HIV status; and
- d Provisions for public interest litigation and for the making of court orders to address systemic issues, such as changing discriminatory policies.

3 Access to justice and legal empowerment

- 3.1 Governments, lawyers' associations, and funders should give priority to supporting access to justice and legal empowerment programmes for people living with HIV and key populations.
- 3.2 Legal aid services should be provided for people living with HIV and key populations for complaints relating to discrimination, violence protection, and other human rights violations. Specialist HIV legal advice services should be provided to people living with HIV and key populations through telephone hotlines and outreach.
- 3.3 Support should be provided to 'know your rights' campaigns and community legal education.
- 3.4 Support should be provided to peer-led advocacy initiatives so that people living with HIV and key populations can self-advocate their rights and can negotiate the resolution of complaints and the protection of their rights in relation to health care services, police, and other bodies.
- 3.5 Support should be provided to community-based HIV organizations to provide human rights advocacy services, including advising clients of their human and legal rights, referring clients to relevant grievance bodies, collecting data on human rights issues, and conducting advocacy campaigns for law and policy reform.

4.1 Capacity development

- 4.1 Governments should ensure that parliamentarians are sensitized and trained in HIV-related human rights issues.
- 4.2 Governments should provide training for police and public security personnel on HIV and human rights to address police abuses and to ensure that police act to protect and promote the rights of people living with HIV and key populations.

- 4.3 Justice ministries and professional associations should include HIV-related legal and human rights issues in the training of judges, magistrates, and prosecutors.
- 4.4 National human rights institutions should ensure that their staff are trained on HIV-related human rights issues and on the handling of complaints from people living with HIV and key populations.
- 4.5 Ministries of justice, working in partnership with the legal profession, should ensure the creation of a trained and sensitized legal work force with expertise in providing legal services to people living with HIV and key populations on issues such as discrimination, police abuses, and violence protection.
- 4.6 NGOs and community-based organizations, including people living with HIV organizations, should be supported to conduct sensitization, education, and training of key sectors such as the law and justice sector, health care services, and schools and colleges on HIV-related legal and human rights issues.
- 4.7 Media organizations should ensure that staff members are sensitized to HIV and human rights issues to ensure that media coverage of HIV reduces, rather than compounds, stigma.
- 4.8 HIV-related human rights considerations should be mainstreamed into law and justice programming.

10.3

UNAIDS IOM recommendations on HIV-related travel restrictions¹⁴¹

HIV/AIDS should not be considered to be a condition that poses a threat to public health in relation to travel because, although it is infectious, the human immunodeficiency virus cannot be transmitted by the mere presence of a person with HIV in a country or by casual contact (through the air, or from common vehicles such as food or water).

HIV is transmitted through specific behaviours, which are almost always private. Prevention thus requires voluntary acts and cannot be imposed. Restrictive measures can in fact run counter to public health interests, since exclusion of HIV-infected non-nationals adds to the climate of stigma and discrimination against people living with HIV and AIDS, and may thus deter nationals and non-nationals alike from coming forward to utilize HIV- prevention and care services. Moreover, restrictions against non-nationals living with HIV may create the misleading public impression that HIV/AIDS is a “foreign” problem that can be controlled through measures such as border controls, rather than through sound public health education and other prevention methods.

141 UNAIDS and International Organization for Migration (2004), *UNAIDS IOM statement on HIV/AIDS-related travel restrictions*, Geneva: UNAIDS and IOM.

Any HIV testing related to entry and stay should be done voluntarily, on the basis of informed consent. Adequate pre- and post-test counselling should be carried out, and confidentiality strictly protected.

Restrictions against entry or stay that are based on health conditions, including HIV/AIDS, should be implemented in such a way that human rights obligations are met, including the principle of non-discrimination, *non-refoulement*¹⁴² of refugees, the right to privacy, protection of the family, protection of the rights of migrants, and protection of the best interests of the child. Compelling humanitarian needs should also be given due weight.

Any health-related travel restriction should only be imposed on the basis of an individual interview/examination. In case of exclusion, persons should be informed orally and in writing of the reasons for the exclusion.

Comparable health conditions should be treated alike in terms of concerns about potential economic costs relating to the person with the condition. Those living with HIV/AIDS who seek entry for short-term or long-term stays should not be singled out for exclusion on this financial basis.

Exclusion on the basis of possible costs to health care and social assistance related to a health condition should only be considered where it is shown, through individual assessment, that the person requires such health and social assistance; is likely in fact to use it in the relatively near future; has no other means of meeting such costs (e.g., through private or employment-based insurance, private resources, support from community groups); and that these costs will not be offset through benefits that exceed them, such as specific skills, talents, contribution to the labour force, payment of taxes, contribution to cultural diversity, and the capacity for revenue or job creation.

If a person living with HIV/AIDS is subject to expulsion (deportation), such expulsion (deportation) should be consistent with international legal obligations, including entitlement to due process of law and access to the appropriate means to challenge the expulsion. Consideration should be given to compelling reasons of a humanitarian nature justifying authorization for the person to remain. It is important that in making necessary arrangements for the person's identification and documentation that s/he be entitled to protection of confidentiality with regard to health, and more specifically to HIV status.

Any policy regarding HIV/AIDS-related travel restrictions should be clear, explicit, and publicly available. Implementation of the policy should be consistent and fair, with discretion guided by clear, written instructions.

142 *Non-refoulement* is a principle of international law that forbids returning a refugee back to the country where they fled from persecution.

Joint statement on compulsory drug detention and rehabilitation centres. ILO, OHCHR, UNDP, UNESCO, UNFPA, UNHCR, UNICEF, UNODC, UN Women, WFP, WHO, and UNAIDS, March 2012.

United Nations entities call on States to close compulsory drug detention and rehabilitation centres and implement voluntary, evidence-informed, and rights-based health and social services in the community.

The continued existence of compulsory drug detention and rehabilitation centres, where people who are suspected of using drugs or being dependent on drugs, people who have engaged in sex work, or children who have been victims of sexual exploitation are detained without due process in the name of “treatment” or “rehabilitation”, is a serious concern.

Compulsory drug detention and rehabilitation centres raise human rights issues and threaten the health of detainees, including through increased vulnerability to HIV and tuberculosis (TB) infection. Criteria for detention of individuals in these centres vary within and among countries. However, such detention often takes place without the benefit of sufficient due process, legal safeguards, or judicial review. The deprivation of liberty without due process is an unacceptable violation of internationally recognized human rights standards. Furthermore, detention in these centres has been reported to involve physical and sexual violence, forced labour, sub-standard conditions, denial of health care, and other measures that violate human rights.

There is no evidence that these centres represent a favourable or effective environment for the treatment of drug dependence, for the rehabilitation of individuals who have engaged in sex work, or for children who have been victims of sexual exploitation, abuse, or the lack of adequate care and protection.

The UN entities which have signed on to this statement call on States that operate compulsory drug detention and rehabilitation centres to close them without delay and to release the individuals detained. Upon release, appropriate health care services should be provided to those in need of such services, on a voluntary basis, at community level. These services should include evidence-informed drug dependence treatment; HIV and TB prevention, treatment, care, and support; as well as health, legal, and social services to address physical and sexual violence and enable reintegration. The UN stands ready to work with States as they take steps to close compulsory drug detention and rehabilitation centres and to implement voluntary, ambulatory, residential, and evidence-informed alternatives in the community.

Where a State is unable to close the centres rapidly, without undue delay, we urge that the following be established immediately:

- A process to review the detention of those in the centres to ensure that there is no arbitrary detention and that any detention is conducted according to relevant international standards of due process and provides alternatives to imprisonment. This review will allow the identification of those who should be released immediately and those who should be referred for voluntary, evidence-informed treatment programmes within the community.
- A process to review conditions in compulsory drug detention and rehabilitation centres with a view to immediately improving those conditions so as to meet relevant international standards applicable in closed settings, including access to quality and evidence-informed health care, social and education services, and the elimination of inhumane and degrading treatment and forced labour, until the centres are closed.
- Provision of health care services pending closure of the centres, including for treatment of HIV and other sexually transmitted infections (STIs), TB, and opportunistic infections, as well as health and legal services to respond to physical and sexual violence.
- Judicial and other independent oversight and reporting over the review and closure process of the centres.
- A moratoria on further admission into compulsory drug detention and rehabilitation centres of people who use drugs, people who have engaged in sex work, and children who have been the victims of sexual exploitation.

Evidence demonstrates that the most effective responses to drug dependence and the health-related harms associated with it, such as HIV infection, require treating drug dependence as a health condition through evidence-informed and rights-based approaches, which in many cases need to be established. All health care interventions, including drug dependence treatment, should be carried out on a voluntary basis with informed consent, except in clearly defined exceptional circumstances in conformity with international human rights law that guarantees such provisions are not subject to abuse. Responses to drug use and health-related harms associated with it should include evidenced-informed prevention and treatment of HIV, other STIs, and TB, for those engaged in drug use.

Where sex workers benefit from due process, protection from discrimination and violence, and access to HIV prevention, treatment, care and support, they have been able to dramatically reduce their vulnerability and that of their clients to HIV and other STIs.

In the case of children under the age of 18 years, the most effective and appropriate responses are those that are family-based and build on the strengths of local communities. These should be the first

option in full compliance with their rights to welfare, protection, care, and justice. Children who are, or have been, involved in sex work should be treated as child survivors of commercial sexual exploitation, in accordance with the *Convention on the Rights of the Child (1989)* and the *ILO Worst Forms of Child Labour Convention, 1999 (No 182)*, not as offenders liable to criminal penalties. Those children who are dependent on drugs should benefit from rights-based and evidence-informed programmes to facilitate their recovery and reintegration into families and communities.

States increasingly acknowledge the concerns associated with these compulsory drug detention and rehabilitation centres, including their lack of effectiveness in preventing relapse, their high costs, and their potential negative impact on efforts to ensure universal access to HIV prevention, treatment, care, and support. We note with appreciation that some countries are in the process of scaling-down the number of such centres and building greater capacity for voluntary, evidence-informed, community-based approaches. These positive steps are critical to expanding understanding and building support for an approach to drug dependence, sex work and child sexual exploitation that is based on available scientific and medical evidence, ensures the protection of human rights and enhances public health.

We are committed to work with countries to find alternatives to compulsory drug detention and rehabilitation centres, including through technical assistance, capacity building, and advocacy. Forms of support might include the following:

- Sharing of information and good practices on voluntary, evidence-informed, and community- and rights-based programmes for people who use drugs, those who engage in sex work, and children who have been victims of sexual exploitation..
- Dialogue with policy makers to increase support for voluntary, evidence-informed, and rights-based treatment and programmes for drug dependence.
- Multisectoral collaboration among law enforcement, health, judiciary, human rights, social welfare, and drug control institutions to assist in developing frameworks of action to support voluntary and community-based services for people who use drugs, those who engage in sex work, and children who have been victims of sexual exploitation; and.
- Establishment of services to address the root causes of vulnerability, such as (e.g. poverty, gender inequality, and the lack of sufficient family and community support structures).

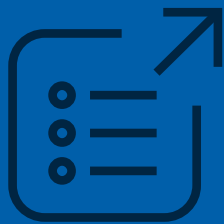
*Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, 1 February 2013*¹⁴³

Compulsory detention for medical reasons

Para 87. The Special Rapporteur calls upon all States to:

- a Close compulsory drug detention and rehabilitation centres without delay and implement voluntary, evidence-based and rights-based health and social services in the community. Undertake investigations to ensure that abuses, including torture or cruel, inhuman and degrading treatment, are not taking place in privately run centres for the treatment of drug dependence;
- b Cease support for the operation of existing drug detention centres or the creation of new centres. Any decision to provide funding should be made only following careful risk assessment. If provided, any such funds should be clearly time limited and provided only on the conditions that the authorities (a) commit to a rapid process for closing drug detention centres and reallocating said resources to scaling up voluntary, community-based, evidence-based services for treatment of drug dependence; and (b) replace punitive approaches and compulsory elements to drug treatment with other, evidence-based efforts to prevent HIV and other drug-related harms. Such centres, while still operating as the authorities move to close them, are subject to fully independent monitoring;
- c Establish an effective mechanism for monitoring dependence treatment practices and compliance with international norms;
- d Ensure that all harm-reduction measures and drug-dependence treatment services, particularly opioid substitution therapy, are available to people who use drugs, in particular those among incarcerated populations.

¹⁴³ Human Rights Council (2013), *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Juan E. Méndez, 1 February 2013, A/HRC/22/53.



References

"A look into some Hadd punishments,"
BruDirect, 23 October 2013.

Acaba, J. (2012), *Making multi-collaborative partnerships work and worth it: experience in working with Philippine National Police and Quezon City Police Department to address the use of condoms as evidence of prostitution among sex workers*. XIX International Conference on AIDS, Washington July 2012, Oral Abstract Session.

ASEAN Human Rights Declaration, 21st ASEAN Summit, Phnom Penh, 19 November 2012, Article 29.

Denham, G. (2010), *Review of Published and Available Materials Related to Law Enforcement Policies on Prevention of HIV and Harms Associated with Injecting Drug Use Across 12 Countries*, ANEX Conference, Melbourne, October 2010.

Equal Rights Trust (2012), *News: Malaysian High Court Upholds a Ban on Cross-dressing*, 26 October 2012, London: Equal Rights Trust.

ESCAP Secretariat (2011), *Overview of good practices in promoting multisectoral cooperation and enhancing national capacity in addressing policy and legal barriers to universal access to HIV prevention, treatment, care and support in the Asia-Pacific region, Asia-Pacific High-level Intergovernmental Meeting on the Assessment of Progress against Commitments in the Political Declaration on HIV/AIDS and the Millennium Development Goals*, Bangkok: ESCAP (E/ESCAP/HIV/IGM.1/2).

Fox, J. (2009), *Sex laws in Thailand: Laws regulating commercial sex and entertainment places*, Thailand Law Forum, at <http://www.thailawforum.com/sex-crimes-in-thailand-part2/?print=pdf>

Global Commission on HIV and the Law (2012), *HIV and the Law: Risks, rights and health*, New York: UNDP.

Global Commission on HIV and the Law (2013). *Police as agents of change an innovative learning programme on HIV and human rights in the context of law enforcement in Thailand*, 25 September 2013, at www.hivlawcommission.org.

GNP+, ICW, IPPF, UNAIDS (2011), *People Living with HIV Stigma Index, Asia Pacific Regional Analysis 2011*, Geneva: UNAIDS.

HIV/AIDS Asia Regional Program (n.d.), *Advocacy and Action Manual*, Bangkok: Mott MacDonald HLSP.

Human Rights Council (2013), *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, 1 February 2013*, A/HRC/22/53.

Human Rights Watch (2013), *Vietnam: Give marriage rights to same-sex couples*, New York: Human Rights Watch.

International Development Law Organization (2010), *Stakeholder report: Rapid needs assessment of the legal needs of people living with HIV and key populations in Jakarta*, Rome: IDLO.

IOM (2013), *Migrant Information Note 21*, Labour Migration Programme, IOM Thailand Office.

Jardine, M. et al. (2012), Harm reduction and law enforcement in Vietnam: Influences on street policing, *Harm Reduction Journal* 9:27.

Jurgens, R. et al. (2007), *Taking action against HIV and AIDS: Handbook for Parliamentarians*, Geneva: UNAIDS, UNDP, and the Inter-Parliamentary Union.

Kamarulzaman, A. (2009) Impact of HIV Prevention Programs on Drug Users in Malaysia, *Journal of Acquired Immune Deficiency Syndrome*, 52(S1), S17-19.

Khin Ninn Lwin (2010), *Burmese sex workers dare not carry condom, fear of arrest*, at moemaka.org/index.php/current/news-brief/81-news/451-burmese-sex-workers-dare-not-carry-condom-fear-of-arrest.

Klindera, K. (2013), *The GMT Initiative Blog*, 18 November 2013, at www.amfar.org/content.aspx?id=18888&blogid=1146.

Lai, G., Asmin, F., and Birgin, R. (2013), *Drug policy in Indonesia*, London: International Drug Policy Consortium.

"LGBT leaders renew push for anti-discrimination bill, local ordinances," *Outrage*, 27 July 2013.

Ministry of Justice, Cambodia (2013), *Explanatory Notes for the Law on Suppression of Human Trafficking and Sexual Exploitation*, Phnom Penh: Ministry of Justice.

"Migrants to be granted access to health care," *The Nation*, 6 September 2013.

Monaghan, G. and Bewley-Taylor, D. (2013), *Modernising Drug Law Enforcement Report 1, Police support for harm reduction policies and practices towards people who inject drugs*, International Drug Policy Consortium.

OHCHR and UNAIDS (2006), *International Guidelines on HIV/AIDS and Human Rights*, Geneva: OHCHR and UNAIDS

OHCHR and UNAIDS (2007). *Handbook on HIV and Human Rights for National Human Rights Institutions*, Geneva: OHCHR & UNAIDS.

Ordinance to protect gay rights in Cebu up in next PB session, *Cebu Daily News*, 17 February 2013.

Pact Thailand (2007), *Turning an enemy into an ally: SWING's police cadet internships on HIV prevention among sex workers*, available at: www.pactworld.org/cs/reach_news_and_media_swing_story, and here: <http://www.unaids.org.cn/pics/20121220161701.pdf>

"Passage of Cebu's anti-discrimination law lauded," *Sun Star*, 18 October 2012.

Philippine National AIDS Council (2011), *5th AIDS Medium Term Plan*.

"Lawmaker files bill vs discrimination of gays, lesbians," *The Philippine Star*, 5 July 2013, at www.philstar.com/headlines/2013/07/05/961779/lawmaker-files-bill-vs-discrimination-gays-lesbians.

Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity (2007), at www.yogyakartaprinciples.org; in relation to state obligations to decriminalize consensual sex between adult males.

Sharma, M. (2010), *Situation Update: HIV epidemics among PWID in Southeast Asia Region and national responses*, 20th International Harm Reduction Conference, April 2009, Bangkok.

Sharma, M. and Chatterjee, A. (2012), Partnering with law enforcement to deliver good public health: The experience of the HIV/AIDS Asia Regional Program, *Harm Reduction Journal*, 9:24.

Macdonald, V. and Nacapew, S. (2013), *Drug control and harm reduction in Thailand*, London: International Drug Policy Consortium.

"Migrants to be granted access to health care," *The Nation*, 6 September 2013.

"Vietnam moves to decriminalize, not recognize gay marriage," *Thanh Nien News*, 16 November 2013, at www.thanhniennews.com/index/pages/20131116-draft-law-shows-vietnam-undecided-about-gay-marriage.aspx.

Thomson, N. et al. (2012), The village/commune safety policy and HIV prevention efforts among key affected populations in Cambodia: Finding a balance, *Harm Reduction Journal*, 9:31.

UNAIDS (2011). *Background note: Thematic Segment: HIV and Enabling Legal Environments 29th Meeting of the UNAIDS Programme Coordinating Board Geneva, Switzerland, 13–15 December 2011*, UNAIDS/PCB(29)/11.27.

UNAIDS and IOM (2004), *UNAIDS IOM statement on HIV/AIDS-related travel restrictions*, Geneva: UNAIDS and IOM.

UNDP (2009), *Developing a Comprehensive Package of Services to Reduce HIV among Men who have Sex with Men (MSM) and Transgender (TG) Populations in Asia and the Pacific, Regional Consensus Meeting Report*. Bangkok: UNDP Asia-Pacific Regional Centre.

UNDP (2010), *Legal environments, human rights and HIV responses among men who have sex with men and transgender people in Asia and the Pacific*, Bangkok: UNDP.

UNDP (2012), *Sex work and the Law in Asia and the Pacific*, Bangkok: UNDP.

UNDP (2013), *Legal protections against HIV-related human rights violations: Experiences and lessons learned from national HIV laws in Asia and the Pacific*, Bangkok: UNDP.

UNDP (2013), *Discussion paper: Transgender health and human rights*, New York: UNDP.

Wickersham, J. et al. (2013), *Implementing methadone maintenance treatment in prisons in Malaysia*, *Bulletin of the World Health Organization*, 91:124–129.



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