

# Health and rights

Human rights and intervention  
programs for males who  
have sex with males

Southeast and East Asia

Professor Douglas Sanders  
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## Information note

Despite evidence, establishing male-to-male sex as one of the driving forces of HIV transmission in the Asia and Pacific region, few strategic interventions address male-to-male sexuality and related HIV vulnerabilities.

In recognition of the need for building and strengthening interventions addressing HIV related vulnerabilities of males who have sex with males (MSM) in the Region; a Male Sexual Health and HIV in Asia and the Pacific - International Consultation is being organized in New Delhi, India from September 23-26, 2006, with the tagline “Risks & Responsibilities”.

This regional consultation will bring together governments, policy-makers, donors, researchers, and community based organisations across the Asia-Pacific region to provide a space for dialogue, learning, networking, and skills building, to enable expansion, strengthening and scaling up of strategies addressing male sexual health and related HIV vulnerabilities. In addition, the consultation will provide an opportunity to inform and develop strategic advocacy initiatives and deliberate on key policies related to these issues.

The main objectives of this three-day meeting are:

- Generating and sharing knowledge and learning on technical, social, policy, rights and resource issues relevant to male-to-male sexual behaviours and HIV in Asia and the Pacific;
- Identification of obstacles and challenges that impede scaling-up of “MSM and HIV” specific programmes and services;
- Informing the formulation of strategies and programmes for improving and expanding “MSM and HIV” specific prevention, treatment, care and support interventions and services.

The theme of the consultation is “Risks & Responsibilities”, signifying the risks faced by MSM due to their sexual practices and cultural vulnerabilities, and the risks of not addressing them with adequate and appropriate HIV prevention, treatment, and care and support interventions. This also highlights the responsibilities that MSM have towards protecting themselves and their partners, and the responsibilities of governments, donors, and other stakeholders in ensuring resources and environments that enable good-quality programmes and services for prevention, treatment, care and support for MSM exist.

There is an urgent need for MSM programming and interventions in Asia and the Pacific to move from the backseat to the forefront.

The larger goal of this consultation is to catalyse and enhance coordinated responses through increased commitment among national and international stakeholders, in tandem with the real needs of males-who-have sex with males. This should lead to intensified HIV and sexual health interventions with appropriate and supportive policies and adequate funding.

The planned outcomes of the “Risks & Responsibilities” consultation are:

- A Declaration of Commitment by policymakers, civil society and donors.
- An agreed set of principles on male sexual health, relating to HIV prevention, treatment, care and support.
- An enhanced knowledge base on the technical, social and policy issues relevant to male-to-male sexual behaviours in Asia and the Pacific, which may take the form of technical resource kits.
- Recommendations for action regarding issues such as resources allocation, epidemiology, intervention strategies, rights and legal issues. In short, strategies that will facilitate and assure inclusion of male-to-male sexuality in national and sub-national HIV frameworks for action.
- Identification of key strategic advocacy initiatives and policies that need to be developed and maintained in relation to MSM, sexual health and HIV vulnerabilities.
- A pan-regional network of organisations and institutions to generate region-wide coordinated advocacy for policy change, social justice, rights, and an equitable allocation of public resources for HIV interventions, care, treatment and other services. This network will ensure that MSM issues remain on the HIV agenda in Asia and the Pacific, and at all relevant national and regional HIV conferences and meetings.

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*We want to get condoms on men who fuck men in the toilets  
and bushes before they go home to their wives.  
We're don't talk human rights. That's for middle-class guys who call  
themselves "gay." There's no human right to have a quick release  
in a park. ... And its not gay men who get beaten up and  
raped. Its lady boys, bakla, waria, metis, kothis.  
They're the ones who have no rights.*

Anonymous health worker, July, 2005

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# Part one: Human rights

## 1. The human rights approach to the world is still new – it's still being developed

While politicians may talk about glorious traditions – the common law, the *Declaration of the Rights of Man*, religious teachings – the truth is that human rights is a new, modern world-view. It got started in 1945. It was one of the goals written into the *United Nations Charter*. It got a boost in 1948 when the UN General Assembly passed the *Universal Declaration of Human Rights*. There was still a lot to do.

Human rights got caught up in the cold war. Both sides used human rights language to condemn the other guys. Progress was slow. But, after bitter fights, the UN produced three key treaties – in 1965 the *International Convention on the Elimination of All Forms of Racial Discrimination* – and in 1966 the two major general treaties, the *International Covenant on Economic, Social and Cultural Rights* and the *International Covenant on Civil and Political Rights*.

Three regional human rights treaties came into being – the *European Convention on Human Rights* in 1950, the *American Convention on Human Rights* in 1969 and the *African Charter on Human and Peoples Rights* in 1981.

More was still to come. The process of defining “human rights” was still far from over. There have been eleven additions to the *European Convention* and work continued on new, specific UN treaties and declarations. For example:

1979: *The Convention on the Elimination of All Forms of Discrimination against Women*.

1984: *The Convention against Torture*.

1989: *The Convention on the Rights of the Child*.

1990: *The Convention on the Protection of the Rights of All Migrant Workers*

These days work is going on at the UN – very slowly – on the rights of indigenous peoples, the disabled and cultural minorities. There are major proposals currently being considered for the reform of UN human rights institutions.<sup>1</sup>

The major international human rights NGOs developed during the cold war. Amnesty International began in 1961. Human Rights Watch in 1978. Amnesty International first started to express concerns about the imprisonment of gays and lesbians in the 1980s, and broadened its mandate to deal with discrimination on the basis of sexual orientation in general in 2001.

So far there have been no UN declarations, treaties or world conferences dealing with sexuality, sexual orientation or gender identity. The international and regional AIDS conferences, which do talk about sexual diversity, are not UN conferences, though UNAIDS participates.

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<sup>1</sup> The most visible reform being debated is the plan to replace the existing discredited Commission on Human Rights with a new, more powerful, Human Rights Council. A second proposal is to replace the various treaty bodies with a single body that would supervise state compliance with all the major UN human rights treaties. This would move supervision and adjudication from many part time bodies to one full time permanent institution, somewhat closer to the model of the European Court of Human Rights. The idea of a single unified treaty body is supported by the UN High Commissioner for Human Rights.

## 2. Why do (some) governments (sometimes) pay attention to human rights

The UN World Conference on Human Rights was held in Vienna, Austria, in 1993. UN Secretary General, Boutros Boutros Ghali, said that ‘human rights’ was now the “common language of humanity.” Governments are illegitimate if they don’t support human rights. That was the general idea.

Singapore didn’t think so. In a statement pointedly called “The Real World of Human Rights” Singapore described most human rights as “still essentially contested concepts.” The statement went on:

**Singaporeans, and people in many other parts of the world do not agree, for instance, that pornography is an acceptable manifestation of free expression or that homosexual relationships is just a matter of lifestyle choice. Most of us will also maintain that the right to marry is confined to those of the opposite sex.**

Five governments made positive references on lesbian and gay issues at Vienna – Australia, Austria, Canada, Germany and the Netherlands. That was the first time in an international intergovernmental meeting that any governments actually said they opposed discrimination on the basis of sexual orientation. As well, GLBT organizations were officially allowed inside the doors of the Vienna conference, another first.

Singapore was the only “no” voice. Five governments said don’t discriminate. Everybody else said nothing.

So why do governments in Asia (other than Singapore and Brunei) say that they support human rights?

1. Some politicians believe in human rights, or want to be remembered by history as supporting human rights.
2. Some politicians support human rights as a way of criticizing the policies of other politicians and other political parties. Human rights becomes a reform policy in the domestic sphere. Competitive democratic politics within a country is a good thing for promoting human rights as government policy.
3. Some politicians see support of human rights as leading to political stability in their countries. As the middle class grows, people want human rights and they may oppose governments that deny them.
4. Some governments want membership in a particular regional or international organization, and they can only get membership if they have a good human rights record:
  - **Turkey** wants to join the European Union and the main issue is human rights.
  - **China** signed the *International Covenant on Civil and Political Rights* in order to get membership in the World Trade Organization.
  - **India** and **Japan** want to be permanent members of the UN Security Council.
  - **South Korea** reformed its labor laws to get membership in the OECD (the Organization of Economic Cooperation and Development).
  - **Thailand** wants to be a member of the OECD.
  - **Taiwan** has decided to abolish the death penalty (a quite un-Asian thing to do). This will show European states that it respects human rights, for the death penalty is an important human rights issue for Europeans. Taiwan is constantly concerned with gaining recognition and legitimacy internationally.
5. Development assistance (foreign aid) is now frequently tied to human rights. Most western countries say they take human rights into account in making aid decisions. The World Bank, the Asian Development Bank and the UN Development Programme all link aid to human rights. The economic sanctions against Myanmar/Burma are on the basis of human rights. A bad human rights record may also be bad for FDI (foreign direct investment). Big companies don’t want to be associated with repressive governments, and may see such governments as possibly unstable.

6. Consumer boycotts in the west are often based on human rights. NGOs established the campaigns for western businesses and consumers to not deal with Myanmar/Burma and other countries with bad records on human rights.

If you are rich, like Singapore and Brunei, you can thumb your nose at the rest of the world. But most countries in Asia want recognition, cooperation and aid.

### 3. Do asian governments talk the human rights talk?

Do Asian governments actually commit themselves to “human rights?”

Yes.

- (a) They put provisions on human rights in their constitutions.
- (b) They sign human rights treaties.
- (c) They establish national human rights commissions.
- (d) But, so far, they do not enact national anti-discrimination laws to prohibit discrimination in the private sector (covering employment, accommodation, commercial services).

#### National constitutions

There are human rights provisions in many national constitutions. Any new or newly amended constitution will have “human rights” provisions – for example, in Cambodia, China, Indonesia, the Philippines and Thailand.

The only constitution in the Asia-Pacific region to expressly grant equality on the basis of “sexual orientation” is the Constitution of the Fiji Islands (one of only three in the world to expressly use such language). In other constitutions we have to rely on general equality/non-discrimination provisions, helped, sometimes, by provisions on privacy rights.

#### Human rights treaties

There are no regional human rights treaties in Asia – none at the Asian level – and none at the level of organizations like SAARC or ASEAN. But many Asian governments have signed UN human rights treaties.

Who has signed what?

#### Asian states (excluding the Middle East): signatures and ratifications as of June, 2005.

ESCRs – International Covenant on Economic, Social and Cultural Rights

CPRs – International Covenant on Civil and Political Rights

OP/CPRs – Optional Protocol to the International Covenant on Civil and Political Rights allowing individuals to challenge state actions before the Human Rights Committee.

CERD – Convention on the Elimination of All Forms of Racial Discrimination

CEDAW – Convention on the Elimination of Discrimination Against Women

OP (CEDAW) – Optional Protocol allowing communications to the treaty body.

CAT – Convention Against Torture

CRC – Convention on the Rights of the Child

MW – Convention on the Protection of Migrant Workers

	ESCRs	CPRs	OP/ CPRs	CERD	CEDAW	OP	CAT	CRC	MW
Afghanistan	X	X		X	X		X	X	
Bangladesh	X	X		X	X	X	X	X	X
Bhutan				X	X			X	
Brunei								X	
Cambodia	X	X		X	X	X	X	X	
China	X	X		X	X		X	X	
DPR Korea	X	X			X			X	
India	X	X		X	X		X	X	
Indonesia				X	X	X	X	X	X
Japan	X	X		X	X		X	X	X
Kazakhstan	X	X		X	X	X	X	X	
Kyrgyzstan	X	X		X	X	X	X	X	X
Laos	X	X		X	X			X	
Malaysia					X			X	
Maldives				X	X		X	X	
Myanmar					X			X	
Nepal	X	X	X	X	X	X	X	X	
Pakistan				X	X			X	
Philippines	X	X	X	X	X	X	X	X	X
R of Korea	X	X	X	X	X		X	X	
Singapore					X			X	
Sri Lanka	X	X	X	X	X	X	X	X	X
Tajikistan	X	X	X	X	X	X	X	X	X
Thailand	X	X		X	X	X		X	
Turkmenistan	X	X	X	X	X		X	X	
Uzbekistan	X	X	X	X	X		X	X	
Vietnam	X	X		X	X			X	

A full list of states parties can be found at the website of the OHCHR (the Office of the High Commissioner for Human Rights).

The fact that a state has signed or ratified a human rights treaty does not mean that the treaty is automatically enforceable in domestic law. Usually treaty provisions have to be incorporated into domestic law by legislation. While China signed the *International Covenant on Civil and Political Rights* a number of years ago, in August, 2005, it signed an agreement with the UN Office of the High Commissioner for Human Rights to collaborate on reforming China's domestic legal system to bring it into line with the provisions of the *Covenant*. The *Covenant* was not yet in force in domestic law, though China was bound by its terms as a matter of international law. This is not an unusual situation. The *Covenant* is also not in force directly in domestic law in Canada or the United States.

The major treaties – *Economic, Social and Cultural Rights* – *Civil and Political Rights* – *Racial Discrimination* – *Women* – *Torture* – *Children* – all establish “treaty bodies.” These are committees, supposedly made up of human rights experts, that meet two or three times a year (a) to review the required periodic reports by governments on what they have been doing to live up to the treaty, and (b) in those situations where countries have allowed it, to hear individual complaints directly against governments (after going through domestic courts or otherwise ‘exhausting domestic remedies’).

The big countries in Asia – China, India, Indonesia, Japan – have signed the *International Covenant on Civil and Political Rights* – but not allowed individual complaints to go the Human Rights Committee

(which monitors state compliance with the treaty). To allow such individual complaints to be heard by the Committee, a country must sign the *Optional Protocol* to the treaty. You can see in the chart above that in Asia only seven out of the twenty-six countries on the list have signed the *Optional Protocol*. Only Sri Lanka, the Philippines and Tajikistan have signed everything on the chart.

## Human rights commissions

In Asia-Pacific there are now national human rights commissions in Afghanistan, Australia, Fiji, India, Indonesia, Jordan, Malaysia, Mongolia, Nepal, New Zealand, Palestinian Territories, the Philippines, Qatar, Republic of Korea, Sri Lanka, Thailand and Timor Lest.<sup>2</sup>

Most of these bodies have a very broad mandate. They can investigate all kinds of problems, and report publicly. They can hold seminars and discussions. They can publish information and debates. But they cannot “adjudicate” – they cannot function like a court and make a binding legal decision on whether human rights have been violated. And they have no power to “sanction” offenders – by ordering them to pay a fine, to behave differently in the future or take other steps to remedy problems.

Most of these commissions are still quite new. Have they done anything about sexual orientation, gender identity or HIV/AIDS issues? No one seems to be keeping track of this, but we can say the following:

- one commissioner in Thailand said that the Commission has the authority to look at sexual orientation issues. In 2002 she disclosed that the Commission had investigated a case of a student excluded from school because the student was gay (probably because he was a ladyboy).
- the commission in India treated a complaint of sexual orientation discrimination as not a real issue, noting that India still had a criminal prohibition against same-sex sexual acts.
- the commission in the Philippines dismissed a complaint of a cross-dresser who had been excluded from a bar or disco.
- the commission in Indonesia has classified homosexuals as a ‘special group’ whose rights are of concern to the Commission.

There is one big success story, and that is the National Human Rights Commission in South Korea. The legislation establishing the Commission gives it express authority to deal with discrimination on the basis of sexual orientation – the only country to put this in the legislation establishing their Commission. The Commission looked at the governments ban on Exzone and other gay websites and said that the ban violated the human rights provisions of the Korean constitution. The government in South Korea accepted this conclusion, and ended its censorship. The Commission has funded consultations with gay and lesbian groups, and supported some of their research. For more examples of decisions by the commission in Korea, see the Appendix.

## 4. Do “human rights” apply to GLBT people, or are we still outsiders?

The answer is yes and no – and things are improving.

First - What rights are we arguing for? We can list seven:

- decriminalization (don’t throw me in jail for having sex in my bedroom),
- equality/non-discrimination (don’t fire me from my job because I’m gay, lesbian or transgendered
- recognition of relationships (give same-sex couples the same rights and obligations as heterosexual couples),
- the highest attainable standard of physical and mental health (as provided for in Article 12 of the International Covenant on Economic, Social and Cultural Rights – which can be argued to require condom

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<sup>2</sup> See the website of the Asia Pacific Forum of National Human Rights Institutions, [www.asiapacificforum.net](http://www.asiapacificforum.net).

distribution, clean needles and access to sex reassignment surgery)

- a move away from the focus on male and female as fixed, exclusive, defining categories – recognizing the evils of sex/gender stereotyping – and the problems created by exclusive two sex/gender concepts (like ‘traditional marriage’). Along the way, we should allow the correction of personal documentation for post-operative transsexuals.
- the right to have our own clubs, bars, organizations, publications and public events.
- inclusion in the public life of society as politicians, judges, cabinet ministers, police, soldiers (so that the only visible queers are not just hairdressers, fashion designers and entertainers, much as we love them).

Decriminalization is not an issue everywhere. All Asian countries that were colonized by the British have criminal laws obsessed with carnal intercourse against the order of nature – the only exception is Hong Kong, which repealed its law in 1991 in advance of reversion to China.

Such laws exist in Bangladesh, India, Malaysia, Myanmar/Burma, Pakistan, Papua New Guinea and Singapore. The Spanish and the Dutch left no such legacy in the Philippines or Indonesia. Nor did the French leave such laws in Vietnam or Cambodia. Japan and Thailand, free from formal colonization, introduced such laws, then repealed them. China and Taiwan have never had an express prohibition, though for many years China prosecuted homosexuals for “hooliganism”, a practice now ended. Criminal prohibitions exist in the Muslim states in the Middle East and Central Asia.

Criminal laws led to early public campaigns for law reform in the West and the pioneering landmark series of court cases on gay issues – cases that challenged the old British-style criminal laws. The decisions come from the European Court of Human Rights (condemning laws in Northern Ireland, Ireland and Cypress), from the United States (upholding, then striking down such laws), South Africa, Zimbabwe and most recently decisions from Fiji and Hong Kong (both in August, 2005). A legal challenge is in the courts in India. Anti-homosexual criminal laws are now completely gone in Europe, North America, Australia and New Zealand.

There are four ways, at present, to argue for GLBT human rights:

- (a) Privacy rights
- (b) Equality rights
- (c) Recognition of diversity
- (d) The right to health

## Privacy rights

The August, 2005, decision in Fiji striking down criminal prohibitions, dealt at some length with the privacy arguments.

These rights to privacy were first described by the philosopher John Stuart Mill. His view that the law should not concern itself in the realm of private morality except to the extent necessary for the protection of public order and the guarding of citizens against injury or exploitation received significant endorsement in the report of the Wolfenden Committee on Homosexual Offences and Prostitution. That committee’s report, furnished to the British Parliament in 1957, contained the following statement in support of its recommendation for limited decriminalization of homosexual acts:

“There remains one additional counter argument which we believe to be decisive, namely, the importance which society and the law ought to give to individual freedom of choice in action in matters of private morality. Unless a deliberate attempt is to be made by society, acting through the agency of the law, to equate the sphere of crime with that of sin, there must remain a realm of private morality and immorality, which is, in brief and crude terms, not the law’s business. To say this is not to condone or encourage private immorality.”

The privacy argument has a lot of problems. The argument says that private acts and private morality should be seen as of no concern to the larger society. The Libertarian party in the United States argues for the decriminalization of narcotic drugs on the same basis. US Senator Santorum cautioned that this approach seemed to validate incest, pedophilia and polygamy, all of which can be carried on with consent and in private. Just talking about privacy does not tell us when harm is associated with private consensual acts. It is an incomplete argument. Our opponents argue that homosexuality does have negative effects on society as a whole. Just invoking 'privacy' does not answer them.

Another problem with privacy is the fact that the public/private distinction gives no rights in the 'public' sphere. Women argue strongly against any analysis that invokes a public/private distinction. Most women live in the 'private' spheres of home and family. They are often denied the human rights that operate in the 'public' sphere. Private rights do not require non-discrimination in employment, equal access to housing or government services. Those are all in the public sphere, not the private sphere.

A third problem is that 'privacy' does not offer homosexuals equality, only limited social space. No equal dignity.

While it was not logical, the European Court of Human Rights expanded 'privacy' to include non-discrimination in employment in the *Lustig-Prean* case. Clearly they were going beyond the logical limits of a privacy argument. Judge Winter, in the Fiji decision, quoted from the decision in *Toonen*:

**In so far as Article 17 is concerned, it is undisputed that adult consensual activity in private is covered by the concept of "privacy"...**

He went on, linking "privacy" with relationships and the good of society in general – clearly he saw "privacy" as including a much broader range of good things than the word itself suggests:

**The way in which we give expression to our sexuality is the most basic way we establish and nurture relationships. Relationships fundamentally affect our lives, our community, our culture, our place and our time. If, in expressing our sexuality, we act consensually and without harming one another, invasion of that precinct risks relationships, risks the durability of our compact with the State and will be a breach of our privacy.**

Since current arguments focus so completely on 'equality' rights it is easy to forget how innovative the privacy argument was when it was first used in the 1950s.<sup>3</sup>

Malaysia's Anwar Ibrahim was convicted of sodomy in a sensational and highly political case. Only after acquittal on a final appeal did he voice any criticism of the law. He said there was a question about the law intruding "on people's privacy and their own private choices..." A privacy argument allowed him to criticize the law, while acknowledging that homosexuality was not accepted by Malay people. No stronger statement was politically possible in Muslim Malaysia.

## **Equality and the problems of categories and lists**

"Privacy" has its problems and limitations – though judges now use the term to mean a lot of things – as something that encourages relationships and lays the foundations for broader social goals.

The stronger argument, these days, is "equality." Recent decisions tend to use both ideas in their judgments.

But there are problems with "equality."

Homosexuals are different than heterosexuals. Hijras are different than gay men. Transsexuals are different than Tomboys. Pedophiles are in a category of their own.

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<sup>3</sup> The related idea that criminal laws should not be based exclusively on notions of morality was seen as such a new idea that it led to a public debate between Lord Devlin, a British judge, and H. L. A. Hart, a British legal philosopher. In the 1960s this was the best-known intellectual controversy in the English speaking legal world, with dozens of articles written about the rival positions. Arguments about "morality" and the 'conservative' character of various societies still surface in court cases – as in both the decisions in August, 2005 – the cases from Fiji and from Hong Kong.

When does difference justify different treatment? When does it not?

The European Union ran a campaign to promote its “equality” directive under the slogan “For Diversity – Against Discrimination.” They gave out lapel pins which showed two arrows – one going down – to oppose discrimination – the other going up – to support diversity. I always worried about the pin slipping, and showing opposition to diversity.

Another lapel pin, purchased in India, has the slogan “Support diversity: All are equal: All are Different.” How’s that for unconditional praise of everything in sight? The background is the rainbow flag. Do the colors on the flag symbolize diversity? Or do they symbolize a minority identity?

A major international conference planned for the summer of 2006 is named “The Right to be Different,” making no concession to standard ‘equality’ language.

The equality rights provisions in national and international laws almost always include a list of categories. Article 26 of the *International Covenant on Civil and Political Rights*, drafted in 1966, prohibits discrimination on the basis of

**...race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.**

This kind of provision picks out the most obvious examples of discrimination – discrimination on the basis of race and sex – and adds more categories of forbidden discrimination. This particular provision is “open-ended” - because it adds the words “or other status” at the end of the list. The word ‘status’ seems to suggest some fairly fixed category – a category something like the ones in the list.

But even the categories in the list have their problems. Is mixed-race included in race? Is dialect included in language? Is atheism or agnosticism included in religion? Is origin in a colony included in national origin? How are Roma or gypsies protected? How are homosexuals included, or are they actually excluded?

“Sexual orientation” became the phrase used in human rights laws to prohibit discrimination on the basis of homosexuality. Does it cover discrimination on the basis of male effeminacy? Does it cover males who have sex with males, but who do not identify as homosexual or bisexual? Our enemies have argued that “sexual orientation” should not be included in such lists because it is not defined. It could include pedophilia or sadism, they say.

“Gender identity” has become the phrase used to prohibit discrimination against transsexuals. Does it cover transvestites as well? Does it cover effeminate males who do not cross-dress?

An alternative approach to the lists would be to have a completely ‘open-ended’ provision that simply barred discrimination (understood as an unjustified negative action against a person). To avoid debating whether to add “sexual orientation” to a list in the drafting of the Vienna Declaration in 1993, the decision was taken by the chair to drop the list completely. The result was a general condemnation of discrimination. The amendment to the constitution of Indonesia in 2000 is an example of such general wording:

**The state should protect citizens against discriminatory actions on any basis.**

While there are problems with the idea of “equality,” it has been working in our favor pretty well over the last ten to fifteen years. No courts seem to have problems with understanding “sexual orientation” as a category. No courts seem troubled by the argument that it could include pedophilia. Judges know that they can explain why it would not include pedophilia.

The acceptance of “sexual orientation” as a category for “equality” purposes reflects shifts in thinking. Homosexuality is not just about sexual acts, but involves categories of people. Religious or moral ideas don’t justify ignoring the category. The idea that homosexuality is a “chosen lifestyle,” not a serious classification, is not credible.

In the recent judicial decision from Hong Kong we see reliance on current medical opinion that sexual orientation is determined by the age of puberty. The doctors say it is not a choice. The judges believe them.

Medical ideas that homosexuality reflects some kind of pathology are largely gone.

The category of “homosexual” used to be painted black. Now it is painted in some neutral color. The legal system cannot regard it negatively – for law and morality are now separate (and the religious consensus against homosexuality has crashed in the West anyway) – and the doctors who used to say bad things about us have changed their tune. Even transsexuals are now legitimate individuals according to the doctors. If they suffer from “gender dysphoria” they are entitled to sex reassignment surgery to bring their lives back to normal. Then they should be treated equally with other people.

## Diversity

But is it possible that having homosexuals around is a good thing? Malaysia praises its “multicultural” society. Should it be praising its “multi-sexual” society as well. Is there a right to be different?

Recognizing “diversity” in some ways seems the best approach to sexual variation. There is diversity within the categories and between the categories – so we should not be overly fixated by the categories. What is more important is to look at acts of discrimination. When are distinctions based on irrelevant, irrational ideas? When are we simply seeing old prejudices being continued under either old or new names?

Look at discrimination, and look at who it is that is suffering from the discrimination. Are the objects of a particular discrimination Hijras – when they get beaten up and raped by the police? Why worry whether the Hijras have a ‘status’ or form a distinct class or a category with ‘immutable’ characteristics. Do MSM have the right to equal treatment – though they don’t fit into any of the categories in any of the lists? If they are excluded from intervention programs can we not call that discrimination?

One of the judges on the Supreme Court of Canada struggled with this issue. Her analysis was quoted and praised in the Fiji court decision in August:

**In reality, it is no longer the “grounds” that are despositive of the question of whether discrimination exists, but the social context of the distinction that matters. Context is of primary importance and that abstract “grounds of distinction” are simply an indirect method to achieve the goal which could be achieve more simply and truthfully by asking the direct question: “does this distinction discriminate against this group of people?”<sup>4</sup>**

Judge Winter in the Fijian case makes a number of references to “diversity.” It seems that he would like to rule on the basis of “diversity” but is forced, by the current legal framework, to talk about equality. He recognizes that equality rights are to be applied in situations where there is, in fact, difference:

**Equality based on the premise of acceptance focuses on creating symmetry in the lived out experiences of all members of society by eliminating the unequal consequences arising from difference. Equality means equal concern and respect across difference. ...difference should not be the basis for exclusion, marginalization, stigma and punishment.**

He is unable to uphold the “difference” solely on the basis that it is a valid difference that should be allowed to survive, that should be tolerated, perhaps even celebrated. Instead he seeks to describe some discrimination at work. He reasons that homosexual difference makes the provisions discriminatory. The section hits at activity essential to homosexual sexual expression (but not to heterosexual sexual expression). As a result there is an unequal impact on homosexuals and discrimination.

But he is led, a bit later in the judgment, to celebrate diversity:

**What the Constitution requires is that the law acknowledges difference, affirms dignity and allows equal respect to every citizen as they are. The acceptance of difference celebrates diversity. The affirmation of individual dignity offers respect to the whole of society. The promotion of equality can be a source of interactive vitality. The State that embraces difference, dignity and equality does not encourage citizens without a sense of good or evil but rather creates a strong society built on tolerant relationships with a healthy regard for the rule of law.**

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<sup>4</sup> Madam Justice L’heureux-Dube in *Egan v Canada*, 1995.

A country so founded will put sexual expression in private relationships into its proper perspective and allow citizens to define their own good moral sensibilities leaving the law to its necessary duties of keeping sexual expression in check by protecting the vulnerable and penalizing the predator.

## Plus arguments based on health

We are missing a good analysis based on “diversity” – and even more so, we are missing human rights arguments based on health.

We know that a number of countries have formally de-listed homosexuality – taken it off the official lists of diseases or pathological conditions. In Asia this has occurred in China, Indonesia, Japan, Korea, Hong Kong, Taiwan and Thailand.

But we must remember the broad wording of the *International Covenant on Economic, Social and Cultural Rights*. Article 12 provides:

1. The States Parties to the present covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for ...
  - (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
  - (e) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Does this not require governments to mount effective and non-discriminatory intervention programs aimed at MSM? Is this not a basis for requiring governments to provide access to sex reassignment surgery when that is considered medically appropriate? Article 2 (2) says there is to be no discrimination in fulfilling the obligations under the Covenant.

The report to the UN Human Rights Commission in 2004 by the Special Rapporteur on health dealt with sexual and reproductive health issues. He said these rights were central to efforts to achieve gender equality, poverty reduction, to combat HIV/AIDS and to achieve the Millennium Development Goals of the UN.

...discrimination on the grounds of sexual orientation is impermissible under international human rights law. The legal prohibition of same-sex relations in many countries, in conjunction with a widespread lack of support or protection for sexual minorities against violence and discrimination, impedes the enjoyment of sexual and reproductive health by many people with lesbian, gay, bisexual and transgender identities or conduct [referencing reports of special rapporteurs on torture and on extrajudicial executions]. Additionally, the Special Rapporteur recalls that the Human rights Committee, in *Toonen v. Australia*, observed: “Criminalization of homosexual activity ... would appear to run counter to the implementation of effective education programmes in respect of HIV/AIDS prevention.” ...

Sexual rights include the right of all persons to express their sexual orientation, with due regard for the well-being and rights of others, without fear of persecution, denial of liberty or social interference.<sup>5</sup>

The United States criticized the report for what it saw as a permissive stance on abortion and for suggesting that sexual orientation was within an international human rights framework. Pakistan

...rejected the Special Rapporteur’s conclusion that discrimination on the grounds of sexual orientation was impermissible under international human rights law and challenged the Special Rapporteur to quote exactly which article of any international human rights law convention prohibited such discrimination, According to Pakistan, the “easy” way for homosexuals, lesbians and transgender persons to avoid discrimination on the basis of sexual orientation was to “stop” engaging in non-heterosexual activity. In the words of the delegate, those of different sexual orientation should suppress their urges or “consult

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<sup>5</sup> Report of Paul Hunt, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, February 16, 2004, E/CN.4/2004/49, paragraphs 38 and 54.

*a medical doctor” and “get some medication.”*<sup>6</sup>

Egypt and Saudi Arabia agreed. Canada and Switzerland disagreed.

## 5. But the real problems are social and religious attitudes, not the law

Changes in public attitudes have come about slowly in the West. A survey in August, 2005, in California showed 46% support for gay marriage and the same percentage in opposition. Even two years ago, getting such a high support figure in liberal California would have been a dream. In general, public support is much higher in Canada and Europe than in the United States.

Today there is a striking gap in attitudes between the West and other parts of the world. An international survey in 2003 asked “should homosexuality be accepted by society?”<sup>7</sup>

In Western Europe majorities answered ‘yes.’ Agreement topped 80% in Germany and the Czech Republic. France, Great Britain and Italy fell in the 70s. The figure for the United States was 51% (below the Philippines and Japan).

Large majorities in Africa, much of the Middle East and Asia answered ‘no.’ In some African countries – notably Kenya and Senegal – opposition is virtually unanimous.

Percentages varied dramatically in Asia:

- Philippines 64%,
- Japan 54%,
- South Korea 25%,
- Vietnam 13%,
- India 7%,
- Bangladesh 7%,
- Indonesia 5%.
- The study was not permitted to ask the question in China.

What can we say? The change in attitudes in the West has gone hand-in-hand with the spread of the ideas of human rights. First Western societies had to address racism and sexism. Racism and sexism have been dramatically reduced, though some levels of discrimination continue. With progress on those issues, it has been possible to spread the idea of gay and lesbian equality rights. “Human rights” is a way of changing conservative social attitudes.

Human rights is about modernization. It is about social change. The agenda to end ‘traditional’ patterns is clear in the treaties on racism, women and children. Racism, whether traditional or not, whether religiously sanctioned or not, is to end. The Committee on the Elimination of Discrimination Against Women works to eradicate “traditional sex role stereotypes” and “deeply ingrained traditional practices and customary laws” that treat women unfairly.<sup>8</sup> Violence against women and children in the home was typically seen as a private matter, often culturally sanctioned. It has been brought into the open and condemned. Similarly recognizing and respecting sexual and gender diversity involves change. In each of these contexts, opposition is inevitable along the way.

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<sup>6</sup> International Service for Human Rights, Human Rights Monitor, No. 62, 2004, 98.

<sup>7</sup> The Pew Global Attitudes Project, Views of a Changing World, June, 2003, The Pew Research Center for the People and the Press, New York, 103 and 114.

<sup>8</sup> These phrases are in the summary of the work of CEDAW’s January, 2003, session, found in the Human Rights Monitor, No. 61, International Service for Human Rights, 294-295.

## 6. The real problems are faced by effeminate men – the ladyboys, the hijras, the kathoey, the waria – what about them?

There has been little attention paid in the West to human rights issues of discrimination based on effeminacy in men and masculinity in women. Sissiphobia is more likely to be talked about in Asia than in America.

The assumptions in the West are that gendered roles – both for heterosexuals and homosexuals, are in sharp decline. As a result, homosexuals are now seen as essentially “gender normative.” They do not display the older stereotypical patterns of male femininity and female masculinity. The ‘butch’ and the ‘fem’ lesbians are historical images from the 1950s. There is more interest in leather among gay men than cross-dressing.

But in Asia, there is no assumption that ladyboys or toms are a passing phenomenon that will fade away. They are part of the human landscape. For men, the idea may still be strong that the ‘active’ partner in male-male sex is not stigmatized.

The best-known court cases that touch on sex/gender roles are Western cases dealing with post-operative transsexuals.

For years the European Court of Human Rights was obviously uncomfortable with transsexual rights, giving inconsistent decisions. Finally in 2002 the Court got it right. It ordered the United Kingdom to correct the information on Christine Goodwin’s birth certificate and other identity documents to reflect her post-operative gender. The court said she must be allowed to live her life in dignity in accordance with the sexual identity chosen “at great personal cost.” And she had the right to marry in accordance with her new gender. As an MTF she could now marry a man.

What’s the result? Gender conformity. The person in the dress with the post-operative genitals of a woman can marry a man.

No wonder Singapore recognizes the post-operative gender of transsexuals. It brings things back (as much as possible) into (some sort of) heterosexual order. China and Japan do the same thing. Thailand does not – for kathoey are understood to be a third sex. Gender non-conformity is not a conceptual problem in Thailand. Everyone knows that there are more than two genders.

In earlier decisions the European Court of Justice looked at the questions whether firing a transsexual or a homosexual was discrimination on the basis of “sex” (prohibited by the treaty setting up the EU). Yes for transsexuals. No for homosexuals. It seems that homosexuals challenged gender roles more than transsexuals.

Later the UN Human Rights Committee ruled that discrimination against homosexuals was discrimination on the basis of sex. But no talk about “gender non-conformity.” None of the individuals bringing the cases in the West were identified as effeminate males or masculine females.

What if a firing was because of gender non-conformity? The firing of a macho female financial advisor who wears no make-up? Or the firing of a male police sergeant who wears too much?

One United States law review article addresses

**...a rather astonishing gap in sex and sexual orientation equality jurisprudence: The failure to remedy much of the discrimination experienced by women and sexual minorities, specifically that discrimination based on gender nonconformity. This failure is premised on a prevalent juridical assumption that the law should target discrimination based on sex (i.e., whether a person is anatomically male or female), rather than gender (i.e., whether a person has qualities that society considers masculine or feminine). In both law and life, though, conceptions of sex and gender are so firmly cemented together that courts’ frequent refusal to address gender-based inequalities mean that much discrimination against women and sexual minorities goes unremedied.<sup>9</sup>**

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<sup>9</sup> Taylor Flynn, Transforming the Debate: Why we need to include transgender rights in the struggles for sex and sexual orientation equality, (2001) 1001 Columbia Law Review, 392-420.

There are now some US cases on gender non-conformity.

### **Price Waterhouse v. Hopkins (US Supreme Court, 1989)**

Back in 1982, PriceWaterhouseCooper, the big international accounting firm, was no equal opportunity employer. Of 662 partners in the firm, 7 were women. Of the 88 individuals considered for partnership in 1982, there was one woman – Ann Hopkins.

The trial judge found that Ann Hopkins had an abrasive manner of dealing with people, particularly other managers and subordinates. Partners said she was “macho.” She needed to take “a course at charm school.” When the decision was taken in 1982 to deny her promotion, one of the partners advised her to walk more femininely, talk more femininely, dress more femininely, wear make-up, have her hair styled and wear jewelry.

The 1964 US *Civil Rights Act* bars discrimination in employment on the basis of “race, color, religion, sex, or national origin.” The US still does not bar discrimination on the basis of sexual orientation or gender identity.

Ann Hopkins sued alleging discrimination on the basis of sex. She won on the basis of “sexual stereotyping.” The law had been enacted to end sexual stereotypes in employment. Ann Hopkins had been put in a bind - out of a job if she behaved aggressively and out of a job if she did not. They wanted her to be tough and aggressive like a man and they wanted her not to be tough and aggressive, for she was a woman.

The Supreme Court said:

**...in forbidding employers to discriminate against individuals because of their sex, Congress intended to strike at the entire spectrum of disparate treatment of men and women resulting from sex stereotypes.**

The end message: you can't fire a competent tom for being a tom. “Sex” in the *Civil Rights Act* had been extended to cover gender performance, gender non-conformity, sexual stereotypes.

### **Schwenk v Hartford, 204 F.3d, 1201 (Federal Court, 9th Circuit).**

The relevant legislation here was the *Gender Motivated Violence Act*, but the court examined the cases under Title VII on discrimination on the basis of sex. A prison guard had sexually assaulted a male-to-female transsexual prisoner. The guard argued that the *Gender Motivated Violence Act* did not apply because the attack was motivated by the prisoner's transsexuality, not by gender. The court, relying on the United States Supreme Court decision in *Price Waterhouse v. Hopkins*, ruled that Title VII barred discrimination “because one fails to act in the way expected of a man or woman.” The guard assaulted the prisoner because the prisoner was a man who failed to act like a man.

### **Rosa v Park West Bank, 214 F.3d 213 (Federal Court of Appeals, 1st Circuit), 2000.**

A man dressed as a woman was refused a loan application form at a bank unless he “went home and changed” into male clothing. The man claimed this was discrimination on the basis of sex, contrary to the *Equal Credit Opportunity Act*.

The district court ruled that the discrimination was based on the way in which he was dressed, and not on “sex.” The Court of Appeals said that the discrimination could be on the basis of gender stereotypes and sent the case back for a new trial. The court said that the *Equal Credit Opportunity Act* would not apply if the refusal occurred because the bank had assumed he was gay. In other words, they did not consider discrimination on the basis of sexual orientation to be discrimination on the basis of sex.

### **Hernandez-Montiel v, Immigration and Naturalization Service, 225 F.3d 1084 (Federal Court, 9th Circuit), 2000.**

An effeminate young gay man fled from his home in Mexico after being raped by police, expelled from school and institutionalized by his family. He claimed refugee status in the United States. Refugee status

may be granted to a member of a “particular social group.” Homosexuals have been held to constitute a “particular social group” for the purposes of refugee law. The immigration judge ruled that the young man had been abused not because of his sexual orientation but because he dressed like a male prostitute. On appeal, the Federal Court concluded that gay men with female sexual identities constitute “a separate social entity within Latin American society,” that its members are “heavily persecuted,” and that the young man, a member of this group, had been subjected to such persecution.

**...gay men with female sexual identities are singled out for persecution because they are perceived to assume the stereotypical ‘female,’ i.e., passive, role in gay relationships.**

The Court determined that the young man “manifests his sexual orientation by adopting gendered traits.”

#### **Smith v. Salem (US Court of Appeals, Sixth Circuit, 2004)**

Jimmie Smith had worked for the city fire department for seven years. He was diagnosed with “Gender Identity Disorder.” He began “expressing a feminine appearance on a full-time basis.”

After some co-workers questioned him about his behavior, he told a supervisor that he was a transsexual and expected to undergo sex reassignment surgery. City officials met and planned how to get rid of him. They demanded that he undergo three separate psychological examinations with doctors of their choosing. The matter wound up in court.

The court reasoned that Smith had picked up the “term-of-art” created by the Hopkins case – “sex-stereotyping” – to do an end run around the fact that the discrimination was on the basis that he was a transsexual.

The Civil Rights Act does not prohibit discrimination against transsexuals. Judges in earlier cases said that “Congress had a narrow view of sex in mind” – “the traditional concept of sex.” One case said that the Civil Rights Act only applied to “sex” and not to “gender”. In contrast, the Supreme Court in the Hopkins case kept talking about “gender” – almost more than “sex.”

The Smith decision clearly held that transsexuals could argue “sex-stereotyping.” It, and the later Barnes case, do not adopt the European position that discrimination against transsexuals is a form of discrimination on the basis of sex.

#### **Barnes v. Cincinnati (US Court of Appeals, Sixth Circuit, 2005)**

Phillip Barnes was a police officer with the City of Cincinnati for 17 years. In 1998 he very successfully passed the examination required to become a sergeant. His promotion was followed by a probationary period.

Barnes was a pre-operative transsexual, who often lived as a woman off duty. The judge noted that Barnes had a reputation throughout the police department as a homosexual, bisexual or cross-dresser. No other male sergeant was known to be gay or have a feminine appearance. Some said that Barnes lacked the necessary “command presence” that would project confidence and gain the respect of subordinates. Barnes had a French manicure, arched eyebrows and sometimes came to work wearing makeup or lipstick. He was told to stop wearing makeup and act more masculine.

The promotion to sergeant was revoked. No other promotion was revoked between 1993 and 2000.

He sued under the Civil Rights Act for discrimination on the basis of sex. The trial court found that Barnes had been demoted because of gender non-conformity.

The fact that Barnes was a pre-operative transsexual provided a reason for the gender non-conformity, but did not move the discrimination out of the category of gender non-conformity and into a separate category for transsexuals. As with Ann Hopkins, discrimination on the basis of gender non-conformity was within the prohibition of discrimination on the basis of sex.

## The paradoxical and appropriate result

US legislation does not bar discrimination on the basis of sexual orientation or gender identity – unlike the general pattern in other Western countries. The US is clearly behind the Western pack on this.

But paradoxically, the court decisions in the cases discussed focus on gender non-conformity. They focus on the kind of individuals most likely to face discrimination – most likely to not get hired or to get fired.

## 7. What about those with no identity?

Does talking about “human rights” offer anything to the clients and workers concerned with promoting safe-sex among males who have sex with males? A clear gap in most intervention and education programs is the inability to reach individuals who treat such sex as casual, as far from any personal ‘identity.’ If such men say they are not ‘gay,’ not ‘bisexual,’ how can they claim any rights as members of a sexual minority?

The idea that the ‘active’ male in a same-sex act bears no stigma (and no identity) has a long history in at least parts of Asia.

As Matthew Sommer’s study of Qing court cases shows, although the penetrated male bore a strong stigma in Qing society, and although only males in the mean professions (such as servants and actors) were willing openly to assume the passive role in male-male sexual relations, the penetrating male was apparently not the object of society’s contempt. A male’s penetration of other males was consistent with normative masculinity in late-imperial China. That is to say, there was no concept akin to *same-sex desire* that universally stigmatized everyone involved in male-male behavior. The immunity from shame was enjoyed, in particular, by elite and/or wealthy men who had a special taste for beautiful boys, a fact well illustrated by the relationships between literati libertines and boy actors of the seventeenth century analyzed by Sophie Volpp. Even if elite men with a taste for boys were duty bound to marry women, they were not necessarily obliged to care about their wives and could very well neglect them once they had produced children. In his classic essay on Chinese homosexuality Pan Guangdan names example after example of emperor and male literatus obsessed with male beauty and passionate in his praise of the male erotic object without ever bothering to mention whether any was inconvenienced by marriage to a woman. The unspoken assumption shared by Pan and his assumed readers was that, while marriage was the norm, it need not hinder the pursuit and enjoyment of passive male sex objects. Gender inequality, in conjunction with class hierarchy, ensured elite men’s sexual freedom in every regard, allowing them to penetrate lower-class men as well as women, in or outside marriage.<sup>10</sup>

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<sup>10</sup> Tze-Ian D, Sang, *The Emerging Lesbian*, Chicago, 2003, 55-6



## Part two: What has actually been decided about GLBTQ rights?

### International law decisions

#### Dudgeon v United Kingdom, European court of Human Rights, 1981.

In this pioneering decision, the European Court of Human Rights ruled that the criminal law in Northern Ireland that prohibited gay male sexual activity violated the *European Convention on Human Rights*. The law had already been repealed in England, Scotland and Wales. The Court ruled that the law interfered with Jeffrey Dudgeon's rights of personal privacy. In later cases the Court condemned similar laws in Ireland and Cypress.

The decision in *Dudgeon* was followed by the UN Human Rights Committee in the *Toonen* decision, which expanded the reasoning by ruling both on the basis of privacy and equality. The *Toonen* decision is important in Asia because it interprets an international treaty that many Asian governments have signed.

#### Toonen v Australia, UN Human Rights Committee, 1994

Nicholas Toonen, a gay rights activist, challenged the criminal law against same-sex acts that was still in force in the state of Tasmania in Australia. All other states in Australia had repealed their laws. Opposition to law reform was led by intemperate reactionaries. Elected representatives in Tasmania were quoted as saying that gay men were "no better than Saddam Hussein" and that people were "15 times more likely to be murdered by a homosexual than a heterosexual..."

Toonen argued privacy rights and equality rights. Article 17 of the *International Covenant on Civil and Political Rights* bars "arbitrary or unlawful interference" with privacy. Article 26 prohibits discrimination

...on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

There were two equality arguments. The discrimination was on the basis of "sexual orientation" which, it was argued, would come within the phrase "other status". As well the law discriminated on the basis of "sex" by applying only to male homosexual activity.

Tasmania argued that the law was partly motivated by a concern to check the spread of HIV/AIDS. But Australia, the World Health Organization and UN bodies all agreed that criminal prohibitions aimed at gay men made it more difficult to organize effective programs to prevent HIV infection. Tasmania also argued a moral basis for the prohibition. Australia conceded that "domestic social mores may be relevant to the reasonableness of an interference with privacy", while asserting a general Australian view that discrimination on the basis of sexual orientation was wrong.

The Committee followed the rulings of the European Court of Human Rights in *Dudgeon*, *Norris* and *Modinos* in finding that the Tasmanian law violated Toonen's right to privacy. They easily rejected Tasmania's arguments on HIV/AIDS and turned to the issue of a moral justification for the law.

The Committee cannot accept that for the purposes of article 17 of the Covenant, moral issues are exclusively a matter of domestic concern, as this would open the door to withdrawing from the Committee's scrutiny a potentially large number of statutes interfering with privacy. It further notes that with the exception of Tasmania, all laws criminalizing homosexuality have been repealed throughout Australia and that, even in Tasmania, it is apparent that there is no consensus as to whether Sections 122 and 123 should not also be repealed. Considering further that these provisions are not currently enforced, which implies that they are not deemed essential to the protection of morals in Tasmania, the Committee concludes that the provisions do not meet the "reasonableness" test in the circumstances of the case, and that they arbitrarily interfere with Mr. Toonen's right under article 17, paragraph 1.

The Committee dealt briefly with the issue of equality rights:

The State party has sought the Committee's guidance as to whether sexual orientation may be considered an "other status" for the purposes of article 26. The same issue could arise under article 2, paragraph 1, of the Covenant. The Committee confines itself to noting, however, that in its view the reference to "sex" in articles 2, paragraph 1, and 26 is to be taken as including sexual orientation.

The Committee was not saying that the exclusive focus on male activity constituted discrimination on the basis of "sex." Nor did it place "sexual orientation" within the phrase "other status." The Committee held that "sex" included "sexual orientation." Discrimination against homosexuals can only operate with reference to the sex of individuals and the sex of the people they desire. The idea that discrimination on the basis of sexual orientation is a form of discrimination on the basis of sex had not been widely accepted before the *Toonen* decision.

Since the *Toonen* decision, the Human Rights Committee has included a concern with anti-homosexual criminal laws in its review of the reports required periodically of all State parties on compliance with the *Covenant*. India, for example, is now open to Committee criticism for maintaining a colonial-era criminal prohibition. The Committee has criticized the United States over anti-homosexual criminal laws (now gone in the wake of the *Lawrence* decision of the US Supreme Court). Other treaty bodies now deal with sexual orientation issues.

The U.N. Human Rights Committee has repeatedly concluded that laws criminalizing same-sex sodomy constitute discrimination based on sexual orientation. The U.N. Committee on Torture and the U.N. Working Group on Arbitrary Detention condemned Egypt's gender-neutral "debauchery" law as constituting discrimination on the basis of sexual orientation. Similarly the U.N. Committee on the Rights of the Child has analyzed disparities in age-of-consent laws between same and different-sex partners as sexual orientation discrimination.<sup>11</sup>

The concerns go beyond criminal laws. In concluding observations on Poland in November, 2004, the Human Rights Committee stated:

The State Party should provide appropriate training to law enforcement and judicial officials in order to sensitise them to the rights of sexual minorities. Discrimination on the ground of sexual orientation should be specifically prohibited in Polish law.

In 2000 the Committee on Economic, Social and Cultural Rights, the UN treaty body monitoring compliance with the *International Covenant on Economic, Social and Cultural Rights*, issued Comment 14 on the right to health. Such comments are issued periodically by various treaty bodies to explain their interpretation of particular provisions in their treaty. Following the logic of the *Toonen* case, Comment 14 interpreted the non-discrimination wording in article 2 (2) as prohibiting discrimination on the basis of "sexual orientation."<sup>12</sup>

## Joslin v New Zealand, UN Human Rights Committee, 2002

In July, 2002, the Human Rights Committee considered the issue of same-sex marriage in the case of *Joslin v. New Zealand*. New Zealand courts had rejected the claim of two lesbian couples, both raising children, for access to marriage. The Human Rights Committee rested its decision on the wording of section 23(2):

The right of men and women of marriageable age to marry and to found a family shall be recognized.

This is the only provision in the *Covenant* using gendered terms, referring to "men and women". The Committee held that this wording had the effect of limiting marriage to mixed sex couples.

A separate concurring opinion by two Committee members added that in some circumstances there might be a valid claim of denial of equality under section 26 for same sex couples, repeating the ruling from *Toonen*

<sup>11</sup> Amici Curiae brief of Mary Robinson, Amnesty International U.S.A., Human Rights Watch (and others) in *Lawrence v Texas*, United States Supreme Court, 2003. 22.

<sup>12</sup> The material on the International Covenant on Economic, Social and Cultural Rights, at [www.unhchr.ch](http://www.unhchr.ch), includes "sexual orientation" both in the "Introduction" (dealing with the interpretation of article 2, paragraph 2), and in General Comment 14 on health (paragraph 18).

that discrimination on the basis of sexual orientation was included in the prohibition of discrimination on the basis of “sex.”

Contrary to what was asserted by the State party (para. 4.12), it is the established view of the Committee that the prohibition against discrimination on grounds of “sex” in article 26 comprises also discrimination based on sexual orientation. And when the Committee has held that certain differences in the treatment of married couples and unmarried heterosexual couples were based on reasonable and objective criteria and hence not discriminatory, the rationale of this approach was in the ability of the couples in question to choose whether to marry or not to marry, with all the entailing consequences. No such possibility of choice exists for same-sex couples in countries where the law does not allow for same-sex marriage or other type of recognized same-sex partnership with consequences similar to or identical with those of marriage. Therefore, a denial of certain rights or benefits to same-sex couples that are available to married couples may amount to discrimination under article 26, unless otherwise justified on reasonable and objective criteria.

The couples submitting the complaint had not alleged specific discrimination, seeking the symbolic validation that would be given to their relationships by marriage.

### **Young v Australia, UN Human Rights Committee, 2003**

In August, 2003, the Human Rights Committee again considered equality issues for same-sex couples in *Young v Australia*. Young’s long-time same-sex partner, a war veteran, died in 1999. Young applied for the pension available to married or unmarried partners of war veterans. Since the legislation expressly applied only to heterosexual couples, the pension was refused.

Australia, the Committee ruled, had shown no “reasonable or objective” ground for such discrimination. The application for the pension would have to be reconsidered by Australian authorities and a decision made which did not involve discrimination on the basis of sexual orientation.

The result of the decisions in *Joslin* and *Young* is that, while same-sex couples do not have a right to marry under the *International Covenant on Civil and Political Rights*, they are entitled to the same rights and obligations as married heterosexual couples.

### **Goodwin v United Kingdom, European Court of Human Rights, July, 2002.**

This is the leading case on the status of post-operative transsexuals. The European Court of Human Rights rejected some of its earlier decisions and ordered the United Kingdom to change the information on Christine Goodwin’s birth certificate.

**In the twenty first century the right of transsexuals to personal development and to physical and moral security in the full sense enjoyed by others in society cannot be regarded as a matter of controversy requiring the lapse of time to cast clearer light on the issues. In short, the unsatisfactory situation in which post-operative transsexuals live in an intermediate zone as not quite one gender or the other is no longer sustainable. ...society may reasonably be expected to tolerate a certain inconvenience to enable individuals to live in dignity and worth in accordance with the sexual identity chosen by them at great personal cost.**

The breach was not simply of the right of privacy, but also of the right to marry. The Court ruled that Christine Goodwin, a male to female transsexual, had the right to marry a man.

## **Court cases in Asia-Pacific**

### **Occur v Tokyo, 1994.**

In 1988, the Japanese gay group Occur was refused permission to use a residential conference center owned by the Tokyo Municipal government. The organization sued the government alleging discrimination. Apparently, Occur did not expect to win the case. Japanese courts are generally considered to be very conservative. Occur hoped for favorable publicity. It staged a long trial with many expert witnesses.

They won the case in 1994. The Tokyo government appealed, but lost the appeal in 1997.

This was the pioneering use in Asia of a strategy of litigation to advance LGBT rights.

### **Exzone v Korea, August, 2002.**

The South Korean *Youth Protection Law* of 1997 was designed to check the distribution of harmful media materials and drugs to young people under nineteen. Under the law, a list of “harmful” matters included

**...things promoting perverted sexual acts such as bestiality, group sex, incest, homosexuality, sado-masochism...**

The Commission on Youth Protection developed a list of 120,000 websites that were to be banned, including those of Advocate magazine, the International Lesbian and Gay Association, gaytoronto and gayvan-couver.

A webmaster, using the name Jung Jun (meaning King’s wife) had established South Korea’s oldest gay website, www.exzone.com. The government blocked access to the site for schools, libraries, state offices and cybercafes. Koreans could access the site from home computers. Other local web sites were also affected. Over twenty Korean GLBT organizations joined together to protest the censorship and formed the Lesbian and Gay Alliance Against Discrimination. A public protest was held outside Myung Dong Catholic Cathedral, a famous site for strikers in Seoul. For sixty days individuals carried out personal one-day hunger strikes. Five persons in the hunger strike were gay – 55 persons were non-gay activists, members of Free On Line.

Amnesty International condemned the censorship:

**Amnesty International considers the blanket censorship of gay and lesbian websites as a violation of the fundamental human rights of individuals to be protected against all forms of discrimination, as guaranteed by the South Korean Constitution. ... The censorship also violates freedom of expression guaranteed under Article 19 of the ICCPR [the International Covenant on Civil and Political Rights] to which the South Korean government is a signatory. Moreover it violates freedom from discrimination guaranteed under Article 2 of the ICCPR.**

On Wednesday, January 9th, 2002, the Lesbian and Gay Alliance Against Discrimination, filed a lawsuit against the government censorship of exzone.com, arguing that it was a violation of constitutional rights. A press conference announced the lawsuit, and the story was spread around the world by Associated Press. “The government has no right to determine people’s sexual orientation,” said Lim Tae Hoon. The Korea Times covered the press conference:

**“The law has a nice-sounding name, but its true purpose is to curb people’s freedom of expression that is guaranteed by the Constitution,” [Lim Tae Hoon] said. “An international law has already defined sexual orientation as a status protected against discrimination,” the groups said in a statement. Even if they fail in the legal fight at home, Lim said, they would appeal to international organizations, including the United Nations Human Rights Committee.**

A judge upheld the censorship of exzone in August, 2002. An appeal was filed, but never heard.

The National Human Rights Commission of Korea looked at the issue and concluded that the censorship was a violation of human rights. This conclusion was not binding on the government, but the government accepted the Commission’s conclusions. The censorship ended.

### **William Roy Leung v. Hong Kong, August, 24, 2005, High Court, Judge Michael Hartmann.**

In 1991 the Colony of Hong Kong enacted a Bill of Rights that was designed to protect rights in Hong Kong after reversion to China. That same year Hong Kong reformed its criminal law, making consensual homosexual acts legal for males 21 years and older.

Because the old British-style criminal law had only applied to males, the reform also only applied to men. The result of the reform was a new system of discrimination in relation to the two separate offences of “gross indecency” and “buggery”:

- (i) The age of consent for lesbians and heterosexuals for what the judge called acts of “sexual intimacy” (and the law called acts of “gross indecency”) was 16, while the age of consent for male homosexuals was 21. [Section 118H]
- (ii) Male homosexual acts of sexual intimacy (“gross indecency”) were legal if both parties were 21, but only if no more than two individuals were involved. This restriction to two parties did not apply to heterosexuals or lesbians. [Section 118J(2)(a)]
- (iii) Heterosexuals were allowed to have anal or vaginal intercourse from age 16, while anal intercourse or “buggery” (considered to be a form of intercourse that should be treated as an equivalent to vaginal intercourse) was prohibited for male homosexuals before age 21. [118C]
- (iv) “Buggery” (anal intercourse) between males was legal if both parties were 21, but only if no more than two people were involved. The restriction to two parties did not apply to heterosexuals (whether practicing anal intercourse or vaginal intercourse). [118F(2)(a)]<sup>13</sup>

William Roy Leung, a 20 year old gay man, challenged the Hong Kong law, arguing rights of privacy and equality. He relied on the Hong Kong *Bill of Rights* and the *Basic Law* (the constitution that governs the Hong Kong Special Administration Region since its reversion to China).

He won.

### **The rationale For 21 And changed medical views**

Judge Hartmann described the reasons given by the Government in 1991 for restricting decriminalization to 21 years:

The Government proposed the amendments on the basis that men over 16 but under 21 still required the protection of the law. Three reasons were given:

- (i) that men under 21 often have only a limited and perhaps distorted knowledge of homosexual activity and its ramifications;
- (ii) that they may be curious about, and inclined to experiment with new activities and could be led into homosexual activities this way, and
- (iii) that they are often dependent, emotionally and financially, on others and are thereby more likely to be tempted by material and other incentives to consent to homosexual acts.

In addition, although it was more indirectly stated, the executive was of the view that men under 21 – and women too – ‘may not be aware of the greater risk of AIDS from buggery than other forms of sexual intercourse.’

...it is apparent that the 1991 amendments challenged by the applicant were brought into law on the assumption that for a large number of young men homosexuality was a lifestyle choice, a chosen deviance – similar to drug addiction – which could be avoided if the necessary legal deterrents were in place. ... Three years later, however, in 1994, the British Medical Association submitted a report to the effect that in the opinion of most researchers sexual orientation was usually established before the age of puberty in both boys and girls. In its judgment in *Sutherland v. UK* [1997] EHRLR 117, the European Commis-

<sup>13</sup> This was the only section that the government did not agree was discriminatory. Because it was a criminal offence for a man to commit buggery with a woman under the age of 21, the government argued that the prohibition on gay men for buggery under 21 was not discriminatory and did not constitute an arbitrary interference in the private life of gay men. By holding that buggery and vaginal intercourse must be seen as equivalent kinds of acts, Judge Hartmann concluded that the provision was discriminatory against gay men. Gay men were denied the right to the only kind of sexual intercourse physically available to two men, while heterosexuals could still practice sexual intercourse (vaginal intercourse, one of the two kinds of sexual intercourse physically available to them). The fact that the government conceded that three of the four provisions was discriminatory is interesting, for it reflects a modern acceptance of homosexual equality claims. The argument against Leung was, as a result, largely on procedural grounds (including an argument that the court should defer to the legislature on how best to protect young persons). We see an equivalent attempt to not argue substantive grounds in the Young case before the UN Human Rights Committee.

sion of Human Rights made reference to that report, recording that the BNA now recommended that the age of consent for both homosexuals and heterosexuals should be 16. The European Commission cited from the report's conclusion which were as follows:

“Of prime concern to the [BMA] ... and to the medical profession as a whole, are the concerns that the present law may inhibit efforts to improve the sexual health of young homosexual and bisexual men. The average age of first homosexual encounter has been found to be 15.7, and it is vital that these young homosexual men receive effective health education and health care. “Previously the BMA proposed that the age of consent for homosexual men should be set at 18 to reflect their slower rate of biological development. However, most researchers now believe that sexual orientation is usually established before the age of puberty in both boys and girls.”

The idea that the law might be able to protect young people from being led into a life of homosexuality had been influential in 1991 – but was shown to be unscientific by 1994. William Roy Leung, who brought the case, testified that he was conscious of his sexual orientation since puberty.

Concerns with HIV/AIDS feature in this decision, as they did in the *Toonen* case. Again the view that the law might protect young people – here from the risk of infection – has been turned on its head. The discriminatory prohibition increases risk. It reduces the possibilities of getting education on prevention to young people.

The rationale for choosing 21 as the age of consent in 1991 was no longer justifiable – on the basis of changed medical views on the causes of a homosexual orientation and in light of the best strategies for preventing HIV infection.

### **The human rights framework**

The *Basic Law* states:

Article 25. All Hong Kong residents shall be equal before the law.

In addition, Article 39 of the *Basic Law* gave recognition to various international human rights treaties:

The provisions of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region. The rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless as prescribed by law. Such restrictions shall not contravene the provisions of the preceding paragraph of this Article.

Article 39 was included in the *Basic Law* to deal with a highly unusual situation. The United Kingdom, the colonial power, had signed international treaties and made them apply in Hong Kong while it was still a colony. What would be the status of those treaties after reversion to China? China took the position that the ‘unequal treaties’ that had ceded and leased Hong Kong and the New Territories to the United Kingdom were invalid – with the result that the colonial government had never been a legitimate government. But China wanted Hong Kong to continue to be stable and prosperous, and agreed that the existing legal system should continue after reversion.

Opposition to reversion, locally and internationally, focused on human rights concerns. In an attempt to reassure people on the issue of human rights, China agreed that, along with other international instruments, the *International Covenant on Civil and Political Rights* would continue to apply in Hong Kong – in spite of the fact that it did not apply (at that time) in any other part of the People's Republic of China. This is provided for in Article 39.

By Article 39 the *Covenant* needed to be “implemented” by the Hong Kong government. Under standard British rules on treaties the treaty provisions would not form part of domestic law without legislative implementation.

Judge Hartmann ruled that the *International Covenant* had been implemented in Hong Kong by the 1991 legislative *Bill of Rights*, which was modeled on the *International Covenant*. The privacy and equality provisions, Articles 14 and 22 of the *Bill of Rights*, are identical to Articles 17 and 26 of the *International Covenant*.

The result is that the *Bill of Rights*, enacted as legislation, not as a constitutional document, has attained constitutional status by Article 39 of the *Basic Law*. Since reversion, conflict with the *Bill of Rights* will result in any conflicting legislation being invalid (a result that may not have been the case before reversion).

All this meant, of course, that the *Toonen* decision of the UN Human Rights Committee was directly applicable. It interpreted the same words found in the *International Covenant on Civil and Political Rights* and in the Hong Kong *Bill of Rights*.

### **A conservative society?**

The government argued that it was the legislature that should be able to decide on questions of how to protect young people and, in this context, on questions of morality. The legislature, it was argued, could legitimately “reflect the conservative attitude of the Hong Kong community in matters of sexual mores.” No evidence of the “conservative attitude of the Hong Kong community” was submitted, and Judge Hartmann noted that social views often changed rapidly.

The Government cited the statement of the Supreme Court of Zimbabwe, in a case upholding an anti-gay criminal law, that Zimbabwe was “broadly speaking, a conservative society in matters of sexual behaviour.”

Judge Hartmann ruled that the *Basic Law* reflected the fact that Hong Kong was now

...an open and essentially democratic society, one based on equality of all persons before the law and on the dignity of the individual, by which I mean all persons – in their sameness and difference – being worthy of respect.<sup>14</sup>

### **The conclusion**

At the end of a long judgment, often complicated because of the peculiarities of the Hong Kong legislation, Judge Hartmann ruled that the set of criminal provisions he was considering all discriminated on the basis of sexual orientation and were

...demeaning of gay men who are, through the legislation, stereotyped as deviant. The sections constitute, in my view, a grave and arbitrary interference with the right of gay men to self-autonomy in the most intimate aspects of their private lives.

He added conclusions related to AIDS concerns:

In so far as the risk of AIDS or similar diseases may rationally require some difference of treatment between anal intercourse and intercourse *per vagina*, I fail to see how it can be said that the four sections which are challenged provide a rational response or a proportionate one. In respect of the issue of health, I can do no better than cite from the judgment of Abella JA in *R. v. CM*:

“The health risks from unprotected anal intercourse are real and ought to be aggressively addressed. But, in my view, the measures chosen in s.159 to protect young people from risk are arbitrary and unfair, compared to the measures used to protect against the health risks for individuals who prefer other forms of sexual conduct. There is no evidence that threatening to send an adolescent to jail will protect him (or her) from the risks of anal intercourse. I can see no rational connection between protecting someone from the potential harm of exercising sexual preferences and imprisoning that individual for exercising them. There is no proportionality between the articulated health objectives and the Draconian criminal means chosen to achieve them.”

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<sup>14</sup> Paragraph 108.

After the decision, the local groups Civil Rights for Sexual Diversities and the Sections 118 Concern Group declared the ruling “a historical moment for the Hong Kong gay community.” They wanted the decision recognized as setting a precedent for upholding ‘sexual orientation’ as one of the protected grounds against discrimination in the *Bill of Rights* and the *Basic Law*.

### **Thomas Mccosker, Dhirendra Nadan v. State, High Court of Fiji, appellate jurisdiction, August 26, 2005.**

An Australian tourist and a Fijian were both charged with carnal knowledge against the order of nature and gross indecency, contrary to two sections of the Fijian Penal Code. The sections are standard examples of British colonial era morals laws.

The Fijian constitution is one of only three in the world to expressly prohibit discrimination on the basis of sexual orientation.

- 38 (1) Every person has the right to equality before the law,
- (2) A person must not be unfairly discriminated against, directly or indirectly, on the ground of his or her
  - (a) actual or supposed personal characteristics, including race, ethnic origin, colour, place of origin, gender, sexual orientation, birth, primary language, economic status, age or disability ...

The inclusion of this provision in the 1997 constitution proved to be very controversial in Fiji, with many politicians saying they were unaware of its inclusion until after the document had been enacted. Some urged an amendment to remove the reference to “sexual orientation...” Probably because the provision had been so controversial, Judge Gerard Winter did not rely on the reference to “sexual orientation” in any way.

He never even quoted the section. You can read the judgment and not know that the constitution prohibited discrimination on the basis of sexual orientation. Instead he grounded his decision on (a) privacy rights and (b) discrimination (for the gross indecency section only applied to men).

The arguments for upholding the criminal law provisions were as follows: (a) the carnal knowledge section prohibited certain acts, without discrimination on the basis of gender or sexual orientation. Anal intercourse and oral sex, the acts that led to the charges, can be committed by heterosexuals or homosexuals and by men or women. (b) Fiji is a conservative and religious country, as shown in the Christian preamble to the constitution. Homosexuality is abhorrent and should be able to be criminalized. This was a “morals based” argument, and an argument that internationally recognized human rights should be given a “particularly Fijian interpretation.”

#### **The carnal knowledge section and the right of privacy**

Judge Winter accepted that the carnal knowledge section did not, on its face, discriminate on the basis of sexual orientation or sex. But he concluded that the section was selectively enforced primarily against homosexuals. While drawing that conclusion, he resolved the issue of the carnal knowledge section on the basis of rights of privacy, specifically set out in Article 17 of the Fijian constitution.

#### **The gross indecency section and equality rights**

In contrast the gross indecency offence, by its clear wording, only applied to two males. The Judge did not rule that it was invalid because it did not apply to women. He ruled that “it is overtly discriminatory of homosexuals as it criminalizes their sexual expression.” While it did not cover all homosexual acts, leaving women out of its ambit, only homosexual acts would be covered – acts between two males. Later he says that the gross indecency section discriminates both on grounds of gender and sexual orientation.

#### **Equality rights, difference, diversity**

Equality rights, Judge Winter recognized, are to be applied in situations where there is, in fact, difference.

Equality based on the premise of acceptance focuses on creating symmetry in the lived out experiences of all members of society by eliminating the unequal consequences arising from difference. Equality means equal concern and respect across difference. ...difference should not be the basis for exclusion, marginalization, stigma and punishment.

But he is unable to uphold the “difference” solely on the basis that it is a valid difference that should be allowed to survive, that should be tolerated. Instead he seeks to describe some discrimination at work. He reasons that homosexual difference makes the carnal knowledge section a discriminatory, anti-homosexual, provision. The section hits at activity essential to homosexual sexual expression (but not to heterosexual sexual expression). As a result there is an unequal impact on homosexuals and discrimination. He adds the conclusion that there has been unequal application of the section against homosexuals in practice (which is technically irrelevant to the point he is making).

But he is led, a bit later in the judgment, to celebrate diversity:

What the Constitution requires is that the law acknowledges difference, affirms dignity and allows equal respect to every citizen as they are. The acceptance of difference celebrates diversity. The affirmation of individual dignity offers respect to the whole of society. The promotion of equality can be a source of interactive vitality. The State that embraces difference, dignity and equality does not encourage citizens without a sense of good or evil but rather creates a strong society built on tolerant relationships with a healthy regard for the rule of law

A country so founded will put sexual expression in private relationships into its proper perspective and allow citizens to define their own good moral sensibilities leaving the law to its necessary duties of keeping sexual expression in check by protecting the vulnerable and penalizing the predator.

### **The argument that Fiji is a conservative and religious society**

The argument that Fiji is conservative and religious, a fact recognized in the Constitution, had to be treated respectfully in the judgment. The same kind of argument had prevailed in the decision upholding criminal laws in Zimbabwe, where the highest court stated that Zimbabwe was more conservative than South Africa (where the new constitution expressly barred discrimination on the basis of sexual orientation). While treating the argument with respect, Judge Winter ruled that Fiji was a secular state with a “rich multi-cultural heritage...”

All parties to this appeal recognize there is a strong body of genuine and sincere conviction shared by a large number of responsible members of the Fijian community that any change in the law to decriminalize homosexual conduct would seriously damage the moral fabric of society. The existence of such strongly held views among such an important sector of society is certainly relevant for the purposes of interpretation of the constitution.

However, while members of the public who regard homosexuality as amoral may be shocked, offended or disturbed by private homosexual acts, this cannot on its own validate unconstitutional law. The present case concerns the most intimate aspect of private life. Accordingly, there must exist particularly serious reasons before the State or community can interfere with an individual’s right to privacy.

Later he drew a conclusion:

I find this right to privacy so important in an open and democratic society that the morals argument cannot be allowed to rump the Constitutional invalidity.

### **The role of international law**

Article 43(2) of the Fijian Constitution requires judges to have regard to public international law as an interpretive aid for the rights set out in the Constitution. Fiji has signed the International Covenant on Civil and Political Rights.

Fiji has ratified the International Convention on Civil and Political Rights. The appellants are entitled to expect that I will interpret these rights in accordance with its provisions.

What that meant was that the *Toonen* decision, interpreting the treaty, was instructive on how the issues should be resolved. It struck down essentially the same laws as the ones in Fiji, on the basis of privacy and equality rights.

### **The case of Joycelyn Gualberto**

In July, 2005, the Philippine's Supreme Court granted custody of a 4 year old boy to his mother, Joycelyn Gualberta. The father, Crisanto Gualberto had claimed that Joycelyn was lesbian. The Court ruled that the husband would have to "clearly establish that her moral lapses have had an adverse effect on the welfare of the child or have distracted the offending spouse from exercising proper parental care..."

## Part three: What is actually happening in Asia?

### At the regional level

Europe is the most highly organized region, with the Council of Europe, the European Union and the European Convention on Human Rights. No other region comes close to that level of regional organization. Africa has the African Union (with a regional human rights treaty). The Americas have the Organization of American States (also with a regional human rights treaty). Asia seems far too large and varied for such arrangements.

The regional organizations that exist in Asia are mostly loose or weak. The main examples of intergovernmental organizations are the Asia Cooperation Dialogue, the Association of Southeast Asian Nations, East Asia Summit, UN Economic and Social Commission for Asia and the Pacific and the Shanghai Cooperation Organization. Some have trade liberalization agreements. None have human rights treaties or mechanisms.

ILGA-Europe is the most active and most effective regional organization within the International Lesbian and Gay Association. ILGA-Asia has had trouble getting going. One regional conference was held in Mumbai, India, in 2002, with about 80 people from a dozen countries. Half of the organizations in India boycotted the conference. A small World Conference was held in Manila, the Philippines, in 2003. 80% of the organizations in the Philippines boycotted the conference.

Perhaps the most successful regional gatherings within Asia are the Tongzhi conferences of ethnic Chinese. The first Tongzhi conference was held in Hong Kong in 1996. Subsequent conferences were held in Hong Kong (1998, 1999 and 2004) and Taipei (2001). But no offices, no regular publications, no programs.

In 1999 the e-mail list AP-Rainbow was established by gays and lesbians during the regional AIDS meeting, ICAAP, in Kuala Lumpur, Malaysia. Numerous gay and lesbian activists in the region are regularly sharing news on this list. In 2005 an executive was selected. No offices, no regular newsletter, no programs.

In 2003 APQ, a grouping of Australian academics, coordinated a series of panels on GLBT issues at the sessions of the third International Convention of Asia Scholars, hosted by the National University of Singapore. Concerns whether such panels could be held in Singapore disappeared as approval was given for each proposed panel. Participants were both Asian and Western, and sessions were well attended. A queer panel was held at the 2005 International Convention in Shanghai. Some sessions will be organized for the 2007 conference in Kuala Lumpur.

In July, 2005, a conference Sexualities, Genders and Rights in Asia, was held in Bangkok, hosted by the Graduate Program in Human Rights at Mahidol University and APQ. 500 participants came from various parts of Asia, as well as a minority from Western countries. No queer event on this scale had been held in Asia before this date.

### In individual countries

We do not have comprehensive “country reports” on GLBTQ / HIV/AIDS / MSM issues in Asian countries. But here are some incomplete comments.

#### Cambodia

Cambodia has a population of 13.5 million. The population growth rate from 1975 to 2003 has been 2.3%. The population growth rate is projected from 2003 to 2015 at 1.9%. Urban dwellers are 18.6%.

During the period in which Cambodia was run by the United Nations, it signed most of the international human rights treaties. It has been troubled by corruption, aid dependency and authoritarian government since the democratic elections that ended the UN mandate.

As a former French colony, it did not inherit criminal laws against male homosexual acts.

Any gay scene is hidden. In 1999 Tamarind, the first gay restaurant and bar in Cambodia opened in Phnom Penh, owned by a gay businessmen. Government officials attended the launch party. It proved unsuccessful. No accessible gay venue has been established since that time, though some bars are said to be gay-friendly.

## China

The Peoples Republic of China has a population of 1.3 billion. The rate of population increase from 1975-2003 was 1.2%. From 2003 to 2015 it is projected to be 0.6%. The government expects the population to peak at 1.5 billion by 2050. The percentage of population living in urban centers is 38.6%.

The new prosperity of the coastal areas and the poverty of interior agricultural regions has resulted in

...one of the greatest internal migration flows in Chinese history. Today, an estimated 100 million “floating” people identify themselves as farmers but spend most of the year working at more lucrative city jobs.<sup>15</sup>

The strict controls over residency that used to characterize Chinese life are gone, though the ‘floating’ people may be an underclass without stable jobs or rights to social services and schooling for children.

China has never had laws specifically condemning same-sex sexual acts. But it has a modern history of persecuting homosexuals.

Writing in the mid-1990s, Wan [Yanhai] commented, moreover: “In mainland China, the status of homosexuals in society is like that of the bad elements [*huai fenzi*] during the Cultural Revolution. Although there is no law explicitly defining homosexuality as illegal, there have been nonstop criminal and administrative punishments.” On the basis of interviews conducted in 1994 with more than two hundred gay men in fifteen mainland Chinese cities, An Keqiang, a Taiwanese journalist, finds the fact that, in the PRC, homosexuality per se is not criminalized to be no sign of an enlightened attitude on the part of the government. In the early years of the People’s Republic, those who were discovered to have engaged in homosexual behavior were made to wear a big sign and paraded through the streets. The character written on the sign, composed of the upper half of the character *nan* (male) on the top and the character *nu* (female) on the bottom, meant ‘neither male nor female.’ Later, during the Cultural Revolution, homosexual behavior was called *jijian zui* (the crime of male-male anal intercourse), and one could be sentenced to the labor camp because of it. Since the economic reform and open-door policy began, the regulation concerning ‘hooliganism’ [*liumang xingwei*] has been subjectively applied by the police to those found to engage in homosexual acts, even though there is in fact no specific law criminalizing homosexuality.<sup>16</sup>

In 1993 the Ministry of Public Security of the People’s Republic of China issued a directive that homosexuals were no longer to be charged with hooliganism, effectively decriminalizing homosexuality. The offence of hooliganism was dropped from the criminal law in 1997.

One major change has been the rediscovery of homoerotic Chinese traditions. In 1964 “The Secret History of Homosexuality in China”, by Weixing Shiguan Zhaizhu, was published in Chinese in Hong Kong. In 1984 “The History of Homosexuality in China,” by Xiaomingxiong, was published in Chinese in Hong Kong. In 1991 the noted sociologist Li Yinhe and her husband Wang Xiaobo, a famous novelist, published “Their World: A Study of the Male Homosexual Community in China.” It was revised and republished in 1998 as “The Homosexual Subculture,” and became a best seller. Further titles on homosexuality were published in China in 1994 and 1995. This material became easily available in the West when Bret Hinch published his book “Passions of the Cut Sleeve.” All this refuted the Chinese governments line after 1949 that homosexuality was a Western perversion – that China (now at least) had no homosexuals.

AIDS had a major impact on changing government attitudes. In 1992 Wan Yanhai, a medical school graduate and public health advocate, initiated the AIDS hotline in Beijing, along with the “men’s world” salon. He started the newsletter Aizhi jianbao, newsletter of love and knowledge, in 1994.<sup>17</sup> In 1998 a women’s Tongzhi conference, involving about thirty women, was held in Beijing. The government held a

<sup>15</sup> William MacNamara, Finding China’s Missing Farmers, Far Eastern Economic Review, November, 2005, 26 at 29

<sup>16</sup> Tze-Ian D. Sang, The Emerging Lesbian, Chicago, 2003, 167

<sup>17</sup> Tze-Ian D. Sang, The Emerging Lesbian, Chicago, 2003, 166.

major national AIDS conference. In 2001 it officially declassified homosexuality as a pathology, following international views.

Homosexuals now exist. In December, 2000, Shi Tou and Cui Zien, a writer and a film researcher, came out on an HNST (China Human Satellite Television) and discussed same-sex love with the sociologist Li Yinhe and studio audience, a first in China. The channel has 300 million regular viewers in China.

But it can be difficult to organize publicly (unless it is around health). The first gay film festival in China was organized at Beijing University in 2001, but was shut down by University officials after media coverage of the event. A second gay and lesbian film festival at Beijing University in 2005 was forced by campus authorities to relocate off campus, but the films were shown.

Gay and Tongzhi websites and chat rooms have boomed. The Chinese language [www.gaychinese.com](http://www.gaychinese.com) was launched in 1999, becoming one of the most popular Chinese language sites. At one point it was receiving more than 55,000 hits a day. Authorities closed it down early in 2005. It was allowed to reopen, remaining only accessible in Beijing (and outside the PRC).

There are positive developments:

- There are gay bars and saunas in major cities.
- English language newspapers, including the officially published China Daily, have some GLBT coverage.
- In 2002 the Chinese Academy of Social Sciences glossy magazine, *Xiandai wenming huabao* (Modern Civilization Pictorial) published a special number on homosexuals in contemporary China entitled "Homosexuals are with us" (Tongxinglian shehui kexue yuan).
- In 2003 China a circular issued jointly by the Supreme Court and the Ministry of Health allowed transsexuals to change their gender designation in their household registry and marry a person of their previous sex.
- The School of Public Health of Fudan University in Shanghai, one of China's leading universities, offered a credit course for graduate students on Homosexuality, Health and Social Sciences, attracting students from other faculties as well. Reports about the course appeared on local television and in Shanghai and Hong Kong newspapers. In 2005 a second course was offered "Gay and Lesbian Studies" at the undergraduate level.
- In September, 2005, Wang Longde, Vice Health Minister, said his government must admit the existence of men who have sex with men in its efforts to fight HIV/AIDS.

Minister Wang Longde said on Wednesday that the Chinese government cannot continue its neglect of the gay and bisexual population, noting that some men who are sexually active "not only have sex with men, but also with women. Minister Longde's warning is supported by research from the Chinese Center for Disease Control and Prevention. It warns that more than 80 percent of Chinese men who have sex with men (MSM) do not know their HIV risk. The organization's research also determined that 31.7 percent of Chinese MSM have had 1-10 sex partners, 22.2 percent have had more than 100 partners, 17.4 percent have had female sex partners and 12.6 percent are married.<sup>18</sup>

On February 12, 2006, the government issued a comprehensive policy statement, bringing together its existing policies:

China's State Council – the country's cabinet – on Sunday released its first comprehensive regulations on HIV/AIDS prevention and treatment, which require local governments to provide confidential HIV testing and antiretroviral drugs to residents. The regulations which the council approved on Jan. 18 and will go into effect on March 1, also outlaw discrimination against HIV positive people and guarantee such people the right to health care, employment, marriage and education. The policy, titled "Statute on AIDS Prevention," consists of 64 regulations. Under the regulations, local governments above the county-level must provide antiretrovirals at no cost to rural and low-income urban HIV-positive peo-

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<sup>18</sup> Christopher Curtis, PlanetOut, Chinese official urges gay focus in HIV fight, September 6, 2005 ([www.planetout.com](http://www.planetout.com))

ple. Local governments also must provide treatment to pregnant women at no cost and counseling and prevention information about mother-to-child HIV transmission. In addition, the government requires all HIV tests be given at no cost, and officials will be barred from revealing the names or other personal information about HIV-positive people. People living with HIV are responsible for informing family members and sexual partners of their status, and people who intentionally transmit the virus to others will be punished, according to the statute.<sup>19</sup>

A few days earlier, on February 7th, a 650,000 page report was released in Beijing, entitled “Chinese MSM: Research on Sex and Self-identification, the result of two years work by Tong Ge, a Chinese gay writer. It tells the stories of more than 500 homosexual males in eight major cities in the country.

His study has reached out to a larger gay society by exploring the non self-identified gay people who were often ignored in previous gay studies. China has an estimated population of about 5 million to 10 million gay men, yet many men who have sex with men do not think they are gay, Tong added. This research is the first homosexual research conducted by a gay man. Tong has worked for many years on publishing gay literature and the prevention of HIV aids. The study was supported by the New York-based Ford Foundation and the Beijing Gender Health Education Institute, the first homosexual counseling agency in China.<sup>20</sup>

## Hong kong

The Hong Kong Special Administration Region has a population of 6.9 million. The growth rate from 1975-2003 was 1.6% and is projected to be 1.0% from 2003 to 2015. It is a city, and so 100% urban

The first gay rights organization, the 10% Club, was formed in 1986. In 1991 homosexual acts were decriminalized (with a discriminatory age of consent of 21 for homosexual acts). This is the only repeal in Asia of colonial era British-style criminal laws against homosexual acts.

The first Hong Kong Queer Film Festival was held in 1998, and has been repeated every year.

In August, 2001, a subcommittee of the Legislative Council in Hong Kong examined issues of discrimination on the basis of sexual orientation. Over 20 individuals and representatives of organization spoke at public hearings.

In 2004, the government of Hong Kong, concerned with establishing official channels of communication with particular civil society organizations, established an Ethnic Minorities Forum and in 2004 established a Sexual Minorities Forum. The government’s Equal Opportunities Commission enforces three anti-discrimination ordinances, relating to sex, disability and family status. The government stated that if there was sufficient public support, an additional ordinance on sexual orientation discrimination could be considered. It has commissioned a survey of public opinion. The SAR government also provided funding to a transsexual support organization to publish information on transsexual issues. Such a law is actively opposed by certain conservative groups, the most visible and active of which is the Society of Truth and Life.

Full-page advertisements have been appearing on a regular basis in the broadsheet Ming Pao newspaper, as well as other Chinese-language publications, in an extremely costly campaign that effectively smears homosexuals as mentally ill sexual deviants who molest children.<sup>21</sup>

According to the South China Morning Post, the Hong Kong government received more than 50,000 letters after the Society of Truth and Light, and other conservative Christian groups, the Sex Culture Society and the Hong Kong Alliance for Family placed full-page advertisements in papers opposing the law. ... And in August this year, the group lobbied the government with a 27,500-signature petition to appeal against a High Court ruling that overturned a law banning sexual acts between men under 21.<sup>22</sup>

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<sup>19</sup> China Issues First Comprehensive HIV/AIDS Prevention, Treatment Regulations, Kaiser Daily HIV/AIDS Report, Monday, February 13, 2006. References omitted.

<sup>20</sup> Zhuo Qiong, New book shows different aspects of gay life, China Daily, February 13, 2006.

<sup>21</sup> Tim Cribb, HK gay media awards to honour journalists for positive coverage of LGBT issues, fridae.com weekly online newsletter, October 4, 2005.

<sup>22</sup> Hong Kong conducts phone survey on public attitudes about gays, press release, Chi Heng Foundation, October 29, 2005.

On May 16th, 2005, a coalition of groups organized a march against homophobia in Hong Kong to support a possible anti-discrimination law. They linked the event to the new International Day Against Homophobia, May 17th, a day commemorating the decision of the World Health Organization to remove homosexuality from its list of psychological disorders. Varying estimates suggested 270 to 350 participants. The chairwoman of Amnesty International HK was one of the speakers.

On October 22nd, a 10 day telephone survey of public attitudes on homosexuality began. This assessment was to guide the SAR government on possible legislation against discrimination on the basis of sexual orientation.

On other fronts, some recognition has occurred. A number of multinational corporations with operations in Hong Kong now extend spousal benefits to same-sex partners. At least one gay couple, married in Vancouver, Canada, have secured recognition of their status by the local taxation authorities. A case is in the courts for the recognition of a Canadian marriage. A special visa class has been created for non-working same-sex partners of expatriates working in Hong Kong.

## Indonesia

Indonesia has over 3,000 inhabited islands and great racial, cultural and linguistic diversity. It has a population of 217.4 million, the fourth largest country by population. From 1975-2003 its rate of population growth averaged 1.7%. It is projected at 1.1% for the years 2003-2015. Urban centers account for 45.5% of the population.

As media stories regularly state, Indonesia is the world's largest Muslim nation. There are significant Chinese, Christian and Hindu minorities. At the moment there are a number of Islamic political parties, but they are small and divided, in comparison to the major parties, making the prospect of the introduction of Sharia law remote.

Indonesia, as a former colony of the Netherlands, did not inherit any anti-homosexual criminal laws.

Indonesian society seems generally tolerant and not homophobic. Baden Offord comments on general social attitudes:

...there is a widespread toleration of homosexuality if it is not explicit and remains silent.<sup>23</sup>

...when an Indonesian cabinet minister “fled New Zealand ... amid allegations that he has made homosexual advances to a waiter in a hotel room ... Indonesia gave a collective shrug. What the Minister had done courted scandal, but did not go beyond the sexual pale ...

Tom Boellstorff suggests that Indonesia exhibits “heterosexism without homophobia.”

## Human rights

Particularly after the Dili massacre in 1991, Indonesia has been regularly criticized on the basis of human rights. In response Indonesia has signed additional human rights treaties and hosted a UN workshop on human rights for the Asia-Pacific region at which President Suharto announced the decision to establish a national human rights commission. In 2000 the constitution was amended to add a new article 28 (i), which reads something like:

**The state should protect citizens against discriminatory actions on any basis.**

The National Human Rights Commission in 2005 deemed homosexuals to be a “special group” to which it will address some attention.

## Organizations

The first enduring gay rights organization in Asia was founded in Indonesia in 1981 by Dede Oetomo and two others as Lambda Indonesia. It was reorganized as Gaya Nusantara in August, 1987. Gaya Nusantara became a member of ILGA, the International Lesbian and Gay Association, and Dede Oetomo

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<sup>23</sup> Offord, page 156

has been on the board of the Asia-Pacific Council of AIDS Service Organizations (APCASO). He is also on the international advisory board of the International Gay and Lesbian Human Rights Commission, based in New York. The first issue of the magazine *Gaya Nusantara* was published in November, 1987. Neither the organization nor the magazine was registered, so both functioned in an ambiguous legal situation. But the need to register organizations has been lifted with the end of martial law, so there is now no question of the legality of the organization and the publication.

Dede Oetomo, chair of *Gaya Nusantara* in Surabaya and convenor of the Indonesian Lesbian and Gay Network, is the central figure in the country on sexual orientation issues. He is a professor of sociology and linguistics in Surabaya. He was a candidate in the June, 1999, election, standing for the left-wing People's Democratic Party (PRD). An article on his candidacy commented that he was not a "typical Surabaya resident," being agnostic, gay and ethnic Chinese.

Dede Oetomo, through his activist career, has consistently sought public recognition for himself and homosexual issues. A basic strategy, from the beginning, was writing letters to newspapers and magazines in order to gain some coverage in their letters sections. Early in the 1990s AIDS provided an opening for publicity:

**...the discourse about AIDS brought up, not the visibility of gay men, as such, but the fact that I could actually appear almost every week in national media, print media, and also some television coverage. It meant that we grew tremendously in 1003 and 1994... the media would approach me as an AIDS activist, but I made sure that I always talked on behalf of *Gaya Nusantara*. I was fully aware that I was using the media as a channel to actually promote the gay organization as well. As a result – lets see, we had three organizations at the beginning of 1992, Jakarta Yogyakarta and Surabaya. By the end of 1993 we probably had eleven.<sup>24</sup>**

Dede Oetomo was delighted to get a ten-page article in *Tempo Magazine* in 1987, right after the founding of *Gaya Nusantara*. "We got 600 letters because of *Tempo*." The great virtue of running for the PRD in the 1999 election was the publicity. He gained forty interviews on television, radio and in print media. As a result of the publicity, he says, the circulation of the magazine *Gaya Nusantara* increased sharply.

But in spite of Dede Oetomo's work, and that of others, the Network has not flourished and the magazine has only a very limited circulation. The Network held the first Indonesian Lesbian and Gay Conference in 1993, with 36 delegates from 15 organizations. The second conference was held in 1995. The third conference was held in 1997, after the financial crisis had hit. Forty-six delegates attended from eleven organizations. The fourth conference was scheduled for March, 2000, but was not held.

In 2001 women in Jakarta formed *Swara Srikandi*, the first really visible lesbian organization in Indonesia.

The Q! Film Festival began in Indonesia in 2002. To mark its fourth anniversary in 2005, the festival, being held in Jakarta in September, 2005, will travel to 6 or 7 other cities over the year.

### ***Transgender "Waria"***

As in much of the Southeast Asian region, the public face of sexual variation is the image of transgendered individuals, known as "waria." They are also known popularly as *banci* or *bencong*, terms that most warias consider offensive.

**Warias are persons born as men who typically dress in a feminine style (though they do not usually try to "pass" as women). From childhood, most believe that they have women's souls or a soul that is both male and female.**

**From available information, it seems that Warias first appeared in the archipelago in the nineteenth century. From the beginning they were not associated with any particular ethnic group, but were associated with popular entertainment, market trading, and other lower-class urban work.**

**It appears that around 1980, Warias increasingly began dressing as waria twenty-four hours a day, and**

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<sup>24</sup> Interview, August, 1999, p 48.

also increasingly began to make permanent modifications to their bodies, such as taking female hormones or receiving silicone injections (sex reassignment surgery involving the genitalia remains rare).

Warias are now particularly associated with the salon profession and are fairly visible; for instance they appear on television and perform at a range of events. However, Warias are not treated as equal members of Indonesian society and often suffer discrimination from family and neighbors; the range of jobs open to them is quite limited.

Most Warias have romantic and sexual relationships with men who see themselves as “normal,” rather than with women or other Warias.<sup>25</sup>

The first waria organization was founded in Jakarta in 1969. Dede Oetomo states that the Jakarta association was set up with the sponsorship of the governor of Jakarta. Waria organizations seem common at the local level. The former ruling party, Golkar, often had a waria unit organized within the local structures of the party. The function of the unit was primarily entertainment. Waria perform at meetings and election rallies. The government social welfare department has also encouraged the formation of waria organizations, regulated waria street prostitution, and funded waria-oriented programs, seeing waria as a marginalized poor population. Dede Oetomo has called this Golkar and welfare department organizing of waria as a form of ghettoization.

Waria occupy varying places in Indonesian society. Some own their own beauty parlours, cafes or exercise salons. Some do fortune telling. Others have taken up giving silicone injections. Some are entertainers, at the local level or in public media. Others are street sex workers, whose customers will know that they are waria. There are separate “strolls” for waria, separate from female and male prostitutes. Tolerance of waria in the villages varies. Apparently local attitudes in Lombok are hostile, with the result that waria from there move to neighbouring Bali.

In about 1997 SCTV started having waria and effeminate men in particular television shows. There was public criticism. The religious Ulama Board asked television stations to ban waria or effeminate men. Two TV stations barred waria as a result of the public controversy – SCTI and SCTV. This kind of controversy has occurred in Malaysia, the Philippines and Thailand as well, reflecting the strong presence of transgendered individuals in public entertainment in each society.

A post-operative male to female transsexual can go to court in Indonesia and get a change of identity. The first case occurred in 1971. The Indonesian Council of Ulama has issued a little known fatwa that a post-operative transsexual becomes a woman, correcting an imperfect condition, and can marry a man. The result is that the marriage will be legal in terms both of Sharia and secular law.

The national Miss Transvestite contest was held for the first time in 2004 in Jakarta. In 2005 the second contest was interrupted by opponents from the Islamic Defender's Front, resulting in the program ending earlier than planned.

Homosexuality is considered a sin according to Islamic tenets and many Muslims are uneasy with the way transvestitism blurs the boundary between traditional gender roles. But the Miss Transvestite Indonesia pageant highlights Indonesia's seeming tolerance for transvestites and transsexuals. Known as waria – a combination of the Indonesian words for man and women – they regularly appear as hosts on television entertainment shows. But discrimination is rife, said Megawati [the show's organizer], and many waria turn to prostitution.<sup>26</sup>

The director the annual gay and lesbian film festival, John Badalu, said that waria are usually viewed more favorably than gays.<sup>27</sup>

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<sup>25</sup> Tom Boellstorff, Indonesia, *glbtq encyclopedia*, www.glbtc.com, accessed August, 2005.

<sup>26</sup> AP, Hardliners' protest end pageant early, *The Nation* (Bangkok), June 28, 2005, 6A.

<sup>27</sup> Boy, oh boy, *The Nation* (Bangkok), June 25, 2005, 4A.

## Lesbian And Gay

Less visible are gay Indonesian males who often live in the larger urban centers of Indonesia. Lesbians are hidden for various social and cultural reasons.<sup>28</sup>

The terms “lesbi” and “gay” began to be used in the early 1980s. Indonesian “gay” men will emphasize that they are not “waria.” But for most people in Indonesia, “waria” is synonymous with “gay” or “homosexual” (a fairly common pattern in other parts of Southeast Asia and an earlier pattern in the west of assuming homosexuals were effeminate and cross-dressers). Generally speaking, gay men, lesbians and waria organize separately.

Tom Boellstorff comments on the development of a “gay” identity in the country:

Beginning in the early 1980s, [Indonesian gay men] began transforming the ostensibly “Western” term “gay” so that they saw it as Indonesian. Through everyday practices of pleasure, romance, and social imagination, they articulate what they call the “gay world” or dunia gay, which parallels the “normal” world.<sup>29</sup>

He comments on recent changes:

In the early 2000s, gay and lesbi Indonesians experienced both a notable increase in press coverage, some of it relatively tolerant, and an increase in anti-gay and anti-lesbi sentiment, including the threat of anti-homosexual legislation and cases where youth groups attacked public performances that included gay men and warias. What the future holds for Indonesia’s sexual and gender minorities remains hopeful but uncertain.<sup>30</sup>

## HIV/AIDS

A recent UNICEF publication comments:

HIV prevalence still appears to be very low – fewer than five people in 10,000 are infected, though this is probably an underestimate. Indonesia benefits from its geographical isolation and the fact that men make relatively few visits to sex workers, who in any case tend to be working ‘indirectly’ – from bars and restaurants, rather than in brothels, and so have fewer clients. In Irian Jaya, which has the second highest number of HIV/AIDS cases after Jakarta, HIV/AIDS is thought to have been introduced by visiting sailors and tradesmen. One potential source for triggering a broader epidemic in Indonesia’s heartland could be the tens of thousands of long-distance truck drivers working along the north coast of Java. According to the Health Research Institute at the University of Indonesia, 80 percent of the truck drivers have multiple sex partners and very few use condoms. The very low rate of condom use in general in Indonesia, along with the general disruption caused by current outbreaks of violence, could well trigger an outbreak.<sup>31</sup>

Homosexual transmission is not mentioned. Unlike Malaysia, the Philippines and Thailand, HIV/AIDS have not been significant in the work of gay NGOs.

In December, 2005, Peter Piot, head of UNAIDS, visited Indonesia on World AIDS day, saying that he wanted to draw attention to Asia. He said that recent statistics indicated that Indonesia was at the beginning stage of an HIV/AIDS epidemic. Tempo magazine, the leading Indonesian news magazine, ran a major story on AIDS featuring Peter Piot’s declaration. The article cited heterosexual prostitution and drug use as the major factors in the spread of HIV – never once mentioning MSM or gay or homosexual or waria.

The same issue had an article on teachers discussing AIDS in the classroom. Teachers were to make it clear that HIV cannot be spread casually – by meeting an infected person, or shaking their hand. A major issue had been whether teachers could talk about condoms. After some debates, the decision was taken that

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<sup>28</sup> Offord, page 155.

<sup>29</sup> The Gay Archipelago, p 4.

<sup>30</sup> Tom Boellstorff, Indonesia, glbtq encyclopedia, www.glbtq.com, accessed August, 2005.

teachers should say that condoms work to block transmission. But, the teachers should not tell students how to use condoms – that would be seen as approving sex outside of marriage, or at least encouraging students to have sex by indicating that it can be done safely.

## Japan

Japan has a population of 127.5 million. The average rate of population growth between 1975 and 2003 was 0.5%. In October, 2005, government statistics indicated that the population had begun to decline. It was down 19,000 from one year earlier. The population is expected to drop to 101 million by 2050. 65.5% of Japanese people live in urban centers.

A modern Japanese gay scene began shortly after the second world war. Tokyo's first modern gay bar, the Brunswick, opened in the Ginza district in 1948. Miwa Akihiro, who became Japan's most famous transgender entertainer, began working in the Brunswick in 1951. Sumi Tasuya published the novel 'Grove of Male Prostitutes' about the transgender prostitution scene in Tokyo's Ueno Park in 1949. Japan's first gay organization Adonis Kai was founded in 1951 and began publication of the privately circulated Adonis magazine (until 1962). In 1957 Japanese sex educator Ota Tenrei published 'The third Sex,' a positive account of male homosexuality written with the cooperation of gay men. Japan's 1958 Anti-Prostitution Law began to take effect and numerous gay bars sprang up in recently vacated red-light districts such as Tokyo's Shinjuku Ni-chome, now home to the largest concentration of gay bars in the world.

The modern pattern of gay magazines began in 1971 – Barazoku (The Rose Clan, 1971 – 2004), Adon (1972 – 1996) and Sabu (1974 – 2001). Gay magazines have been published continuously in Japan since that time and marketed openly. Some gay groups functioned. Beginning in 1971, Togo Ken ran as a gay candidate in Japanese national elections, never winning a seat.

The modern pattern of gay rights organizations began in 1984. In that year Minami Teishiro, the publisher of the gay magazine Adon, formed JILGA, the Japanese International Lesbian and Gay Association, after the head of the International Lesbian and Gay Association visited Japan. JILGA attempted to form an Asian regional grouping for ILGA, holding two meetings in Japan and a final one in Bangkok in 1990. In 1986 some younger Japanese gay men split from JILGA and formed OCCUR, which became the most visible national organization. Similarly in Osaka former JILGA members left that organization and formed a separate group, the Osaka Gay Community, in 1987.

In the early 1990s Japan experienced a 'gay boom' in which gay-themed movies, books, articles and television programs became popular in mainstream media. Fushimi Noriaki published his book "Private Gay Life" in 1991, with a "widespread reaction" among gay men in the country. In 1992 Kakefuda Hiroka published her book "On Being Lesbian." After 1991 the visibility of homosexuality in Japan "has increased enormously – with mainstream movies, books, and almost every magazine featuring articles, if not complete special theme issues, on homosexuality."<sup>32</sup> In 1992 the first Tokyo International Lesbian and Gay Film Festival attracted an audience of 1,000. Starting in 1997 it also held screenings in Osaka and Kyoto.

OCCUR had some successes. In 1991 it launched a successful campaign to remove references to sexual perversion from dictionary definitions of homosexuality. In 1994 it won a court case against the Tokyo municipal government for discrimination in denying the organization the use of a residential conference center.

The first pride parade in Japan (and the second in Asia) was held August 28th, 1994, in Tokyo, organized by JILGA. There were 1,134 participants. The first pride march in Sapporo, in northern Japan, was held in 1996.

In May the final report of the Council for Human Rights Protection, a grouping within the Ministry of Justice in Japan, included within the mandate for a new Japanese Human Rights Commission the issue of discrimination on the basis of sexual orientation. Gays and lesbians had testified openly at public hearings leading up to the final report. But the commission has not been established.

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<sup>32</sup> Wim Lunsing, *Japan: Finding Its Way?*, in Barry Adam, Jan Willem Duyvendak, Andre Krouwel, *The Global Emergence of Gay and Lesbian Politics*, Temple, 1999, 293, at 296.

A Japanese transgender academic commented at the July, 2005, conference on Sexualities, Genders and Rights in Asia that foreign transgender people say that Japan is the safest environment for transgenders. She said it was true. There is cultural tolerance, but discrimination in the public domain. Japan will change the personal documentation for transgender individuals – birth certificates, personal identity cards and passports. But if the individual has already had a child, these corrections are not permitted.

## Republic of Korea

South Korea has a population of 47.5 million. The average population growth rate from 1975 to 2003 was 1.3%, and is projected to be 0.3% from 2003 to 2015, one of the lowest rates in the world. South Korea is very highly urbanized, with 80.3% of the population living in urban centers.

Korea has no tradition of criminal laws against homosexual acts.

It has a large, educated Christian minority, about one-third of the population. The Christian churches are seen as very conservative on social issues. Political leaders tend to be educated Christians. Yet a survey of ten countries in 2005 found that South Korea and France had the highest numbers of individuals who said they did not believe in God.

**South Korea and France have the largest proportion of outright unbelievers – but that viewpoint still characterizes only 1 in 5 (19%).<sup>33</sup>**

68% of South Koreans said they felt that religious leaders should not try to influence political decisions in their country.

In 1995 the first university gay student groups were established in Seoul, treated in the media as a surprising (perhaps shocking) development

In 1997 President Kim Dae Jung Korea stated:

**I do not agree to same sex love, but I think we should not unconditionally perceive it as heathenism... We need a vision through which we can approach activities of lesbians and gays as a part of security of human rights.”**

The attempt to hold a gay film festival at Yonsei University in Seoul in 1997 was blocked when the administration cut off the electricity. The first gay film festival in Korea was held the following year after the Film Censorship Board ended its complete ban on the depiction of homosexuality on film.

In September, 2000, Hong Suk Chun, a popular actor and comedian in Korea, came out in a television interview. As a result he was fired by two television networks, leading to protests by other celebrities and gay activists. Gradually he has been able to resume an active television career.

In 2001 the National Human Rights Commission of Korea was established by legislation with a mandate to address discrimination on the basis of “sexual orientation,” a first in Asia. The Commission has investigated GLBT issues, and proposed reforms in at least five cases.

### (1) Correcting dictionaries.

In March, 2002, the Lesbian and Gay Human Rights Federation and the gay university clubs objected to the disparaging definitions of homosexuality in Korean dictionaries. They named the National Academy of the Korean Language, the publisher of the standard Korean dictionary, and nine other publishers.

**According to the result of the Commission’s probe, most dictionaries currently published in Korea – including Korean dictionaries, English-Korean dictionaries, and Korean-English dictionaries – have defined homosexuality as ‘sexual perversion’ or ‘abnormal sexuality,’ using similarly disparaging terms. However, as most respondents accepted the demands of the complainants during the Commission’s deliberation,**

<sup>33</sup> Ipsos World Monitor, World Monitor Research Alert, Religiously Speaking, August 23, 2005. The ten countries surveyed were Australia, Canada, France, Germany, Italy, Mexico, South Korea, Spain, the US and the UK. The figure for the US was 2%.

from this time forward, the discriminatory expressions about homosexuality will be removed from the various dictionaries published in Korea.<sup>34</sup>

## (2) Censoring gay websites

In 2002 Kirikiri and Dong In Ryun (the Lesbian and Gay Human Rights Federation) filed petitions with the Human Rights Commission against the banning of exzone and other GLBT websites. On April 2nd, 2003, the National Human Rights Commission issued a press release titled “Web sites on Homosexuality Are Not Harmful to Minors.” The Commission stated that the discrimination against homosexuals involved in the banning was a violation of three provisions in the Constitution, Article 10 (right to pursue happiness), Article 11 (right to equality) and Article 21 (freedom of expression).

Furthermore, the American Psychiatric Association deleted ‘homosexuality’ from its list of mental illnesses in its 1974 publication of Diagnostic and Statistical Manual of Mental Disorders, and the World Health Organization (WHO) stated “sexual orientation has no relation to mental disorder” in their ICD-10 (International Statistical Classification of Diseases), published in 1993.

In South Korea, there is a growing awareness of the need to regard homosexuality as normal sexual orientation and protect the human rights of gays and lesbians. In addition the ‘Korean Standard Disease Classification’ announced by the National Statistical Office asserts “sexual orientation itself cannot be related to mental disorders” and ‘Sex Education Guidebook for Teachers published by the Ministry of Education and Human Resources Development states “homosexuality also is a human way of life as well as a form of affection” (for middle school), and “homosexuality is no longer classified as sexual perversion” (for high school).<sup>35</sup>

The Youth Protection Committee has accepted the Commission’s request to remove homosexuality from its categories of harm.<sup>36</sup>

The action of the Human Rights Commission in the exzone case was criticized in a set of articles in a prominent newspaper, Kukmin Daily, published by the Assembly of God church. A young Catholic gay activist, working with Dong In Ryun, who actively denounced the newspaper stories, committed suicide in protest in April, 2003.

## (3) Sexual violence in the military

A 2004 report said sexual violence in the military, among other things, led younger males to develop a hatred for gays and anxieties about being sufficiently masculine.

## (4) Questions for blood donors.

The Commission concluded that asking blood donors whether they had had sexual conduct with someone of the same sex raised serious problems. If the question was answered positively, the person was not permitted to donate blood, suggesting a strong link between homosexuality and HIV infection. The automatic refusal was to end, and the question was not to be asked of women, for lesbian incidence of HIV is very low.

## (5) *The Healthy Families Basic Act.*

The *Healthy Families Basic Act*, which has implications for social services, limits its application to families based on marriage, blood ties or adoption. The Commission concluded that this can result in “discrimination in society in which the number of diverse types of families is on the rise.” The Commission asked that the law be revised and the title changed, for it implied that some families were ‘unhealthy families.’

On April 25th, 2003, Kukmin Daily reported that the National Human Rights Commission had entered into contracts with Kiri Kiri and Dong In Ryun. Kiri Kiri will receive around US\$5,000 for a program

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<sup>34</sup> Press release, National Human Rights Commission, December 24, 2002, accessed on the Commission website April, 2003. Also see Homosexuals no longer ‘perverts’, Friday magazine, November 21, 2002.

<sup>35</sup> Ibid. And see, Homosexuality needs to be lifted from obscenity list, Korea Times, April 2, 2003.

<sup>36</sup> Communication from Huso Yi, Korean Sexual-Minority Culture and Rights Center deputy director, April 3, 2003.

to instill self-pride in lesbians. Dong In Ryun will receive slightly more for a program of human rights seminars or workshops on university and college campuses on sexual orientation issues. The newspaper account quoted criticisms of the action by the Commission.<sup>37</sup>

In December, 2002, Harisu, a nationally famous transsexual star, was granted the right to change her name and gender on the national family register by an Inchon district court. The judge noted that the Korean constitution guarantees the individual the right to pursue happiness and dignity.<sup>38</sup> But judges proved to be inconsistent. It was reported in October, 2005, that 40 of 81 transsexuals who had applied to change their listed gender between 2000 and 2004 had been refused. Three post-operative transsexuals have taken their cases to the Supreme Court to have the matter settled uniformly in the country.<sup>39</sup>

## Laos

Laos has a population of 5.7 million. Its average rate of growth from 1975 to 2003 was 7.3. Growth is projected at 2.2% for the period 2003-2015. The urban population is 20.7% of the national population. As a former French colony, it has no laws against homosexual acts. Like Thai transgender people, Laotian ones are also called Katoeys. Serge Doussantousse, a French researcher, conducted a study in Laos to understand how katoeys cope with a changing society. As katoeys embody feminine traits, they stand out in public, he said. Most of them work in women's jobs such as hairdressers, beauticians, hospitality workers and entertainers. "They seem well integrated in the Laotian community. Being influenced more by women since young, they consider themselves girls. They like to wear makeup and dress up," he said. Doussantousse said from his interviews, the katoeys do not recall being stigmatized or subjected to parental constraints.

However, they say some teachers and friends made fun of them in a friendly way. Gay discrimination seem minimal among Lao families and society. The subjects are able to start living as katoeys once they leave school. "They also use female toilets without objection from women. They are confident and seem popular with male and female friends, he added. He said a growing number of katoeys take up prostitution. Many use contraceptive pills as well as surgery. Currently the use of hormones is the most common way they are modifying their bodies.<sup>40</sup>

## Malaysia

Malaysia has a population of 24.4 million. The average growth rate from 1975 to 2003 was 2.5%. It is projected to average 1.6% from 2003 to 2015. 63.8% of the population live in urban centers. In 2003 the World Trade Organization ranked Malaysia as within the top 20 trading nations in the world, remarkable given its small population. Exports reached US\$105 billion that year. Almost 80% of exports are manufactured goods.

Malays and other indigenous groups make up 65.1% of the population. Ethnic Chinese are 26 %. Ethnic Indians are 7.7%.

On religious lines, Muslims are 60.4% of the population, Buddhists are 19.2 %, Christians are 9.1 % and Hindus are 6.3 %.

## Organizations

In 1988 gay men created two pioneering organizations as HIV/AIDS education and prevention groups - Pink Triangle in Malaysia as an HIV/AIDS education and prevention organization (at about the same time as similar initiatives in Thailand and the Philippines).

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<sup>37</sup> Information from Professor Kwak Nohyun, April, 2003. A listing of "sexual orientation" NGOs on the website of the National Human Rights Commission refers to Chingusai, Kirikiri and the Lesbian and Gay Human Rights Federation.

<sup>38</sup> Singer allowed to switch gender, Wocker International News, #452, December 23, 2002.

<sup>39</sup> Information from a story in the Korea Times, October 23, 2005, as reported in Korean transsexuals sue over registry, Wockner International News, #601, October 31, 2005.

<sup>40</sup> Theeranuch Pusaksrikrit, Internet, handsets liberate more gays, The Nation (Bangkok) July 10, 2005, 4A.

Pink Triangle Malaysia was reorganized in 1998 to represent six constituencies: homosexual men, homosexual women, transgendered individuals, sex workers, intravenous drug users and people living with HIV/AIDS. It was renamed in 2001 as PT Foundation.

To some degree the unique structure of the PT Foundation may reflect the difficulties of establishing legal organizations in Malaysia. Coming within the umbrella of PT will work: organizing outside it may pose problems. PT Foundation, with its diffuse roles and its work on HIV/AIDS, has secured a respectable place in Malaysia. PT has a seat on the Bar Council and good relations with the main human rights NGO and the Ministry of Health. It works with the Malaysian AIDS Council, which is headed by Marina Mahathir, the daughter of the Prime Minister. Marina Mahathir has been virtually the only public voice for tolerance of sexual diversity and ending discrimination against people with HIV or AIDS. Many of her columns from The Star newspaper were collected and published in 1997 in a book entitled "In Liberal Doses." The book, reprinted in paperback, is widely available in Malaysia. It is the only plea for non-discrimination in common circulation.

### ***The legal situation***

Part II of the Federal Constitution deals with "Fundamental Liberties." Article 8 (1) provides:

**All persons are equal before the law and entitled to the equal protection of the law.**

Like Article 26 of the International Covenant on Civil and Political Rights, this promise of equality is stated in general terms, not in terms of a limited list of prohibited grounds of discrimination. The following subsection, on discrimination in public employment, or laws dealing with property or businesses, is limited to discrimination on the basis only of "religion, race, descent or place of birth..."

Legislation establishing a national Human Rights Commission was passed in the summer of 1999.

Islamic law is recognized in Malaysia by individual states as a personal law applying exclusively to Muslims and applied by syariah courts. The powers of the individual states, under the Federal Constitution, include:

**...Islamic law and personal and family law of persons professing the religion of Islam, including the Islamic law relating to succession, testate and intestate, betrothal, marriage, divorce...punishment of offences by persons professing the religion of Islam against precepts of that religion...**

Criminal law is under federal jurisdiction and does not incorporate syariah law. Malaysia inherited a British-style anti-homosexual criminal law from the colonial period.

It is pervasively accepted in Malaysia that homosexual acts are contrary to the Quran, and, therefore, to Islam. While certain individuals are aware that this point is disputed by some outside the country, there is as yet no attempt within Malaysia to challenge existing views or create an Islamic grouping that challenges prevailing assumptions.

One very exceptional story has to be addressed. In 1998 Prime Minister Mahathir Mohammed of Malaysia fired his deputy, Anwar Ibrahim, who then led large anti-government protests before he was arrested. He was charged and convicted on counts of corruption and sodomy. Mahathir publicly expressed his shock at Anwar's alleged homosexual activity. Anwar, who had been named as Mahathir's successor, was both more pro-Western and more Muslim than Mahathir. He was handsome and articulate, in comparison to his dour mentor. The two had publicly disagreed on how to respond to the Asian financial crisis of 1997. Mahathir's more radical decision, to impose capital controls on the Malaysian currency, prevailed over Anwar's apparent support for an IMF-style response.

Anwar denied the charges of corruption and sodomy, saying they were part of a conspiracy to eliminate him as a political rival. This explanation was widely accepted outside Malaysia, and Amnesty International listed Anwar as a 'prisoner of conscience.' During the trials neither he nor his supporters challenged the colonial-era British criminal law under which he was charged. They accept that homosexuality is contrary to Islam. The Malaysian press is tightly controlled, and the media discussion of the charges against Anwar

meant shockingly new public references to homosexuality. These included dramatic scenes of a mattress being brought to court, bearing, it was said, incriminating semen stains. Six years later, the Federal Court, the highest court in Malaysia, reversed Anwar's conviction for sodomy. By this time Mahathir had retired and his successor, Badawi, had won a convincing majority in a national election. The acquittal now served government interests by releasing Anwar from prison (ending the calls for a pardon), while barring him from an immediate return to politics (because of the corruption conviction).

The Anwar affair did not signal any 'crackdown' on homosexuality in Malaysia. The organization Pink Triangle, legitimated by its HIV/AIDS work, kept its head down and made no comments on the charges against Anwar. It survived. The couple of gay bars in Kuala Lumpur continued, apparently unaffected. The affair certainly told homosexuals to keep quiet. They stayed out of sight and were not targeted. In other words, the story of Anwar Ibrahim does not indicate any active pattern of state-sponsored repression in Asia or in Malaysia.

Before the prosecution of Anwar Ibrahim, section 377 was routinely not enforced, and the existence of the prohibition was not well known. Amnesty International concluded that prosecutions of consensual sexual acts in private between adults "appears to remain rare." The prosecution of Anwar Ibrahim and others connected with him for homosexual acts was a sharp departure from police and prosecutorial practices, and gave unprecedented publicity to the criminal prohibition and to "sodomy" (matters not previously discussed in public media). Dennis Altman commented:

Ironically by publicly accusing Anwar of sodomy Prime Minister Mahathir broke the de facto ban on public discussion of homosexuality in Malaysia, despite his claimed reluctance to do so.<sup>41</sup>

### **Social attitudes**

The former executive director of Pink Triangle commented that Malaysia was very tolerant of the "invisible homosexual." Dennis Altman recently elaborated on this perception that the situation in Malaysia is actually quite relaxed:

The dutiful Confucian or Islamic Malaysian son one weekend might appear in drag at Blue Boy, Kuala Lumpur's gay bar, the next – and who is to say which is "the real" person? Just as many Malaysians can move easily from one language to another, so most urban homosexuals can move from one style to another, from camping it up with full awareness of the latest fashion trends from Castro Street to playing the dutiful son at a family celebration.

To western gay liberationists these strategies might seem hypocritical, even cowardly (and some westerners expressed surprise at the apparent silence from Malaysian gay men after the arrest of Anwar on Sodomy charges). But even politically aware Malaysians may insist that there is no need to "come out" to their family, while explaining that in any case their lover is accepted as one of the family – though not so identified. (The Malaysian situation is further complicated by the fact that Muslims are subject to both civil and *sharia* laws, and the latter have been used quite severely, against transvestites in particular.) Some people have suggested that everything is possible *as long as it is not stated*, but it is probably more complex than that. For many men I have met in Southeast Asia being gay does mean a sense of communal identity, and even a sense of "gay pride," but this is not necessarily experienced in the vocabulary of the west.

Middle-class English-speaking homosexuals in places like Mexico City, Istanbul, and Mumbai will speak of themselves as part of a gay (sometimes "gay and lesbian" community, but the institutions of such a community will vary considerably depending on both economic resources and political space. Thus in Kuala Lumpur, one of the richer cities of the "developing" world, there are no gay or lesbian bookstores, restaurants, newspapers, or businesses – at least not in the open way we would expect them in comparable American or European cities. There is, however, a strong sense of gay identity around the AIDS organization Pink Triangle – its name is emblematic – and sufficient networks for a gay sauna to open and attract customers. Yet when a couple of years ago I gave some copies of the Australian gay magazine *Outrage*

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<sup>41</sup> Dennis Altman, *Global Sex*, Chicago, 2001, ix. Actually Mahathir constantly talks about homosexuality, in the context of describing the decadence of the west. His use of homosexuality as a theme of attack precedes the charges against Anwar Ibrahim. His "reluctance," then, was staged.

to the manager of the Kuala Lumpur sauna, I was told firmly there could be no display of something as overtly homosexual as these magazines – which are routinely sold by most Australian newsagents. In the same way there is also a strong lesbian network in the city, and many women use office faxes and email to arrange meetings and parties.<sup>42</sup>

Former Prime Minister Mahathir regularly condemned homosexuality. Only President Robert Mugabe in Zimbabwe can be compared to Mahathir for such a constant stream of anti-homosexual statements. In 1992, he addressed the United Nations General Assembly. He said that developing countries had no interest in American-style democracy if “democracy means to carry guns and flaunt homosexuality.” When the United Nations Economic and Social Council debated granting “consultative status” to the International Lesbian and Gay Association in July, 1993, Malaysia voted against accreditation. The Malaysian representative stated that it opposed the “ethical and moral values represented by this organization.”

In his fourth book, published in 1999, Mahathir took a typical slam at the west, implicating homosexuality:

Materialism, instant sexual gratification, selfishness and the cult of the individual have all become something like cultural norms. The community has given way to the individual and his desires. This change in values in the West has inevitably eroded established customs, conventions and traditions. The new set of values largely rejecting all that relates to spiritual belief or communal life. Hence, Western societies today are riddled with single-parent families, with homosexuality, with cohabitation, with unrestrained avarice, and, of course, with disrespect for others... We do not reject our Asian values and surrender to the woes of Western hedonism.<sup>43</sup>

## HIV/AIDS

The public promotion of Islam has a clear impact on HIV/AIDS education and prevention programs. There has been religiously based opposition to public education efforts:

In a recent incident, efforts by university volunteers to promote a seminar was not only largely ignored but some students went on to tear down posters of the programme. Another round of condemnation is already in store against preparations to host the International AIDS Conference next month. While the reasons for the criticism and lack of sympathy towards these programmes vary, the qualms among Malays from the religious group are generally centred on their perception that AIDS conferences promote the use of condoms or safe sex. To them, contraceptives are linked to promiscuity and adultery. In other words, having pushed the community into religiosity and on to moral high ground, it will be “counter productive” to accept such programmes. Agreeing or supporting such programmes will mean, first, admitting that the community is facing moral decadence and secondly, religious pressure alone is not enough to check immorality ... Many Malay elders ... refused to believe there are many Malay youths involved in homosexuality ... To make matters worse, these problems have led to a conflict between Malay political forces in the country. One side believes the setting up of an Islamic state run according to religious laws will overcome these problems. The other believes in being pragmatic, wanting to remedy the situation by whatever means, regardless of whether the approach is deemed Islamic or otherwise.<sup>44</sup>

A recent UNICEF publication commented:

The first case of AIDS appeared in 1986. Although the epidemic started among injecting drug users, there are probably as many infections now through sex. The government made the first major efforts to tackle the disease in 1988. These, however, do not seem to have been very effective, and prevalence in Malaysia is now relatively high. The government has banned needle exchange programmes and has not promoted condom use.<sup>45</sup>

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<sup>42</sup> Dennis Altman, *Global Sex*, Chicago, 2001, 92-93.

<sup>43</sup> Mahathir Mohamad, *A New Deal for Asia*, Pelanduk, 1999, 78.

<sup>44</sup> Shamsul, *Blaming the garb of fallen angels*, *The Star*, Kuala Lumpur, September 17, 1999, 22.

<sup>45</sup> *Every Last Child: Fulfilling the rights of women and children in East Asia and the Pacific*, UNICEF, 2001, 28.

## Transgender

In Malaysia the state does not pay for sex reassignment surgery (though it is paid for in Iran).

Dr. The Yik Koon of Universiti Utara Malaysia, who has studied the history of Malaysian transsexuals, said they often faced discrimination and found it difficult to get a decent job or home. Many banks and insurance firms are also reluctant to provide loans or insurance services. “Discriminatory laws and mis-informed attitudes mean transgenders continue to be denied basic rights. Overall, the movement of lesbian, gay and transsexual communities in Malaysia is still behind when compared to Singapore or Thailand,” she added.<sup>46</sup>

## Mongolia

Mongolia has a population of 2.6 million. 56.8% of the population are urban.

In 1999 we learned that the first LGBT organization, named Tavilan, had been formed in Mongolia, with 22 members.

## Myanmar/Burma

Myanmar (to use the name recognized by the United Nations) has a population of 49.5 million. The average growth rate from 1975 to 2003 was 1.8. The average growth rate from 2003 to 2015 is estimated at 9.0%. 29.5% of the population lives in urban centers.

Myanmar, like other former British colonies, inherited a criminal prohibition against gay male acts.

The Global Fund to Fight Aids, Tuberculosis and Malaria announced in August, 2005, that it was ending funding and activity in Myanmar on December 1st because of government restrictions on travel, procurement and monitoring.

The Global Fund ... said its decision was regrettable given the serious epidemic threatening the impoverished Southeast Asian nation. Burma ... has up to 610,000 people living with HIV/Aids... But travel curbs on UN staff overseeing the implementation of Fund-financed programmes and bureaucratic hurdles in procuring medical and other supplies had forced the Global Fund to terminate its agreement with Rangoon. ... “The Global Fund has now concluded that the grants cannot be implemented in a way that ensures effective programme implementation”... It is the first time that the Geneva-based Global Fund has withdrawn from a country...<sup>47</sup>

In contrast, UNAIDS continues to be active in Myanmar.

We know of no GLBT rights organizations active within Myanmar.

## The Philippines

The Philippines consists of 7,100 islands, and has a population of 80.2 million. The average growth rate from 1975 to 2003 was 2.3%, and is projected to run at 1.6% from 2003 to 2015. It probably has the fastest population growth rate in Asia. 61% of the population lives in urban centers, the highest urbanization rate in Southeast Asia. The literacy rate, at 94%, is the highest in the ASEAN region. The majority of the population is Roman Catholic, though evangelical protestant churches are now important. The Philippines is the only Christian majority country in Asia. There is a Muslim minority in the southern island of Mindanao.

### Criminal law

The Philippines was a colony of Spain, followed by fifty years as a colony of the United States. It did not inherit any law against same-sex sexual activity.

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<sup>46</sup> Pathomkanok Barnes, Thailand ‘least biased’ on gender, The Nation (Bangkok), July 10, 2005, 4A.

<sup>47</sup> Reuters, Aid body leaves Burma, The Nation (Bangkok), August 20, 2005, 5A.

Manila, in the past, had a reputation for heterosexual sex bars. Mayor Lim cleaned up the city, with the result that the few gay bars that operate these days are scattered in the large urban areas that border Manila itself.

The state structure copies basic elements of the United States constitution. As a result the legislative initiatives on lesbian and gay issues over the last few years have come from individual members of congress and not from the executive.

### **Organizations and public events**

The lesbian organization CLIC was formed in 1983. The Library Foundation began informally in 1989 and was registered in 1991 focused on HIV/AIDS education and prevention. UP Babaylan, the first gay student group, was founded in 1992 and gained official recognition at the University of the Philippines Diliman campus. ProGay was established in 1993. The Womyn Supporting Womyn Centre was started in 1994.

The first pride parade in Asia was held in Manila on June 26th, 1994, co-organized by ProGay and the Metropolitan Community Church. It commemorated the 25th anniversary of the Stonewall riots in New York City. Fr. Richard Mickley, pioneer of gay and lesbian marriage in the Philippines, conducted a pride worship service. The second parade was held on June 22nd, 1996, with about 500 participants. It has been held every year since.

The first national lesbian conference was held in December, 1996, the first of a series of national conferences held on the main campus of the University of the Philippines. The campus could be used because the student group, UP Babaylan, had been officially recognized by the University.

Three lesbian organizations worked together to host the 4th Asian Lesbian Network conference at the University of the Philippines in December, 1998. After the conference, back home, a Malaysian lesbian commented on the openness she had seen at the conference – recalling a banner which stretched across the main road on the campus proclaiming the “lesbian” conference. Such a public use of the word “lesbian” was unthinkable in Malaysia.

In June, 1999, the Lesbian and Gay Legislative Advocacy Network, or Lagablab was formed, to lobby the Philippine Congress. It was put together by UP Babaylan, CLIC, Katlo, The Library Foundation, ManilaOUT Foundation, Metropolitan Community Church, The Order of St. Aelred, Womyn Supporting Womyn Centre and Zone.

### **The role of the Roman Catholic Church**

The Roman Catholic Church has great influence in the Philippines. Divorce is not allowed (though annulment is). The Church opposes state family planning programs. Yet popular culture, with its love of local transvestite beauty pageants and macho movie stars, does not reflect Catholic moral teachings. Joseph Estrada, a movie star who publicly talked about how he supported all his illegitimate children, swept the popular vote and became president a decade ago.

**It would probably be fair to say that Catholicism has had a greater influence in public than in private behaviour. This is a consequence of its strong association with an often resisted colonial power, and the unsuccessful attempts to indigenize many of its interior orientations. An example of the latter is the common attitude among rural Filipinos not to consider sexual practice as coterminous with moral probity. The long list of sexual prescriptions associated with Catholicism are as often breached as observed. While public behaviour of Filipinos conforms to Catholic norms, their private behaviour often contradicts them. Rather than seeing this inconsistency as an instance of uneven socialization (split-level Christianity), it simply expresses the fact that universal norms linking the private-public spheres are undeveloped. Moves for such a development, especially in the moral domain are conspicuously initiated by middle-class Filipinos. Couples for Christ is a middle class organization whose aim is to practice Catholic norms in public and private spheres. Its appeal in rural areas and among the urban poor is negligible.** <sup>48</sup>

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<sup>48</sup> Paul Pertierra, *The market in Asian values*, in Cauquelin, Lim, Mayer-Konig, *Asian Values: Encounter with Diversity*, Curzon, 1998, 135.

## Human Rights Commission

The Gay Movement for Human Rights in the Philippines (GAHUM-Philippines), based in Cebu City, lodged a complaint with the Philippine Commission of Human Rights concerning Jonathan Agudana who was barred on two separate occasions from entering a dance club in Cebu City for cross-dressing.

Agudana who was wearing denim shorts, a vest and lady's sandals was at the Commission for Human Rights (CHR) yesterday for the preliminary investigation of his complaint against a club for "discrimination." Club Royale had barred him from entering their establishment in two instances because he was dressed as a woman, Agudana said. He said cross-dressing "is a form of self-expression for gays and the public should not perceive it as offensive." ... Assisted by Gay Movement for Human Rights in the Philippines (Gahum) Agudana filed the complaint against Club Royale's policy last Oct. 25 [1999]. It was the first time the CHR received such a complaint. ... Agudana said he tried to reason with the guard [who barred him from entry] but was told that he could not enter because men were supposed to be dressed in pants and put on socks. "Niingon ko nga dili man ko lalaki, bayot man ko (I told him that I am not a man, I am gay)," he said. He said his appeal fell on deaf ears.<sup>49</sup>

This was the first complaint ever presented to the Commission concerning lesbian, gay, bisexual or transgender rights. The complaint was dismissed by the Commission on January 11th, 2001. The IGLHRC draft letter of protest contained the following paragraph on the view of Attorney Alejandro P. Alonzo, Regional Director, Commission on Human Rights-Region VII, Cebu City:

In your public comments regarding the dismissal of the case, you stated that Club Royale's policy violated no law because customers should be subject to house rules, including dress codes governing "appropriate attire." You also presented your personal views about standards of dress: "If you are a man, you should wear the apparel of a man or vice versa."

## HIV/AIDS

A recent UNICEF publication comments:

[In the Philippines] prevalence is also low, probably for reasons similar to Indonesia, including the low use of sex workers. One risk could be home visits from the four million or so overseas workers. In 1998 AIDS was the second leading cause of death for Filipino immigrants to California. In 1998 the government introduced a new AIDS Prevention and Control Act. This includes the provision of HIV/AIDS instruction in schools, but it states that this may not be used to propagate the use of birth-control devices, such as condoms.<sup>50</sup>

## Anti-discrimination legislation?

In 1995 lesbians from CLIC and some gay men testified before a congressional committee in the Philippines on gay and lesbian rights legislation, the first such event in Asia. In December, 2001, gays and lesbians testified for the second time before a congressional committee on anti-discrimination legislation. The bill was approved in principle by the committee, but was not enacted. In 2004 the Philippines' House of Representative passed a bill banning discrimination against gays, lesbians, bisexuals and transgendered people. The legislation moved on to the Senate. Again it was not enacted. The political turbulence in the Philippines over the last few years has made legislative action difficult.

Meanwhile, in 2005, Eric Julian Manalastas, an instructor at the University of the Philippines, stated "Next academic year, UP will offer a new courses in gender and sexuality."

## Singapore

Singapore has a population of 4.2 million. Its average growth rate from 1975-2003 was 2.2%. The birth rate has been declining, dropping to its lowest level of 1.24 in 2005, well below the replacement rate of 2.1. In August, 2004, the government announced a US \$175 million package of grants and incentives to encourage couples to have more children and singles to marry. Singapore is a city. 100% of the population is urban.

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<sup>49</sup> Doris C. Bongcad, Gay takes case to CHR, defends cross-dressing, Cebu Daily News, 13 December, 2000.

<sup>50</sup> Every Last Child, Fulfilling the rights of women and children in East Asia and the Pacific, UNICEF, 2001, 27-28.

Singapore has a remarkable continuing modern history of discrimination and repression. No GLBT rights organizations are permitted. A colonial era British anti-homosexual criminal law continues in force.

In 1988 three gay-themed plays were banned in Singapore. The banning in 1988 was followed by performances in 1989, 1990 and 1992. The 1990 Singapore International Arts Festival staged a performance of *M Butterfly*. Theatre is one of the open areas for Queer performance. In 1992 the Censorship Review Committee in Singapore recommended that “materials encouraging homosexuality should continue to be disallowed.”

On May 30th, 1993, Singapore police raided Rascals, a gay-on-Sunday disco, harassing patrons for no apparent reason. Twenty-two gay people, including lawyers, doctors and other professionals, signed a letter of protest addressed to the chief of police in an unprecedented public move. They received an official apology. Such harassment of gay venues ended. The event prompted the formation of the group People Like Us. In 1996 ten individuals signed an application for the legal registration of People Like Us. The application was refused, and refused again on an appeal. Membership in an unregistered organization is unlawful. The group officially disbanded. It reapplied for registration in 2004 and was again refused.

In June, 1993, five governments made positive references to lesbian and gay issues at the Vienna World Conference on Human Rights: Australia, Austria, Canada, Germany and the Netherlands. Singapore was the only state to make a negative comment. In a statement pointedly titled “The Real World of Human Rights” Singapore described most human rights as “still essentially contested concepts.” The statement went on:

**Singaporeans, and people in many other parts of the world do not agree, for instance, that pornography is an acceptable manifestation of free expression or that homosexual relationships is just a matter of lifestyle choice. Most of us will also maintain that the right to marry is confined to those of the opposite sex.**

Some of this language was repeated by Singapore’s Deputy Prime Minister S. Jayakumar in September, 2005, at the UN Summit. He again said that most human rights were still essentially contested concepts. He added:

**But the penchant of some states to present their views as universal norms inevitably provokes resistance, unnecessarily politicizes the process and is ultimately unhelpful to the cause of human rights. Unless this deeper issue is squarely addressed, any changes will only be superficial.**<sup>51</sup>

Singapore’s views fit easily with statements by Pakistan and Malaysia, who have opposed “new” and “undefined” rights in name of cultural sensitivities, often speaking at the UN in the name of the Organization of the Islamic Conference.

In 2001 a large circuit party was held on the eve of Singapore’s national day in August. The second annual party, Nation02, drew 2,500 people, including around 500 visitors from the region. Nation04 got extensive publicity outside Singapore, but was not covered by local media. The party had gotten too big and too successful for authorities to continue to ignore it. Permits for additional parties have been refused by police. Early in 2005 the government denied a permit for a concert by the openly gay US Christian singers (and partners) Jason and deMarco. The concert was being sponsored by a local gay Christian support group, Safehaven. Proceeds were to go to Singapore’s Action for Aids.

In July, 2003, Prime Minister Goh Chok Tong told Time Magazine that his government had begun to hire gays and lesbians. Goh said “We are born this way and they are born that way, but they are like you and me.” This liberalizing attitude did not go very far. The criminal law against male homosexual activity remains in place and activist groups are still not allowed to be legally registered. Current Prime Minister Lee had said that indoor talks would no longer require a permit. So in August, 2005, a group organized IndigNation – a series of artistic presentations and talks – the whole event protesting the refusal of the government to license the Nation party or liberalize further.

Prime Minister Lee Hsien Loong was asked in October, 2005, about the ban on gay parties by a Time maga-

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<sup>51</sup> AFP-Jiji, U.N. assembly pressured over new human rights council, Japan Times, September 18, 2005, 5.

zine reporter, who suggested that the Singapore government seemed to be “somewhat homophobic.”

Lee responded that the government was not homophobic, but must be sensitive to those who condemn homosexuality.

I think it would be offensive to a large number of Singaporeans and will be very divisive. And I think from a government’s point of view therefore, it is not a wise thing to do. How do we provide the maximum space without it becoming intrusive and oppressive on the rest of the population and without causing a backlash which will lead to polarization and animosity? There will be those who say this is wrong, it’s a sin, not just a crime but a sin, stop it. Therefore, it’s a dynamic balance and one which we’ll have to manage very carefully.<sup>52</sup>

In November, 2,000 people attended the Nation V party, held in Phuket, Thailand. The organizers have been busy organizing additional large party events in Shanghai and Taipei.

## Taiwan (Republic of China)

Taiwan has a population of 22.72 million. The official language is Mandarin. It is the world’s 17th largest economy and 15th largest trading nation. It has the third largest foreign exchange reserves in the world. The per-capita income in 2004 was US \$13,500. The literacy rate is 97.16%.<sup>53</sup> The People’s Republic of China regards the island as a breakaway province, and places pressure on intergovernmental organizations, such as the UN and ASEAN, and on individual countries to follow a ‘one China’ policy and refuse separate diplomatic recognition to Taiwan.

In 1983 the prominent modernist author Pai Hsien-yung published his novel “Crystal Boys,” in Chinese, telling the stories of a group of young male sex workers and their patrons in New Park in central Taipei. After a few years the novel gained widespread attention from the mainstream literary establishment in Taiwan. It has been called the first modern Asian gay novel. It was made into a film in 1986 and a “hugely popular” television series in 2003.

Lesbian organizations and magazines developed in the early 1990s. ‘Tongzhi’ fiction garnered a number of prizes and accolades from the mainstream literary establishment and “became a clearly delineated movement with defining significance for 1990s Taiwanese literature.”

A remarkable political mainstreaming of sexuality issues developed in Taiwan in the 1990s. A forward-looking recognition of human rights was becoming a part of Taiwan’s assertion of legitimacy:

- In March, 1993, Gay Chat became the first officially registered and recognized gay student group at National Taiwan University, and the first in the country. By November, 1995, ten such groups existed on various campuses, though often not officially recognized.<sup>54</sup>
- In December, 1993, a public meeting was held between the Taiwanese Legislative Yuan and a coalition of six tongzhi groups, Between Us, Asian Lesbian Network Taiwan, Ai Bao, National Taiwan University’s Gay Chat Group, Speak Out and Tongzhi Workshop. The groups put forward a number of demands, some related to HIV/AIDS policies.
- In his campaign for mayor of Taipei, Chen Shui-bian, later the President of Taiwan, promised, if elected, to organize a public tongzhi street party.
- Taiwan journalist An Keqiang interviewed over two hundred gay men in fifteen cities in the People’s Republic of China, and published a report in 1995, Black Souls Under the Red Sun (Hong taiyang xia de hei linghun).<sup>55</sup>
- In 1995 academic Josephine Ho was a central figure in establishing the Center for the Study of Sexualities at Taiwan’s National Central University. It has played a prominent activist role in public policy discussions.

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<sup>52</sup> Not homophobic, but no gay parties anyway, says s’pore PM, fridae.com, October 7, 2005.

<sup>53</sup> Figures from a pamphlet issued by the government of Taiwan, entitled Taiwan, Happy Birthday: The Republic of China National Day, 10th October 2005.

<sup>54</sup> John Nguyet Erni, Anthony Spires, The Formation of a Queer-Imagined Community in Post-Martial Law Taiwan, in John Nguyet Erni, Siew Keng Chua, Asian Media Studies, Blackwell, 2005, 229.

<sup>55</sup> Tze-Ian D. Sang, The Emerging Lesbian, Chicago, 2003, 169.

- In June, 1996, the first issue of the glossy, normal sized G&L Magazine appeared in Taiwan, licensed by the city government, selling publicly. In the first issue the Democratic Progressive Party of Chen Shui-bian published a message of support for tongzhi equality, liberation and rights, claiming that it aimed to build “a respectful, pluralistic society which embraces difference, allowing people the freedom to choose and treating people as people.”<sup>56</sup> The magazine sold 15,000 copies in the first month. It had a variety of articles on establishing relationships and, very importantly, on how to relate to parents. It was joined by a sister magazine Glory.<sup>57</sup>
- Mayor Chen Shui-bian sent a representative of his government to attend the same-sex wedding ceremony of popular author Hsu Yoshen and his partner Gary Harriman in Taipei in November 1996, saying a stomach ailment prevented his attendance.
- In 1997 the first gay pride festival was held in Taiwan. In 2000 it was held with financial support from the city government. In 2003 the first pride parade in greater China was held in Taiwan as part of the annual pride festival. More than a thousand people were involved.
- In 2000 the government announced the draft of the “Basic Human Rights Protection Law.” Reportedly homosexuals would be granted the legal right to form families and adopt children. No further actions were taken on the proposal.
- In parliamentary elections in December, 2001, two openly gay candidates ran for office as independents.
- The Asian Lesbian Film and Video Festival was held in Taipei, August 5-10, 2005, organized by the Gender/Sexuality Rights association - apparently the first “lesbian’ film festival in Asia.

## Thailand

Thailand has a population of 63.1 million. Its average rate of population growth from 1975 to 2003 was 1.5%, indicating the success of its population policies. Growth from 2003 to 2015 is expected to average 0.7%. 32% of the population lives in urban centers.

In 1983 the first gay magazine, Mithuna, began publication in Bangkok. Various gay magazines have been published in Thailand since that time, none of a mainstream character. In 1986 Anjaree, a lesbian organization, was formed in Bangkok, but did not become publicly active for a few years. For a period it published a small format magazine.

Beginning in the 1980s Thailand emerged as a gay tourist destination in Asia both for Asians and for Westerners. In 1987 the first of seven editions of Eric Allyn’s guidebook, *The Men of Thailand*, was published, selling in the various GLBT bookstores that had come into being in the West.

For many years, it was not for sale in Thailand. Around five gay guidebooks on Thailand have been published since, one in Mandarin. In recent years free gay maps and gay magazines have emerged for tourists, widely available in the bars and saunas.

Academic interest in Thailand also developed. In 1989 Peter Jackson’s book *Male Homosexuality in Thailand* was published, followed by a number of books, articles and chapters by Western scholars. This external interest in Thailand has produced an extensive English language literature.

In 1988 the pioneering HIV/AIDS education and prevention group FACT (The Fraternity for AIDS Cessation in Thailand) was established. Currently the largest gay organization in the country is Rainbow Sky, an HIV/AIDS organization.

In 1997 the Rajabat Institute, the national system of 36 teacher training colleges in Thailand, announced that it would ban homosexuals (meaning effeminate ‘lady boys’ or kathoeyes). The lesbian organization Anjaree was active in the campaign against the ban. After public controversy the ban was rescinded. In 1999 the Public Relations Department of the Government of Thailand announced a ban on people with

<sup>56</sup> Fran Martin, *Situating Sexualities*, Hong Kong University Press, 2003, 84.

<sup>57</sup> JTze-Ian D. Sang, *The Emerging Lesbian*, Chicago, 2003, 249; John Nguyet Erni, Anthony Spiers, *The Formation of a Queer-Imagined Community in Post-Martial Law Taiwan*, in John Nguyet Erni, Siew Keng Chua, *Asian Media Studies*, Blackwell, 2005, 225. In 2003 the English language name of G&L was changed to Gamma.

sexual abnormalities appearing on television programs. The ban was controversial and probably never enforced.

In 1999 the Bangkok Gay Festival parade was held for the first time at Halloween in the central business and bar district in Bangkok, initiated by an alliance of gay business owners and gay and transvestite entertainers. It is now an annual event. Gay oriented businesses in the beach resorts of Pattaya and Phuket copied the idea, giving Thailand three annual pride/festival events. Thailand was already established as the major Asian and western gay tourist destination in Asia because of its flourishing bar and sauna scene.

Anjaree, the Thai Lesbian organization, held a public seminar in December, 2002, in Bangkok at which the Deputy Minister of Health spoke, confirming a letter from the Ministry that homosexuality was not now considered to be a mental disorder. Thailand was following international standards on this issue. The English language papers reported this announcement as a breakthrough.

In 2004 the Ministry of Culture of Thailand, active in opposing pornography in magazines and on the internet, requested television stations not to air “sexually deviant” homosexual messages (by having effeminate homosexual characters in programming). It has been active in closing websites and its actions seem to have eliminated the clandestine sale of soft-core locally produced gay male magazines. Bangkok Post reported in July, 2005, that the Crime Suppression Division had blacklisted about 20 Thai-language websites featuring lewd pictures and offering pornographic video CDs for sale.

In 2004 the Bangkok Metropolitan Administration named pioneering gay activist Natee Teerarojjanapongs to an advisory committee to represent gay, lesbian and transgendered people.

When it was announced that the large Singapore-organized Nation party would be held in Phuket in November, 2005, it had the support of Phuket officials, including Phuket Governor Udomsak Uswarangkura, who said “We already have one annual Gay Festival in Phuket, and nobody ever has any trouble with it.”

Thailand is well-known for its transgender kathoeyes. Like in the Philippines, transgender beauty contests are common features in rural life in the country. Kathoeyes have a visible and successful place in entertainment. Large transvestite cabaret shows function in Bangkok, Pattaya and Phuket, serving the large tourist market. Busloads of families from Hong Kong or Singapore pour into the theatres to see the shows.

Thailand is a world center for sex reassignment surgery, but good medical assistance can be costly. Thailand does not correct personal documentation to reflect the post-operative sex of individuals. There are many examples of social acceptance of kathoeyes. Some function, apparently without problems, as teachers in schools. But there have been attempts to exclude effeminate males or ladyboys from the teacher training universities and from prominent roles in television. Those attempts have failed, but they may be repeated.

An AIDS prevention campaign was announced in early 2006 focused, for the first time, on gay men and MSM:

**Thailand will this month see its first mass campaign to prevent HIB infection among men who have sex with men (MSM), amid an alarming surge in gay infection rates. The five-month campaign – Sex Alert – will be run by the US non-government organization (NGO) Family Health International, in conjunction with government agencies, including the Public Health Ministry. A public relations firm has been hired to distribute safe-sex information through various media.**

The category MSM includes gay and bisexual men, male sex workers (some of whom are not gay) and transgender individuals, explained Dr. Frits van Griensven, associate director for science at HIV/Aids Collaboration, a joint activity of the Health Ministry and the US Centres for Disease Control and Prevention.

Van Griensven said that the nature of the epidemic in the country had changed. “Previously Thailand faced a heterosexual epidemic of enormous size that required all its resources and attention,” Van Griensven said. “As that epidemic has been controlled... [it] diversified to other groups.”

USAID regional mission director Tim Beans said the problem of detection and outreach had been com-

plicated by a tendency for men who have sex with men to be “stigmatized” and “neglected” by society. “Up until now, men having sex with men has not been included in the national strategy plan,” he said.

Surveys carried out last year in Bangkok, Chiang Mai and Phuket found an alarming incidence of HIV infection among MSM. The rate of infection among MSM surveyed in Bangkok surged from 17 per cent in 2003 to 28 per cent last year, van Griensven said. ...

About a third of the 16,000 Thais expected to get HIV this year would be MSM, Dr. Sombat Taenpra-sertsuk said.<sup>58</sup>

## Vietnam

Vietnam has a population of 82.0 million. The average rate of population increase from 1975-2003 was 1.9%. The rate of increase from 2003 to 2015 is projected at 1.2%. 25.8% of the population live in urban centers.

...the Vietnamese Government launched a ‘Social Evils Campaign’ [in 1995] that decried ‘cultural poisons’ such as ‘illegal karaoke singing,’ prostitution, heroin and pornographic videos. Throughout the campaign the Vietnamese press carried endless reports of teenage violence, sexual assaults, drunkenness, drug addiction and homosexuality.<sup>59</sup>

In 1997 two men were married in April in Ho Chi Minh City. They celebrated in a hotel with 100 guests, provoking public controversy. Authorities said that they had broken no law. In March, 1998, two women married in the province of Vinh Long. The local People’s Committee refused to register the marriage. In June, 1998, Vietnam’s national assembly banned same-sex marriage.

In 2000 Bui Ann Tan, a police officer, published his novel ‘A World Without Women,’ telling a story of a police investigation of a series of murders of gay men. The People’s Police Publishing House insisted on changing the ending so that the gay brother of the policeman hero finally married a woman. The third edition restored the author’s ending, where the character’s ongoing sexual orientation is unsettled. The novel was made into a ten part television series in 2004 as part of the very popular program The Crime Police. The author has completed a second book, ‘A Dialogue With the World Without Women,’ which reprints letters he received from gay men about the novel. Apparently a World Without Women support group has formed in Hanoi.

In 2002 state run media in Vietnam declared that homosexuality was a “social evil” on a par with drug use and prostitution and proposed laws to allow the arrest of gay couples. The government reported that homosexuals had infiltrated the tourism, restaurant and karaoke bar industries.

In June, 2005, authorities refused a permit for a transvestite show from Thailand on the basis that it would “promote homosexuality.” The show was organized by the popular Tiffany cabaret theatre that draws large tourist audiences in Pattaya, Thailand.

Prime Minister Phan Van Khai, visiting Canada, in 2005, was asked by reporters about equality rights for gays and lesbians. He laughed and said: “This is not a serious problem in Vietnam at the moment. Only a few people, I think. The issue has not been rising or debated in Vietnam.”

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<sup>58</sup> Arthit Khwankhom, Chris Vedelago, Anti-Aids campaign to focus on gay men, The Nation, February 1, 2006, 2A

<sup>59</sup> Michael Barr, Cultural Politics and Asian Values, RoutledgeCurzon, 2002, 19.

