

HEADLIGHT



**BITE
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BRIEF**

Understanding Young People & the Law in Asia and the Pacific





HEADLIGHT – an introduction

APCOM aims to increase access and understanding to important global and regional policies, strategic information and other high-level publications, including legal and policy analyses, research reports, and skills building tools by summarising information into a short brief using simple language. It is designed for use by community HIV and sexual health and rights organisations and advocates working with men who have sex with men (MSM) and transgender people (TG).¹



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Young people and the law in Asia and the Pacific

This issue of *HEADLIGHT* is based on the report **Young people and the law in Asia and the Pacific**, which was published by UNESCO, UNAIDS, UNDP, UNFPA, and Youth Lead in 2013². In this brief we will focus especially on the issues in the report which affect access to HIV and sexual and reproductive health services (SRH) by young MSM and young TG, especially those under 18. From here on, the report will be referred to as **Young people and the law**.

Young MSM and young TG face significant barriers in accessing SRH and HIV information and services in the region. Laws and policies highlighted in this *HEADLIGHT* adversely affect young MSM and young TG. For example, young MSM will be affected by age of consent laws, laws criminalizing same-sex sexual behaviour, laws criminalizing sex work, and laws and policies restricting services to married persons only. Collectively, the effect of these laws and policies mean that most, if not all, SRH and HIV services can be withheld from young MSM and TG. As a result, young MSM and TG may have to rely on parental consent to access SRH and HIV services, or to work creatively with health services providers or law enforcement officers to obtain the SRH and HIV services they need. All of these can create barriers to access for young MSM and TG.

This is slowly changing. Many countries are beginning to adopt laws and policies that recognise the need for young people, in particular young MSM and TG, to access SRH and HIV services. The most significant and widespread development is national health strategies which offer policy guidance, rather than enforceable rights created by laws. Governments need to address the issues raised in *Young People and the law in the Asia and the Pacific*, and work towards legal and policy reform to give young people, including young MSM and TG, the ability to achieve the highest attainable standard of health.

Cover page of "Young people and the law in Asia and the Pacific" published by UNESCO Bangkok



I. Background

The Asia-Pacific region is home to the largest number of young people aged 10-24 globally.³ While young people in the region are generally healthier and better educated than in the past, SRH and HIV are often overlooked aspects of their well being.⁴ Poor access to health information, commodities such as condoms and contraceptives, and other services, contribute to high levels of unplanned pregnancy and the spread of HIV and other sexually transmitted infections (STIs).

Many factors play a role in determining young people's access to services, including cultural, financial, legal, and policy factors. Some obstacles which adults face are also faced by youth, for example distance to services, and embarrassment about needing, wanting or asking for SRH or HIV information and commodities. Other obstacles are unique to youth, including:

- lack of independent finances to pay for health products, services, insurance, legal or transport, and other costs;
- limited independence in making decisions to seek care, with decisions made by parents, spouses, in-laws, and other gatekeepers; and
- reluctance among health care workers to provide information or services to young people.

To-date, there has been no systematic review of how laws and policies in the region affect young people's access to SRH/HIV information and services, or the ability of service providers to ensure services are available and accessible. This review:

- drew from focus group discussions with young people to capture their views in accessing SRH and HIV services in Indonesia, Myanmar and the Philippines;
- assessed criminal laws, laws in relation to age, laws on health and HIV, law enforcement practices, and national policies relating to HIV, SRH and youth;
- highlighted whether laws, policies and practices were restrictive or supportive of the rights of young people to access services; and
- made 15 recommendations for action.



II. Laws and policies that impede young people's access to SRH and HIV services

REGISTRATION LAWS

A significant number of young people do not have birth registration or other civil registrations.⁵ This can prevent access to some government health services, particularly for those who are parentless, refugees and/or internally displaced.

AGE OF CONSENT LAWS

These laws determine when young people are legally able to make certain decisions, for example consenting to medical procedures, accessing SRH services like HIV testing, and consenting to sex. If a young person is below this age, they are considered to lack the capacity to make such decisions. The age at which a person is considered to have the capacity to make these decisions, also called 'the age of majority', is determined by legislation in civil law countries (Cambodia, China, Indonesia, Lao PDR, Mongolia, the Philippines, Thailand and Vietnam) and by a combination of legislation and case law in common law countries (generally former British or US colonies or territories). The age at which a person can make a decision can vary depending on whether it is a decision to have sex, a decision to use a medical service, or another decision where an age restriction applies.

AGE OF MAJORITY/AGE OF CONSENT FOR MEDICAL INTERVENTION/ HIV TESTING

In most countries, persons aged 18 years and over are considered adults, and have legal capacity to give full consent to medical interventions. Parental consent is usually required for people under 18, who are sometimes referred to as 'minors'. The requirement to obtain parental consent does not take into account the specific needs and circumstances of the young person seeking access to services. For example, if a minor does not have rights to privacy and confidentiality, minors might be reluctant to seek services, as doing so could disclose their sexual and/or drug using behaviour to their parents.⁶

Other obstacles to accessing information and services include situations where:

- There is no way of obtaining consent because no parent or legal guardian exists or is available;
- No laws or policies may exist for HIV testing for unaccompanied minors, abandoned, orphaned and street children, minors engaged in commercial sexual exploitation, or children in institutional settings;⁷
- Even in some countries where the age of consent to medical treatment is lower than 18, there is inconsistency between the law and rules governing the professional conduct and practices of health care workers.⁸

Guidance documents have been prepared in relation to HIV services for adolescents in some countries and sub-regions.⁹ These documents in principle advocate for the acceptance of the 'mature minor' principle. The mature minor principle is a legal principle that recognizes the capacity of some minors to consent independently to medical procedures, if they are assessed by a health professional to be sufficiently mature to understand the meaning and consequences of the procedure. In common law countries where the 'mature minor' principle has been accepted, there is some flexibility in providing SRH services to minors.



II. Laws and policies that impede young people's access to SRH and HIV services

(continued)

In practice, there is often confusion about the legal rights of young people to access SRH and HIV services and information without parental consent. Where rights are unclear, service providers often act conservatively regarding consent, restricting access to information and services.¹⁰ But in some countries, for example the Philippines, service providers do provide SRH and HIV services to adolescents without the consent of parents and guardians.¹¹

LAWS RELATING TO CONSENT TO SEX

Laws relating to age of sexual consent are essential to protect children from sexual exploitation. However, such laws can also restrict young people's access to SRH and HIV services because:

- Young people may be deterred from attending SRH and HIV services if they fear that they or their sexual partners might be prosecuted for underage or extramarital sex;¹²
- Young people may also be deterred if they need to obtain parental consent as this might disclose their sexual activity to their parents;¹³
- A high age of consent to sex (e.g. 18 or 19 years) could contribute to judgmental attitudes of health care workers and reluctance to provide SRH and HIV services towards sexually active younger people.

There needs to be a balance between enabling young people to assume adult roles and responsibilities (including decisions regarding their own health and sexual lives) and ensuring their protection from exploitation and abuse.¹⁴ Some countries have sought to achieve this balance by enacting laws that permit young people to consent to sex if the age difference between the parties engaging in sexual conduct is not more than a certain number of years.¹⁵

LAWS AND POLICIES RESTRICTING ACCESS TO SRH SERVICES TO MARRIED PERSONS

In many countries in the region, SRH information and services are generally only available to married persons,¹⁶ and few services are provided to unmarried young persons. The legal age of marriage in many countries is 18 or 21, however marriage at a younger age may be allowed with parental consent.¹⁷ Therefore, access to SRH information and services for young people under the age of legal capacity and/or unmarried depends on parental consent. Some countries provide services to unmarried young people discretely and without publicly acknowledging it (e.g. Malaysia) or through private clinics (e.g. China).¹⁸ Some countries, including Bangladesh, India, Myanmar, the Philippines, and Tuvalu, are introducing policies that provide access to services to unmarried young persons.¹⁹

II. Laws and policies that impede young people's access to SRH and HIV services

(continued)

LAWS AND POLICIES RESTRICTING ACCESS TO HARM REDUCTION SERVICES TO PEOPLE OVER A CERTAIN AGE

Harm reduction services for people who use drugs generally target adults, and may be restricted to those over 18 years old,²⁰ even though many people experiment with drugs during adolescence.²¹ Another major barrier to services targeted at youth is the relative invisibility of the drug-using population.²² The Committee on the Rights of the Child (CRC) has asked countries to ensure that criminal laws do not impede access to specialized and youth-friendly harm-reduction services.²³

CRIMINAL LAWS

Laws criminalizing certain conduct can in practice be direct barriers to the provision SRH and HIV services. Such laws can also increase stigma towards young people engaged in the criminalised conduct, and deter them from accessing services for fear of arrest or disclosure of their conduct to their families or the authorities. Examples of these laws include:

- Age of criminal responsibility laws: some countries set the minimum age of criminal responsibility at a low age (e.g. below 12 years old²⁴), capturing children who have been forced into criminal activities, or who cannot understand criminal responsibility. The CRC has encouraged States to raise the minimum age level to at least 12, the generally accepted age at which a child can be assumed to be aware of and responsible for any criminal conduct;²⁵
- Laws criminalizing same-sex sexual conduct: 19 countries in the region criminalize male-to-male sexual conduct;²⁶
- Laws criminalizing cross-dressing or female impersonation: in some Malaysian states, transgender persons have been subject to prosecution under such laws;²⁷
- Laws criminalizing the sex industry, and law enforcement practices such confiscating condoms, harassing educators and outreach workers, and harassment, extortion and assault of sex workers;²⁸
- Censorship and public order laws are sometimes enforced broadly so as to interfere with health promotion efforts such as distribution of safe sex information, or dissemination of health promotion information;²⁹
- Possession or use of illicit drugs attracts criminal and/or administrative penalties in all countries in the region, and in some countries may lead to compulsory detention in detoxification or rehabilitation centres.³⁰ Possession of needle and syringes is also illegal in some countries. Fear of arrest and detention leads many young people who use drugs to avoid health services, and to avoid carrying clean injecting equipment;
- Some countries have enacted laws that criminalize HIV transmission, or failure to disclose positive HIV status to sexual partners.³¹ Such laws add to the stigma associated with HIV. In most cases it is more effective to address sexual behaviour through voluntary education, counselling and health promotion, rather than by imposing legal penalties. It has been recommended that governments prosecute intentional HIV transmission using general criminal law, rather than HIV-specific laws.²³

SUMMARY TABLE OF LAWS RELATING TO AGE

The following table summarises the various laws relating to age in the region (proposed laws in grey).³³

| Country | Age of majority/Consent for medical intervention/HIV testing | Age of consent to sex for males (with female or with another male) | Age of consent to marriage (males) | Age of criminal responsibility |
|------------------|---|---|------------------------------------|--------------------------------|
| Afghanistan | - | Only after marriage (with female) Illegal (with another male) | 18 | 12 |
| Bangladesh | - | None specified (female) Illegal (male) | 21 | 9 |
| Bhutan | - | 18 (female) Illegal (male) | 18 | 10 |
| Brunei | - | None specified (female) Illegal (male) | | 7 |
| Cambodia | HIV testing: 18. If a guardian's consent cannot be obtained, testing may be conducted if in minor's best interest and with their consent. | 15 (female) 15 (male) | 20 | 14 |
| China | Age of majority: 18, 16 if source of income is his own labour | 14 (female) 14 (male) | 22 | 14 |
| Cook Islands | | None specified (female) Illegal (male) | 21 | 10 |
| Fiji | HIV Testing: Under 18 if the person can understand the nature and consequences of the test. | 16 (female) 16 (male) | 18 | 10 |
| Hong Kong | Mature minor principle applies | | | |
| India | Age of majority: 18 Mature minor principle applies HIV Testing: 12 (HIV/AIDS Bill 2007) | 18 (females) 18 (males) | 21 | 7 |
| Indonesia | Age of majority: 21 Children are consulted for medical intervention under the Child Protection Act | 19 (female) Aceh Province: Muslim males can only have sex after marriage (female) 18 (male) | 21 | 12 |
| Kiribati | | | 18 | 10 |
| Lao PDR | HIV Testing: 14 | 15 (female) 15 (male) | 18 | 15 |
| Malaysia | Age of majority: 18 HIV Testing: 18 Mature minor principle applies | Muslim males can only have sex after marriage (female) Illegal (male) | 21 | |
| Maldives | | Only after marriage (female) Illegal (male) | 18 | 10 |
| Marshall Islands | HIV Testing: 14/15 | 16 (female) 16 (male) | 18 | 10 |
| Micronesia | HIV Testing: 14/15 | | 18 | 14 |
| Mongolia | | 16 (female) 16 (male) | 18 | 16, or 14 (serious crimes) |
| Myanmar | Age of majority: 18, parental consent explicitly required for under 12. Mature minor principle applies Children are consulted regarding medical intervention (<i>Child Law 1993</i> , Section 13) | None specified (female) Illegal (male) | 18 | 7 |
| Nepal | Age of majority: 18 HIV testing: Minors 14 and over can give consent to an HIV test and VCT without parental consent on a case-by-case basis, if the minor has sufficient maturity to understand the testing procedures and results. | None specified (female) None specified (male) | 20 | 10 |

| | | | | |
|------------------|--|--|----|----------------------------|
| Pakistan | HIV Testing: 18 or less if estranged and living independently from parents (proposed but not passed into law) | Only after marriage (female) Illegal (male) | 18 | 7 |
| Palau | | None specified (female) Illegal (male) | | 10 |
| Papua New Guinea | HIV testing: 13 | 16 (female) Illegal (male) | 18 | 7 |
| The Philippines | Age of majority: 18 HIV Testing: 18. 15, if at higher risk of HIV (proposed by Revised Philippine HIV and AIDS Policy Program) | 12 (female) 12 (males) | 21 | 15 |
| Samoa | | 16 (female) Illegal (male) | 21 | 10 |
| Singapore | Undefined. Over 18s can give legal consent, and under 12s need parental consent. Mature minor principle applies for those between 12 and 18. | | | 7 |
| Solomon Islands | | None specified (female) Illegal (male) | 18 | 8 |
| Sri Lanka | Age of majority: 16 (males) 14 (females) | 16 or 12 if married (female) Illegal (male) | 18 | 8 |
| Thailand | Age of majority: 20 (age of majority), although minors can do acts that are personal, suitable for his life and reasonable to his needs | 15 (female) 15 (male) | 21 | 10 |
| Timor Leste | | 17 (female) 17 (male) | | 16 |
| Tokelau | | 16 (female) 16 (male) | | 10 |
| Tonga | | None specified (female) Illegal (male) | 18 | 7 |
| Vanuatu | | 15 (female) 15 (male) | 21 | 10 |
| Vietnam | HIV Testing: 16 (proposed by Law on HIV/ Aids Prevention and Control of 2006 Article27) | 16 (female) 16 (male) | 20 | 16, or 14 (serious crimes) |

Self-stigma among young men who have sex with men and transgender women & the linkages with HIV Session : ICAAP11; Bangkok



III. Laws and policies that support young people's access to SRH and HIV services

There are various laws and policies that provide legal protections that can enhance the rights of young people to access SRH and HIV services. It should be noted that young people may still face a range of practical challenges in enforcing their legal rights, including:

- lack of awareness and understanding of their legal rights;
- lack of access to independent legal advice and legal aid services;
- cost and complexity of legal proceedings;
- lack of confidence and trust in the formal legal system; and
- concerns regarding disclosure of a person's identity or health status during legal proceedings (of particular concern for those living with HIV).

CHILD PROTECTION LAWS

Child protection laws aim to protect children from abuse, neglect, exploitation and violence. They can also facilitate access to SRH and HIV information, commodities, and other services, by clarifying the rights of minors in relation to health care and the obligations of parents, guardians, caregivers and government agencies regarding children's health.³⁴ Child protection laws can provide the basis for addressing the needs and rights of children who have experienced sexual exploitation or abuse or who are using harmful drugs, by facilitating access to SRH, HIV, and other health services. These laws can support government action, as well as more informal community-level action, to promote young people's right to health.³⁵

LAWS THAT GIVE PEOPLE RIGHTS TO ACCESS SRH AND HIV SERVICES

Some countries have enacted laws providing general rights of access to services for all persons in need:

- In Fiji and PNG, it is unlawful to deny any person access to the means of protection from HIV including condoms, lubricant, and needles and syringes;³⁶
- In Cambodia, people living with HIV have a right to free primary health care;³⁷
- In China and Viet Nam, there is a legal right of access to antiretroviral drugs (ARVs) for prescribed populations.³⁸
- In Viet Nam, children under 16 are given first priority in access to free ARVs;³⁹
- In the Philippines, there is a right to basic health services for people living with HIV in government hospitals.⁴⁰

LAWS THAT PROTECT CONFIDENTIALITY

These laws can reduce a young person's fear that if they access SRH and HIV services, their behaviour or health information may be disclosed to their family and the authorities. The national HIV laws of Cambodia, Fiji, Lao PDR, Mongolia, PNG, the Philippines, and Viet Nam, make HIV-related health information confidential, subject to some exceptions. The laws of Cambodia, Fiji, PNG, the Philippines and Viet Nam permit disclosure of HIV test results relating to a minor to their parent or guardian in certain circumstances.

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ANTI-DISCRIMINATION LAWS

Laws prohibiting discrimination against a person in the provision of health care services can support young people's access to services. Anti-discrimination laws are particularly helpful for young people if they specify that discrimination is prohibited on the grounds of age, marital status, HIV status, health status, disability, pregnancy, sexuality, gender, or gender identity.

III. Laws and policies that support young people's access to SRH and HIV services

(continued)

While several countries in the region have laws prohibiting discrimination on the grounds of HIV, only a few have laws prohibiting discrimination by health services on the grounds of sexuality.⁴² There are generally no laws that prohibit discrimination against a person due to a history of drug use or selling sex.⁴³

The national HIV laws of Cambodia, Fiji, Lao PDR, Mongolia, PNG, the Philippines and Viet Nam prohibit discrimination by health services against a person because of their HIV status.⁴⁴ These laws enable people living with HIV to challenge stigma and discrimination in accessing HIV or SRH services, and to seek a legal remedy through court action if necessary.

Very few countries specifically prohibit discrimination on the grounds of being a young person,⁴⁵ although discrimination on the basis of age is sometimes covered by broad anti-discrimination language in some countries.⁴⁶

NATIONAL POLICIES AND FRAMEWORKS

Most countries in the region have national policies that address the needs of young people. Policies are not laws – they merely guide actions to achieve a desired outcome. In many countries, even with progressive policies in place, there is a significant gap between the intention of a policy, and the reality of service provision. In many countries, access to SRH and HIV services for young people continues to be restricted by cultural and religious norms, stigma and discrimination, resource constraints, police practices, and confusion caused by conflicting laws and policies. Laws often lag behind policies, because the process for repealing restrictive laws and enacting new progressive laws can take many years. Ideally, policies that promote service access should be supported by laws that provide young people with enforceable rights to access SRH and HIV services, including penalties for conduct that impedes access.

Relevant policies of countries in the Asia and Pacific region include: national HIV policies, strategies and plans; national youth policies; national SRH, adolescent health and population policies; and policies on youth-friendly national service standards. Some aspects of these policies which address the needs of young people include:

- recognition of the need for youth friendly policies and participation of young people in policy development;⁴⁷
- increased education and health services targeted towards young people, especially most at risk young people;⁴⁸
- recognition of the need to address stigma and discrimination among health service providers;⁴⁹
- promotion of rights of young people including confidentiality rights;⁵⁰
- identifying and addressing cultural, political, economic, social, educational, religious and institutional factors that contribute to the vulnerability of young people to HIV.

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India's Draft National Youth Policy 2012 is an important model because it addresses the needs of key populations that are often ignored in other government policies. The policy touches on the needs for basic nutrition and health, including mental health, the need for promotion of a healthy lifestyle free of substance abuse and addictions, recognition of the vulnerability and stigma associated with youth engaged in sex trade / sex work, and the prejudices and stereotypes that affect transgender persons, gays, lesbians and young people infected and affected by HIV and tuberculosis (TB).

IV. Recommendations⁵²

These recommendations were formed after a thorough analysis of existing laws that impede and support the provision of SRH and HIV services. The steps for moving forward are designed to fill in the gaps in SRH and HIV services access by young MSM and young TG, and improving the quality of these services for young people.

YOUTH LEADERSHIP AND PARTICIPATION

Governments should support young people and their organizations to engage in advocacy and decision making on legal and human rights issues relating to SRH and HIV. Capacity-building of youth leaders should be supported.

LAW REFORM

Governments should enact comprehensive legislation guaranteeing young people's right to the highest attainable standard of health including: the right to access information and education essential to their health and development including on SRH and HIV; the right to access quality SRH and HIV services that are sensitive to their concerns; and freedom from violence and abuse.

Governments should remove age restrictions and parental consent requirements that impede access to SRH and HIV services. Consistent with the *Convention on the Rights of the Child*, national laws should recognize the evolving capacity of adolescents to make independent decisions regarding their health. Parental or guardian consent to SRH and HIV services should not be required if a minor is considered to be sufficiently mature, is capable of understanding the nature and consequences of the service, and is able to assess their own best interests. If governments prefer to define a minimum age for consent, this should be set at early adolescence.

Marriage should not be a pre-condition for access to SRH services.

Young people should have a legal right to access their medical records and to confidentiality of their medical records and health status. The law should prohibit disclosure by health care workers providing SRH and HIV services of personal information relating to a young person without the young person's consent, taking into account the **mature minor principle** and **evolving capacities**. Personal information includes (but is not limited to) information about the young person's health status, sexual behaviour, and drug use history.

The age of consent to sex should be set at an age that recognizes that many young people commence sexual activity during their early adolescence. Consensual sexual activity between adolescents who are similar in age should not be criminalized. Contradictions between age of consent to sex and age of consent to SRH services should be reconciled. The age of consent for autonomous access to SRH and HIV services should be equal to or lower than the age of consent for sexual relations.

Birth registration laws should address the need of young people who were not registered at birth to obtain identification documents so they can access government health and welfare services.

IV. Recommendations

(continued)

GENERAL LAW REFORM RECOMMENDATIONS APPLYING TO YOUNG PEOPLE AND ADULTS

Governments should implement the following recommendations of the Global Commission on HIV and the Law:

- Decriminalize private, consensual adult sexual behaviours, including same-sex sexual acts and voluntary sex work.
- Reform approaches towards drug use. Rather than punishing people who use drugs but do no harm to others, governments must offer them access to effective HIV and health services.
- Provide legal protections against discrimination based on actual or assumed HIV status, sexual orientation or gender identity.
- Work with the guardians of customary and religious law to promote traditions and religious practices that promote rights and acceptance of diversity and that protect privacy.

IMPROVEMENTS TO LAW ENFORCEMENT PRACTICES

Governments should ensure that law enforcement abuses, including harassment, extortion and violence, are punished. Criminal offences should not be applied against sexually exploited minors who sell sex or minors who use drugs as they should be seen as needing protection, rather than as offenders to be prosecuted.

Governments should provide independent monitoring and complaint mechanisms that can help prevent and respond to police abuses of young people.

In advance of law reform, **governments can adopt a pragmatic approach by not requiring harmful laws to be enforced against young people.** Governments can explore options such as not actively enforcing arbitrary age, marital status or parental consent restrictions.

Communication Causes Change Project



IV. Recommendations

(continued)

SRH AND HIV POLICIES AND PROGRAMMES

Governments should ensure that the rights of young people are explicitly addressed in HIV, SRH and population and development policies, and that SRH and HIV issues are integrated into national youth policies and strategies. As a policy response, SRH and HIV services can be reoriented to young people's needs (particularly unmarried adolescents) through requiring service standards and guidelines to be developed that address their specific needs.

SRH and HIV policies and programmes should address the following:

- Access to youth-friendly, evidence-based, gender-sensitive, non-discriminatory and confidential SRH and HIV services and information.
- Access for young people living with HIV to condoms, contraceptives, reproductive services and sexual health services, as essential components of HIV care.
- Recognition of the importance of ensuring SRH services are available to sexually active adolescents and unmarried young people, as well as married people.
- Support to programmes that respond to the specific needs of young people living with HIV and other young people from key populations.
- Systematic collection of confidential data in relation to the progress towards universal coverage of SRH and HIV services for young people, particularly young key populations. Age-disaggregated data on young people who are at increased risk of HIV and other STIs are required as an evidence base to inform policies and planning of services.
- Rights of young people to participate in policy development and programme implementation and evaluation.
- Community mobilization, focused awareness-raising and public education to enable parents, community leaders, health care workers, and the broader society to learn about adolescent SRH and HIV issues in culturally-sensitive ways, thereby influencing the social norms and cultural practices that are key to a supportive environment for SRH and HIV information and service provision.
- Removal of financial barriers to access to services through waiver of fees, health insurance, voucher schemes or other financing options to ensure services are affordable to young people.

LEGAL SERVICES

Governments should ensure access to legal aid for young people who require legal advice and representation in relation to their rights to access SRH and HIV services, privacy rights, law enforcement abuses, discrimination or other rights violations.

How you can use information from this *HEADLIGHT* and from *Young people and the law in Asia and the Pacific*

You might be thinking about how community organisations and advocates working with young MSM and young TG can use the information in this brief. Here are some ideas for you to consider:

Discuss the ideas in HEADLIGHT with your communities – take the opportunity of any regular community meetings, peer outreach worker meetings, or even your organisation's next annual general meeting to discuss these ideas with your community. This will share the information with a broader base of supporters, and will support discussions about what are the priority issues for young MSM or young TG in your country.

Identify and write down the key advocacy issues in your country – if your organisation can outline the key legal issues for young MSM and young TG in your country, and outline some key advocacy messages, you can share these with other organisations and advocates to generate a shared vision and broad support for change.

Share this brief in with key stakeholders and advocacy allies – The brief is a useful tool for discussing the priority legal and policy issues for young MSM and young TG in your country. You could use it during one-on-one meetings with key stakeholders such as government ministries, non-government organisations, faith-based organisations, or technical working group meetings. Using information from the brief, you can present and discuss some of the key legal issues for young MSM and young TG that are relevant in your country. If you don't have regular meetings with key stakeholders or technical working groups, you could use this brief as a reason to schedule meetings with stakeholders and advocacy allies.

Translate this brief into your local language – either through your organisation's staff, or by raising funds from country partners, you could develop a translation of this brief to make it even more accessible to community advocates. If you do go ahead with translation, please let us know at APCOM! We would also like to share translated versions through our networks.



Young transgender participants in #sayit activities: ICAAP11, Bangkok

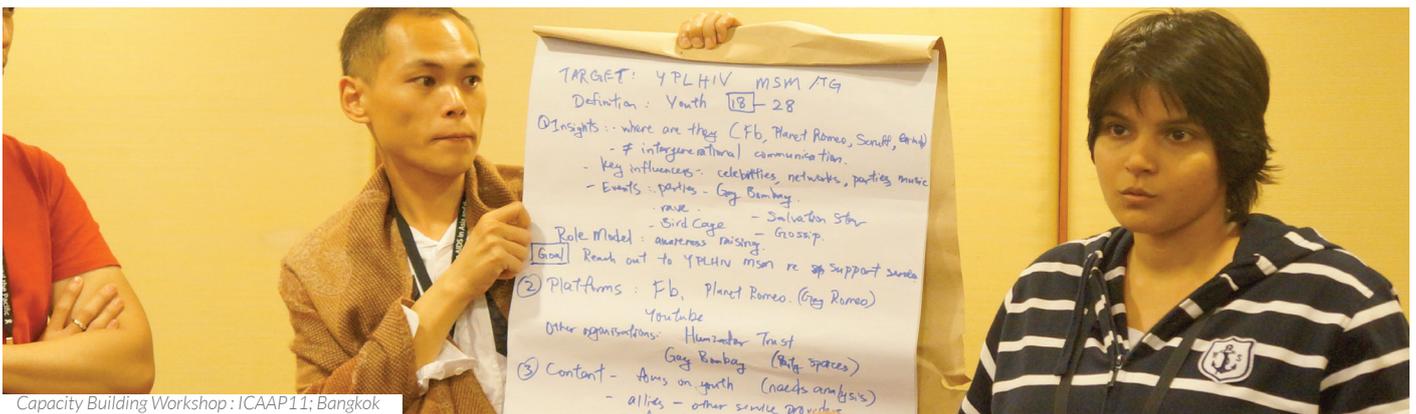
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3. United Nations Department of Economic and Social Affairs. 2013. *World Population Prospects, 2012 Revision*
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6. For example, in Brunei and Singapore, HIV information about a person under 16 years old may be disclosed with the parent's consent and in Cambodia, the Philippines and Viet Nam, a minor's HIV status can be disclosed to their parent or legal guardian without their consent. See Brunei's *Infectious Diseases Act*, Singapore's *Infectious Diseases Act*, Cambodia's *Law on the prevention and Control of HIV/AIDS 2002*, the Philippine *AIDS Prevention and Control Act 1998*, and Viet Nam's *Law on HIV/AIDS Prevention and Control 2006*.
7. For example in China, Malaysia, PNG, the Philippines and Thailand: Goyena, M. 2007. *Multi-Country Review of Laws and Policies on HIV Testing and Counseling in Select Countries in East Asia and the Pacific, presented to a regional experts meeting on Scaling up HIV Testing and Counselling in Asia and the Pacific, Technical Consultation*. Key informant interview, NGO, Yangon, November 2012, *Young People and the law*: endnote 131.
9. See for example WHO, UNESCO, UNFPA, UNICEF and GNP+, *Guidance for HIV Testing and Counselling for Adolescents and Treatment and Care for Adolescents Living with HIV, 2012-2013; Secretariat of the Pacific Community, Regional HIV and STI Testing Policy for the Pacific 2012*.
10. *Young People and the Law*, page 2
11. Capule R. 2009, *Parental notification and the minor patient* Phil. J. Internal Medicine, Vol. 47, No. IV, May-June, 2009
12. There are reports in some countries of minors being prosecuted for engaging in sex. In Maldives, 10 girls below 18 and one male minor were sentenced in 2011 for the offence of fornication. A person found guilty of 'fornication' is subjected to 100 lashes and sentenced to one year of house arrest or banishment, while a minor's flogging is postponed until 18: Lubna, H. 2012. 'Judicial statistics show 90 percent of those convicted for fornication are female.' *Minivan News*, 1 October 2012.
13. For example, in the Philippines, age of consent is set at 12, recognizing that many adolescents experience consensual sex at a young age, yet a person must be 18 before she or he can consent independently to an HIV test: see *Young People and the Law*, page 36 and Table 6.
14. WHO South-East Regional Office (SEARO) 2006, *Consent and Confidentiality: Increasing adolescents' access to health services for HIV and sexual and reproductive health, Report of the Regional Consultation*, New Delhi, India, 25-27 July 2006.
15. For example, in the Philippines, sex with someone 12 years or over but less than 18 is permissible provided that the age difference between the two persons is less than 10 years: *Special Protection of Children Against Abuse, Exploitation and Discrimination Act 1992*, Section 10.
16. For example, in Bangladesh, SRH service delivery systems generally do not cater to the needs of unmarried adolescents, and public facilities only provide contraceptives to married couples: Khan, M., Hossain, M. and Hoq, M. 2012, 'Determinants of contraception use among female adolescents in Bangladesh'. *Asian Social Science* Vol. 8, No. 12 pp. 181-191, p. 182. In Indonesia, article 72 of the *Health Law 2009* states that every individual has the right to a healthy and safe reproductive life and sexual life free from coercion and/or violence, however this is only with a lawful partner, and the right to determine one's reproductive life is subject to respecting "noble values and religious norms".
17. *Young people and the law*, Table 8 and page 39
18. *Young people and the law*, pages 40-41, Ersheng, G. and Chaohua, L. 2011. *Cognition, belief and practice: Sexual and Reproductive Health for Young People in China, a Course Under Development*. Zhang, K. (ed.) 2011. *Sexual and Reproductive Health in China, Reorienting Concepts and Methodology*. Leiden: Brill, p.160. Abdullah, R. 2009. *Increasing Access to the Reproductive Right to Contraceptive Information and Services, SRHR Education for Youth and Legal Abortion*, p.32
19. *Young people and the law*, page 42
20. *ibid*
21. For example, a survey of 2,231 people who inject drugs in Thailand identified age of first injecting ranging from 15 to 27, and a survey of 200 people who inject drugs in India identified age of first injecting ranging from 13 to 26: Cheng, Y., et al. 2006. 'Risk factors associated with injection initiation among drug users in Northern Thailand'. *Harm Reduct J*, Vol. 3, No. 10; Kermode, M., et al. 2007. 'My first time: initiation into injecting drug use in Manipur and Nagaland, north-east India' *Harm Reduct J*, Vol. 4, No, 19
22. For example, no data is available in Afghanistan, Bangladesh, Mongolia, Philippines: Fletcher A, and Krug A. 2012 *Excluding youth? A global review of harm reduction services for young people*. C. Stoicescu (ed.). 2012. *The Global State of Harm Reduction 2012: Towards an integrated response*, p.140.
23. UN Committee on the Rights of the Child (CRC). 2012. Consideration of reports submitted by State parties under article 44 of the Convention. Concluding Observations:Albania. CRC/C/ALB/CO/2-4. New York: UN, para. 63(b) with broader discussions on drug prevention and the needs of adolescent drug users highlighted in paragraph 62.
24. 7 years old in Brunei Darussalam, India, Myanmar, PNG, Pakistan, Singapore, Tonga; 8 years old in Solomon Islands, Sri Lanka, 9 years old in Bangladesh, and 10 years old in Bhutan, Cook Islands, Fiji, Kiribati, Malaysia, Maldives, Marshall Islands, Nepal, Palau, Samoa, Thailand, Tokelau, Tuvalu, Vanuatu: *Young People and the Law*, Table 10
25. UN Committee on the Rights of the Child (CRC). 2007. CRC General Comment No. 10 (2007): Children's Rights in Juvenile Justice. 25 April 2007, CRC/C/GC/10

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27. See: Equal Rights Trust. 2012. News: *Malaysian High Court Upholds a Ban on Cross-dressing*, 26 October 2012.
28. See: Godwin J. 2012. *Sex Work and the Law in Asia and the Pacific*. Bangkok: UNDP, p.22.
29. For example via internet sites targeting specific populations such as men who have sex with men or sex workers (e.g. China, Malaysia): Godwin, J. 2010. *Legal Environments, Human Rights and HIV Responses among Men who Have Sex with Men and Transgender People in Asia and the Pacific*. Bangkok: UNDP, pp.61-62,
30. For example Cambodia, China, Indonesia, Lao PDR, Myanmar and Viet Nam: UNDP. 2011. *Reference Guide for the Six Cities MSM Transgender Scanning Initiative*, p.128; Fajjar, R. and Crosby, A. 2012. 'Online networking and minority rights'. *Inside Indonesia*, 110: Oct-Dec 2012.
31. Cambodia: *Law on the Prevention and Control of HIV/AIDS of 2002*, Article 18; Lao PDR: *Law on HIV/AIDS Control and Prevention of 2010*, Article 69; Viet Nam *Penal Code Article 117*; PNG: *HIV/AIDS Management and Prevention Act 2003*, Section 24
32. Global Commission on HIV and the Law. 2012. *Risks, Rights and Health*, p.25; UNAIDS. 2008. *Criminalization of HIV transmission: Policy Brief*
33. This data has been collected from *Young People and the Law*, Tables 4,5,7,8,10 and 11, and section 3.1.2
34. See for example *Child Welfare Decree 2010*, Fiji; *Protection of Children from Sexual Offences Act 2012*, India; *Child Protection Law 2002*, Indonesia; *Child Act 2001*, Malaysia; *Law on Child Protection, Care and Education 2004*, Viet Nam
35. Plan Asia Regional Office. 2012. *Lessons for Protection, A comparative analysis of community-based child protection mechanisms supported by Plan in Asia*.
36. *HIV/AIDS Management and Prevention Act 2003* (PNG), Section 11; *HIV/AIDS Decree 2011* (Fiji) Section 26
37. *Law on the Prevention and Control of HIV/AIDS of 2002*, Article 26
38. *Law on HIV/AIDS Prevention and Control of 2006* (Viet Nam), Article 39; *AIDS Prevention and Control Regulations 2006* (China), Article 44 (rural PLHIV and those in economic difficulty)
39. *Law on HIV/AIDS Prevention and Control of 2006* (Viet Nam), Article 39
40. *Philippine AIDS Prevention and Control Act of 1998*, Section 22
41. Cambodia: *Law on the Prevention and Control of HIV/AIDS 2002*, Article 41; Fiji: *HIV/AIDS Decree 2011*, Sections 21-22; Lao PDR: *Law on HIV/AIDS Control and Prevention* Articles 21 & 34; PNG: *HIV/AIDS Management and Prevention Act 2003*, Sections 6 & 7; Mongolia: *Law on Prevention of Human Immunodeficiency Virus Infection and Acquired Immune Deficiency Syndrome of 2012*; Philippines: *Philippine AIDS Prevention and Control Act 1998*, Section 40 and see *Revised Philippine HIV and AIDS Policy and Program Act of 2012* (House Bill 6751, to be considered by Congress in 2013-2014); Viet Nam: *Law on HIV/AIDS Prevention and Control, 2006*, Article 8.
42. Such prohibitions exist in Australia, three cities in the Philippines (Davao City, Cebu City and Angeles City), Fiji, Hong Kong SAR, and New Zealand, *Young people and the law*, endnotes 322-326
43. Some states and territories in Australia provide limited protections on these grounds: *Young people and the law*, endnote 327
44. National Committee for the Control of AIDS. 2010. *National Strategic and Action Plan on HIV/AIDS/STI 2011-2015*. Vientiane: National Committee for the Control of AIDS, p.17
45. For example, *Australia's Age Discrimination Act 2004*
46. *Pakistan's Reproductive Healthcare and Rights Act 2013* provides that the right to be free from all forms of discrimination can be promoted by ensuring that no person shall be discriminated against in their reproductive lives, in their access to services and information on the grounds of race, colour, sex, creed or 'other criteria of discrimination'
47. For example, *Bhutan's National Strategic Plan for the Prevention and Control of STIs and HIV and AIDS 2008*
48. For example, *Cambodia National HIV and AIDS Strategic Plan 2011-2015*, *China's Action Plan to Prevent and Control HIV/AIDS (2011-2015)* 342, *Cambodia's National Policy on Youth Development 2011* (street children and out of school children) (*Myanmar's National Strategic Plan on HIV and AIDS 2011-2015*)
49. For example, *Mongolia's National Strategic Plan on HIV, AIDS and STIs*
50. For example, *Sri Lanka's National HIV/AIDS Strategic Plan 2007-2011*
51. For example, *PNG's National HIV and AIDS Strategy, 2011-2015*
52. *Young people and the law* also includes the following recommendation: *Abortion should be decriminalized and access to legal and safe abortion services should be increased*. This recommendation is not in the main text of the HEADLIGHT as it is outside the focus of the brief.



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