

Job Discrimination and Marginalization of LGBT People in Thailand*

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ABSTRACT:

Thailand is perceived to be open to people of diverse sexualities and gender expressions but a recent study commissioned by the International Labour Organization (ILO) found persistent stigma, discrimination and marginalization of Thai lesbian, gay, bisexual, and transgender (LGBT) workers. Discrimination occurs at all stages of employment, from education and training to access to employment, career advancement, and job and social security benefits. Gay, lesbian and bisexual workers are tolerated as long as they stay in the closet, while transgender persons face the strongest barriers to employment, being systematically excluded from many mainstream jobs in both public and private sectors and marginalized to a few stereotypical jobs open to them.

While Thailand has seen some positive legislative changes towards recognizing LGBT rights in recent years, genuine acceptance of gender diversity is still lacking in most Thai workplaces, especially in the public sector. Hostile work environment, in the forms of gossip, insensitive jokes, slurs, insults, sexual harassment and violence, result in many LGBT workers opting out of gainful employment for more accepting jobs that often offer lower pay, less job security and limited social protection. LGBT workers living with HIV and transgender sex workers face double stigma based on their sexual orientation and gender identity, HIV or sex worker status. Transgender sex workers are also a target of police harassment and extortion. The article concludes with policy recommendations.

KEY WORDS: LGBT, transgender, employment discrimination, sexual orientation, gender identity, Thailand

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http://www.ilo.org/asia/whatwedo/publications/WCMS_356950/lang--en/index.htm

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1. Introduction

Discrimination on the grounds of sexual orientation and gender identity (SOGI) has been recognized in international law, and developments in recent years have led to increased focus on the prevalence of discrimination against lesbian, gay, bisexual, and transsexual (LGBT) persons around the world. While some countries have adopted legal provisions prohibiting discrimination against LGBT persons, most countries have not.

LGBT workers face discrimination in various aspects in the job market throughout the employment cycle. There is a growing concern within governments and international trade union federations regarding violations of the rights of LGBT persons. However, specific information about discrimination against LGBT workers is not available in many countries, in particular developing countries like Thailand.

As part of a series of country studies that examines the discrimination faced by LGBT people at work, the International Labour Organization (ILO) commissioned a study to map the patterns of discrimination faced by LGBT persons in Thailand's world of work. (Other countries in the country study series include Argentina, Costa Rica, Hungary, Indonesia, Montenegro, and South Africa.)

2. Research methodology

2.1 Research aim and approach

The research was the first major study in Thailand that focused on discrimination against LGBT workers and therefore was exploratory in approach. It aimed to identify key issues and patterns of discrimination in the employment and occupation of Thai LGBT persons for policy considerations and recommendations. The qualitative research included two components, legal review and field research, and was conducted in close collaboration with the Thai LGBT networks and the ILO tripartite partners.

The legal review involved analysis of existing Thai national laws, regulations and policies that guarantee LGBT rights to equality and non-discrimination, discriminatory provisions thereof, as well as gaps in legal protection for LGBT rights, and recent legislative and policy changes to promote gender equality and LGBT rights.

The field research involved in-depth interviews, focus groups and meetings in four cities with over 80 individuals from LGBT organizations, academics, and representatives of the ILO tripartite partners from the government, workers' and employers' organizations, and civil society.

2.2 Field data collection

Field data were collected during June 2012 and February 2013. In-depth interviews and focus group discussions were conducted in four cities, including the capital Bangkok, the city of Chiang Mai and the industrial town of Lamphun in the North, and the city of Pattaya in the East.

Twenty-one (21) in-depth interviews were conducted with 29 individuals. Ten (10) focus groups were conducted with 54 respondents aged 20 to 54 from various sub-groups within the Thai LGBT community, with 12 email interviews to supplement data from the focus groups. The research respondent profiles are presented in Table 1 below.

Table 1: Research respondent profiles

Personal In-depth Interviews		Focus Group Discussions	
Category of respondents	Number	Category of respondents	Number
LGBT activists	12	Lesbian & bisexual women (1 FG)	9
Academics	2	Gay men (2 FGs)	11
NGOs	7	MTF transgender persons (3 FGs)	15
Government officials	3	Trans women (1 FG)	4
Employers' representatives	3	Trans men (1 FG)	3
Workers' representatives	2	MTF transgender sex workers (1 FG)	9
Lesbians (email interviews)	10	Gay male sex workers (1 FG)	3
Gay men (email interviews)	2	(*MTF = Male-to-Female)	
Subtotal	41	Subtotal	54
TOTAL			95

In addition, the author participated in two meetings with a number of LGBT individuals and government representatives and four seminars on LGBT rights.

The personal interviews, focus groups and supplementary email interviews were provided and arranged with the assistance of the following organizations:

- Lesbian organizations: Anjaree Group, Sapaan
- Organizations supporting gay men and men who have sex with men (MSM): Rainbow Sky Association of Thailand (RSAT), Bangkok Rainbow Organization (BRO), Mplus+
- Transgender organizations: Sisters, Center for Transgenders (supporting transgender sex workers), Thai Transgender Alliance (TGA), Trans Female Association of Thailand (TFAT)
- Foundation for SOGI Rights and Justice (FOR-SOGI)
- Teerarat Kanjanauksorn Foundation (TKF, advocating gender justice)
- The Poz Home Center (supporting people living with HIV)
- Service Workers In Group (SWING, supporting sex workers)
- Women's Health Advocacy Foundation (WHAF)
- People's Empowerment Foundation.

Efforts were made to obtain balanced perspectives from respondents, who came from all walks of life and various educational and social backgrounds. While the focus groups were conducted in four provinces, the respondents came from all regions of Thailand. They ranged from university students and university-educated urban professionals and gender/LGBT rights advocates, to low-income workers and sex workers, to less educated, unemployed/underemployed persons in rural and urban areas.

2.3 National validation of findings

The research findings were validated at a national workshop on 4 June 2014, attended by 163 people from various organizations, including over 80 members of LGBT community from across Thailand, 26 representatives of relevant government agencies, and workers' and employers'

organizations, over 30 interested academics and individuals from civil society, and around 20 staff members of various United Nations agencies. Many respondents in the research were among the workshop participants.

Workshop participants largely confirmed the research findings. They were asked to give their feedback on the findings in a brief 10-question questionnaire. In total, 90 people returned a completed questionnaire. Seventy-three (73) per cent of the questionnaire respondents identified themselves as LGBT. The majority of the respondents (78 per cent) said they were not surprised by the findings. Nearly half (43 per cent) said the findings reflected their own experience and 78 per cent the experience of LGBT people they knew. As high as 87 per cent of self-identified LGBT respondents said the findings reflected their own experience and others in their LGBT communities. Some self-identified heterosexual respondents commented that they were surprised by the findings because they were unaware of the problems before, especially the extent of discrimination against trans women (MTF transgender persons).

The research findings also confirmed findings of the national participatory review and analysis in Thailand under the “Being LGBT in Asia initiative” supported by United National Development Programme (UNDP) and United States Agency for International Development (USAID), in particular that discrimination against LGBT people in Thailand starts before employment, that transgender persons face the severest discrimination due to their visibility, and that LGBT people are pressured to hide their diverse gender identities at work or face lack of career progress (UNDP-USAID 2014).

2.3 Data limitations

The data tend to favor younger, urban, educated LGBT populations. Despite efforts to obtain interviews with older LGBT respondents, most active LGBT organizations tend to favor the younger LGBT generation and most active LGBT individuals who agreed to participate in the study were in their twenties and thirties, and some in their forties. As a result, the information received is somewhat skewed toward younger LGBT persons in the early and middle stages of their career. This was rectified to some extent by supplementary email interviews with older respondents.

As most interviews and focus groups were conducted in large cities, there is a slight skew toward vocational- and university-educated, urban LGBT population in white-collar and non-governmental jobs. This is particularly true for the lesbian group. Supplementary data were added for balance from a master’s thesis on “tomboy” factory workers in an industrial estate in a rural province of Lamphun in Northern Thailand.

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

3. Findings

The research findings are summarized in two parts: 3.1 protection for LGBT rights under Thai law; and 3.2 reality of LGBT discrimination in Thailand's world of work, which includes key observations and patterns of discrimination experienced by Thai LGBT workers in employment and occupation.

3.1 Protection of LGBT rights under Thai law

3.1.1 Equality protection and anti-discrimination provisions

Thai law does not criminalize homosexuality. Sodomy was decriminalized in 1956. However, legal protection of LGBT rights in Thailand has been relatively limited. In general the Thai legal system strictly and explicitly identifies persons in the law only by the male and female genders. Laws and regulations that discriminate against LGBT persons still exist even if there have been some positive legislative progress in recent years to ensure equal rights between men and women and to recognize LGBT rights.

Until very recently there was no Thai law that recognized the rights of persons of diverse sexualities. There is also no specific anti-discrimination law covering employment and occupation. Thai LGBT communities have actively advocated for more legal recognition and protection of their rights with some success.

The two previous constitutions of Thailand (1997 and 2007) guaranteed equality for all persons and between men and women. Section 30 of the Constitution of Thailand B.E. 2550 (2007), abrogated by the 22 May 2014 coup d'état, prohibited discrimination on the ground of sex among the twelve prohibited grounds. LGBT advocates lobbied unsuccessfully due to objections from conservative lawmakers to include "sexual diversity" as a prohibited ground in the anti-discrimination provision. However, they negotiated to have protection against discrimination based on "sexual identity," "gender" and "sexual diversity" annotated as inclusive in the ground of sex in the accompanying Intentions of the Constitution which provided guidelines for application. The Interim Constitution of Thailand imposed by the military junta since 22 July 2014 contains no equality protection or anti-discrimination provisions. The draft Constitution of Thailand set to go for endorsement by the National Reform Committee in September 2015 and possibly a referendum in 2016 includes "gender" as a prohibited ground of discrimination (Sec 35). The ground may include sexual identities and expressions "different from birth sex," as often articulated in the Thai language.

Persons of diverse sexualities were recognized for the first time in Thai law in the November 2012 National Social Welfare Promotion Commission (NSWPC) Regulation, issued under the 2007 amendment of the Social Welfare Promotion Act B.E. 2546 (2003). The 2012 NSWPC regulation identifies "persons of diverse sexualities" as one of the 13 target population groups requiring assistance to access social services. It gives comprehensive definitions of LGBT identities, including homosexuals (gay men and lesbian women, including *toms*); bisexuals; transgender persons (Thai: *khon kham phet*, *katoeys*, *sao praphet song*, *ying kham phet*); intersex persons; and queer persons (Royal Gazette 2012, November 16). LGBT advocates provided

extensive input to the drafting of the Regulation which sets out key measures to increase opportunity in employment, education and participation in policymaking, among others.

In recent years gender expressions and identities have become diversely identified in Thai society. Besides common English terms such as “gay”, “lesbian,” “bisexual,” “transgender” and “intersex” adopted into usage in the Thai language with additional nuances, there are many specific Thai terms for various gender expressions and identities in the Thai context:

- “Gay” is used exclusively with men who are attracted to men. Thai women who are attracted to women are not referred to as “gay women,” but “*tom*,” “*di*,” “*les*,” or *ying rak ying*, literally “women who love women.” Gay men are also called *chai rak chai*, “men who love men.” The latter two terms are relatively new.
- “Lesbian” is used to refer to women who are attracted to women but is generally not favored by Thai “women who love women” because it is perceived to carry a negative connotation that lesbians are mentally abnormal. However, many lesbian women refer to themselves simply as “*les*.”
- “*Bi*” is an informal Thai term for “bisexual” used as in English, although few Thais openly identify themselves as bisexual.
- “*Tom*,” from English “tomboy,” refers to a woman with a masculine gender expression/identity who is attracted to women, often but not always, a “*di*.”
- “*Di*,” from English “lady,” refers to a woman with a feminine gender expression/identity who is attracted to women, often but not always, a “*tom*.”
- “TG,” shortened from “transgender,” is a new term of self-identification among Thai transgender activists and members of the male-to-female (MTF) trans community.
- “*Katoey*” is an old but still widely used Thai term referring to a person who was born male but has a feminine appearance, expression and behavior more consistent with that of a female person. The term has historical meaning as “hermaphrodite,” which medically means a person who has both male and female sexual organs, and historically used to mean either a MTF or female-to-male (FTM) transsexual person. In current usage, *katoey* refers exclusively to MTF trans persons. Some MTF trans women do not favor this term and find it derogatory, while those who take pride in their unique, in-between gender identity of *katoey* embraces it.
- “*Sao praphet song*,” literally “woman/women of the second category,” refers to *katoeys* and trans women. This term is widely acceptable to MTF trans persons.
- “*Tut*,” from *Tootsie*, the Dustin Hoffman film, is equivalent for the English term “fag,” or “faggot.” This adopted term is widely used but highly pejorative for gay men, *katoeys* and MTF trans people, although some gay men among the younger generation may embrace it and use it subversively. However, in general usage it is best avoided.
- “*Phet thi sam*,” literally “the third gender,” refers collectively to individuals who are not heterosexual. This term is generally not favored by Thai LGBT people, as it is perceived to reinforce gender hierarchy.
- “*Khon kham phet*” is the direct translation of “transgender person,” used for both MTF and FTM.
- “*Ying kham phet*” is the Thai term for “trans woman.”
- “*Chai kham phet*” is the Thai term for “trans man.”
- “*Phet kam-kuam*” is the Thai term for “ambiguous sex” of intersex persons.

The Gender Equality Act B.E. 2558 (2015) (Royal Gazette 2015, March 13) was the first major Thai law that guarantees protection from gender discrimination for LGBT persons as follows:

‘Unfair gender discrimination’ refers to any direct or indirect action or non-action which is an unfair distinction, exclusion or restriction of any right or benefit because the person is male or female, or has a *gender expression different from his/her birth sex* [my emphasis]. (Sec. 3, para. 1)

However, while the Act takes a major step towards recognizing LGBT identities, its content is limited and concerns mostly with the administrative process of the establishment of two gender equality commissions. The Act contains no mention of sexual harassment and gender-based violence, and no guidelines for promoting gender equality or protecting equal opportunity.

Traditionally Thai law protected only women and children from sexual violence. In the last decade, there has been a move towards a more inclusive definition of sexual rights and wider protection to also cover men and people of diverse sexualities. The Criminal Code Amendment Act (No. 19) B.E. 2550 (2007) has expanded the definition of rape to cover raping of people of all genders and all types of sexual penetration, and imposes more severe penalties (up to 20 years imprisonment) on offenders in all forms of rape and sexual abuses. However, concerns remain about effective law enforcement and law enforcement officers’ insensitivity for rape victims, especially transgender persons.

In employment and occupation, the Labour Protection Act B.E. 2541 (1998) and No. 2 amendment B.E. 2558 (2008), which provides protection for workers in the private sector, contains provisions that guarantee equal treatment for male and female workers (Sec. 15) and equal pay for work of equal value (Sec. 53). The Labour Protection Act also prohibits sexual harassment against all workers including men (Sec. 16). The Act does not apply to central, provincial and local administration, and state enterprises under the law governing state enterprise labor relations. The Ministry of Labour Regulation on Thai Labour Standards, Social Responsibility of Thai Businesses B.E. 2547 (2007) prohibits discrimination against workers on the basis of sex as well as personal sexual attitude.

3.1.2 Discriminatory provisions

Discriminatory provisions persist in some laws, regulations, and administrative rules. Some discriminatory provisions have been addressed, while others remain.

Until 2012 transgender/transsexual males were still officially described as “mentally ill” as the basis of an exemption from mandatory military conscription. The wording “permanent mental disorder” was commonly recorded on the reserved military service exemption document, known as Sor Dor 43, for exempted trans persons but who are still required to report for compulsory military draft along with all 21-year-old Thai males. Sor Dor 43 is often required for Thai men in job applications as proof of military service or exemption thereof, resulting in many MTF trans persons with such a document being rejected or deterred from applying for formal jobs.

Thai LGBT networks heavily lobbied the Ministry of Defense to discontinue certifying the Sor Dor 43 documents with the “mental disorder” wording. The military agreed in March 2006 but refused to revise previously issued papers. The real change came in September 2011, following a court order in a case filed by a 27-year-old transgender person against the Ministry of Defense in 2006 for the use of such wording. The Central Administrative Court issued a landmark ruling ordering the Ministry of Defense to stop labeling transgender persons as having a “permanent mental disorder” and correct the wording on the plaintiff’s Sor Dor 43, stating that such a wording was “inaccurate” and “unlawful.” On 11 April 2012 Ministerial Regulation No. 75 B.E. 2555 (2012) was issued under the 1954 Military Service Act to use the term “gender identity disorder” in military service exemption for transgender persons. Exempted transgender persons can now request a new Sor Dor 43 with the new wording. This was progress, but the new wording “gender identity disorder” continues to stigmatize as a form of psychological abnormality.

Ambiguous language in laws and regulations sometimes lead to discrimination resulting from arbitrary interpretation and application of the law, limiting the opportunities of transgender people (and other population groups, in particular persons with disabilities). One key example is the Civil Service Act B.E. 2551 (2008) which defines a disqualification for civil service applicants on the basis of “being morally defective to the extent of being socially objectionable” (Sec. 36, B(4)).

3.1.3 Gaps in legal protection

Thailand is known for world-class medical skills in sex assignment surgeries and a high visibility of transgender people in society, yet ironically the Thai legal system fails to recognize transgender identity. Sex reassignment surgeries are legally permissible for those aged 18 and above, but transgender persons who have had sex change are not allowed a legal change of their gender. Legally Thai citizens are either male or female according to their gender registered at birth. At present only intersex persons with ambiguous or both male and female sexual organs can apply for a legal title “correction,” after a medical procedure has been completed to keep either male or female sexual organs.

Thai law also allows only a man and a woman to be legally married. Thailand’s Civil Code stipulates that only persons with a legal marital status can be considered a legal heir of the spouse. Without legal recognition of the union, same-sex partners in Thailand are deprived of many legal spousal entitlements and benefits and the capacity to conduct legal transactions as legal spouses, for example, the right to co-manage spousal assets, tax benefits, alimony, social security benefits for spouses through the employer and the state, life insurance benefits (Preechasilapakul 2013).

3.2 Reality of LGBT discrimination in Thailand’s world of work

3.2.1 Persistent stigma and discrimination of LGBT persons in Thai society

The overwhelming majority of respondents in this research believe there is no real acceptance of LGBT people in Thai society due to persistent and prevalent prejudices, misconceptions and

lack of understanding about SOGI rights. Thai LGBT persons face stigma and many forms of discrimination in education, at work and in life. Some are rejected by their own families.

Different groups of LGBT respondents experience varying degrees of social acceptance, but those with visibly different gender expressions, in particular transgender persons—*katoeys*, *sao praphet song*, trans women and trans men—as well as *toms* and intersex persons face the strongest and most extensive discrimination and exclusion by mainstream Thai society. While there is more social acceptance for LGBT people now than in the past, the perception that Thailand is an LGBT heaven is more an illusion than reality. One extreme example is a sign in front of a restaurant in Pattaya that says “*Katoeys*, dogs and durians are not allowed.”

The respondents in this research generally characterized Thai society’s acceptance of LGBT people as: “It’s OK, as long as they are not my children.” Their observation from the research is to some extent supported by two national polls conducted in 2013 and 2015, each with 1,250 respondents nationwide (SE ≤1.4). The poll results indicate that while Thais are generally open and accepting of LGBT friends and colleagues and, to a lesser extent, family members, they are much less willing to support LGBT legal rights. Nonetheless, there are slight increases in support for the right to a legal gender title change for transgender persons and for legal same-sex partnership (see Table 2 below).

Table 2: NIDA Poll - Acceptance of LGBT at work and in family in Thai society (2013, 2015)

Poll question	Answer	2013 (%)	2015 (%)
LGBT friends and colleagues	Can accept	88.49	88.72
	Cannot accept	8.79	10.00
	No answer/Not sure	2.72	1.28
LGBT family members	Can accept	77.56	79.92
	Cannot accept	17.25	16.80
	No answer/Not sure	5.19	3.28
Transgender persons should have the right to a legal gender title change	Agree	43.53	53.20
	Disagree	42.01	39.44
	No answer/Not sure	14.46	7.36
Legal same-sex partnership	Agree	52.96	59.20
	Disagree	33.84	35.04
	No answer/Not sure	13.18	5.76
Add alternative gender(s) besides male and female in all official documents	Agree	-	59.36
	Disagree	-	35.12
	No answer/Not sure	-	5.52

Source: NIDA Poll, “What does Thai society think of the third sex?” <http://goo.gl/ix2Qaj>. Accessed 5 August 2015.

Another survey conducted with 868 LGBT people from eight provinces in 2012-2013 revealed that 27 percent experienced violence in the family, with the highest percentage (38.4 percent) among MTF trans, and most did not report violence to authorities (Samakkeekarom & Taesombat 2013). MTF trans also reported sexual harassment and rape or attempted rape during reserved military conscription and training.

3.2.2 Hetero-normative pressure and exclusion of trans people

Discrimination and exclusion against LGBT people is an extension of the larger gender inequality that still exists in society based on heterosexual normative values, which perpetuate and reinforce the distinction and expectations of masculine and feminine gender roles and

behaviors. Those who do not conform to traditional gender norms are censured, marginalized or excluded for being different. These norms are reinforced by social conditioning at home, at school and at work, and sanctioned through laws, rules and regulations. For example, the male vs. female school and work uniforms have been a source of difficulties for many Thai trans people, as increasingly covered by Thai media in recent years.

While Thai society can be said to tolerate transgender persons who have had a full transformation to the preferred sex, there is less tolerance for those whose gender identity is ambiguous, “in between,” neither “man” nor “woman.” Trans people tend to be the target of the strongest discrimination and violence among all LGBT populations.

3.2.3 Discrimination at all stages of employment, starting from education

The majority of LGBT respondents in the research have experienced discrimination in many aspects and stages of employment, starting from education and training, to access to employment, career opportunity and advancement, as well as in access to pension and other social security benefits.

MTF trans more than other groups reported being pressured at home and by teachers to choose “soft” subjects and fields of study (such as communication, humanities and social science) and discouraged from others, often high status, fields such as teaching, psychology, medicine, and engineering. Transgender university students, both MTF and FTM, are sometimes barred from examination and training courses due to strict dress code.

A MTF trans trainee teacher in Northern Thailand was now allowed by her university to wear a female student uniform during her teacher’s training after four-year university course work. (Thailand is one of the few countries in the world where university students are required to wear uniform.) Although the school that accepted her as a trainee teacher in a female uniform, the university objected citing the university’s dress code, arguing that a trainee teacher must be an appropriate role model for school pupils, and if she insisted on wearing the female uniform she would not be allowed to graduate and become a teacher. With the intervention of a local NGO and the National Human Rights Commission, the matter was resolved. The university gave a special permission to allow her to wear a female uniform during her training (Suriyasarn 2015, Box 4.2, p. 49).

Some trans respondents reported having been denied scholarship due to their transgender identity. Some gay male and trans students experienced harassment and violence, from verbal abuse to bullying and physical assaults from peers as well as teachers, resulting in school dropout or change of school, even attempted suicide.

A feminine gay male was bullied and physically assaulted by classmates when he was a technical school student in Bangkok. He studied industry logistics, a male-dominated field, and received top marks in class. In his first year he was chosen as the school’s representative in a competition. His classmates were unhappy because they felt that industry logistics was a ‘manly’ field. One day he was ganged upon by eight classmates who tried to undress him to take pictures and make a video clip to post on the school web board, which at the time featured

clips of *katoey* students forced undressed by fellow students. He fought back and screamed until a teacher came to rescue him. The classmates told the teacher they were “humiliated” that a *katoey* was chosen to represent them. The classmates were punished but the bullying worsened. Finally he moved to a new school and changed his major to business (Suriyasarn 2015, Box 4.7, p. 66).

Many gay research respondents revealed that they hid their sexuality while they were high school students and not associated themselves with gay or *katoey* classmates in fear of being found out and subsequently teased or bullied.

A 2014 study on bullying of LGBT students in Thai schools, which surveyed 2,070 students in five provinces in Thailand, of which 11.9 percent self-identified as LGBT, confirmed high prevalence of bullying of LGBT students. The study revealed that 56 percent of students self-identified as LGBT reported having been bullied in the past month, and 25 percent of students who did not identify as LGBT reported being bullied because they were perceived to be transgender or same-sex attracted. The bullying ranged from verbal abuse (e.g., face-to-face and online name calling), physical abuse (e.g., slapping, kicking), social exclusion, and sexual harassment, which included public sexual humiliation (e.g., placing victims into sexually humiliating positions, mimicking rape). *Toms* were the least liked group, with recent emergence of anti-*tom* hate groups (Mahihol University, Plan International Thailand, UNESCO 2014).

3.2.4 Least access to job opportunities for trans and ‘toms’

While masculine gay men and feminine lesbian women have comparable access to jobs as heterosexual men and women, MTF trans, lesbian tomboys and trans men face the biggest barrier to access to jobs, especially in public institutions and large private companies. Several trans respondents (referring to MTF trans, self-identified trans women and trans men in this research) said they were asked intrusive questions about their sexuality in job interviews, and denied jobs at the interview stage once their legal gender title was known to be different from their outward appearance. Trans job applicants are also commonly given psychological tests not given to other applicants.

A self-identified trans man in his late twenties, a respondent in this research, said he was unemployed for two years after university, despite graduating with honors. He struggled with having to wear skirts to job interviews and being asked questions about his sexuality, e.g., “why did you choose this sex, why do you want to become a man, which toilet will you use?” He said one job interviewer told him, “We are open-minded here but we still have rules. Can you wear the female uniform to work?” He was eventually hired by a bank but only worked there for a brief period before leaving the job due to anti-LGBT slurs from co-workers. He became an international LGBT activist.

Trans people feel almost completely excluded from employment in the civil service which enforces strict sex-specific dress codes. For trans people to gain employment in the civil service, they must observe the dress code at work according to their birth sex. Not many are willing to do so. A MTF trans social worker related her experience applying for a job with the government:

“I had to cut my hair short and dress as a man to apply for the job because I was afraid I would not be considered otherwise. After having worked for a period I still kept my hair short but I started telling my direct superiors [of my real

gender identity]. They acknowledged it and I started dressing as normal, as a woman” (Suriyasarn 2015, p. 52).

Transgender identity is also a problem for some employers in the private sector. In a case that went to the Labour Court in Bangkok in 2007, a MTF transgender person was already hired by the Thailand country office of a multinational company but the hiring was retracted because of her “cross-dressing” (Suriyasarn 2015, Box 4.3, p. 54). Recent positive changes in new acceptance for transgender workers in some jobs (such as flight attendant, elected local government official) remain exceptions rather than a real change on a larger scale.

Interestingly, most MTF trans respondents in this research said the improvement of wording in the military exemption document has no significant impact on their employment opportunity because the real obstacle in getting mainstream jobs is the mismatched physical appearance and legal identity.

3.2.5 Ghettoization of employment for trans people

Often denied jobs in the formal sector, most trans people, including those highly qualified, are left with limited stereotypical job choices where they are more accepted, in entertainment as cabaret performers or beauty pageants, in the beauty industry as make-up artists and sale persons in cosmetic department, and in a few service jobs such as public relations. Many MTF trans resort to sex work. Trans in poor rural communities also find themselves at the margin of the rural informal economy as unpaid or poorly paid family workers, irregular hired laborers, home-based workers at the bottom of the manufacturing supply chains, or even as spiritual mediums.

At a workshop on human rights with 27 mostly university-educated trans contestants in the world-famous Miss Tiffany beauty pageant in Pattaya in April 2013, the contestants shared their experience in employment discrimination: “We were often denied jobs because we were judged as abnormal, different, and less valuable than women and men, but in truth we have no different capacity and can also be doctors, prosecutors, judges, etc.” (Suriyasarn 2015, p. 55).

3.2.6 Differential preference for tomboy factory workers

During the past decade or so *toms* have become workers in demand by factories in the manufacturing industry which have traditionally employed a large number of women. According to a 2011 master’s thesis (Chailangka 2011), *toms* have become desirable workers because they are perceived to have combined feminine and masculine qualities (“nimble” and “detailed oriented” like women and “strong” like men).

3.2.7 Gay workers staying in the closet for job security

Many gay and lesbian workers tend to play heterosexual roles to avoid possible rejection, gossips and anti-LGBT comments that can amount to a hostile work environment (unless they work in an LGBT-specific organization). Generally, homosexual men and women hide their sexuality in the early stages of their career and only come out later after they feel some security in their job. This largely depends on the workplace culture and the profession. Non-heterosexual gender identity is perceived to damage credibility in leadership and in some traditional high-status jobs, for professions such as lawyers and judges. A lesbian respondent in

this research who was a Muslim and worked as a lawyer said that she hid her sexuality at work for fear of losing her professional credibility in the male-dominated field and in particular among her Muslim colleagues. She explained:

“In the Muslim culture, being a lesbian would mean excommunication ... The locals would say [lesbianism] is a sin and satanic” (Suriyasarn 2015, Box 4.4, p. 59).

3.2.8 Unfair treatment at work for trans and ‘toms’

Access to toilets is an issue for both MTF and FTM transgender employees. Often neither male co-workers nor female co-workers like *katoeys*, *sao praphet song* or *toms* and trans men to use their restrooms. Very few workplaces in Thailand have special restrooms for trans people.

Trans and *toms* face more discrimination at work. They are often not fairly treated in terms of recognition for their work. Although *toms* are accepted in some jobs such as factory and construction and some enjoy job promotion, others are pressured to resign from their job as a result of harassment and unfair treatment, feeling their work is not fairly valued and compensated (Suriyasarn 2015, Box 4.5, p. 61). Incongruous legal identity also poses an obstacle in career advancement to managerial positions for some trans employees (Suriyasarn 2015, Box 4.6, p. 62).

3.2.9 Hostile work environment, sexual harassment and violence

Many members of all LGBT groups in the research reported having experienced various forms of gender-based harassment and violence at school and at work, from verbal harassment in forms of mild teasing, taunting, gossip, slurs and insults, to groping and more serious forms of physical and sexual violence, including bullying, physical assaults and rape.

Many MTF trans and feminine gay respondents reported having experienced being called the pejorative term “*tut*,” Thai for “faggot.” The word *katoey* itself is sometimes also used as an insult, and large, unfeminine, or heavily built trans are often called “*katoey kwaay*,” “buffalo trans” (buffalos are seen as large and stupid in Thai culture). Many LGBT respondents have experienced strong judgmental comments from people in various situations, often described as “*phit phet*,” meaning “sexually abnormal” or “sexually perverse.” They have also been told that theirs was “*sia chart kerd*,” a “wasted life.”

Hostile work environment commonly experienced by LGBT respondents in the research involves gossip and slurs, insensitive jokes, sexual comments or intrusive questions about their private lives and sexuality. Some reported having experienced their co-workers telling jokes about trans and *toms* being raped or gang raped. Some lesbian respondents complained about male co-workers watching pornographic films at work and making suggestive comments about lesbian sex acts.

While MTF trans respondents reported harassment and violence more than other groups, lesbians are also subject to sexual violence. Some respondents reported rape and attempted rape of tomboy lesbians by male friends and co-workers, rape and attempted gang rape of intersex persons because of their ambiguous gender identity, and rape of trans detainees in male prisons. There have also been media reports of rape and murder of lesbians that fit the

definition of hate crime but are not recognized as such by the Thai police, as noted by the International Gay & Lesbian Human Rights Commission (IGLHRC 2012).

3.2.10 Opting out of mainstream jobs

Due to repeated rejection, hostile work environments, limited freedom of gender expression at work, and limited career advancement opportunities, many LGBT respondents in the research said that LGBT people tend to opt out of formal employment in large public or private organizations to seek jobs where they can express themselves more freely in smaller enterprises and non-government organizations, or they set up their own business. Others choose jobs that allow them to go outside of the workplace such as sales or become freelance workers in various fields such as computer programming, architecture, interior design, etc.

3.2.11 Lower job security and limited access to social protection and services

Many in the Thai LGBT community find themselves in the informal, often lower-paid jobs which afford them less job security, often with lower pay and fewer benefits. Even gay men do not have job security like heterosexual men.

A real estate manager was fired after five years on the job for being gay. He became aware that he had been fired when a notice was posted on the company's public notice board, stating the reason of his termination that he was "a person with two genders [gay] who abused his power and tried to gain acceptance from others." The manager filed a lawsuit with the labor court for unlawful termination. With intervention from the National Human Rights Commission the case ended in a settlement with the employer offering him an apology and eight-months severance pay (Suriyasarn 2015, Box 4.8, p. 74).

Most LGBT respondents do not feel a strong sense of job or life security, in a large part due to the lack of the legal right to marry. Hence they cannot access many benefits and rights enjoyed by heterosexual couples, such as joint bank loans. Poor LGBT people with lower education and social status in the rural areas struggle to sustain their livelihoods amid strong cultural prejudices and have little access to regular employment, credit, capital, and social security. There is a phenomenon of *katoeys* in rural areas in Northern Thailand reinventing themselves as spiritual mediums as a strategy to sustain their livelihood, gain respect and build a support network within their own community (Suriyasarn 2015, Box 4.9, p. 76).

Many LGBT respondents complained about discrimination in access to public health services, with trans people having the most difficulties due mostly to prejudices and insensitivity towards trans identity and inflexible hospital rules (e.g., MTF patients must be treated as male). Gay men and trans persons are also presumed to have a "risky lifestyle" with a higher risk of contracting HIV and are often refused insurance or required to pay higher insurance premiums.

3.2.12 Double stigma and discrimination for LGBT people living with HIV (PLHIV)

There is no law in Thailand prohibiting discrimination in employment on the grounds of HIV status. PLHIV have been found to be denied employment or not to be eligible for promotion, more often due to discrimination than poor health. Although there have been significant improvements in access to antiretroviral treatment, PLHIV continue to face problems with involuntary HIV screening and confidentiality being violated by employers and hospitals,

despite codes of practice. According to The Poz, an NGO supporting gay men living with HIV in Bangkok, HIV-screening in job application remains common in factories, businesses in the service sector including retail, hospitality (hotels) and sales, as well as in major businesses and state enterprises. Violation of confidentiality and gossip often result in the employees leaving the job.

3.2.13 Discrimination and harassment of transgender sex workers

Transgender sex workers are routinely harassed and extorted by police in red light districts popular with foreign tourists in Bangkok, Pattaya, Chiang Mai, and Phuket. Compared to freelance female sex workers, freelance or street-walking transgender sex workers are much more vulnerable to being arrested and “fined” for solicitation. Police often cite “bad image” (for Thai tourism and culture) as the reason for cracking down on transgender sex workers. Transgender sex workers in this research said they were perceived to make “more money” and hence have more to pay “fines.”

3.2.14 Increasing but limited social dialogue

So far there has been limited discussion on labor issues among LGBT organizations but even less among government, workers and employers organizations, although discrimination in employment is one of the major complaints within the LGBT communities. No LGBT organizations in this study work actively to promote labor rights for LGBT people, and LGBT rights are not a priority issue in employers’ and workers’ organizations. However, LGBT organizations have recently begun to coordinate with some government agencies on LGBT rights issues, specifically on legal same-sex partnership and access to social services.

3.2.15 No dedicated agency to tackle employment discrimination

The National Human Rights Commission of Thailand (NHRC) has served as the *de facto* agency that LGBT organizations turn to in times of need, including when the grievances concern labor rights. However, the NHRC has limitations in resources and mechanisms to ensure timely and effective redress. There is as yet no dedicated agency that specifically addresses discrimination in employment and occupation in the country.

4. Conclusion and recommendations

Recent positive legislative changes mean LGBT rights are finally on the road to recognition in Thai law after more than a decade of advocacy. However, major gaps still exist in legal protection for LGBT people in Thailand: notably, no legal recognition of transgender identity or marriage equality for same-sex couples. Persistent stigma and prejudices, lack of understanding about SOGI rights combined with gaps in legal protection, have led to extensive discrimination in many areas of life and various aspects of employment and occupation for Thai LGBT people. While discrimination, exclusion and marginalization are particularly acute for transgender persons, Thai LGBT people as a population group do not yet enjoy the full range of fundamental rights and equal opportunity and treatment and as a result are unable to reach their full potential.

Full rights cannot be exercised and full participation is not possible, unless society accepts all members as equal before the law and entitled to the same human and workers’ rights. The gaps

in legal protection of SOGI rights require further policy mobilization to include LGBT in the full protection against discrimination under Thai law, including in the forthcoming constitution and the Labour Protection Act. Importantly, transgender persons must be allowed a legal gender title change and same-sex partnership legally recognized.

The lack of anti-discrimination legislation specific to employment and occupation can be remedied by seeking useful guidance in international instruments, in particular the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111). Good practice examples from other countries are worth considering, such as establishing an Equal Employment Opportunity Commission as an advisory and monitoring body with effective implementation mechanisms to ensure equal opportunity and treatment for all workers.

Effective action against discrimination of LGBT in the workplace involves responsive laws, policies and mechanisms, responsive human resources and practices, as well as more education and social dialogue towards a better understanding about LGBT rights and acceptance of LGBT people as full and equal members of society. More cooperation from all key stakeholders is needed.

The government, LGBT communities, educational institutions at all levels, media, and civil society, all have a role to play in promoting awareness and understanding about gender equality and diversity and LGBT rights in school, at work, in the media and in society at large. Workers' and employers' organizations need to step up measures to prevent and eliminate hostile work environment and violence to ensure safe workplace for workers of all sexual orientations and gender identities, while law enforcement and the judiciary also need better understanding about LGBT and SOGI rights.

Concrete qualitative and quantitative data about LGBT and SOGI rights are fundamental to program and policy actions to bring about societal change. This research is part of the first steps to build such a knowledge base in Thailand. Thus far there is insufficient information about LGBT workers in the informal economy. Further research is needed about this group of workers, especially in the poor, rural areas. More information is also needed on good practices and perspectives of companies and of employers and workers' organizations on LGBT discrimination, to promote social dialogue that focuses on discrimination against LGBT people in employment and ways to prevent and redress it.

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