



# Regional Advocacy Tool

Sexual and Reproductive Health and  
Rights Advocacy in Southeast Asia



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## I. EXECUTIVE SUMMARY

This report was commissioned by Development Alternatives with Women for a New Era (DAWN) to analyze the advances made, the barriers encountered and the regressions that have hindered progress of sexual and reproductive health and rights (SRHR) in the 10 countries that comprise South East Asia. In the two decades since the International Conference on Population and Development (ICPD) laid down the framework for a rights based approach to sustainable development, rooted in protecting and promoting SRHR for all, much has happened at the regional and country levels in South East Asia.

While progress has been made in certain aspects of SRHR, such as improvements in maternal health and survival, it has been uneven and variable across and within countries in the region. For example, the regional maternal mortality ratio (MMR) has decreased by more than half from 320/100,000 in 1990 to 140/100,000 in 2013. However, the MMR remains high in countries such as Lao PDR and Myanmar, and has increased in the Philippines. Young people continue to be excluded from provision of and access to sexual and reproductive health information, education and services, particularly in countries such as Indonesia, and all 10 countries score poorly with respect to advancing sexual rights, specifically of same sex attracted and gender diverse populations. Using illustrative country case studies from the Philippines, Indonesia and Malaysia, this report provides an in-depth analysis of key SRHR issues in three key thematic areas, namely:

- 1) Access to comprehensive and integrated sexual and reproductive health (SRH) services,
- 2) SRHR of young people, and
- 3) Sexual and reproductive rights.

The Philippine case study illustrates how the reproductive health movement was able to advance the Reproductive Health Law despite strong opposition from the most powerful social institution in the country, the Roman Catholic Church. The following factors were identified as facilitating the advancement of state policy on SRH services:

- 1) the strength of the women's movement,
- 2) coalitional politics,
- 3) the power of multiple arguments based on rights, needs based and social justice discourses,
- 4) strong public opinion favoring the RH law,
- 5) research to support advocacy, and
- 6) political will.

The Indonesian case study demonstrates how the women's movement was unable to advance SRH for young people as Islamic conservative groups positioned SRH as applicable only to legally married couples; excluding the unmarried in the Population Law and the Health Law. The barriers to advancing a state policy on SRH for the youth include:

- 1) the strengthening of Islamic conservative groups,
- 2) the weakening of women's rights organizations, and
- 3) Islamic conservatism in the State.

## Introduction

Southeast Asia is comprised of 10 countries – Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam. All of them were signatories to the Programme of Action (PoA), the primary outcome document of the International Conference on Population and Development (ICPD) in Cairo in 1994. The PoA laid down a human rights based framework for addressing population and development concerns, with particular attention to protecting and promoting the sexual and reproductive health and rights (SRHR) of all individuals.

In the two decades since the ICPD, there has been mixed progress on various aspects of SRHR in Southeast Asia. This report seeks to identify the advances made, the barriers encountered and the regressions that have hindered progress towards achieving the ICPD agenda through an analysis of country case studies within 3 key thematic areas: (1) Access to comprehensive and integrated sexual and reproductive health (SRH) services, (2) SRHR of young people, and (3) sexual and reproductive rights. Specifically, this report focuses on:

1. Philippines and the Reproductive Health Law as an advancement of state policy for SRH services
2. Indonesia and the Population Law and Health Law as a regression of state policy for SRHR of young people
3. Malaysia and Section 377 as a regression of state policy on SR rights

Each section begins with a brief overview of regional and country level data on key aspects of SRHR. Using a discursive and structural analytical framework, the country case studies provide an in-depth illustration and analysis of context, actors, discourses and outcomes that have contributed to the advancement or regression of SRHR policy in Southeast Asia.

## II. THEME A. Sexual and Reproductive Health (SRH) Services

Southeast Asia is comprised of Myanmar, Lao PDR, Cambodia, Thailand, Vietnam, Malaysia, Singapore, Indonesia, Brunei, and the Philippines. The state of sexual and reproductive health (SRH) services in Southeast Asia generally follows the state of economic development of the ten countries in the region. Classified as “resource-poor” or the least economically developed countries, Lao PDR, Cambodia, and Myanmar are likewise poor in terms of SRH service delivery.

The availability of skilled care during childbirth is a critical intervention for safe motherhood, and a key indicator of SRH services. In Lao PDR, 42% of births have skilled attendance (Table 1), which is the lowest in the region. In Cambodia and Myanmar, skilled attendance at birth is 72% and 71% respectively. Not surprisingly, the maternal mortality ratio (MMR) in these countries is correspondingly higher than the rest of the region. At 220 maternal deaths for every 100,000 live births, Lao PDR has the highest MMR, followed by Myanmar at 200/100,000 live births and Cambodia at 170/100,000 live births.

**TABLE 1 MATERNAL MORTALITY AND SKILLED BIRTH ATTENDANCE ACROSS SOUTH EAST ASIA**

	<b>MMR in 2013 (per 100,000)</b>	<b>SBA (%) (Year)</b>
<b>Country</b>		
Lao PDR	220	42 (2011-12)
Myanmar	200	71 (2009-10)
Cambodia	170	72 (2011)
Philippines	120	72 (2011)
Indonesia	190	83 (2012)
Viet Nam	49	93 (2011)
Malaysia	29	99 (2012)
Thailand	26	100 (2012)
Brunei Darussalam	27	100 (2009)
Singapore	6	100 (1998)

*Sources: UNICEF – Delivery care: Skilled attendant at birth & Trends in maternal mortality 1990-2013 (WHO, UNICEF, UNFPA, World Bank, UN Population Division)*

In contrast, Singapore, Brunei and Malaysia, the most economically developed countries exhibit the best indicators for SRH services. Skilled birth attendance (SBA) in Singapore and Brunei is 100%, closely followed by Malaysia, a ‘newly industrialized country’ at 99%. These countries, however, lag in terms of sexual rights and are yet to repeal an inherited British colonial law, Section 377, which criminalizes homosexuality or same-sex relations.

Of the middle-income countries, Thailand is unique for having strong state policies on SRHR. Skilled attendance at birth is universal at 100%, with a correspondingly low MMR at 26 per 100,000 live births. Vietnam has a relatively high percentage of SBA at 93%. Indonesia and the Philippines lag behind in terms of SRH services. Indonesia has the third highest MMR in the region at 190 maternal deaths per 100,000 live births as well as a high adolescent birth rate (ABR). And yet, its state policy on SRHR excludes the unmarried, and consequently, the youth. The Philippines has the third lowest SBA in the region at 72%. As the only country without an SRHR policy, it passed a 'Reproductive Health Law in 2014, after more than a decade of advocacy in the face of strong opposition by the Church and its supporters. In the following section, the Philippines is presented as a case study of the advancement of state policy for SRH services, highlighting the facilitators and barriers to advancing reproductive health legislation in the country.

# PHILIPPINES / REPRODUCTIVE HEALTH LAW

## Advancing State Policy on SRH Services

### Background Information on SRH Services

#### Country SRH Data

“11 deaths a day!” has been the rallying cry of the reproductive health (RH) movement in the Philippines as 11 mothers die each day from childbirth or pregnancy-related complications (National Statistics Office & ICF Macro, 2009). Eleven percent of all deaths among women of reproductive age are maternal deaths (National Statistics Office, et al., 2009). The country has made no progress in improving maternal health as indicated by the maternal mortality rate (MMR) has increased from 110/100,000 in 1990 to 120/100,000 in 2013 (United Nations Population Fund, 2012). Additionally, pregnancy-related complications and other maternal health problems is the leading cause of disease among Filipino women (United Nations Population Fund, N.D. a).

Among those who are most at risk of maternal death and pregnancy-related health problems are young women and girls (United Nations Population Fund, N.D. b). Adolescent girls aged 15 to 19 are twice as likely to die of childbirth compared to young women in their 20s (United Nations Population Fund, N.D. b). The gravity of the maternal health situation in the Philippines is intensified by its high adolescent birth rate (ABR) of 53 per 1000 girls in the 15-19 age group.

One of the primary reasons for poor maternal health is lack of access to adequate reproductive health services (United Nations Population Fund, 2012). The disparity in access to skilled birth attendants (SBA), proper birth methods/services, and health care facilities is an important contributory factor to the high maternal morbidity and mortality (United Nations Population Fund, N.D. c). The percentage of births attended by an SBA in the country is 72%; the third lowest in Southeast Asia, after Lao PDR at 42% (United Nations Population Fund, 2012).

The Philippines is the only country in Southeast Asia with no national reproductive health policy in place (Integrated Regional Information Networks, 2010). In December 2012, the Reproductive Health or RH Law was finally signed into law (Philippine Commission on Women, 2009). However, in opposition, the Catholic Church challenged the law’s constitutionality, in an effort to prevent implementation. The matter was put to the Supreme Court (SC), and in 2014 the SC ruled in favor of the law, upholding its constitutionality. This section focuses on the passage of the RH Law as a case of advancement in state policies on sexual and reproductive health (SRH) services. The existence of this law is progress compared to the country’s previous state of absence of any systematic policy affirming access to and availability of sexual and reproductive health care (Development Alternatives With Women for the New Era, 2013).

## Description of Pro-SRH Services State Policy

Republic Act No. 10354, **An Act Providing for a National Policy on Responsible Parenthood and Reproductive Health**, was signed into law by President Benigno S. Aquino III in December 2012 (See Appendix B.7). The law acknowledged that the State recognizes and guarantees “the right to health which includes reproductive health”; “the advancement and protection of women’s human rights... to address reproductive health care”; and, “universal access to medically-safe, non-abortifacient, effective, legal, affordable, and quality reproductive health care services, methods, devices, supplies... and relevant information and education thereon according to the priority needs of women, children and other underprivileged sectors...”; among others (See Appendix B.7). Through the RH Law, the State will provide access to reproductive health care services and supplies to all, especially to women, the poor, and the marginalized others (See Appendix B.7).

In March 2013, The Supreme Court issued a **Status Quo Ante Order** (SQAQO), requiring the status quo before the issuance of the RH Law to prevail for a period of 120 days (Supreme Court of the Philippines, 2013). Ten petitions were filed at the Supreme Court to stop the implementation of the RH Law, primarily challenging the constitutionality of the RH Law (The Philippine Star, 2013a). A motion to lift the SQAQO was denied (The Philippine Daily Inquirer, 2013a), and it was subsequently extended beyond the 120 day period. The authors of the RH Law considered the Supreme Court’s decision part of the judicial process to review the petitions and believed that the constitutionality of the RH Law will eventually prevail (Manila Bulletin, 2013).

In April 2014, after hearing arguments in support of and against the law, the SC made a landmark judgment that the RH Law was not unconstitutional, despite striking down eight provisions, either partially or fully. The law mandates the Philippines government to provide maternal care, family planning, and adolescent sexuality education.

## Legal Restrictions/Facilitators for ICPD

The Philippine Constitution was constructed as a legal restriction to SRH services by actors who lobbied against the RH Law and the petitioners who filed against the constitutionality of RA 10354 at the Supreme Court (Manila Bulletin, 2013; The Philippine Daily Inquirer, 2008a). On the other hand, actors who advocated for the RH Law argued that the RH Law did not violate the Constitution (The Philippine Daily Inquirer, 2013a; The Philippine Daily Inquirer, 2013b). They further argued that the RH Law has constitutional basis as the constitution states that “The State shall protect and promote the right to health”, prioritizing the needs of women and the underprivileged (Ateneo de Manila University Professors, 2012).

The specific provision in the 1987 Philippine Constitution that was contested was Article 2, Section 12: “The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the life of the unborn from conception (Arellano Law Foundation, N.D.) On the other hand, RH advocates argued that the RH Law was in fulfillment of the state’s obligations under international human rights laws (Ateneo de Manila University Professors, 2012). The Philippine government is signatory to several international human rights covenants that facilitate its commitment to sexual and reproductive health. It is signatory to the International Conference on Population and Development (ICPD, 1994), the Beijing Platform for Action (BPfA, 1995), the Millennium Development Goals (MDGs), the Convention on the Elimination of Discrimination against Women (CEDAW), the International Covenant on Economic, Cultural and Social Rights (ICECSR), and the International Covenant on Civil and Political Rights (ICCPR) (Asia Pacific Alliance, 2012).

## Assessment of Advancement in State Policy on SRH Services

### Context

**Economic.** The Philippine population is growing at 1.9% annually (National Statistics Office, 2012). From a total population of 76.51 million in 2000, the country’s population grew by 15.83 million in 10 years; with the 2010 census counting the total population at 92.34 million (National Statistics Office, 2012). The youth comprise the larger share of the population, with 50% under 21 years old (The Philippine Star, 2013b). Of the projected population of 94 million, 26.2 million Filipinos are living in poverty (Malaya, 2013). The poverty incidence for the first semester of 2012 was 28%; that is 28 out of every 100 Filipinos live in poverty (Malaya, 2013). Figures from the last 5 years indicate little change in poverty levels. Around 13% of the Filipino population live in extreme poverty (Malaya, 2013).

**Historical.** The Philippines was under Spanish colonial rule from 1565 to 1898 (University of Alberta, N. D. a). Prior to Spanish colonization, the Philippines was influenced by Islam (University of Alberta, N. D. b). Spanish colonization brought with it Roman Catholicism; as Spanish political leaders worked with friars, religious clergymen, and religious orders to rule over the Filipino people (University of Alberta, N. D. a). As such, the continued influence of the Roman Catholic Church in Philippine politics is rooted in Spanish colonization, as religion sustained colonial ideologies (Pui-lan, 2005). “After almost 500 years under Spanish colonial rule, Canon law and laws of Spanish origin continue to dominate family, civil and penal law” (Austria, 2004).

The Filipino people revolted against the Spanish colonizers and declared Philippine independence from Spain in 1898. But the Spanish-American war had Spain turn over the Philippines to the United States. The Philippines was then under American rule from 1901 to 1946 until it gained full independence as a nation after the Second World War (Republic of the Philippines Museum and Library (N. D.)). As an independent Republic of the Philippines, it came under the dictatorship of President Ferdinand Marcos from 1965 to 1986, until it was overthrown by the People Power or EDSA Revolution in 1986 (Official Gazette of the Republic of the Philippines, 2012).

During the Marcos period, a national family planning program was put in place to manage the population growth rate for social and economic development (Philippine Institute for Development Studies, 2002). Presidential Decree 79 of 1972 established the Population Commission (POPCOM) to provide family planning services and make all contraceptive methods available, except for abortion (See Appendix B.7, Policy p1). In the era of democratization post-Marcos, the population policy went through a period of ambiguity as Catholic conservatism entered state policy with the Aquino administration (1986-1992). Eventually, the population policy was re-oriented into a maternal and child health program, now under the Department of Health (DOH) (Philippine Institute for Development Studies, 2002).

The Ramos administration (1992-1998) would implement a more aggressive population management program to moderate the population growth rate, a policy inherited by the Estrada administration (1998-2001); in effect, endorsing “artificial” family planning or contraceptive methods (Philippine Institute for Development Studies, 2002). From 2001 to 2010, President Arroyo, following the Catholic Church hierarchy, endorsed a “natural” family planning or NFP-only method (The Alan Guttmacher Institute, 2003). However, the Department of Health continued to implement a family planning program through Administrative Order No. 50-A as a reproductive health measure development (Philippine Institute for Development Studies, 2002). With a lack of national law on reproductive health and Arroyo’s NFP-only pronouncement, local governments implemented anti-condom policies during this period development (Philippine Institute for Development Studies, 2002; Human Rights Watch, 2004).

Despite Arroyo’s conservative position on contraceptive methods, the Department of Health continued to implement a family planning program as a reproductive health measure through a DOH Administrative Order (AO)(Philippine Institute for Development Studies, 2002). The DOH’s efforts at providing reproductive health care, such as through the Women’s Health and Safe Motherhood Program, was supported by international agencies including UNFPA, UNICEF, WHO, World Bank, ADB, EU/GTZ, and JICA (United Nations Population Fund, N. D.). The United States government through USAID and the Australian government through AUSAID have been providing funding for the Philippine government’s maternal and infant health programs (Australian Government Overseas Aid Program, 2013; United States Agency for International Development, N. D.).

**Political.** The Philippine government has three main governing bodies – the executive, the legislative, and the judiciary (United Nations Economic and Social Commission for Asia Pacific, N. D.). The President is the chief executive and has a cabinet of secretaries heading the various departments of government. The legislative is a bicameral body comprised of Congress or the House of Representatives and the Senate. The judiciary is headed by the Chief Justice and the Supreme Court. In 2012, the legislative finally passed a national policy on reproductive health or the RH Law. The executive strongly supported the passage of the RH Law. In April 2014, the judiciary ruled in favor of the RH law through a judgment upholding the law’s constitutionality.

**Cultural.** The Philippines is unique among its Southeast Asian neighbors as the only predominantly Roman Catholic country in Asia (Austria, 2004). Around 81% of Filipinos are Roman Catholic, 12% are of various Christian denominations (Aglipayan, Evangelical, Iglesia ni Kristo, and other Christians), 5% Muslim, and 2% other religions (Central Intelligence Agency, 2013). The Roman Catholic Church remains a powerful and prevailing influence in the lives of Filipinos (Tripon, 2000). The Church continues to promulgate conservative views about women's sexuality (Pui-lan, 2005).

In analyzing the history of the Philippine government's population policies, the Philippine Institute of Development Studies concluded that, "perhaps the single most important factor influencing population policy making since its formulation in 1969, and may partly explain its ever shifting focus, is the persistent and consistent opposition of the Catholic Church hierarchy... The Catholic Church's position is quite clear: the use of artificial contraception is not allowed because it is morally wrong..." (Philippine Institute for Development Studies, 2002). Despite the general public expressing support for modern contraceptive methods, as seen from population surveys, public opinion has not been as influential to state policy as the Catholic Church hierarchy (Philippine Institute for Development Studies, 2002). The Church continues to have strong political influence over the State despite the separation of the Church and the State in the 1987 Constitution (British Broadcasting Company, 2008).

**A vibrant social movement.** The civil society sector in the Philippines is considered to be one of the most vibrant and dynamic civil societies in Asia (Tadem, 2011). The period during Martial Law became the ground for strengthening civil society organizations (CSOs) as they fought against human rights violations during the Marcos dictatorship (Mott MacDonald Limited, 2011). Years after the EDSA Revolution and the Philippines democratic transition, CSOs expanded and continued to be involved in the development of the country (Civil Society Resource Institute, 2011). The Local Government Code of 1991 highlighted the role and participation of CSOs in governance (Mott MacDonald Limited, 2011). By 1996, the Philippine Agenda 21 considered civil society a key social actor for sustainable development (Mott MacDonald Limited, 2011).

CSOs are categorized as non-government organizations (NGOs), people's organizations (POs), think tanks and research institutes, cooperatives, and media nonprofit organizations. Estimates of the number of CSOs vary as some studies claim that there are around 34,000 to 68,000 NGOs while others say that there are around 15,000 to 30,000 NGOs in the country (Civil Society Resource Institute, 2011). The estimate of POs is more than 100,000 (Civil Society Resource Institute, 2011).

CSOs have played a key role in policy development and implementation. In the past decade, CSOs have succeeded in creating significant state policies including the Law on Violence against Women and Children (VAWC) and the Magna Carta for Women (Civil Society Resource Institute, 2011). As of this writing, and after 14 years of pushing for the Reproductive Health Bill, CSOs, their networks, and their allies in government have finally succeeded in enacting the Reproductive Health Law.

### **Debating the Reproductive Health Law**

The passage of Republic Act No. 10354, "Responsible Parenthood and Reproductive Health Act of 2012", or the RH Law, is presented in this paper as the example of advancement of state policy on SRH services.

**History of the RH Bill debates.** The first Reproductive Health Bill was filed in the 11th Congress, 1998-2001, and in every Congress thereafter (Democratic Socialist Women of the Philippines, 2012). In 1998, the Reproductive Health Action Network (RHAN), a coalition of CSOs advocating for the RH Bill, was formed with the support of the International Planned Parenthood Federation (International Planned Parenthood Federation, 2013). The height of the public debate as covered by mass media was during the filing of the RH Bill in the 14th Congress, 2007-2010; as authors of the RH bill and the Catholic Church debated passionately in public. In 2008, there were talks of dialogue between the RH bill legislators and the Catholic bishops (The Philippine Daily Inquirer, 2008b). Public opinion surveys would come out in 2009 and 2010 showing that majority of Filipinos support the RH Bill (The Philippine Daily Inquirer, 2009; The Philippine Daily Inquirer, 2010).

Heated national debates over the RH Bill would rage on into the Aquino administration as both the Pro-RH and the Anti-RH camps aggressively lobby their respective positions. Since assuming the Presidency in 2010, Aquino consistently pushed for the RH Bill as an urgent and priority measure (The Philippine Daily Inquirer, 2011a). In 2010, the Catholic Church stepped up its actions to halt the passage of the RH Bill through threats of excommunication and civil disobedience. On the other side, RHAN and its network of NGOs, POs, media practitioners, and local advocacy teams would intensify local and national campaigns for the RH Bill (Philippine NGO Council, N. D.). The Catholic Church would respond with calls for prayer vigils to stop the RH Bill (The Philippine Daily Inquirer, 2011b). During the last quarter of 2011, RH advocates staged the “Occupy for RH” campaign as women from communities camped outside of the House of Representatives over a one-month period to call for the passage of the RH Bill (International Planned Parenthood Federation, 2013).

On December 13, 2012, the RH Bill was finally approved in the House of Representatives by a vote of 113 to 104 (The Philippine Daily Inquirer, 2012a). On December 17, 2012, the RH Bill was approved in the Senate by a vote of 13 to 8 (The Philippine Daily Inquirer, 2012b). And on December 21, 2012, President Aquino signed the RH Bill into law (The Philippine Daily Inquirer, 2012c).

**The pro-RH actors.** The primary mover of the RH Bill was the Reproductive Health Advocacy Network (RHAN), “a coalition of non-government and people’s organizations championing reproductive health” (Reproductive Health Advocacy Network, N. D.). “RHAN is comprised of health service providers, women’s organizations, people’s organizations, party-list federation and academic institutions who believe in the need for the adoption of a comprehensive policy on reproductive health” (Reproductive Health Advocacy Network, N. D.).

Thirty-five (35) organizations are formally part of RHAN. Though all 35 organizations cannot be named within this paper, among them were women’s health organizations such as Linangan ng Kababaihan (LIKHAAN), health service providers like the Family Planning Organization of the Philippines (FPOP), women’s organizations like the Democratic Socialist Women of the Philippines (DSWP), NGOs such as Reproductive Health, Rights, and Ethics Center for Studies and Training (REPROCEN), legal advocacy groups like the Sentro ng Alternatibong Lingap Panligal (SALIGAN), labor groups such as the Trade Union Congress of the Philippines (TUCP), and POs like Pinagsamang Lakas ng Kababaihan at Kabataan (PILAKK) (Reproductive Health Advocacy Network, N. D.).

The organizations that comprise RHAN were not only women's health or women's rights advocates but also POs and NGOs that work on the broader agenda of social justice and sustainable development; advocates for the issues of various sectors such as the poor, workers, labor, and lesbians, gays, bisexuals, and transgenders (LGBT); and service providers (including legal services), and those involved in resource mobilization, research, and training. As such, it was a coalition of diverse groups with different politics and agendas but united on the RH Bill (Confidential Interviewee Identity 1, 2013).

Beyond RHAN were the "extensive network of activists" that were able to put the RH Bill together (Confidential Interviewee Identity 1, 2013). There were GO-NGO networks such as the Philippine Legislative Committee on Population and Development (PLCPD), independent NGOs such as the Interfaith Partnership for the Promotion of Responsible Parenthood and the Filipino Free Thinkers, and various CSOs such as Partido ng Manggagawa (Sun Star Baguio, 2013).

There was the academe that included faculty members of the premier State University – University of the Philippines (UP), and faculty members of the top Catholic private universities in the country – Ateneo de Manila University (ADMU) and De La Salle University (DLSU) (The Presidentiables Blog, 2011). There were the medical professionals such as the doctors of the Philippine Medical Association (PMA), obstetricians and gynecologists of the Philippine Obstetrical and Gynecological Society (POGS), and nurses of the Alliance of Young Nurse Leaders and Advocates (AYNLA) (Philippine Medical Association, N.D.; Philippine Obstetrical and Gynecological Society, 2010; Alliance of Young Nurse Leaders and Advocates, 2012).

There was the support of the business or private sector through the major business organizations such as the Philippine Chamber of Commerce and Industry (PCCI) (Philippine Daily Inquirer, 2012d). And there were journalists, media practitioners, and social media activists who were Pro-RH (Confidential Interviewee Identity 1, 2013). Non-Catholic denominations also supported the RH Bill. Among them were Islam in Muslim Mindanao, Protestant churches including Iglesia ni Cristo, the c, the Philippine Council of Evangelical Churches, the United Methodist Church, the Philippines for Jesus Movement, the Seventh Day Adventist church, and the Episcopal Church of the Philippines (Ateneo de Manila University Professors, 2012). There were also Catholics who expressed support for the RH Bill such as the group Catholics for RH (Confidential Interviewee Identity 1, 2013).

And then there were the legislative champions in Congress who pushed for the RH bill for over 14 years such as Congressman Edcel Lagman and Congresswoman Risa Hontiveros; the champions of the RH Bill in the Senate, Senators Pia Cayetano and Miriam Defensor-Santiago (Democratic Socialist Women of the Philippines, 2012). And finally, the steadfast support of the executive with no less than President Benigno S. Aquino III and the members of his cabinet firmly behind the passage of the RH Bill; including the 20 agencies under the Human Development and Poverty Reduction (HDPR) cabinet cluster such as the Department of Health (DOH) and the Philippine Commission on Women (PCW), among others (Philippine Commission on Women, 2013).

The social movement actors in coalition with legislators and the executive came together to push for the Reproductive Health Law. Though they cannot all be named, the number and diversity of the individuals and groups who were part of the RH movement was tremendous. Nationwide surveys further showed that majority of the Filipino people were in favor of the RH Bill. Ultimately, the driving force of the social movement for reproductive health were the women from the communities who filled the plenary halls of Congress consistently for over 14 years. “The hero always (would) be the women, the communities who are the backbone of the movement (Confidential Interviewee Identity 1, 2013).”

**The anti-RH actors.** It was the Catholic Church as a social institution, through the Catholic Bishops’ Conference of the Philippines (CBCP) that was the primary actor against the RH Bill (Priests for Life, N. D.) Among the actors aligned with the Catholic Church were Pro-Life Philippines, Alliance for the Family Foundation Philippines, Couples for Christ, and Filipinos for Life (Alliance for the Family Foundation Philippines Inc., N. D.). Some Catholic schools such as the University of Santo Tomas (UST) also positioned against the RH bill (The Varsitarian, N. D.). The anti-RH actors were all Catholic groups and individuals who carried the “Pro-Life” or “Anti-Abortion” position. Among the Church’s allies in Congress were Senators Juan Ponce Enrile and Tito Sotto and Representatives Rufus Rodriguez and Lucy Torres-Gomez.

**The pro-RH discourses: needs, social justice, development.** The Pro-RH actors utilized multiple discourses to push for the RH Bill. The various discursive positions supporting the RH bill were clustered into wider discourses such as needs, social justice, development, education, public opinion, rights, state obligation, respect for religion, and secularism, among others. Of these, the dominant discourse was a needs, social justice, and development discourse.

Needs discourse. With the slogan “11 Deaths a Day”, the RH advocates positioned the RH Bill as an urgent need of women. The RH law is urgently needed to reduce the maternal mortality rate and save women’s lives; reduce unwanted pregnancy; reduce unsafe abortion; and reduce HIV/AIDS and STIs. RH advocates supported this needs discourse with research showing how RH services is urgently needed given empirical data showing the number of women who die from childbirth or suffer from the consequences of inadequate RH services.

“...RH bill should be enacted immediately to lessen the number of mothers, unborn, and newborn lives wasted daily.” (Philippine Obstetrical and Gynecological Society, 2010)

“address... the spread of sexually transmitted diseases... also the looming AIDS epidemic...” (Philippine Daily Inquirer, 2008c)

Social justice discourse. One of the strongest Pro-RH discourses was that expressed by the poor women in the communities themselves – that the RH Bill addresses the needs of the poor and the marginalized. Armed with research on how the lack of access to reproductive health services most severely impacts women who are poor, Pro-RH advocates argued that the RH Bill is primarily a social justice measure.

“...many of our poor women in the communities... have no access to contraception which leads many of them to unsafe abortion...” (Alliance of Young Nurse Leaders and Advocates, 2012)

“Most important, the RH Bill is an equity measure... It is the poor – and in particular poor women and their children – who stand to benefit the most...” (Ateneo de Manila University Professors, 2012)

Development discourse. Another popular Pro-RH discourse was the economic discourse linking population and development as likewise supported by research.

“The connection between population and development is well-documented and empirically established.” (The Philippine Daily Inquirer, 2008d)

“...promotes population management in order to achieve social and economic development” (Sentro Ng Alternatibong Lingap Panligal, N. D.)

Education discourse. The benefits of sex education were heavily documented through research as RH advocates positioned the RH Bill as addressing the needs of the youth. Empowering the youth through education was a key discourse.

“Sexuality education is needed... many young people are getting infected with HIV and other STIs. Many young women are getting pregnant in their teenage years.” (Alliance of Young Nurse Leaders and Advocates, 2012)

Popular opinion discourse. The voice of the people through nationwide surveys conducted by independent research institutions such as Pulse Asia and the Social Weather Station (SWS) was used as a “majority vote” argument. With 69% of Filipinos in the 2010 Pulse Asia survey and 73% in the 2011 SWS survey supportive of the RH Bill, the popular opinion discourse gave strong support to the Pro-RH position (Ateneo de Manila University Professors, 2012).

“Lawmakers should also heed the people, who consistently showed in surveys their support for the measure...” (Philippine Daily Inquirer, 2009)

“The people have already spoken in two decades of surveys that they’re in favor of the enactment of the RH bill.” (Philippine Daily Inquirer, 2010)

Rights discourse. As expected, the “women’s rights as human rights” discourse was an integral part of the Pro-RH position. But it was often only one of many discourses, particularly alongside a needs discourse; that is, more than a right is a need for reproductive health.

“It is high time that legislators fulfill their duty to uphold women’s right to reproductive health.” (Partido ng Manggagawa, 2012)

“It is about promoting and protecting the basic human right to health and reproductive self-determination.” (Sentro Ng Alternatibong Lingap Panligal, N. D.)

State obligation discourse. The Pro-RH actors also demanded the government’s duty to provide reproductive health services to the poor. They also claimed the state’s obligation to international covenants such as CEDAW, ICECSR, ICPD, BPfA, and the MDGs.

“Reproductive health is a basic human right and it is the obligation of the government to protect and facilitate the enjoyment of this right.” (Sentro Ng Alternatibong Lingap Panligal, N. D.)

“...in fulfillment of our obligations under international human rights law” (Ateneo de Manila University Professors, 2012)

Respect for religion discourse. RH advocates also argued for an individual's freedom to follow one's religion or not.

"...mutual respect for religious differences... other religions have expressed support for the RH bill..." (Ateneo de Manila University Professors, 2012)

"...freedom to act or not to act according to one's religious beliefs" (Ateneo de Manila University Professors, 2012)

Secularism discourse. The separation of church and state was also used as a Pro-RH argument.

"Let the Church take care of saving our souls. But let the state pursue an unhampered policy of saving lives. That's the secular realm in which the Church should not unduly interfere." (Ateneo de Manila University Professors, 2012)

**The anti-RH discourses: abortion, immorality, and anti-family.** The Anti-RH position equated RH with abortion; hence, immoral. It was the morality discourse that was the dominant discourse of the Catholic Church and its allies. The Church position can be summarized in the quote below:

"It is an ideological attack on human life, the family, and our social and cultural values... It is unnecessary, unconstitutional, oppressive of religious belief and destructive of public morals and family values." (Manila Bulletin, 2013; The Philippine Daily Inquirer, 2008a)

RH is abortion discourse. With the slogan "Pro-Life", the Church positioned all modern forms of contraception as abortifacients and the RH bill as equal to abortion. As such, the RH bill is "Anti-Life" as it is seen as killing the life of the unborn.

"...pills and the IUD hinder implantation... That is abortion." (Manila Bulletin, 2013; The Philippine Daily Inquirer, 2008a) "...a serious threat to life of infants in the womb." (The Philippine Daily Inquirer, 2009)

"...a ferocious threat to those who are yet to be born." (ABS-CBN News, 2010)

RH is moral corruption: morality discourse. The Anti-RH actors positioned all forms of modern and artificial contraception as immorality.

"...the RH bill if passed into law can harm our nation. Contraception corrupts the soul... (It will put the moral fibre of our nation at risk." (Catholic Bishops' Conference of the Philippines, 2012)

RH is anti-family: cultural discourse. Alongside a morality discourse, the Catholic Church used a cultural discourse that the RH Bill goes against Filipino cultural values. The RH Bill was positioned as anti-family, anti-marriage, and anti-children; and that it will destroy the Filipino family and Filipino values.

"undermines the institution of marriage... undermines parental authority... undermines the family, which are against Christian principles" (Christian Pro-Life Resources of the Philippines, N.D.)

"...the RH bill is a major attack on authentic human values and on Filipino cultural values" (Catholic Bishops' Conference of the Philippines, 2011)

"adolescent reproductive health... this is child abuse of the highest order." (Manila Bulletin, 2013; The Philippine Daily Inquirer, 2008a)

“It is a source of danger for the stability of the family. It places the dignity of womanhood at great risk.” (The Philippine Daily Inquirer, 2009)

RH is unconstitutional: legal discourse. Resorting to legal discourse, anti-RH advocates also positioned the RH Bill as unconstitutional.

“...the State binds itself to equally protect the life of the mother and the life of the unborn... A state-funded contraceptive program is an abomination.” (Manila Bulletin, 2013; The Philippine Daily Inquirer, 2008a)

“undermines fundamental rights... in the Constitution.” (The Philippine Daily Inquirer, 2011b)

RH is dangerous: scientific discourse. Anti-RH actors also turned to science and argued that contraceptives can lead to disease and death.

“oral contraceptives are associated with an increased risk of breast cancer” (Manila Bulletin, 2013; The Philippine Daily Inquirer, 2008a)

Among the other discourses carried by the anti-RH groups was a political discourse, arguing that the RH Bill is a form of corruption. They also positioned the RH Bill as oppressive of religious beliefs as it will require Catholics to practice RH. At some point, the Catholic Church also positioned the RH Bill as act of terrorism.

**Pro-RH counter-discourses: RH is not abortion.** In the course of the public debates on the RH Bill, the pro-RH actors counter-positioned against the Catholic Church’s dominant discourses. One of the most often repeated counter-argument was to say that the RH Bill does not promote abortion; as supported by scientific research.

RH is not abortion. Using medical research and scientific evidence, pro-RH advocates presented evidence that contraception is not abortion.

“Contraceptive bills do not cause abortion; in fact they prevent unwanted pregnancies hence nothing to abort.” (Philippine Obstetrical and Gynecological Society, 2010)

“Abortion is the termination of pregnancy before the 20th week of gestation.” (Philippine Obstetrical and Gynecological Society, 2010)

“Life or conception begins at fertilization.” (Philippine Obstetrical and Gynecological Society, 2010)

“The bill does not legalize abortion... abortion remains a crime...” (Manila Bulletin, 2013; The Philippine Daily Inquirer, 2008a)

“According to studies, correct and regular use of contraceptives reduces abortion rates...” (Manila Bulletin, 2013; The Philippine Daily Inquirer, 2008a)

RH is not anti-life, anti-family, anti-children. Countering the anti-RH’s cultural discourse that the RH Bill goes against Filipino values, pro-RH actors argued that it is pro-life, pro-family, and pro-children.

“The bill is not antilife. It is proquality life. It will ensure that children will be blessings... It will empower couples... strengthen the family...” (Manila Bulletin, 2013; The Philippine Daily Inquirer, 2008a)

“The bill does not prohibit pregnancy... The bill does not impose a two-child policy.” (Manila Bulletin, 2013; The Philippine Daily Inquirer, 2008a)

RH does not cause death/disease. Using scientific research, pro-RH advocates argued that contraceptives are safe.

“Contraceptive pills... do not cause death and disease when used appropriately.” (Philippine Obstetrical and Gynecological Society, 2010)

“Contraceptives do not have life-threatening side effects.” (The Philippine Daily Inquirer, 2008d)

RH does not lead to sexual promiscuity. Evidence from research on sex education was used to argue that information leads to better decision-making about sex.

“Sexuality education will neither spawn a generation of sex maniacs nor breed a culture of promiscuity.” (The Philippine Daily Inquirer, 2008d)

Pro-RH advocates presented counter-arguments to all the discourses of the Catholic Church. They argued that the RH Bill is not unconstitutional; instead, it has basis from the Constitution. They argued that the RH Bill is not corruption; instead, it is part of good governance. They argued that the RH Bill is not about religion; rather, it is about health and rights. One of the most interesting counter-arguments come from Catholics who argue that the RH Bill is compatible with Catholic teaching.

“... the key principles of the RH Bill... are compatible with core principles of Catholic social teaching, such as the sanctity of human life, the dignity of the human person, the preferential option for the poor, integral human development, human rights, and the primacy of conscience.” (Ateneo de Manila University Professors, 2012)

To end, they point to other Catholic countries who have implemented reproductive health laws as an example for the Philippines.

“Many Catholic countries criminalize abortion even as they vigorously promote contraceptive use...” (The Philippine Daily Inquirer, 2008d)

**Anti-RH counter-discourses: RH is unnecessary.** The Catholic Church and its allies counter-positioned against the Pro-RH’s social justice and development discourse. They argued that the RH Bill is not a need and that the RH Bill will not lead to development.

RH is unnecessary. The anti-RH actors argued that the poor do not need RH. “the poor, needy, and marginalized... whose real needs are jobs...” (Manila Bulletin, 2013; The Philippine Daily Inquirer, 2008a) “What the poor people need is not c...” (Integrated Regional Information Networks, 2010)

RH does not lead to development. The anti-RH actors also argued that the country does not need RH.

“today’s average family has three children compared with seven in the 70s. But the billions of pesos spent have not reduced poverty or benefited the poor.” (Manila Bulletin, 2013; The Philippine Daily Inquirer, 2008a)

“the population is not a problem” (Integrated Regional Information Networks, 2010)

Faced with the results of surveys that majority of Filipinos are pro-RH, the Catholic Church replied:

“The truth is never the result of surveys... It is a desperate attempt to show that right or wrong can now be reduced to what you like or dislike.” (Integrated Regional Information Networks, 2010)

**Conclusion: science versus religion.** The debates on the RH Bill in the Philippines centered on needs versus morality, science versus religion, rights versus values. Using research and empirical evidence, the pro-RH actors presented their main argument – that the RH Bill promotes social justice and development. Using religious beliefs and moral values, the anti-RH actors positioned the RH Bill as killing life and destroying the Filipino family and the nation.

## **Analysis of Factors to Advancing SRH Services**

From an insider’s perspective on how the RH Law was passed in the Philippines after 14 years of struggle, theirs was a story of “how support was met and mobilized for the bill”, “of an impressive and extensive network of activists”, “of the small little efforts of a lot of people coming together”, “of a different take on a social movement, “of coalitional politics.” (Confidential Interviewee Identity 1, 2013) The Philippine story was a struggle against “one of the strongest social institutions”, “a Church that has hundreds of years of history”, “the last bastion of Vatican fundamentalism in the old colonies.” (Confidential Interviewee Identity 1, 2013)

**The strength of the women’s movement.** From a social movement perspective, the usefulness of the ICPD depends on the “the strength of the women’s movement” (Confidential Interviewee Identity 1, 2013). In the case of the Philippines, there was an investment in movement-building (Confidential Interviewee Identity 1, 2013). There was a history of a vibrant civil society and a women’s movement that has been engaged in mobilizing women and organizing communities long before the filing of the first RH Bill. The women’s movement had a strong mass base of women in the communities that became part of the RH movement.

**Coalitional politics.** Beyond the women’s movement, the RH movement was an extensive network of NGOs, POs, GOs, media, the academe, political parties, professionals, legislators, groups and individuals who were united on the RH Bill. “From the very beginning, there was this coalitional politics that on one hand allowed us to be single-focused and... was able to allow us to bring in so many disparate political forces” (Confidential Interviewee Identity 1, 2013). Coalitional politics means “putting aside all other political differences,” “respecting each other’s autonomy,” and “accepting whatever you are... as long as you subscribe to the RH Bill” (Key Informant Interview, 2013). “It was a struggle that was extremely patient and coalitional (Confidential Interviewee Identity 1, 2013).”

**The power of multiple discourses.** The diversity of discourses used as arguments for the RH Bill was part of the practice of coalitional politics. Rights, needs, social justice, and development discourses were utilized alongside each other. This multiplicity of discourses challenged the hegemony of the Catholic discourse.

**The voice of the people.** Another factor to the success of the RH movement was how the public opinion surveys solidified the pro-RH position. Arguing that the people have spoken, the RH movement placed the people behind them.

**The value of research.** The discourses carried by the RH movement were all substantiated by empirical data from research coming from diverse disciplines. It was a movement that benefited from “its great database, great researchers” (Confidential Interviewee Identity 1, 2013).

**Harnessing political will.** A last lesson is the importance of alliances with actors in government. With its champions in the legislative and champions in the executive, the RH movement succeeded.

## Conclusion

In the words of the CBCP, “If an act is made legal, it will be perceived as moral. If an act is perceived as moral, it will become a norm. If it is observed by all as a norm, then it is too late. By then, you will have changed the culture (Manila Bulletin, 2013; The Philippine Daily Inquirer, 2008a). From the perspective of the Philippine RH movement, this is what they have achieved. Filipino culture has changed.

“The interesting case from a social movement” perspective is that “even if there is no law... people understand now that sexual and reproductive health is a right they need to have” (Confidential Interviewee Identity 1, 2013). “If we lose at the Supreme Court, that’s heartbreaking. But I don’t think that it’s crashing. I don’t think that it’s as if nothing happened or that we haven’t won tremendous gains... We always have to look for the broader context... people are disagreeing with the Church in massive numbers on the issue of gender and sexuality. I think it’s a victory that they can’t take away” (Confidential Interviewee Identity 1, 2013).

“The power of the Church over the norms of sexuality... has been broken (Confidential Interviewee Identity 1, 2013).”

## Recommendations for further action

In the Philippines:

1. Strengthen concerted and coordinated action by SRHR advocates within and outside the Philippines government to ensure adequate implementation of the RH Law into policies and programs, with particular attention to the needs of disadvantaged youth, girls and women in rural and hard to reach areas.
2. Continue to strongly counter opposition to the implementation of the RH Law by the Church, particularly over the more contentious issues such as access to contraception and comprehensive sexuality education for adolescents and youth.

In the region:

- I. Sustain advocacy to urge governments fulfill their obligations to provide comprehensive SRH services that are of adequate quality, and which include (1) contraception, (2) maternal healthcare, (3) STI and HIV prevention and treatment, and (4) safe abortion.
- II. Recognize and respond to the multiple SRH needs of the population including that of adolescents and youth (especially girls), women, people of marginalized genders and sexualities, and populations living in rural and hard to reach areas.

### III. Theme B. SRH for Young People

The state of sexual and reproductive health (SRH) of young people in Southeast Asia varies widely across countries. The adolescent birth rate (ABR) captures the risk of childbearing among adolescent girls ages 15-19, and is a key indicator of the state of adolescent SRH. Lao PDR, the most resource-poor country with the highest incidence of poverty in the region has the highest ABR at 94 per 1000 girls ages 15-19 (Table 2). On the other hand, Singapore, Malaysia, and Brunei, the most economically developed countries in the region, have the lowest ABRs at 3.1, 13.2, and 16.8 per 1000 girls ages 15-19. While in this region, economic development appears to be a key driver in promoting adolescent reproductive health, cultural factors are also at play as the middle-income countries of the Philippines (53), Indonesia (47), Vietnam (38) and Thailand (60) exhibit higher adolescent birth rates as resource-poor countries Cambodia (30) and Myanmar (16.9).

TABLE 2 ADOLESCENT BIRTH RATES, PER 1000 WOMEN

	Country	ABR (Year)
1	Lao PDR	94 (2010)
2	Myanmar	16.9 (2006)
3	Cambodia	30 (2012)
4	Philippines	53 (2006)
5	Indonesia	47 (2009)
6	Vietnam	38 (2010)
7	Malaysia	13.2 (2008)
8	Thailand	60 (2012)
9	Brunei Darussalam	16.8 (2008)
10	Singapore	3.1 (2012)

Source: United Nations Statistics Division. Millenium Development Goals Indicators (updated 7 July 2014)

State policies that focus on the sexual and reproductive health (SRH) of young people or the youth in Southeast Asia have been likewise uneven and inconsistent. Some countries have national reproductive health policies that include adolescents in SRH services; some have SRH programs targeting the youth; some state policies are not clear or are silent on the inclusion of the youth in SRH services; while others have state policies that are exclusionary of young people.

Three countries with high adolescent birth rate, Lao PDR, the Philippines, and Indonesia, reflect this variation in state policy on SRH for young people. Lao PDR has the National Population and Development Policy of 1999 that provides adolescents with reproductive health and sex education. And yet it continues to have the highest ABR as the least developed country in the region. The Philippines has had no systematic state policy on adolescent SRH until the recent passage of the Reproductive Health Law of 2012. While Indonesia presents the unique case of having two laws – the Population and Family Development Law of 2009 and the Health Law of 2009 – that restrict SRH services to legally married couples.

Indonesia is the only country in Southeast Asia that has a state policy that excludes the unmarried, and consequently, the youth, from SRH services. This section focuses on the case of Indonesia as an example of regression in state policy on SRH for young people.

## INDONESIA / POPULATION LAW AND HEALTH LAW

### Regression in State Policy on SRH for Young People

### Background Information on SRH for the Youth

#### Country SRH Data

Indonesia is among the top ten countries accounting for the most maternal deaths in the world, with an estimated 10,000 women dying every year (Center for Reproductive Rights, 2012). Data from 2013 shows that the MMR in Indonesia is 190 per 100,000 live births. Within the Southeast Asian region, it has the third highest maternal mortality rate, falling closer to the most resource poor countries in the region, namely, Lao PDR and Myanmar (United Nations Population Fund, 2012; Asia Pacific Alliance, 2012).

The high maternal mortality in Indonesia has been linked to high rates of teenage pregnancy, which, among other factors is related to lack of access to comprehensive reproductive health services (United Nations Population Fund, 2012). Around 10% of teenage women in Indonesia are married and have children, with the rates of pregnant adolescents higher in rural areas than urban areas (Center for Reproductive Rights, 2012). Early pregnancy comes with greater risks of a young woman dying or suffering from serious health problems related to pregnancy and childbirth; hence, higher maternal mortality and morbidity (Center for Reproductive Rights, 2012).

The situation for teenage women in Indonesia is further complicated by early marriage. The Indonesian Ministry of Health in 2010 found that 41.9% of all first marriages involve women and girls aged 15 to 19, with 4.8% of first marriages among girls aged 10 to 14 (Center for Reproductive Rights, 2012; Amnesty International, 2012). Many of these young women and girls are likely to give birth to their first child shortly after marriage. With the high rates of maternal death coupled the high rates of teenage pregnancy and marriage in the country, this section focuses on the sexual and reproductive health of adolescents or the youth in Indonesia.

#### Description of Anti-SRH for the Youth State Policies

The two laws that govern access to reproductive health services in Indonesia are the Population and Family Development Law of 2009 and the Health Law of 2009.

The **Population and Family Development Law of 2009** assists “husband and wife couples in making decisions and realizing reproductive rights responsibly on the following: a. ideal age of marriage; b. ideal age for childbirth; c. ideal interval of childbirth; and d. reproductive health counseling.” This family planning policy is aimed at regulating desired pregnancies, maintaining the health of the mother and child, and increasing access to reproductive health services, among others (See Appendix B.3). The **Health Law of 2009** is implemented “to create healthy, small, happy and prosperous families” (See Appendix B.3). It states that parents should “give priority to birth control to create a healthy and harmonious family” (See Appendix B.3).

According to the **Population Law**, reproductive rights and family planning provisions are aimed at couples who are legally married (*perkawinan yang sah*). Contraceptive services can only be availed by legally married couples (*pasangan suami isteri*) (See Appendix B.3). According to the **Health Law**, access to sexual and reproductive health services may only be provided to legal partners (*pasangan yang sah* and *pasangan usia subur*), which implies that in practice only married couples can access family planning services (See Appendix B.3). Both laws exclude unmarried people from access to sexual and reproductive health information and services.

“This situation leaves unmarried women and girls at risk of unwanted pregnancies, sexually transmitted diseases, and human rights abuses” (Amnesty International, 2012, p.13) In a report by Amnesty International to the CEDAW Committee, unmarried adolescents who become pregnant may be forced to stop schooling; may decide or be forced to marry; or may seek unsafe abortion which puts them at risk of serious health problems and maternal mortality (Amnesty International, 2010a). It is unclear how unmarried women and girls can access reproductive health services given that the existing laws on reproductive health restrict access for the unmarried, who will most likely be young women and girls.

A related policy tied to teenage pregnancy is the **Marriage Law of 1974** which sets the age of marriage at 16 years for women and 19 years for men (See Appendix B.3). This makes young women and girls vulnerable to early marriage and early pregnancy.

Despite these national laws, the Indonesian government through its Ministry of Health, Ministry of Education, and National Family Planning Coordinating Board (BKKBN) has initiated education programs that provide sexual and reproductive health information to the youth (See Appendix B.3). However, these programs often do not include information about sexual relationships and preventing unwanted pregnancy (See Appendix B.3). Information about contraceptives, such as condoms, is rarely included. The legal restriction on giving information to unmarried adolescents serves as a barrier to adolescent sexual and reproductive health. Aside from the Population Law and the Health Law that restrict reproductive health to legally married couples, Indonesia’s **Criminal Code** contains legal provisions that criminalize supplying information on how to prevent pregnancy, making it punishable through imprisonment (See Appendix B.3). In addition, the controversial **Pornography Law of 2008** has also been a deterrent to disseminating information on sexual and reproductive health issues as it punishes the sharing of material that “contravenes norms of community morality” with imprisonment (See Appendix B.3).

### Legal Restrictions/Facilitators for ICPD

The Indonesian Constitution of 1945 is seen as a legal restriction to fulfilling Indonesia’s commitment to ICPD. Article 28b of the Constitution states that “every person shall have the right to establish a family and to procreate based upon lawful marriage” (See Appendix B.3). “The Constitution does not contain specific provisions which guarantee the right for unmarried men and women to have children. This lack implies that the right to establish a family and procreate is only protected in the context of marriage” (Amnesty International, 2010a).

The commitment of the Indonesian government to international human rights covenants is seen as a legal facilitator to fulfilling ICPD. Aside from being a signatory to the International Conference on Population and Development (ICPD, 1994), the Indonesian government is signatory to the Beijing Platform for Action (BPfA, 1995) and the Millennium Development Goals (MDGs) (Asia Pacific Alliance, 2012). Most significant has been the Convention on the Elimination of Discrimination against Women (CEDAW) which has been heavily used by international NGOs as a space for lobbying the Indonesian government to meet its commitments to women's rights (Center for Reproductive Rights, 2012; Amnesty International, 2010a). Other international covenants that may be relevant include the International Covenant on Economic, Cultural and Social Rights (ICECSR) and the International Covenant on Civil and Political Rights (ICCPR).

## Assessment of Regression in State Policy on SRH for the Youth

### Context

**Economic.** Indonesia is a country marked by chronic poverty (The Jakarta Post, 2012). Out of the 234 million Indonesians, more than 32 million live below the poverty line (World Bank, 2013). Approximately half of all households remain clustered around the national poverty line set at 200,262 rupiahs per month (USD 22) (World Bank, 2013). That is, around 50% of Indonesia's population remains poor, living on less than USD 2 per day (The Jakarta Post, 2012). The Asian financial crisis of 1997 worsened the poverty situation in Indonesia (United States Department, 2005). The economic crisis has been identified by the Indonesian government as the primary cause of the failure of sexual and reproductive health programs (ARROW, N. D.).

**Historical.** Indonesia has had a long colonial history; as a colony of the Netherlands from 1670 to 1900 before gaining independence in 1949 (British Broadcasting Company, 2013a). Indonesia entered authoritarian rule, first under Sukarno's "Guided Democracy" and later under Suharto's "New Order" military regime (Centre for Research on Inequality, Human Security, and Ethnicity, 2008). From 1965 to 1998, Indonesia was ruled by President Suharto (British Broadcasting Company, 2013a). It was in the 1970s that the National Family Planning Coordinating Board (BKKBN) was established and a national family planning program was initiated (World Bank, 2007). Securing partnerships with politicians, bureaucrats, and fieldworkers across national, provincial, district, and village levels, as well as the agreement of Islamic leaders across the nation, the BKKBN managed to implement a village-level family planning program (United Nations Population Fund, 2005; Shiffman, 2004). Family planning was however increasingly criticized by Islamic leaders; and with the Asian economic crisis, the New Order government fell and the reform era began (International Center for Not-For-Profit Law, 2005).

**Political.** At present, the Republic of Indonesia has a unicameral People's Consultative Assembly (Parliament) and its seat is in Jakarta, the capital (Global Resource Information Directory, N. D.). The Parliament has the highest authority in the country while the President is the highest executive in government. The government is served by Ministers who each head a specific sector (United Nations Educational, Scientific, and Cultural Organization, N. D.). The BKKBN which is under the Ministry of Health is primarily responsible for the reproductive health programs of the nation (United States Agency for International Development, 2003). The various ministries, including the Ministry of Health and the Ministry of Education, have been implementing information, education, and communication (IEC) programs on adolescent reproductive health (United States Agency for International Development, 2003). However, the content of these IEC programs is "limited to the promotion of family, moral, and religious values" and do not include significant information about the sexual and reproductive health of unmarried youth (United States Agency for International Development, 2003). And though the Indonesian Parliament agreed to include adolescent health programs in the national development plan, family planning services, including contraceptives, are only for legally married couples (University of Melbourne, N. D.). Most recently, the Parliament passed the Population and Family Development Law of 2009 and the Health Law of 2009. Both laws exclude unmarried people, and consequently the youth, from accessing reproductive health services (Center for Reproductive Rights, 2012; Amnesty International, 2012).

**Cultural.** Religion plays a significant role in the life of the people of Indonesia (ASEAN News Network, N. D.). Around 86-88% of the more than 230 million Indonesian population is Muslim, 8-9% Christian (5-6% Protestant and 3% Catholic), and 2-3% Hindu (ASEAN News Network, N. D.; Human Rights Watch, 2013). Islamic conservative views about women and sexuality remain the cultural norm as women are primarily seen in relation to their role as wives and mothers (Amnesty International, 2012; Amnesty International, 2010a). "All women should be married and have children, and any woman having a child should be married" (Amnesty International, 2010a). "Women's place is in the home, and their primary roles are mother, wife, and housekeeper" (Munir, N. D.).

The power of Islamic religious beliefs to control women's bodies and sexuality is most evident in the existence of female genital mutilation (FGM) as a cultural tradition (Amnesty International, 2010a). In Indonesia, circumcision of women and girls is a tradition closely associated with Islam and has been endorsed by the Indonesian Ulema Council (the highest Islamic advisory body in Indonesia) and the Nahdlatul Ulama (NU) (Indonesia's largest Muslim organization)" (Center for Reproductive Rights, 2012). Despite the CEDAW committee's recommendation to eliminate FGM and change the cultural beliefs surrounding FGM, the Indonesian government through its Ministry of Health issued a policy regulating female circumcision in 2010; further legitimizing the cultural practice of FGM (Center for Reproductive Rights, 2012; Amnesty International, 2012; Amnesty International, 2010).

**The rise of conservative Islam.** The emergence of Indonesia's democracy in the post- Suharto era was accompanied by the rise of Islamic fundamentalism (Freedom House, 2012). Conservative Islam grew in political influence as Islamist political parties were allowed to take part in Indonesian politics (Human Rights Watch, 2013). In 1999, 20 of the 48 parties were Muslim-identified; eventually winning 37% of the vote (Human Rights Watch, 2013). One such Islamist political party is the Prosperous and Justice Party (PKS) which advocates for the Islamic Sharia law (Eliraz, 2004). Radical and militant Islamist groups have also grown in strength and number, such as the Islamic Defenders Front (FPI) which uses Islam to justify attacks and violence (Human Rights Watch, 2013). Islamic fundamentalism seeks to establish an Islamic state based on Sharia or Islamic law (Munir, N. D.).

The regional autonomy policy that was part of the new era of reformasi and democratization facilitated the institutionalization of Sharia (Munir, N. D.). Decentralization allowed provinces and regencies to enforce Sharia laws, mostly to control women's dress code and women's chastity (Munir, N. D.). According to the National Commission on Violence against Women (Komnas Perempuan), there have been 154 regional bylaws passed which discriminate against women since the reformasi (The Jakarta Post, 2010).

Though there is a diversity of Islamic views and Islamic organizations, including pluralist and feminist perspectives within Islam (Parvanova, 2012), it is this context of an increasingly strong and politically influential Islamic conservatism that women's rights activists face in light of the struggle for sexual and reproductive health for the youth.

### Debating the Population Law and Health Law

The passage of the Population and Family Development Law and the Health Law in 2009, despite being exclusionary of unmarried people, is presented as an example of regression in terms of state policy on SRH for the youth.

**Women's rights and human rights discourse.** Women's rights activists protested the health law for not accommodating the rights of unmarried people to reproductive health services (World Bank, 2007). Among the protesters were members of the Network of the Pro-Women's National Legislation Program (JPK3), an association of various NGOs, including the Women's Health Foundation (YKP), the Indonesian Women's Association for Justice (LBH APIK) and the Mitra Perempuan Women's Crisis Center. The Indonesian Legal Aid Society Association (Perkumpulan Masyarakat Bantuan Hukum, consisting of Federasi Apik, Federasi Lembaga Bantuan Hukum Asosiasi Perempuan Indonesia Untuk Keadilan, was among the human rights activists that protested the health law (The Jakarta Post, 2009). Amnesty International (AI) was also involved in protesting the health law (Amnesty International, 2010b). Amnesty International (AI) and the Center for Reproductive Rights (CRR) were among the international NGOs that lobbied the Indonesian government at the CEDAW Committee to amend these laws, among others (Center for Reproductive Rights, 2012; Amnesty International, 2012).

The primary discourse carried by women's rights activists and human rights activists to protest the non-inclusion of the unmarried and the youth in the health law was a rights-based discourse. They positioned the health law as a form of discrimination. For example:

“some of the provisions... violate, among others, women's rights” (Amnesty International, 2010b)

“This requires that... sexual and reproductive health care, be accessible to all, free from discrimination and from the threat of criminalisation” (Amnesty International, 2010b)

Risk and danger was another discourse carried by those who pushed for the inclusion of the youth and the unmarried in the health law. For instance:

“unmarried women and girls... are at risk of unwanted pregnancies, sexually transmitted diseases, and human rights abuses” (Amnesty International, 2010a)

“unmarried women often face the harsh consequences of an unplanned pregnancy” (Media Global News, 2010)

International NGOs have also used the Indonesian government’s commitment to international human rights covenants, particularly CEDAW, to argue for amending the said laws (Center for Reproductive Rights, 2012). Feminists also argued that sex is a natural part of a “woman’s full life cycle”(Confidential Interviewee Identity 2, 2013).

**Islamic conservative discourse.** The Islamic conservative view over women and sexuality was carried by the Indonesian Parliament in passing both laws that exclude the youth and the unmarried access to sexual and reproductive health services.

“The assumption is... you have reproductive rights only when you have sex. And to have sex, you have to marry” (Confidential Interviewee Identity 2, 2013)

To promote reproductive health for the youth is to encourage “free sex” or immoral sexual behavior (National Commission on Violence Against Women, 2009). The discourse underlying reproductive health from an Islamic conservative perspective is that sex can only take place within marriage (Jakarta Globe, 2012).

**State discourse.** With the passage of these regressive laws, the Indonesian Parliament carried the Islamic conservative discourse on SRH for the youth. There are however, progressive forces within the Indonesian government that acknowledge the need for SRH for the youth. The National Commission on Violence against Women (Komnas Perempuan), for instance, acknowledged the importance of ICPD and stressed that the youth, even the unmarried, need access to SRH information and services (National Commission on Violence Against Women, 2009). Adolescent reproductive health programs were also being promoted by the BKKBN, the Ministry of Health, the Ministry of Education, among others, with the support of the United Nations Population Fund (UNFPA) (University of Melbourne, N. D.).

**Conclusion.** With the passage of regressive laws that exclude the youth and the unmarried from accessing sexual and reproductive health services, the Islamic conservative discourse has won over the discourse on rights and health in Indonesia.

### **Analysis of Factors to Regression in SRH for the Youth**

An analysis of the current state of regression of SRH of youth in Indonesia points to the growing strength of Islamic fundamentalism and the weakening of the women’s movement (Confidential Interviewee Identity 2, 2013).

**Strengthening of Islamic conservative groups.** Islamic fundamentalist groups have grown in strength and have risen to power. Islamic conservative groups, with their women members, would lobby in Parliament every day. Islamist political parties, though not the dominant political parties, would speak out in Parliament and in Court and bring the support of their members en masse. Some groups resort to threats and instill fear to gain compliance. The Islamic conservative voice has become stronger and is now more visible in popular media. On TV and radio every day, women clerics teach that the highest value for a woman is to become a mother; that is, to marry and give birth (Confidential Interviewee Identity 2, 2013).

**Weakening of women's rights organizations.** On the other hand, women's rights organizations have weakened. "The situation is really bad... NGOs are weak." Despite consistent and persistent campaigning and lobbying, feminist organizations reported that they "failed to do advocacy for the rights of girls, the youth." Women's rights organizations were not as strong as the Islamic conservative groups. Though women may support the cause, women lacked experience in legislative advocacy and were afraid to be visible in public. Apart from fear, a major reason for the weakening of women's organizations in Indonesia is the difficulty in finding resources as international funding is phased out of the country. Funders are reportedly now funding the Indonesian government, despite its adherence to Islamic conservatism (Confidential Interviewee Identity 2, 2013).

Though different kinds of women's organizations grew after the reformasi movement that toppled the Suharto dictatorship in 1998, there is of yet no mass women's movement that continuously organizes women around women's issues (Direct Action for Socialism in the 21st Century, 2011).

**Islamic conservatism in the state.** Islamic conservative groups are now part of Indonesian politics as political parties and elected members of Parliament. Sharia Laws have now been institutionalized in different provinces, with regional autonomy and decentralization. The national government itself now carries increasingly conservative views of women and sexuality. A case in point is the Bandung Declaration of Gender Harmony in 2012 spearheaded by the Ministry of Women Empowerment (International Conference on Gender Empowerment, 2012). According to feminist organizations, the idea of gender harmony follows the traditional concept of family in Islam; hence, promoting the traditional role of the woman as wife and mother (Confidential Interviewee Identity 2, 2013).

Though there are ministries that attempt to implement progressive SRH programs, the existence of laws and norms that support Islamic conservative beliefs serve as barriers to SRH in Indonesia.

## Conclusion

The challenge for SRH in Indonesia is how to break the hegemony of the Islamic conservative discourse on women and sexuality and create a strong social movement that can challenge the power of Islamic conservative forces.

At a discursive level, creating multiple discourses alongside a rights-based approach may help break the hegemony of Islamic conservatism. Deriving discourses from Islamic pluralism and Islamic feminism to create a diversity of voices may also be useful. A possible strategy to challenge the hegemony of Islamic conservatism is to create multiple counter-discourses carried by a diversity of social movement actors.

At a structural level, strengthening the women's movement is imperative.

Increasing support for women's rights organizations, mobilizing women in communities, and building a mass women's movement may be the steps needed to counter an increasingly powerful Islamic fundamentalist movement. Developing allies and networks among progressive civil society organizations, even secular political parties, may also be necessary. The strategy then is to invest in movement-building.

## Recommendations for further action

In Indonesia:

1. Mobilize and strengthen civil society action to counter religious fundamentalism, and its negative impact on advancing SRHR in the country.
2. Urge the Indonesian government to review and amend restrictive laws such as the Population and Family Development Law of 2009 and the Health Law of 2009, that deny access to SRH information for youth, impair their sexual and reproductive rights, and prevent their access to SRH services.

In the region

1. Develop and implement national policies and programs that are responsive to the SRH needs of adolescents and youth, particularly unmarried girls, including for comprehensive sexuality education, contraception, safe abortion, and prevention and treatment of STI's including HIV.
2. Train healthcare providers to create and sustain an enabling environment for adolescents and youth to access affordable, safe and confidential SRH services and that are not discriminatory on the basis of gender, age, marital status or sexuality.

#### IV. Theme C. Sexual and Reproductive Rights

State policies that promote and protect sexual rights in Southeast Asia are non-existent. All 10 Southeast Asian countries do not have a national law or state policy that promotes and protects the rights of lesbians, gays, bisexuals, and transgenders (LGBT). The law is silent on LGBT rights in 6 of the 10 countries, namely Lao PDR, Cambodia, Indonesia, Philippines, Vietnam, and Thailand. Attempts to advance legislation on anti-LGBT discrimination have been initiated in the Philippines where bills against the discrimination on the basis of sexual orientation and gender identity (SOGI) have been filed in Congress. However, an anti-LGBT discrimination law is yet to be passed in the Philippines and in the entire Southeast Asian region.

Four of the ten Southeast Asian countries have existing laws that criminalize homosexuality. The Penal Code of Brunei, Myanmar, Malaysia, and Singapore, contain an identical provision, Section 377, which criminalizes homosexuality. Section 377 is a remnant of the Penal Code of Former British Colonies. Section 377 refers to homosexuality as “carnal intercourse against the order of nature” or as “unnatural offences”. In Brunei and Myanmar, homosexual acts are punishable by imprisonment of up to 10 years. In Malaysia, same-sex sexual acts are punishable by whipping and imprisonment of up to 20 years. In Singapore, male (but not female) homosexuality is punishable by imprisonment of up to 2 years.

Although attempts have been made to repeal Section 377 in Singapore and Malaysia, LGBT advocacy in these countries has not yet succeeded. The continued existence of a law that criminalizes homosexuality is evidence of regression in terms of state policies on LGBT rights. This section focuses on the case of Malaysia as an example of regression in state policy on sexual rights.

## **MALAYSIA / SECTION 377**

### **Regression in State Policy on Sexual Rights**

## **Background Information on Sexual Rights**

### **Country SRH Data**

Malaysia is among the more economically advanced countries in Southeast Asia, where women are said to benefit from the implementation of comprehensive reproductive health programs. Within the Southeast Asian region, the health condition of women in Malaysia ranks second to Singapore and is believed to be comparable to that of developed countries (United Nations Development Program, 2003). Malaysia's maternal mortality ratio is 29/100,000 live births, significantly lower than the world average of 210 (United Nations Population Fund, 2012). It has the second lowest MMR in the Southeast Asian region, following Singapore (United Nations Population Fund, 2012; Asia Pacific Alliance, 2012). Particularly impressive is Malaysia's percentage of access to skilled birth attendants (SBA) at 99%, which is much higher than the Asian region and world average at 69% and 70% respectively (United Nations Population Fund, 2012; Asia Pacific Alliance, 2012). Even Malaysia's policies on access to safe abortion is commendable given that it is permitted to save the life of the mother and/or preserve her health (See Appendix B. 5).

In this context of a very advanced state of reproductive health services, it is ironic that sexual rights, in particular the rights of lesbians, gays, bisexuals, and transgenders (LGBT) have lagged behind so considerably in Malaysian society. Despite Malaysia's history of sexual diversity, the recognition and respect for non-heteronormative practises is believed to be wading (Women's Aid Organization, 2012). In fact, non-heteronormative practises are criminalised in both civil and Syariah laws. In a number of Malaysian states, musahaqah (lesbianism) is a crime wading (Women's Aid Organization, 2012, p. 225). Transgenders in particular, perhaps because they are the most visible among the LGBT, are often the target of discrimination and humiliation by both Islamic and civil policing of non-heteronormative sexuality (Women's Aid Organization, 2012, p. 225; pp. 56-57; 61-62). Both secular law and Syariah law have classified LGBT sexuality as "unnatural" (Women's Aid Organization, 2012, p. 64), and therefore committed to its moral policing.

The focus of this section is the regression that exists in the area of sexual rights in Malaysia, specifically with the continued existence of Penal Code 377.

### **Description of Anti-Sexual Rights Policies**

In the Malaysian context, there is a co-existence of secular laws and Syariah laws. While Syariah laws, specific to particular territorial states, apply to its Muslim population, secular law applies to both the Muslim and non-Muslim population (Asian-Pacific Resource and Research Center for Women, 2006). Although in practise there are some differences and tensions between what secular laws and Syariah laws dictate, civil courts are said to be very accommodating in applying Syariah laws to Muslims (Michigan State University Asian Studies Center, N. D.).

However, when it comes to laws for the moral policing of non-heteronormative sexuality or LGBTs in Malaysia, both secular laws and Syariah laws are united in condemning and declaring such as unnatural and a criminal offence. The particular policies used for the moral policing of sexual rights is primarily the **Penal Code Section 377 A-D**, and **Sections 26, 28, 66, and 92** of the **Syariah Criminal Offences**.

**Penal Code Section 377 A-D** was established in 1936 and revised in 1997. It is the civil policy that “condemns certain sexual acts and classifies them as unnatural offenses” (Michigan State University Asian Studies Center, N. D.). **Section 377 A-C** indicate that carnal intercourse is “against the order of nature” and punishable by whipping and an imprisonment from two years up to twenty years (Michigan State University Asian Studies Center, N. D.). Specifically, **377A** states, “Any person who has sexual connection with another person by introduction of the penis into the anus or mouth of the other person is said to commit carnal intercourse against the order of nature” (Michigan State University Asian Studies Center, N. D.) while **377B** refers to the “Punishment for committing carnal intercourse against the order of nature” (Michigan State University Asian Studies Center, N. D.). The sections **377C** and **377D** refer to “sexual connection by object” and “outrages on decency” respectively (Michigan State University Asian Studies Center, N. D.). Clearly the sexual acts described in these provisions refer to homosexual activities, classifying such as unnatural offences (Michigan State University Asian Studies Center, N. D.).

There are also a number of Syariah Criminal Offences enactments criminalizing non-heteronormative sexuality or homosexuality and transgenderism, specifically:

**Section 26 of the Syariah Criminal Offences Act 1997** which states: “Any female person who commits musahaqah or lesbianism shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding 3 years or to whipping not exceeding six strokes or to any combination thereof (Michigan State University Asian Studies Center, N. D.);

**Section 28 of the Syariah Criminal Offences Act 1997** which states: “Any male person who, in any public place, wears a woman’s attire and poses as a woman for immoral purposes shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding one year or to both” (Michigan State University Asian Studies Center, N. D.);

**Section 66 of the Syariah Criminal Enactment 1992** which criminalizes “any male who wears women’s attire or poses as a woman” (Michigan State University Asian Studies Center, N. D.); and

**Section 92 of the Criminal Offences Enactment 1995** which criminalizes “a male posing as woman or vice versa’ (Michigan State University Asian Studies Center, N. D.).

In line with the moral policing of sexual rights and expression in Malaysia, in 2011 the Malaysian government banned the annual festival called “Seksualiti Merdeka” or sexuality independence, which was first launched in 2008. The festival sought to promote the space for diverse sexual orientations and gender identities as a human right. However, Malaysian government officials described the festival as promoting animalistic culture and social deviance (Associated Press, 2012).

Human Rights Watch also reported that in 2011, the Malaysian courts denied the legal appeal of a transgender woman named Allesha Farhnan Abdul Aziz, who sought to change her name and gender from male to female (Human Rights Watch, 2013). Also reported in the same year, Malaysia authorities forcibly sent 66 allegedly effeminate schoolboys to a camp intended “to guide them back to the right path” (Human Rights Watch, 2013). A more recent moral policing of transgenderism was in October 2012, where two court rulings were released: [1] “a transsexual was refused the right to change the gender recorder on her national identity card” and [2] “that Muslims born as males may not dress as females” (Human Rights Watch, 2013).

Also reported in 2012, Malaysia’s Prime Minister Najib had categorically stated: “it is compulsory for us to fight LGBT behaviour” (Human Rights Watch, 2013) and that LGBT activities “have no place in the country” (Human Rights Watch, 2013).

### Legal Restrictions/Facilitators for ICPD

Malaysia continues to deal with its dual legal system of civil courts coexisting with Syariah Courts, where Syariah courts are primarily for religious and family activities of Muslims (Michigan State University Asian Studies Center, N. D.). The concept of Islam most widely accepted and introduced by Datuk Seri Abdullah Ahmad Badawi, is referred to as Islam Hadhari. It is said to stress the values of “knowledge, hard work, honesty, good administration and efficiency, and appeals to Muslims to be inclusive, tolerant and outward looking” (Michigan State University Asian Studies Center, N. D.). But there are moves from Pan- Malaysian Islamic Party (PAS), an Islamic conservative political party, for Malaysia to implement stricter Islamic regulations and to make Malaysia an Islamic state (Michigan State University Asian Studies Center, N. D.).

At the international level, the Malaysian government has committed to a number of international agreements directed at promoting gender equality and women’s empowerment. Apart from Malaysia’s commitment to the ICPD, it has also signed the Convention of the Elimination of Discrimination against Women (CEDAW), the Beijing Platform for Action (BPfA, 1995), and adheres to the Millennium Development Goals (MDGs).

However, on the issue of upholding sexual rights, in particular sexual orientation and gender identity, the Malaysian government has taken a clear stance in opposition. It has opposed the recognition and protection of rights on the basis of sexual orientation and gender identity (SOGI) in the ASEAN Human Rights Declaration 2011 and also signed against the United Nations Resolution on SOGI (United Nations Human Rights Council, 2011).

At the national level, both the Penal Code and Syariah laws continue to not just discriminate LGBTs, but actually criminalize homosexual and transgender acts and declare such “against the order of nature” (See Appendix B. 5).

# Assessment of Regression in State Policy on Sexual Rights

## Context

**Economic.** Malaysia is classified among the 2nd level Newly Industrialized Countries (NICs), with a population size of around 25 million (Drabble, 2000). The development of the Malaysian economy is considered one of the fastest in the world. It was reported in 2010 that Malaysia's estimated GDP per capita was at \$15,700 in 2008. Previously an economy producing raw materials, it has now developed into a multi-sector economy and is considered a middle income country (Drabble, 2000). It is said that the comfortable economic lifestyles of middle class Malaysians could be a contributing factor to the public's general acceptance or lack of resistance to government's discriminatory policies and practises against sexual rights (Tan, 2013).

**Historical.** Malaysia was a Buddhist country, before it converted to Islam in the 15th century. It was first conquered by the Portuguese empire in 1511, then by the Dutch empire in 1641, and by the British Empire in 1795. The British colonial rule lasted until 1957 when Malaysia gained independence from Britain. The Federation of Malaysia was formed in 1963 together with the former British colonies of Singapore, Sabah and Sarawak. Eventually, Singapore sought independence from the federation in 1965. And so, with the integration of Peninsular Malaysia with Sabah and Sarawak, Malaysia was formed (Drabble, 2000).

With the leadership of Abdullah Badawai since 2003 as the successor of Prime Minister Mahathir Mohamed, many reforms have been initiated by the government, such as stricter policies against corruption in the public sector, greater judicial independence, and a more permissive and progressive interpretation of Islam (Hadhari), which was said to have paved the way for religious tolerance (University Utara Malaysia, N. D.).

The Islamisation of Malaysia was done alongside its economic development under Mahathir Mohammad's administration from 1981 to 2003. Mahathir's political party, United Malays National Organization (UMNO), sought legitimacy from its constituency of Muslims through the creation and implementation of Islamic policies. Many of these newly-created Islamic policies posed restrictions to women's human rights and freedoms (Asian-Pacific Resource and Research Center for Women, 2006). The Islamic fundamentalist movements sought to Islamise Malaysia through the imposition of Islamic morals (Asian-Pacific Resource and Research Center for Women, 2006). Traditionally, pre-colonial and colonial Islamic law dictates certain parameters of sexual activity as acceptable, prime among them for Muslim women and men to have heterosexual sex within marriage. Over time post-colonial Syariah laws had expanded to include regulations pertaining to homosexuality and transgenderism (Tan, 2012).

**Political.** Malaysia is comprised of 13 territorial States and where one is a Federal Territory which is run by the national government. The Federal Territory or Federal executive is headed by the Prime Minister, although the supreme head is a constitutional monarch, the Yang di-Pertuan Agong or King. Similar divisions of power structures exist in the other territorial States, led by a Chief Minister and a head, either a sultan for the Malay States or a governor for the other non-Malay States (Tan, 2012).

The issue of whether Malaysia is an Islamic state or a secular state has long been debated among Malaysian political leaders. The current Prime Minister Abdullah declared Malaysia an Islamic state that is ruled by both Islamic principles and Parliamentary democratic principles as stipulated in Malaysia's Federal constitution (Michigan State University Asian Studies Center, N. D.).

Given the plurality of Malaysian society, the government is constantly seeking to protect its harmony and stability. While trying to maintain its status, it must also appear to be open to public debates among the various sectors of its society. Though difficult, it continues to maintain a dual legal system, where Syariah law pertains to religious, family, and criminal issues for its Muslim population, and secular law for other issues for both Muslim and non-Muslims. While the minority religious groups are said to be free to practice their beliefs, there is concern that Syariah laws are increasingly superseding the secular civil and criminal court system (University Utara Malaysia, N. D.).

**Cultural.** For Malaysia to continue its economic development, its main challenge is to address the deeply rooted economic, social, cultural, and religious divides among the major ethnic groups in the country. The Malaysian population currently stands at around 60% Malays, 26% Chinese, and the remaining 14% Indian and other indigenous groups. It is the Chinese ethnic groups that continue to hold the country's economic power, while the Malays are said to dominate politics, with the Indians remaining among the poorest (British Broadcasting Company, 2013b).

With the declaration of Islam as the official religion of Malaysia in 1957 is said to have imposed Islamic fundamentalist views and practices at the cost of local Malay culture and tradition. The Malay indigenous cultural identity is being replaced with an Arabised Islamic identity (Asian-Pacific Resource and Research Center for Women, 2006).

It is believed that Islamic fundamentalists and political Islamists use the Syariah to enforce a negative view of women and their lower status in marriage, family and society. They use the Syariah to regulate dress, public presentation of self, behavior, belief and lifestyle of women and non-heteronormative sexualities, thereby promoting unequal gender relations and intolerance for sexual diversity (Asian-Pacific Resource and Research Center for Women, 2008).

## **Debating Section 377**

The refusal to repeal Penal Code 377 and its Syariah equivalent, serves to keep non-heteronormative sexuality marginalized and criminalized in Malaysian society, and illustrates a regression in Malaysia's policy on sexual rights for the LGBTs.

**Homosexuality and transgenderism as unnatural discourse.** Both Islamic laws and secular laws have classified LGBTs as unnatural offences, punishable by whipping and imprisonment (See Appendix B. 5). According to the president of Jamaah Islah Malaysia, a Malaysian NGO promoting Malay superiority over other ethnicities in Malaysia, Zaid Kamaruddin, Section 377 should not be repealed because it ensures that human nature is upheld. He states:

“If the act were actually to be repealed, somehow it would affect the value of our community and our future generation would be more exposed to unhealthy behaviour.” (The Malaysia Online, 2012a)

This is also the discourse upheld by the Malaysian government as clearly evident in the statements of Prime Minister Najib made in reference to LGBTs:

“it is compulsory for us to fight LGBT behaviour.” (Human Rights Watch, 2013)

**Homosexuality and transgenderism as western or anti-Malaysian discourse.** With the declaration of Islam as the official religion of Malaysia, the Islamic laws are asserted as representing and protecting what is truly Malaysian in values and beliefs. It is in this context that homosexuality, bisexuality, and transgenderism are deemed as going against Malaysian culture. As stated by Syariah law practitioner Mohammad Isa Abdul Ralip:

“...the country is well-known for its eastern values. Hence we should be firm and strongly condemn those who try to fight for freedom of LGBTs.” (The Malaysia Online, 2012a)

It is also a discourse carried by the Malaysian government, where again Prime Minister Najib publicly talks about LGBT activities, and asserts:

“...have no place in the country.” (Human Rights Watch, 2013)

**LGBT rights as modern discourse.** Malaysia’s political opposition are said to be divided on the call of the international human rights groups, such as Amnesty International, to revoke the 377 or sodomy law. While on one hand repealing 377 is perceived as not making any difference given it has not been invoked, except in the case of Anwar Ibrahim. On the other hand, it is not right for a modern Malaysia to have such discriminatory and exclusionary laws still in existence. As stated by Chua, Johor PKR chairman:

“...in this day and age, this law is very unjust. No one should be jailed for 20 years simply because of his personal preferences.” (The Malaysia Online, 2012b)

As put forward by International Federation for Human Rights (FIDH) Deputy Secretary-General, Debbie Stothard, laws such as 377 are archaic and a clear violation of human rights and freedoms. She explains:

“In a multi-ethnic and modern society like Malaysia, the sodomy laws and other discriminatory laws have no place and the government’s continued failure to repeal them will only place itself at odds with the Malaysian people’s aspirations for greater freedom.” (International Federation for Human Rights, 2012)

**LGBT rights as human rights discourse.** Malaysian human rights activists are calling for the abolishment of laws criminalizing LGBTs and sought to challenge the ban placed on the annual sexual independence festival in 2011. Calling the ban unconstitutional and discriminatory, an LGBT organization called Seksualiti Merdeka asserts:

“...to prevent us from expressing ourselves are irrefutable evidence of the discrimination” (Associated Press, 2012)

As well, no less than the Secretary General of the United Nations invoked the universality of human rights, and has also called for the repeal of Section 377, particularly since Malaysia is a member of the UN Human Rights Council.

## Analysis of Factors to Regression in Sexual Rights

**Islamic fundamentalism and conservative secularism stand united.** Despite the calls to repeal 377 of the penal code, particularly by international human rights organizations, the Malaysian government continues to uphold these homophobic and discriminatory laws. While such policies implicitly already serve to police non-heteronormative sexuality, the Malaysian government also exercises explicit policing of LGBT sexualities. No less than Malaysia's Prime Minister Najib was publicly quoted as saying that LGBT activities "do not have a place in the country". He also called upon the Muslim people of Malaysia to fight against LGBT behaviour (Human Rights Watch, 2013), invoking the discourse that homosexuality and transgenderism is unnatural and anti-Malaysian.

It comes as no surprise therefore that the High Courts dismissed the appeal of Seksualiti Merdeka to lift the ban on the annual festival it holds in celebration of sexual diversity. Nor did the courts allow the request of two transsexuals to legally change their gender, from male to female. And both Syariah and secular laws continue to prohibit born males from dressing as females and vice versa behaviour (Human Rights Watch, 2013).

The highly conservative Muslim stance that do not just discriminate, but actually criminalize LGBT sexualities and identities, and label it as "unnatural" and "animalistic" remain a powerful voice in Malaysian society. It is a discourse that is carried by Syariah laws, reinforced by secular laws, and reflected in people's cultural practices and beliefs. As in the of case former political leader Anwar Ibrahim who was charged with sodomy, the moral policing and shaming of LGBTs, directly and indirectly, coercively and non-coercively, remains a powerful force felt throughout Malaysia.

**A weak and fragmented social movement.** In the face of the highly conservative and criminalizing discourse of secular and Syariah laws towards LGBTs, the feminist movement of Malaysia has yet to put forward a substantive and sufficient counter discourse. It has not prioritized the issue of sexuality as a human rights concern in its feminist agenda (Tan, 2007). Even at the height of the Anwar Ibrahim controversy, feminist groups did not have a strong position on how to challenge the State for using homosexuality to destroy the image of a former political leader (Tan, 2007). The seeming silence of feminist groups regarding the Malaysian government's use of homosexuality to remove Anwar from power, may imply that it did not have a strong position on LGBT rights (Tan, 2007). Sexual behaviour and sexual orientation is said to be a missing or marginal discourse in the Malaysian women's movement. The rights of lesbian, gays, bisexuals, and transgenders to freely exist in Malaysian society has yet to be taken up by feminists as part of its human rights agenda (Tan, 2007).

The LGBT organizations such as Seksualiti Merdeka have called for the repeal of 377 and have attempted to assert their rights and freedoms as LGBTs, yet they remain weak and vulnerable to discrimination and conviction. However with the support of local and international human rights organizations, such assertions could be strengthened.

But as of now, the social movement in Malaysia is described as weak, reactionary, and divided, particularly in the face of the increasing intolerance and criminalization of sexual diversity and LGBTs lifestyles (Tan, 2013).

**For fear of the backlash.** It is said that the silence of feminist groups during the Anwar controversy is based on “well-founded fears”. There is apparently a fear among feminist groups and individuals that they might lose the legitimacy and the good relations they have built with the Malaysian government. There is also a fear among women’s groups, with a composition of mostly non-Muslims, that taking a position that was not perceived as appropriate by the greater majority, might only serve to further divide Malaysian society (Tan, 2007). As such, the (lack of) positioning of the feminist movement, on the issue of LGBT sexual rights is greatly influenced by the moral policing of both Syariah and secular laws. An environment of fear to speak out against the discrimination and criminalization of LGBTs is a real one. There is a belief that to challenge Islamic law would be to have “all hell break lose”, according to the Malaysian feminist interviewed (Tan, 2013).

The efforts of Malaysian LGBT activists, for instance, to put forward a counter discourse to LGBT discrimination and criminalization are almost immediately shot down by the Malaysian government. LGBT rights and other human rights groups were also unable to speak out against the use of homosexuality during the Anwar issue. There remains a reluctance to speak out against the discrimination of LGBTs, based on an assessment that the time is not right for such. Yet the inevitable question also raised is “When will it ever be the right time?”(Tan, 2007).

## Conclusion

The strong alliance built between Islamic and secular politics is a major hindrance to the legal recognition and social legitimization of LGBTs in Malaysian society. But such an alliance can be challenged with a strong and united people’s call for sexual rights and respect for sexual diversity.

Building this critical mass or social movement would entail making a strong connection to the importance of upholding the rights and freedoms of LGBTs in Malaysia society, as a core element for the country to truly be considered a modern, multicultural, democratic, and prosperous nation. Discursively, there is the need to break the narrow, exclusionary, and conservative Islamic interpretation, of what the country upholds as its cultural values, particularly in the area of people’s sexual orientation and gender identity. And instead, to assert the importance of an open, inclusive, and diverse appreciation of sexuality in Malaysian society as reflective of the country’s multicultural and pluralistic values and lifestyles.

## Recommendations for further action

1. Continue action and advocacy to urge the governments of Malaysia, Myanmar, Brunei and Singapore to repeal Section 377 of their penal codes that prevents citizens of marginalized genders and sexualities from enjoying their sexual health and rights, without fear, stigma, discrimination and violence.
2. Review and amend other national laws and regulations that discriminate against and prevent marginalized genders and sexualities from enjoying their sexual health and rights, without fear, stigma, discrimination and violence.

## V. Conclusion

A singular rights-based discourse could not break the hegemonic discourse of Islamic conservatives. The women's movement needs resources to strategically mobilize against a growing Islamic fundamentalist movement and create counter-discourses that will not be positioned as anti-Islam.

The Malaysian case study illustrates how the social movement has yet to mobilize in advancing sexual rights (SR) by repealing Section 377. The regression in sexual rights is tied to the:

- 1) coming together of Islamic fundamentalism and conservative secularism,
- 2) a weak and fragmented social movement, and
- 3) the fear of a backlash from Islamic fundamentalist forces.

The alliance between Islamic and secular politics is a formidable barrier to the rights of lesbians, gays, bisexuals, and trans genders (LGBTs). Challenging this alliance may require massive mobilization across social movement actors, including women, LGBT, and human rights organizations; as well as creating discourses derived from the unique Malaysian cultural context that can uphold sexual rights. Overcoming the fear of retaliation, and even violence, may involve strengthening the movement and deriving power from local and international networks, partners, and allies.

Across the three country cases, the religious right is vigorously at work. From the Catholic conservatives to the Islamic fundamentalists, the religious right is mobilizing and intensifying its base and creating alliances with the State. Key recommendations for advancing SRHR in the region include:

- 1) Forge strong collaborations and improved strategies and alliances across a diversity of civil society actors and representatives of the State to counter religious fundamentalism and its threat to SRHR;
- 2) Heighten advocacy to urge governments to fulfill their obligations to provide comprehensive SRH services that are of adequate quality, and which include:
  - a) contraception,
  - b) maternal healthcare,
  - c) STI and HIV prevention and treatment, and
  - d) safe abortion;
- 3) Develop and implement national policies and programs that are targeted towards and responsive to the multiple and unique SRH needs of adolescents and youth, particularly unmarried girls, including comprehensive sexuality education, and youth friendly SRH services; and
- 4) Review and amend national laws and regulations that discriminate against and prevent citizens of marginalized genders and sexualities from enjoying their sexual health and rights, without fear, stigma, discrimination and violence.

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