Thailand has witnessed tremendous changes in relation to sexual matters over the past decade. The public now learns from the news about various dimensions of sex which has become one of the most heated subjects throughout the decade including as it relates to gender–based violence, teenage sex, LGBTIQ rights, and unwanted pregnancies. In addition, the media and academic also discussed sex at depth from various perspectives from tradition and morality to liberties and rights. Nevertheless, “sexual health” is still primarily the domain of small government agencies and NGOs. It’s now time that politicians and policy makers pay attention to sexual health at a macro level to ensure that Thai society can survive the time bombs of sexual problems that it will surely face in the next decade.

Changing attitude towards sex over the past 13 years

Several phenomena show that Thai society’s attitude to sex has begun to change, particularly from late 2010 when 2002 fetus tissues were discovered in Bangkok’s Phai Ngoen Temple. This incident became the biggest abortion–related news in Thailand and made international news headlines on CNN, BBC and AFP. International agencies focused on the obvious contradiction between the discovery and Thailand’s supposedly Buddhist society.
The debates around this incident indicated that a lot of people no longer considered sex as something to hide. Most people now think teenagers should be given proper sex education and taught to practice safe sex, as reflected in the news headline “More than 90% of parents support sex education to prevent abortion.”

Even the more conservative government agencies such as the “Virtues Center” stated that “Let’s not look at it as taboo. Thai society has changed… We need to solve the problems together. It doesn’t help to kick pregnant students out of school, because they will be forced to seek abortions.”

As a result, over the past ten years, sex is no longer seen only as a problem in Thailand. While in the past, sex was hidden for fear of enticing youngsters to impropriety, now questions are raised whether the state and religion have exerted excessive control over sex, what kind of ideology prevails in such control and how this control affects the life of the population.

With such free and open public debates and probing questions on the ideological framework used to give meaning and to explain sex, it is hoped that increased public understanding and knowledge will increasingly move discourse away from “sex–related problems” to “sexual health”, while measures to ensure better quality of sex life will also be improved.

Outstanding sexual–related news and stories over the last 13 years (1998–2010)

According to two reports which compiled sex–related news from daily and weekly newspapers, news agencies, government bulletins, research institute newsletters and polling agencies between 1998 and 2010, the most common sex–related news items are rapes and gender–based violence whilst unwanted pregnancy, abortion and abandoning of newborns dominate the headlines for the reproductive health category.

(1) Rape remains the most common headline between 1998 and 2010, totaling 8,902 news items or 741 per year. Especially during the last three years of the research period, rapes accounted for more than half of the news items on gender–based violence, reflecting a worrying situation of sex–related danger in Thai society. The characteristics of rape in the news included:

- committed by those with power over, reflecting power imbalance in relationships.
- often excused by other factors such as alcohol use and pornography consumption. In addition, the “rape law” allows settlement which lessens the seriousness of the crime.
- interestingly, rape also happens in the context of faith and beliefs, such as that committed by monks, fortune tellers and enchanters. Rape victims are often ridiculed for their gullibility.

(2) Sexual violence. Other than rape, gender–based violence in the news numbered 6,435 items over 13 years. More than two thirds of reports related to commercial sex and sexual exploitation of women and children which often involved deception and human trafficking. Other reports related to voyeurism, clandestine photographing or dissemination of illicit images and physical and verbal sexual harassment, most commonly found in the workplace by male superiors in exchange for better grades by university lecturers and during custody or search by law enforcement officials.

Violence within relationships, whether active or past relationships, also appeared significant in reporting as well as gender–based prejudices and discriminations against women with disabilities, homosexuals and transgenders. This kind of “structural and cultural violence” is based on a mindset inclined on discriminatory treatment against certain groups. One example is the virtually forced
sterilisation of people with disabilities based on the idea that they should not be involved in sexual activity and procreation. Another example is the belief that homosexuals are mentally sick and in need of medical treatments leading to homophobia and human rights violations in various ways including in self–expression, education, employment and marriage.

(3) Reproductive health including sexual health—from pregnancy, maternal care, delivery, abortion, birth control, impotence, sexually transmitted diseases such as venereal diseases and HIV/AIDS, genital cancer and assisted reproductive technology such as surrogacy.

These news items are noticeably infused with bias and stigmatisation towards women. They often link the women’s plights with abortion, newborn abandoning or infanticides and brand those with unwanted pregnancy as women with loose morality, sexual behavior problems and a lack of responsibility.

Over the past 13 years, the tone has barely changed in reporting, as reflected in headlines such as “Teenage mother throws newborn in rubbish bin”, “Monster mother abandons lifeless newborn in department store”, or “5-month fetus found. Suspected premature delivery induced by drugs.”

The biggest news was, of course, the discovery of 2,002 fetus tissues at a Bangkok temple in 2010. The news was as usual followed by pandemonium and the government’s knee–jerk action to raid abortion clinics. However, this controversial discovery brought the topic of abortion law amendments to the forefront again as it revealed a large number of women with unwanted pregnancy problems as well as the country’s lack of options and inadequate management.

According to polls, public opinion also seemed to have shifted. More than 60% of the people polled favoured the expansion of legal abortion while policy makers disagreed insisting that the law on abortion was already adequate and only more preventive measures were needed.

Between 2008 and 2010, teen pregnancy also received a lot of attention in the media. The coverage included both the number of pregnancies as well as new suggestions as to how to solve the problem rather than the usual “say no to sex”. These reports were seen in headlines such as “School allows pregnant student to study”, “Public supports Reproductive Health Bill, allows teen mothers in school”, “Ministry of Public Health clinics to give teenage sex counseling nationwide” and “Cabinet approves pregnant students to study/take maternal leave.”

Meanwhile, the Ministry of Public Health also started to conduct surveillance on teenage pregnancies as a factor which affected the quality of the future population given research showing that babies born by young women often have low birth weight and other long–term health problems. This research found an increase of pregnancy rates among teenagers throughout the country. This finding led to increased attention to the “teenage moms” phenomenon by policy makers and the media and more attention to sexual health issues, especially among teenagers.

‘Sex’ and participatory public policy

In a modern society with intensifying problems which cannot be addressed by the government alone, participatory public policy processes are one of the tools that can help determine key social norms and standards.

The most concrete example of comprehensive, inclusive participatory public policy processes was the 1st National Health Assembly (NHA) in 2008. The process allowed all sectors to identify problems, promoted data collection and knowledge building and created a space for debate and collective problem solving, leading to a formal
“public policy” after the cabinet’s consideration and approval.

(1) Resolution on sexual health: gender–based violence, unwanted pregnancy, HIV/AIDS and sexually transmitted diseases

‘Sex’ was the focus of one of the resolutions coming out of the 1st NHA, namely the Resolution on sexual health: gender–based violence, unwanted pregnancy, HIV/AIDS and sexually transmitted diseases. This resolution was the result of advocacy by, amongst others, five civil society networks that collectively put together the policy and brought it to the NHA’s attention for consideration.

These five networks were the Network for the Elimination of Violence Against Women and Children, the United Front for Women’s Advancement, the Women and HIV Network, the Network for the Promotion of Options for Women with Unwanted Pregnancies and the Healthy Sexuality Network. These are loose networks of government agencies, NGO’s and individuals working on related issues. The formation of the NHA allowed these networks to advance sexual health issues onto the agenda, coordinated by the Healthy Sexuality Network.

The consultation process on these issues included public hearings to solicit opinions, a research team to conduct data collection and two brainstorming sessions to compose and revise recommendations in line with public hearing results. After submission to the NHA, the recommendations were reviewed and adopted as the Resolution on sexual health: gender–based violence, unwanted pregnancy, HIV/AIDS and sexually transmitted diseases. This resolution included the following recommendations:

- to provide well–balanced sex education to citizens of all genders and ages both in and outside the educational system.
- to form peer–to–peer groups to provide counseling before and after problems, provide options and encouragement.
- to establish sexual and reproductive health clinics which are friendly to all populations.
- to provide safe and legal abortion services, to be included as free services in all health security systems.
- to promote research and build a database on the unwanted pregnancy situation.
- to establish shelters in every province for those facing problems, providing comprehensive, inclusive and accessible services.
- to eliminate sexual and gender prejudices from all levels of the justice system.
- to enable local administrative organisations to make sexual health operational plans in collaboration with relevant networks.
- to ensure clear policies and guidelines to prevent and eliminate unsafe abortion.
- to strengthen relevant networks, local administrative organisations and communities to ensure effective operationalisation of the resolution.
(2) Resolution on unwanted pregnancy amongst teenagers

In 2010, the Department of Health in collaboration with allied government agencies and civil society developed a resolution specifically on unwanted pregnancy among teenagers in response to the increased rate of childbirth rates among teenage mothers. This increased birthrate, as considered in the key document, was said to be causing serious consequences on maternal and child health as well as population quality.\(^\text{10}\)

The resolution was widely supported by other sectors in the 3\(^{\text{rd}}\) NHA in 2010 and was passed as a cabinet resolution on April 21\(^{\text{st}}\) 2011. The resolution includes the following recommendations:

- to establish an inter–agency mechanism between the National Reproductive Health Development Committee, National Child Protection Committee, National Child and Youth Development Committee and other relevant sectors to ensure effective mobilisation at national and provincial levels.
- to provide well–balanced sex education, ethics and morality education and appropriate support mechanisms for students with unwanted pregnancies.
- to provide funding from the local–level health security funds to local administrative organisations for the prevention and solution of teen pregnancies.
- to collaborate with the Ministries of Culture, Social Development and Human Security and Public Health, education committees, National Alcohol Beverage Committee and local Alcohol Beverage Control committees to ensure positive attitude to sex, ethics and morality, skills on sex communications within the family, diverse teenager–friendly services, and decreased alcohol consumption among teens.

- to advocate the passing of the Reproductive Health bill by 2014.

Despite the adoption of these two NHA resolutions, responsible government agencies continued with “business as usual” without taking on or integrating the recommendations into their mandates. This reflects shortcomings in addressing complex social and public health problems and an urgent need for multi–agency collaboration. If continued, this attitude towards development in line with public development of ideas could lead to more explosive sex–related problems.

Focusing on laws impinging on sexual health

(1) Amendment of the “rape law”

2007 can be said to be a year of victory for the sexual rights movement after over a decade of attempts to amend Article 276 of the Criminal Code or the so–called rape law to include marital rape as criminal offense.

This amended statute was expanded to include acts committed against a person of all genders and ages and acts using objects other than genitals. The Act also prescribes a more sensitive trial in cases between spouses. (However, the ability of the judge to lower a penalty as permitted by law at his/her own discretion is seen as an effort to compel settlement and reconciliation in the name of “protection of the family”)

In addition, Article 277 on statutory rapes was also amended to include rapes committed against girls or boys by males or females, including those using objects other than genitals. It also prescribed increased punishment for rapes of children under 13 years old. However, the statute still allows marriage between perpetrator and victim if the former is younger than 18 years old and the latter is between 13 and 15 years old, allowing impunity for a perpetrator.
(2) Promulgation of the Domestic Violence Act 2007

Also in 2007, Thailand adopted a new law which clearly criminalised domestic violence, provided protection to victims regardless of family status, and rehabilitates/punishes perpetrators depending on the seriousness of a crime.

“Domestic persons” under this protection refer to “spouses, former spouses, unmarried cohabitation partners, children, adopted children, family members including any person who lives in the same household.” Going further beyond the traditional concept of a legally married “man and wife”, this expanded definition shows a progressive idea about what constitutes the family.

The law also established new mechanisms, particularly the “husband repair workshop, a sophisticated tool to address domestic violence in which the wife may not necessarily want her abusive husband to be criminalised but behaviorally adjusted and disciplined to stop his violence.

However, challenges remain as there is yet no government mechanisms designed to implement the law.

Monitoring the enforcement of the law and analysing its conceptual framework, Varaporn Chamsanit et al. found that it will be difficult for the law to achieve protection for victims of domestic violence, mostly wives, because of the prevailing attitude towards domestic violence as a domestic matter. Meanwhile, the enforcing mechanism for the law is unclear and inadequate. The spirit of the law aims more at the protection of the family rather than protection of the victims, as can be seen in the provision allowing settlement at every step of the legal process. These researchers therefore concluded that it was hard to say that the law would have positive effects on the domestic violence situation.11

(3) Reproductive Health Protection Bill

In mid–2010, several newspaper headlines announced the intention of the Ministry of Public Health to pass a reproductive health bill to protect the right to education of pregnant students. As a result, the word “reproductive health” became a household word as debate raged on whether the law was the right way to solve the problem. (See outline of the law in the box on page 69)

Glancing over news headlines, it seems that public opinion towards the bill was more welcoming than objecting. For example, “Friends of Women Foundation supports pregnant students.” (Khaosod, July 9), “Popular support for the RH Bill” (Baan Muang, July 22), “Warakorn supports ‘pregnant student bill’” (Thai Rath, July 20). Even the then prime minister, in an interview, agreed to support the bill in order to solve sex–related problems among teenagers.12

In mid–2010, the cabinet accepted the bill in principle and submitted it to the Council of the State for review before returning it to the cabinet and the House of Representatives successively.13 But in March 2011, the 10th committee of the Council of the State ordered the Ministry of
Public Health to review the bill for its necessity as the committee considered the bill’s provisions redundant as they could be enacted by the cabinet without putting the provisions into a law.

However, after its review and minor revision of the bill, the Ministry of Public Health renamed the document the “Reproductive Health Bill” and in late 2012 sent it back for another review by the Council of the State where it is languishing as of present (March 2013).

(4) Gender Equality Bill

The Ministry of Social Development and Human Security’s Women’s Affairs and Family Promotion Bureau is the key agency advocating the Gender Equality Bill since its drafting in 2005 until its cabinet approval in April 2012.14

In October 2012, civil society groups, consisting of the Women Networks Reshaping Thailand, the Women’s Network for the Advancement and Peace, the Sexual Diversity Network and other civil society groups submitted a people’s draft attached with 15,636 signatures to the Chairperson of the Parliament. This means that both the government’s and the people’s drafts will go under consideration of the Parliament together.15 (See details in box)

(5) Same–sex domestic partnership bill

Thai laws recognise spousal relationships only for opposite–sex couples although in reality there are many same–sex couples who live as life partners or families and newspaper frequently headline same–sex wedding ceremonies.16 This lack of recognition deprives same–sex couples of the rights guaranteed by the constitution. Over the past three years, the Sexual Diversity Network has been advocating the promulgation of a law to recognise same–sex relationships through collaboration with the National Human Rights Commission and several seminars.

This issue attracted the attention of the Parliamentarian Commission on Legal Affairs, Justice and Human Rights in August 2012 after prominent gay activist Natee Theerarojnapong, President of the Political Gay Group, attempted to file a case at the Administrative Court after he and his partner of 19 years were refused a marriage license by the Chiangmai City registrar. Natee said that “The existing family law violates Article 30 of the 2007 Constitution which prescribes gender equality. It is unfair discrimination on the basis of sex.”17

Consequently, Pol Gen Virun Phuensaen, Pheu Thai party–list MP and Chairman of the Commission, took the initiative to draft a same–sex domestic partnership bill in collaboration with the Ministry of Justice’s Rights and Liberties Protection Department. A working group was formed to examine facts and laws related to LGBTIQ rights under the premise that this issue was a matter of rights and liberty. “This law aims to enable LGBTs to live as couples. It is a question of social order, therefore relevant to the law. It will be useful as a guideline for all sectors to follow.”18

The draft bill was completed in February 2013 (see box) and underwent public hearings between February and March 2013. The Sexual Diversity Network, which has long advocated the issue, hopes that the law will as much as possible alleviate the real–life problems of same–sex couples by giving them the rights to make medical decisions on behalf of their partners, to act on behalf of their partner in the justice process, to manage common properties, to make legal transactions, to receive social welfare benefits as a spouse, to reside in the country as foreign partner and to have custody over children.19
Civil Society Advocacy of Sexual Rights

Over the past decade, there has been active involvement of civil society in the issue of sexual health in Thailand. Several civil society networks emerged at national and provincial levels, as can be seen in the following five strong networks which are active at policy and operational levels in the government, private and civil society sectors:

- **Network for the elimination of violence against women and children**, formed in 2001 with the aim to amend the “rape law” to 1) include marital rape and 2) make rape a non-compoundable offense. While the former goal has already been achieved, the latter is still in limbo.

- **Women and HIV Network**, formed in 2002 by HIV/AIDS civil society groups who saw the need to address women’s sexual health. This network is based on the recognition that more sensitive and specific services are needed in order to fill the gap in HIV/AIDS work among women who face different cultural conditions and power structure relationships from men. The network now focuses on building public understanding that sexual rights and rights related to HIV/AIDS are human rights.

- **Women’s Network for the Advancement and Peace**, formed in 2000 during an NGO seminar to update the agenda for women’s issues for the 21st century. This network of 39 organisations, coordinated by Foundation for Women, monitors Thailand’s compliance with the Convention on the Elimination of Discrimination against Women (CEDAW), influences public opinion on current situations (for example, in the cases of child abuse by a senator and a murder of a woman by her professor husband) and advocates for “rape law” amendments.

- **Sexual Diversity Network**, formed in 2005 by civil society groups working on LGBTIQ issues in close, sustained collaboration with the National Human Rights Commission to advocate LGBTIQ-friendly social, legal and policy changes. For example, the network contested the Ministry of Defense’s labelling of male-to-female transgender draftees as “suffering from permanent psychosis” in their conscription discharge papers. The network’s main goal is to build public understanding that sexual diversity is natural and non-heterosexuals must be legally protected as heterosexuals. Most recently, the network has been pushing the Same-Sex Domestic Partnership draft (see box).

- **Network for the promotion of options for women with unwanted pregnancies**, formed in March 2007 by government agencies, NGOs, academics and the media all working on the issue of unwanted pregnancy. This network met every two months to exchange knowledge and discuss challenges in their work. Coordinated by PATH and Women’s Health Advocacy Foundation, the network developed into a comprehensive support network for women, both young and adult. With unwanted pregnancies, developing educational materials and building capacity of member organisations especially in counselling skills to empower clients with choices, as well as advocating policy changes which led to the first NHA resolution.

Looking back over the last decade, sex-related challenges facing Thai society seem to have increased in intensity, with more public debates and emerging civil movements especially in the human rights dimension. “Sexual Health” activism is another effort by pertinent government agencies and NGOs to steer Thai society away from these recurring problems.

The hope for “healthy sexuality” to become reality in the next decade now relies on the supports of politicians and policy makers who must recognise the need for macro-level policies to take the country beyond these sex-related problems.
Sexual health–related laws entering the Parliament

(1) Reproductive Health Protection Act, with 6 chapters prescribing: the protection of rights to make decisions regarding pregnancy and childbirth; the duty of educational institutions to teach appropriate sex education and develop qualified sex education instructors, government–provided sexual health and reproductive health services which meet the needs of the population of all ages and genders with an emphasis on confidentiality; the protection of women with unwanted pregnancies in educational system and employment; the prevention of sexual harassment in government and private agencies; and the creation of national mechanism to enforce this law.

(2) Gender Equality and Opportunity Promotion Act. The key differences between the government and the people’s drafts are:
- While the government’s draft permits unfair discrimination based on academic, religious and public interest reasons (Article 3), the people’s draft prohibits direct and indirect discrimination without exceptions.
- The government’s draft doesn’t prohibit gender–based violence while the people’s draft explicitly forbids gender–based violence, sexual violence and sexual harassment.
- The people’s draft has an additional chapter on the protection of and opportunity promotion for gender equality with the establishment of the Gender Equality and Opportunity Promotion Fund with government budgetary contribution to be used for reparations to victims and promoting gender equality and opportunities. The government’s draft is silent on this matter.
- The people’s draft requires the national committee to have a balanced member composition from different sectors and requires participation of NGOs and other sectors in the nomination of complaints committee members. In the government’s draft, these positions are appointed by the Minister of Social Development and Human Security.

(3) Same–sex Domestic Partnership Bill.
Between December 2012 and January 2013, the Parliamentarian Commission on Legal Affairs, Justice and Human Rights together with the Sexual Diversity Network groups drafted this bill which is now (March 2013) undergoing regional public hearings.

The essence of the bill is:
- Domestic partners means two persons who are registered according to this Act.
- Partnership can be registered when both persons are of legal age.
- Domestic partners according to this Act are regarded as legally married couples.
- One partner may use the surname of the other partner.
- Regarding property, the Civil Code’s Chapter 5 on family and Chapter 4 on properties of husband and wife are applicable mutatis mutandis (i.e. rights to property of same–sex domestic partners are the same as those of married heterosexual couples).
- Regarding inheritance, the Civil Code’s Chapter 6 on inheritance is applicable mutatis mutandis (i.e. same–sex domestic partners have the same rights to inheritance as married heterosexual couples).
- Domestic partners have the same rights as family members such as the rights to file criminal complaints on each other’s behalf, to be involved in criminal cases as stakeholders according to the Criminal Procedural Code, to be considered as a ‘domestic person’ in the Domestic Violence Act, and to be legal guardians of his/her partner if the latter is declared legally incompetent.