

FACTSHEET – UPR 2018 – Cambodia

3rd CYCLE UNIVERSAL PERIODIC REVIEW

SOGIESC-SRHR

Legal discrimination against LGBTIQ people

Joint-submission by the Cambodian Center for Human Rights (“CCHR”), Rainbow Community Kampuchea (“RoCK”), Destination Justice (“DJ”), Micro Rainbow International (“MRI”), the Reproductive Health Association of Cambodia (“RHAC”), the International Lesbian, Gay, Bisexual, Trans and Intersex Association (“ILGA”), ILGA Asia, ASEAN Sexual Orientation and Gender Identity/Expression Caucus (“ASC”), the Swedish Association for Sexuality Education (“RFSU”), ActionAid Cambodia, DanChurchAid Cambodia (“DCA”), and CamASEAN

SUMMARY OF KEY ISSUES FROM PREVIOUS UPR CYCLES

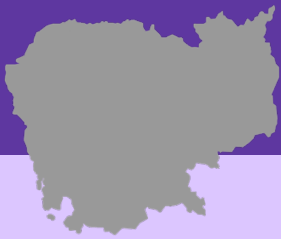
During Cambodia’s second UPR in 2014, no recommendations were made to the Royal Government of Cambodia (“RGC”) specifically regarding the rights of Lesbian, Gay, Bisexual, Transgender, Intersex and Queer (“LGBTIQ”) people.

NATIONAL FRAMEWORK

While progress has been made in respect of LGBTIQ visibility, **LGBTIQ people in Cambodia continue to endure various forms of legal discrimination**, and significant steps by the RGC are required to ensure Cambodia’s compliance with its international human rights obligations in respect of LGBTIQ rights. **Cambodia’s legal framework denies LGBTIQ people basic equality.**

LGBTIQ people in Cambodia face four forms of legal discrimination: the lack of legal protection against discrimination and violence; the absence of legal recognition of self-defined gender identity; the absence of marriage equality in Cambodian law; and the denial of full adoption rights to rainbow couples.

CHALLENGES	IMPACT
Lack of legal protection against discrimination and violence	The Cambodian legal framework contains no explicit protections against discrimination on the grounds of SOGIESC . Article 31 of the Cambodian Constitution guarantees equal rights to all Cambodians regardless of personal characteristics, and while LGBTIQ people are arguably protected under the “other status” category, the explicit inclusion of nine other categories appears to diminish this argument. Furthermore, the Criminal Code contains no defined sanctions for those who commit hate crimes against LGBTIQ people . This is particularly concerning in the Cambodian context, where LGBTIQ individuals face numerous forms of discrimination and violence in their daily lives. For instance, 92% of transgender women report experiencing verbal abuse in public spaces because of their trans identities, while 43% report experiencing physical violence and 31% experiencing sexual assault.
Absence of legal gender recognition of self-defined gender identity	In Cambodia, there is no legislation which supports transgender people’s right to be legally recognized according to their self-defined gender . However, there is no specific legal provision prohibiting legal gender recognition either. The lack of clarity surrounding the current legal situation leaves transgender Cambodians subject to individual decisions of relevant officials . The realization of the right to legal gender recognition is required in order to fulfill a range of other fundamental human rights for transgender people which Cambodia has a specific obligation to protect, such as the right to recognition everywhere as a person before the law, and the right to be free from discrimination. Legal recognition of self-defined gender identity is also inextricably linked to the ability to found a family, marry and adopt children, especially in Cambodia where one survey revealed that 99.17% of the cohabiting same-sex couples surveyed were comprised of one partner who identifies as transgender, and one who does not.



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<p>Absence of marriage equality in Cambodian Law</p>	<p>The Cambodian Constitution determines that marriage is between a “husband” and a “wife”, which effectively excludes the possibility of same-sex marriage. While there is no longer any explicit legal prohibition of same-sex marriage, there are no explicit provisions facilitating same-sex marriage. As a result, unofficial wedding ceremonies and parties can be held; however, legal recognition of these partnerships is impossible. The institution of marriage is exceptionally highly-valued in Cambodia, and 87.85% of rainbow couples asserts that marriage would be vital for them. Excluding LGBTIQ people from the institution of marriage excludes them from one of the foundations of Cambodian society. Due to rainbow couples’ inability to get legally married, they are also denied numerous rights and privileges arising from marriage, including in relation to joint ownership of property, custody of children, taxation, inheritance and protection from domestic abuse.</p>
<p>Denial of full adoption rights to rainbow couples</p>	<p>The Civil Code provides that “full adoption” is only available to married couples, while “simple adoption” enables a single person to adopt. In theory, this permits one person in a rainbow couple to adopt a child on behalf of the couple. 32.71% of currently co-habiting rainbow couples across Cambodia already have children in their care. Over two-thirds of these adoptions were based on “simple adoption” or informal agreements, and 40% of couples had adopted family members such as nephews or nieces. However, in simple adoptions, the partner who has not adopted the child is left without essential legal protection, and the adoptive parent is subject to legal uncertainty and vulnerability, as there are apparently no hierarchy of rights between the adoptive parent and biological parents. In Cambodia, nearly 1 in 100 children live in residential care institutions. Enabling full adoption rights for rainbow families could go some way toward ensuring that all Cambodian children are provided with a loving, protective family environment.</p>

RECOMMENDATIONS

- 1. Introduce an Anti-Discrimination Law** by the end of 2023, which **guarantees equality and explicitly prohibits discrimination of all kinds, including on the basis of SOGIESC**, in all areas of public and private life, including in employment, education and access to health care, by all private and state actors, in line with SDG 5.1.
- 2. Introduce the specific offence of “hate crimes” into the Criminal Code** by the end of 2023, in line with international best practice, including appropriate punishments for the perpetrators of hate crimes against LGBTIQ people and other minorities, in line with SDGs 5.1, 5.2, 16.1 and 16.2.
- 3. Introduce a Gender Recognition Law** by the end of 2021, which guarantees every person the right to have their self-defined gender identity recognized on all official documents issued by the state (including ID cards, family books, passports, etc.) through a simple administrative procedure based on self-determination.
- 4. Amend Article 45 of the constitution to enable legal marriage equality** by the end of 2022, and ensure that any two consenting adults can marry each other in the same manner currently available to heterosexual couples.
- 5. Amend the relevant provisions of the Civil Code (Articles 1008-1015) governing adoption to guarantee that full adoption rights are made available to any couple, provided it can be shown that the adoption is “in the best interests of the child” without discrimination on the basis of SOGIESC or any other status**, by the end of 2021.
- 6. Issue a directive which clearly articulates the right of all rainbow families to receive family books that classify them according to their self-defined gender identities and actual family relationships**, by the end of 2021.

