

GUIDE TO HUMAN RIGHTS FOR LGBTQ IN CAMBODIA

Love Who We Are!



GUIDE TO HUMAN RIGHTS FOR LGBTQ IN CAMBODIA

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Rainbow Community Kampuchea,
December 2015.





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Pride week 2012, an activity to support LGBTQ community

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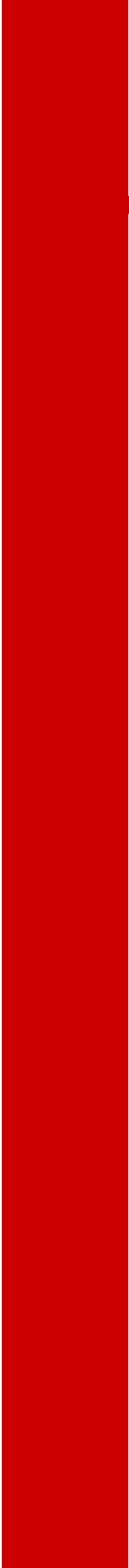


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©RoCK, Yun in front the UDHR

I want to say "gay!"



Glossary

Bisexual - This term refers to individuals who are physically, romantically and/or emotionally attracted to both men and women.

Constitution - The Constitution is the fundamental law of a country. The Constitution organises the life of the State. In particular, it sets out the rights and responsibilities of the citizens, and creates the institutions that will guarantee the effectiveness of people's rights.

Gay - This term is used to describe a male-identified individual who is attracted to men in a romantic, erotic and/or emotional way.

Gender binary - A system in which sex and gender are only classified into two categories (male and female). This system is considered oppressive by many LGBTQ individuals.

Gender expression - An individual's external manifestation of gender, for instance through behaviour, voice and speech patterns, names and pronouns used to identify oneself, clothing, grooming and social interactions.

Gender identity - An individual's own internal feelings and experiences of gender, which may or may

Glossary

not correspond to the sex that individual was assigned at birth.

Gender Queer - Individuals whose gender identity and/or expression fall outside the gender binary of male and female. These individuals may identify their gender somewhere between male or female or entirely outside those categories.

Homosexual - Outdated term sometimes broadly used to describe either a gay or a lesbian individual's attraction to individuals of the same gender.

Intersex - A term used to describe people that are born with atypical characteristics that do not fit within the stereotypical binary definitions of a man or a woman. It includes a diverse range of hormonal anatomic, genetic and chromosomal variations.

Lesbian - A term used to describe female-identified people attracted romantically, erotically, and/or emotionally to other female identified people.

LGBTQ / LGBTIAQ - Lesbian, Gay, Bisexual, Transgender, Intersex, Asexual, Queer and/or Questioning.

Glossary

Sexual Orientation - An individual's physical, romantic and/or emotional attraction to a specific gender or genders.

SOGIE - Sexual Orientation and Gender Identity and Expression

Transgender - Individuals whose gender identity and/or expression is not typically associated with their assigned sex at birth. This is a gender identity, not a sexual orientation.

Yogyakarta Principles - Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity.



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Introduction

The ***Guide to Human Rights for LGBTQ in Cambodia*** (hereinafter, “the guide”) is the result of a collaboration between Rainbow Community Kampuchea (“RoCK”) and Destination Justice’s Rainbow Justice Project. The guide was born from the desire of both organisations to improve access to basic legal information for all.

All human beings share a common characteristic: we all have a sexual orientation and a gender identity. Whether we are lesbian, gay, bisexual, asexual, or straight and whether we identify ourselves as a woman, a man, a transgender, or an intersex, human rights are entitled to each one of us without discrimination. As such, although the guide is designed for the Lesbian, Gay, Bisexual, Transgender and Queer (“**LGBTQ**”) community in general, its provisions apply to everyone.

The guide aims at empowering the LGBTQ community in claiming the rights individuals are entitled to under the Constitution of the Kingdom of Cambodia. It has an informative purpose only and may not be used before a court of law. The guide is a tool for the LGBTQ community’s members, its leaders and non governmental organisations to assist them in effectively claiming their rights.

Introduction

The guide is divided into two different sections:

1. Presentation of Sexual Orientation and Gender Identity and Expression (“**SOGIE**”) and the legal background for human rights;
2. Your rights. This section details a selection of rights relevant to LGBTQ individuals based on common violations and abuses faced on a daily basis, and inspirational stories illustrating them.

In the developing context of Cambodia, the necessity to guarantee the same rights to everyone, regardless of their SOGI, is more recognised than ever. As an example, in September 2015, members of the Royal Government of Cambodia (“RGC”) publicly announced being in favour of same-sex marriage. They said: *“the Cambodian society does not discriminate against LGBT people. It is only individuals who do so. [...] No Cambodian laws discriminate against them, and nothing is banning them from loving each other [...]”*. However, despite the growing recognition of the LGBTQ community by the Cambodian society and authorities, concrete legislative steps to effectively protect LGBTQ individuals’ rights are yet to be taken.

RoCK and Destination Justice are proud to present this guide and hope it will contribute to the advancement of the LGBTQ community’s rights in Cambodia.

What is SOGIE?

The term “SOGIE” stands for “**Sexual Orientation and Gender Identity and Expression**”.

Sexual Orientation refers to an individual’s physical, romantic sexual, and/or emotional attraction to a specific gender or genders. As such, individuals may identify themselves as lesbian or gay (that is, when they are attracted to the same gender as theirs), bisexual (that is, when they are attracted to both female and male genders), asexual (that is, when they do not have sexual feelings or desire towards any gender), or straight (that is, when they are attracted to the opposite gender).

Gender expression may be expressed in particular through behaviour, dress, voice, names, and pronouns an individual may use to identify themselves. For example women dressing and behaving like men is the expression of their gender. This is the same for men dressing and behaving like women.

Gender identity refers to a person’s deep internal feeling of who they truly are, even if who they are is opposite to society’s traditional expectation of them. For example, a transgender woman is born in a man’s body but has a deep internal feeling that she is truly a woman; also a woman who loves oth-

What is SOGIE?

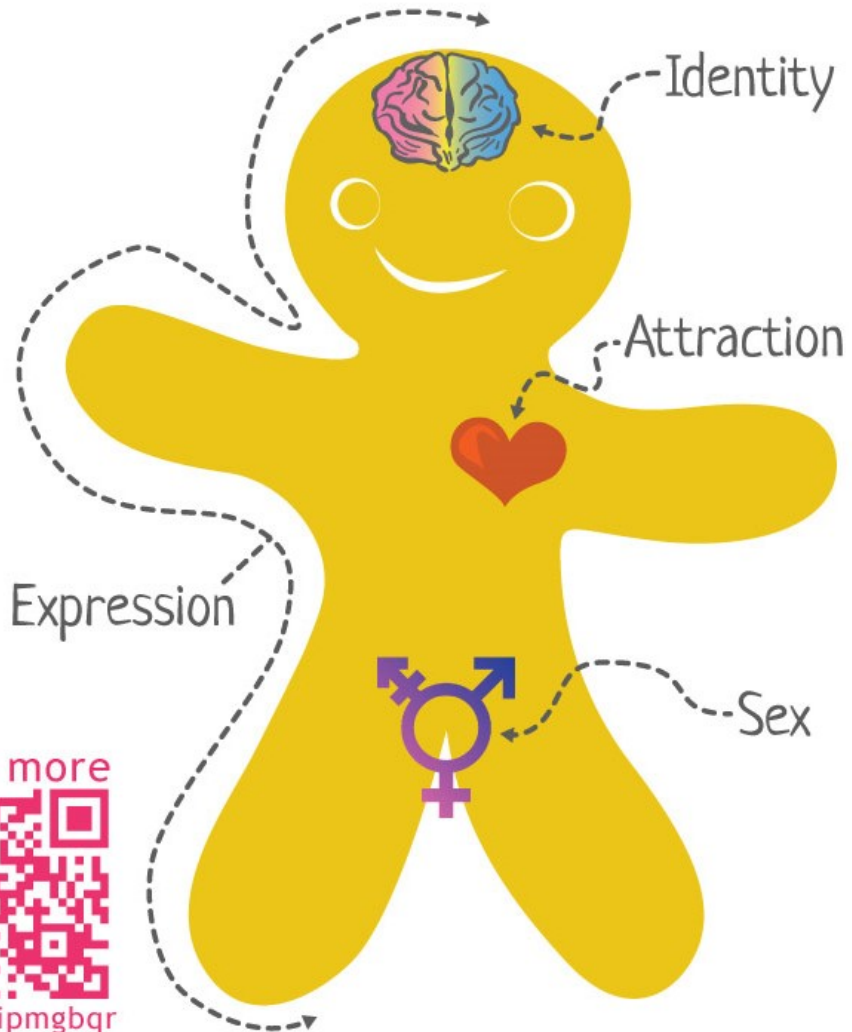
-er women (a lesbian) knows this as the truth inside her even though society traditionally expects her to love a man.

As such, SOGIE constitutes a spectrum and is a shared characteristic among all human beings, not only those individuals identified as Lesbian, Gay, Bisexual, Transgender, or Queer.

LGBTQ individuals may fear discrimination on the basis of their SOGIE in many areas of their lives. These areas include, but are not limited to, access to education, healthcare, employment, or even marriage. While the Cambodian legal framework forbids any form of discrimination, no explicit regulation exists so as to specifically address forms of discrimination faced by LGBTQ individuals based on their SOGIE.

The Genderbread Person

Gender is one of those things everyone thinks they understand, but most people don't. Like *Inception*. Gender isn't binary. It's not either/or. In many cases it's both/and. A bit of this, a dash of that. This tasty little guide is meant to be an appetizer for understanding. It's okay if you're hungry for more.



read more

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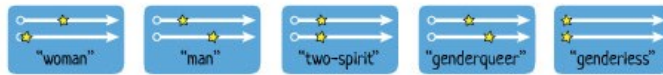
by its pronounced **METROsexual**.com

on.
more.

Gender Identity



5 (of infinite) possible plot and label combos



Gender Expression



5 (of infinite) possible plot and label combos



Biological Sex



5 (of infinite) possible plot and label combos



Attracted to



5 (of infinite) possible plot and label combos



Human Rights in Cambodia

Human rights refer to the protections and freedoms everyone is entitled to in order to live their lives with dignity, equality, and respect. Every human being is entitled to human rights. Hillary Rodham Clinton rightly illustrated this point when she said that *“gay rights are human rights and human rights are gay rights”*.

Human rights are guaranteed by the Universal Declaration of Human Rights adopted by the United Nations on 10 December 1948. They are also enshrined in the Constitution of the Kingdom of Cambodia, and in particular in its Preamble and Article 31. Article 31 of the Cambodian Constitution explicitly recognises that all human rights treaties signed by Cambodia shall be directly applicable in Cambodia. This means that everyone in Cambodia is guaranteed to enjoy all the rights included in those treaties.

In this regard, the Cambodian Government has a duty to protect human rights based on three key categories of instruments:

- * The Cambodian Constitution;
- * Cambodian legislation and regulations; and

Human Rights in Cambodia

- * The Universal Declaration of Human Rights and relevant international conventions the Cambodian Government has ratified including the International Covenant on Civil and Political Rights.

In addition, in 2006, several international human rights experts met in Yogyakarta, Indonesia to outline a set of international principles relating to SOGIE. Following their discussions, the experts adopted the Yogyakarta Principles: a universal guide to human rights which reaffirm binding international legal standards relating to SOGIE with which all States must comply. This document, however, only serves as a guideline and does not have any legal force.



©RoCK, *Blessing ceremony for the LGBTQ community*

YOU SOUP Recipe by its pronounced [METROsexual.com](http://www.ItsPronouncedMetrosexual.com)



Ingredients:

base & broth

- race
- ethnicity
- gender
- sexuality
- disability status



early additions

- socioeconomic status
- geographic location
- education
- family structure



optional

- hobbies & passions
- religion & faith
- career
- political beliefs



secret ingredients

- personal experiences
- changes to other ingredients
- hidden identities
- misperception of ingredients



Procedure:

Combine base ingredients to create broth and bring to a boil. Add early additions and simmer over low heat for 18 - 25 years, adding optional and secret ingredients to taste. Makes one You.

Your Rights

Under this section you will find a list of rights the most relevant to the LGBTQ community, and an explanation of each of them.

Some human rights may, in exceptional circumstances such as during wartime, be limited in their effect. However, taking away any of your human rights because you are part of the LGBTQ community is strictly prohibited. Your SOGIE will never constitute a valid and legal justification for depriving you of a right you are entitled to as a human being.



©RoCK, All loves are Equal, Pride 2013

Right to

non discrimination

The very first and basic right you have is the right not to be discriminated against on the basis of your SOGIE.

This means that:

- * No-one can treat you differently from others on the basis of your SOGIE;
- * The law must ensure that you are treated equally and with respect in and by the society;
- * Cambodian authorities have a duty to guarantee and protect your rights; and
- * This is particularly true for areas such as education, employment, and access to health care.

The right to non-discrimination acts as an umbrella. This means that it applies in addition to all other rights guaranteed to you.

For example: all human beings are entitled to the right to life. Your right to life cannot be taken away from you because you identify as lesbian, gay, bisexual, transgender, or intersex as opposed to another sexual orientation or gender identity. As a human being you have the right to life, no matter your SOGIE.

*“I am a **teacher**, a **transgender** (female to male),
a homosexual, and the **proud father of five
children** that my partner and I adopted. Some of
my colleagues know my SOGIE, but **they do not
discriminate me**, even if I am not wearing the
skirt as required by law.
I dress fairly simply to teach students, **all that
matters to me is the quality of the job.**”*

– Vann –

Legal sources: Article 2 of the Universal Declaration on Human Rights, Articles 2 and 26 of the International Covenant on Civil and Political Rights, Article 31 para. 2 of the Cambodian Constitution, and Principle 2(A) of the Yogyakarta Principles.

Right to

life, physical integrity, and not be enslaved

You have the right to life and physical integrity.
You also have the right not to be enslaved.

These rights mean that:

- * No one may threaten your life on the basis of your SOGIE (in particular, capital punishment is prohibited by law in Cambodia);
- * Your physical integrity may not be threatened either (even if you are deprived of your liberty);
- * You may not be punished or treated in a cruel or inhuman way, nor should you be tortured; and
- * No one may put you into slavery or illegal trafficking.

“I was born a girl, but I am now a straight transgender (female to male). Ten years ago, when my family discovered that I loved girls, they first disowned me and then forced me to marry a man, and my mother locked me into my room until the wedding day. This situation led me to consider suicide as the only alternative, although I decided to flee my family and my community after the wedding. At that time, I did not know my rights, I did not know forced marriage was forbidden by law.”

– Phakdey –

Legal sources: Articles 3 and 4 of the Universal Declaration on Human Rights, Articles 6, 7 and 8 of the International Covenant on Civil and Political Rights, Articles 32 and 38 of the Cambodian Constitution, and Principle 4 of the Yogyakarta Principles.

Right to

equality before the law and an effective remedy

You have the right to equality before the law.

You have also the right to an effective remedy.

These rights mean that:

- * The law applies to every citizen in an equal way, and no one shall be above the law, or be discriminated on the basis of various characteristics such as your sex. The reference to the term “sex” encompasses your SOGIE. The law applies to you the same way as it applies to everyone else in Cambodia;
- * You have the right to be protected by the law against discrimination. The law itself shall prohibit discrimination on the basis of your SOGIE;
- * If one of your rights has been violated, whether or not based on your SOGIE, you have the right to file a complaint or to claim for a compensation before the rightful authorities; and
- * The settlement of complaints and claims for compensation for damages is the responsibility of the judicial system.

The right to equality before the law is an umbrella right, meaning that this right applies in addition to all other rights, and for all other rights.

“One day, I was away from the cottage, one military man came to our place and forced my “wife” to have sex with him which resulted in her being pregnant. He forced me to give her away to him. It shows that even if we were in a stable relationship, people were still discriminating us, trying to separate us from each other denying our right to equality and non-discrimination.”

– Phakdey –

Legal sources: Articles 7 and 8 of the Universal Declaration on Human Rights, Articles 9, 14, 16 and 26 of the International Covenant on Civil and Political Rights, Article 38 and 39 of the Cambodian Constitution, and Principle 3 and 28 of the Yogyakarta Principles.

Right to

a fair trial and to be presumed innocent.

You have the right to a fair trial. You have also the right to be presumed innocent.

These rights mean that:

- * In the event you are charged with a penal offence, you are entitled in full equality to a fair and public hearing by a competent, independent and impartial tribunal established by law;
- * As an accused, you may have the benefit of any reasonable doubt, and be presumed innocent until found guilty by a court judgment; and
- * Regardless of your SOGIE, you may have the right to defend yourself through the judicial system.

*“I am a transgender man (female to male). When my girlfriend’s parents discovered our relationship, they **asked the police to arrest me for human trafficking**. Even though, I told the policemen that we both loved each other, they told me that I was lying. They **asked my family to pay 8 millions riels** if they wanted me back. We can’t afford that kind of money. So I had to stay in jail until I won my trial”.*

– Sarann –

Legal sources: Articles 11 and 12 of the Universal Declaration on Human Rights, Articles 9 and 14 of the International Covenant on Civil and Political Rights, Article 38 of the Cambodian Constitution, and Principle 8 of the Yogyakarta Principles.



Right

against arbitrary detention

You have also the right not to be arbitrarily detained.

This right means that:

- * You may not be subjected to arbitrary arrest, detention or exile;
- * Arresting or detaining you on the basis of your SOGIE, even as a result of a court order, is considered as arbitrary, and is therefore illegal; and
- * All persons under arrest, regardless of their SOGIE, shall be informed of the reasons for their arrest.

*“I am a transgender woman (male to female) and gay. Once, I was hanging out at the park at night, and a **group of policemen came to arrest my friends and me**. They **threatened us** to get in their cars or they would shoot at us. Only once at the police station they told us they arrested us because **our attitude was “affecting the public order and that we are sex traffickers”**.”*

*But we were not!
And they did not arrest other people, only us because we are different. They **kept us in custody for 16 hours without charges**, although we did not commit any crime, and then released us ”.*

– Srey Mao –

Legal sources: Article 9 of the Universal Declaration on Human Rights, Article 9 of the International Covenant on Civil and Political Rights, Article 39 of the Cambodian Constitution, and Principle 7 of the Yogyakarta Principles.



Right to

freedom of movement

You have the freedom of movement.

This right means that:

- * You have the right to go to all the public spaces without being discriminated against based on your SOGIE;
- * You have the right to travel inside the territory of your country regardless of your SOGIE; and
- * You have the right to leave any country, including your own. Similarly, you have the right to return to your own country freely, regardless of your SOGIE.

*“Sometimes, I like to wear girl-clothes, but when I was doing so at home, my mom would always hit me. That is why, **in public space, I dress with man-clothes, so I do not face any challenge with local authorities that often discriminate people like me.**”*

– Phally –

Legal sources: Article 13 of the Universal Declaration on Human Rights, Article 12 of the International Covenant on Civil and Political Rights, Article 40 of the Cambodian Constitution, and Principle 22 of the Yogyakarta Principles.

Right to

freedom of opinion, thought and expression

You have the freedom of opinion, thought and expression.

These freedoms mean that:

- * You have the right to freedom of opinion, thought and expression regardless of your SOGIE as long as it does not affect public order and national security;
- * You are free to express your identity or personality through speech, behaviour, dress, body characteristics, choice of name or any other ways;
- * You are free to seek, receive and share information and ideas of all kinds regardless of your SOGIE; and
- * Your freedom of opinion, thought and expression includes the freedom of publication and assembly regardless of your SOGIE as long as it does not affect public order and national security.

“I am a gay man. I had to leave my home because my family wanted me to marry a woman, and always teased me. When I was a child, my parents used to call me “kteuy” which my brother and father still do, even though they know I do not like it at all. But now that I left, I do not have to force myself to act “like a man”, I have the freedom to be myself!”

– Phally –

Legal sources: Article 19 of the Universal Declaration on Human Rights, Articles 18 and 19 of the International Covenant on Civil and Political Rights, Article 41 of the Cambodian Constitution, and Principle 19 of the Yogyakarta Principles.

Right to

health and social security

You have the right to health. You also have the right to social security.

These rights mean that:

- * You have the right to access medical facilities and to enjoy a minimum acceptable standard of living;
- * You have the right to the highest attainable standard of physical and mental health without being discriminated against on the basis of your SOGIE;
- * The State may pay attention to disease prevention and medical treatment for every citizen, including you; and
- * You have the right to obtain social security and other social benefits as determined by law.

*“One year ago, I went to the public hospital to get a health check-up. It was **recommended to me by a NGO** that take care of gay people. After waiting for 2 hours, I realised that the doctor was taking new patients that arrived after me and that were also here for check-ups. Even if I tried to be nice and friendly to him, **he was still ignoring me**. It made feel really bad to be discriminated based upon my SOGIE. I feel like **everyone should have access to health equally** and that especially doctors should not discriminate people.”*

– Sopheak –

Legal sources: Articles 23 and 25 of the Universal Declaration on Human Rights, Articles 9 to 12 of the International Covenant on Economic Social and Cultural Rights, Articles 36 and 72 of the Cambodian Constitution, and Principles 5, 12 and 17 of the Yogyakarta Principles.



Right to work

You have the right to work.

This right means that:

- * You, regardless of your SOGIE, have the right to choose any employment according to your ability. In particular, you have the right to favourable conditions of work by getting equal pay for the same work as others;
- * You have the right to form and to join trade unions for the protection of your interests, regardless of your SOGIE; and
- * You have the right to decent and productive work without discrimination on the basis of your SOGIE.

“Before my current employment, I was discriminated against at my internship place on the basis of my SOGIE. When my former employer learned I was a transgender man, she terminated my contract. That is why I started to work for a LGBTQ organisation, I had to promote my rights, our rights!”
– Seakley –

Legal sources: Article 23 of the Universal Declaration on Human Rights, Articles 7 and 8 of the International Covenant on Economic Social and Cultural Rights, Article 36 of the Cambodian Constitution, and Principle 12 of the Yogyakarta Principles.



Right to

education

You have the right to education.

This right means that:

- * You have the right to have access to education without discrimination;
- * Primary education may be free and accessible to all and higher education may be accessible on the basis of merit only, without discrimination on the basis of your SOGIE;
- * The state may protect and promote your rights to quality education at all levels; and
- * Technical and professional education shall be made generally available.

“I am transgender man, and an university undergraduate. When I was at high school, my female classmates encouraged me to become a “real girl”, to get married with a “real man” and to have children so as to fulfill my parents’ wish and pay them back what they have done for me. However, I do not feel comfortable wearing a female uniform, therefore I raised the issue with the University’s Director of the Department and the Dean who both agreed that I could wear a male uniform.”

– Seaklay –

Legal sources: Article 26 of the Universal Declaration on Human Rights, Articles 13 of the International Covenant on Economic Social and Cultural Rights, Articles 47, 48 and 65 of the Cambodian Constitution, and Principle 16 of the Yogyakarta Principles.

SOURCES

- * Constitution of the Kingdom of Cambodia, 1993 available at: http://cambodia.ohchr.org/klc_pages/KLC_files/section_001/section_01_01_ENG.pdf
- * UNDP and USAID, Being LGBT in Asia: Cambodia Country Report, 2014, Available at: <http://www.usaid.gov/sites/default/files/documents/1861/rbap-hhd-2014-blia-cambodia-country-report.pdf>
- * Universal Declaration of Human Rights, 1948, available at: <http://www.un.org/Overview/rights.html>
- * Yogyakarta Principles, 2007, available at: <http://www.yogyakartaprinciples.org/>



Additional resources

- * **Chbab.net**, Destination Justice's creative and interactive platform aims to gather legal data, develop a legal community on justice matters as well as reduce the gaps in legal resources and access to information. Available at: <http://en.chbab.net/home>



- * **RoCK** website www.rockcambodia.org and Facebook page: [facebook.com/RoCKHMERLGBT2009](https://www.facebook.com/RoCKHMERLGBT2009)
- * Sam Killerman, **The social justice advocate's handbook: A guide to Gender**, 2013, available at <http://itspronouncedmetrosexual.com/>

About Destination Justice

Destination Justice is a nonprofit law, governance and development organisation which aims to strengthen human rights and rule of law in a pragmatic, collaborative, holistic, and sustainable way.

Established in December 2011 with a parent association in France and sister association in Australia, Destination Justice works multinationally, wherever it is most needed and can make the most difference.

Destination Justice is not a law firm and cannot provide legal services.

However, you can visit ***Destination Justice's Justice Café & Library*** which is a safe place for LGBTQ and their allies, and where resources are freely available and activities are organised for young people eager to learn, exchange ideas and change the world.

Contact details:

info@destinationjustice.org

<http://www.justice.cafe/>

About RoCK

Rainbow Community Kampuchea (RoCK) is a membership based organisation of LGBTQ people and supporters, dedicated to improving the lives of all LGBTQ people in Cambodia.

RoCK started as a voluntary group of LGBTQ activists in 2009 and in 2014 became the first registered LGBTQ NGO in Cambodia.

RoCK helps Cambodian LGBTQ citizens to live their life receiving full and equal respect, acceptance and human rights from all sectors of society, most especially families, communities and authorities.

RoCK representatives can assist anyone in need of talking through difficult situations, as well as assisting in advocating toward a better change.



Contact details:

Telephone: 012 481 561

Email: contact@rockcambodia.org



“Now that I have learned a lot about my rights and human rights in general, I am intending to use them. I will not tolerate being discriminated against anymore, I will fight for my rights.”

