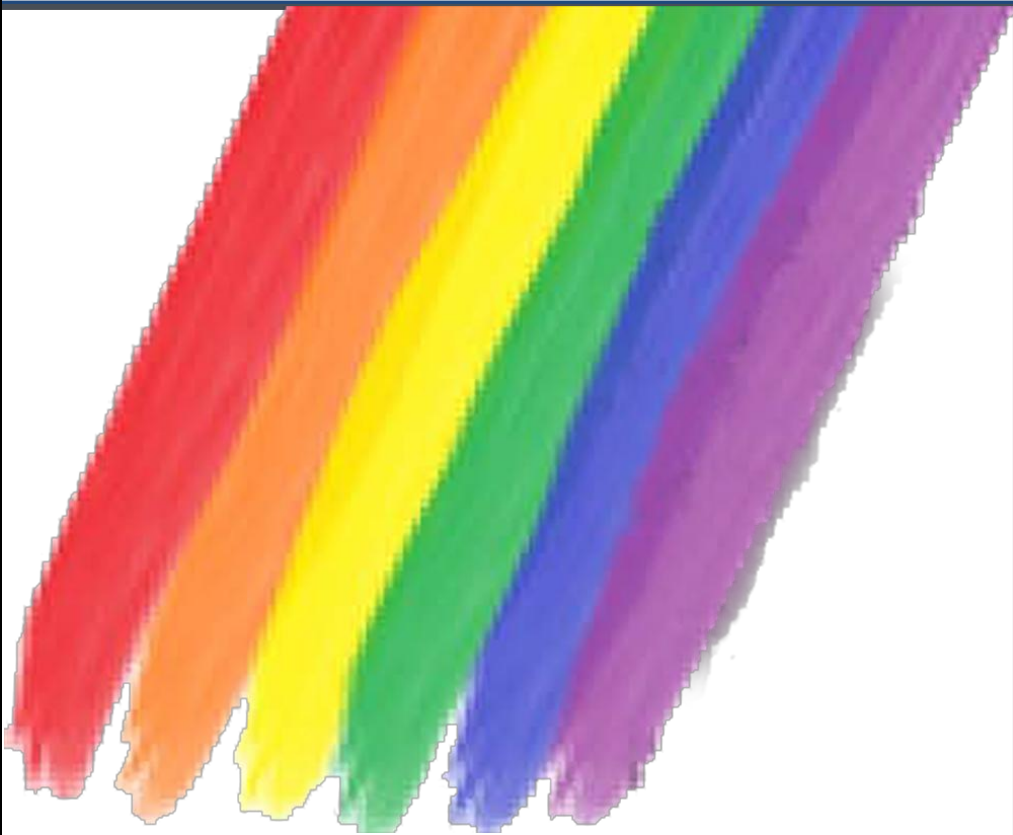




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Cambodian Center for Human Rights

**December
2012**

Rainbow Khmer: From Prejudice to Pride



About the Cambodian Center for Human Rights

The Cambodian Center for Human Rights (“CCHR”) is a non-aligned, independent, non-governmental organization (“NGO”) that works to promote and protect democracy and respect for human rights – primarily civil and political rights – throughout the Kingdom of Cambodia (“Cambodia”). CCHR’s vision is of a non-violent Cambodia in which people can enjoy their fundamental human rights, are empowered to participate in democracy, and share equally the benefits of Cambodia’s economic development. CCHR promotes the rule of law over impunity, strong institutions over strong men, and a pluralistic society in which variety is welcomed and celebrated rather than ignored and punished. CCHR’s logo – a dove flying in a circle of blue sky – represents the twin principles of peace and freedom.

This report – *“Rainbow Khmer: From Prejudice To Pride”* (the “Report”) – is an output of CCHR’s Sexual Orientation and Gender Identity (“SOGI”) project.

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Definitions and Acronyms

AHRD	ASEAN Human Rights Declaration
ASEAN	Association of South-East Asian Nations
BC	Bandanh Chaktomuk
B&HR Project	CCHR's Business and Human Rights Project
BRO	Bangkok Rainbow Organization
Cambodia	Kingdom of Cambodia
CCHR	Cambodian Center for Human Rights
CESCR	UN Committee on Economic, Social and Cultural Rights
Constitution	Constitution of the Kingdom of Cambodia, 1993 (as amended)
CSO	Civil Society Organization
Equality Act	Equality Act 2010 (UK)
ETA	Equal Treatment Act (Netherlands)
HIV/AIDS	Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDAHO	International Day Against Homophobia
IGLHRC	International Gay and Lesbian Human Rights Commission
ILGA	International Lesbian, Gay, Bisexual, Trans and Intersex Association
IPPF	International Planned Parenthood Federation
LCD	Law on the Control of Drugs 2005
LGBT	Lesbian, Gay, Bisexual and Transgender
LGBT List	Human Rights Campaign's "Best Places to Work for LGBT Equality"
LGBT Network	ASEAN-wide LGBT Network
LGBTIQ Caucus	ASEAN LGBTIQ Caucus
LHTSE	Law on the Suppression of Human Trafficking and Sexual Exploitation 2008
MHC	Men Health Cambodia
MSM	Men who have sex with men
NCAVP	National Coalition of Anti-Violence Programs
NGO	Non-Governmental Organization
OHCHR	Office of the High Commissioner for Human Rights

Penal Code	The Penal Code of the Kingdom of Cambodia 2009
PFLAG	Parents, Families and Friends of Lesbians and Gays Project
Portal	The Rainbow Khmer Portal
Project	The SOGI Project implemented by CCHR
Report	This Report entitled “ <i>Rainbow Khmer: From Prejudice to Pride</i> ”
RGC	Royal Government of Cambodia
RoCK	Rainbow Community Kampuchea
SOGI	Sexual Orientation and/or Gender Identity
SONDA	New York Sexual Orientation Non-Discrimination Act of 2003
STIs	Sexually Transmitted Infections
STRAP	Society of Transsexual Women of the Philippines
SWING	Service Workers In Group Foundation
UDHR	Universal Declaration of Human Rights
UK	The United Kingdom
UN	United Nations
UNESCO	United Nations Education, Scientific and Cultural Organization
UN HRC	UN Human Rights Council
UN Report	Report of the UN High Commissioner for Human Rights on ‘Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity’ (17 November 2011)
UN Resolution	UN Resolution on Human rights, sexual orientation and gender identity
US	The United States
VCSP	Village Commune Safety Policy
Yogyakarta Principles	Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity (finalized in the Indonesian city of Yogyakarta in 2006)
2010 Report	“ <i>Coming Out in the Kingdom: Lesbian, Gay, Bisexual and Transgender People in Cambodia</i> ” report, published by CCHR in December 2010

Glossary

- Groukhmer** A Khmer term that refers to traditional doctors or healers, who operate throughout the country and especially in rural areas and primarily use medicinal plants.
- Khteuy** A Khmer term that is used to describe those who are biologically a man or woman, but display the personality and behavior of the opposite sex. It is often used to describe a man who dresses and acts as a woman. It is also used refer to transgender persons. Although some transgender people use the word “*khteuy*” to refer to themselves, it is generally considered insulting or derogatory if used by others.
- Krama** The traditional Cambodian scarf and a national symbol of Cambodia.
- Ladlad** A Tagalog (the language spoken in the Philippines) term that means “to come out.”

Executive Summary

In the past few years, the world has seen a groundswell of support and activism to try to stem the tide of continuing discrimination against lesbian, gay, bisexual and transgender (“LGBT”) people. With Cambodia coming to the end of its year as Chair of the Association of South-East Asian Nations (“ASEAN”), now is a perfect opportunity for Cambodia to surf the tide of progress, showcase its growing reputation for tolerance towards LGBT people, and set an example in promoting equality and fighting discrimination. It is the aim of this Report to provide some recommendations, legislative and non-legislative, establish a positive vision, support this process, and assist the Royal Government of Cambodia (the “RGC”) in leading Cambodia forward into a brighter future.

Chapter 1 (Introduction) introduces the objectives of this Report and discusses recent developments and changes related to the rights of LGBT people both throughout the world and in Cambodia.

Chapter 2 (Purpose, Scope and Methodology) offers an overview of the methodology that was used to research and draft this Report.

Chapter 3 (Cambodian Context) provides a brief but broad summary of how far the LGBT movement in Cambodia has come, and what challenges LGBT people in Cambodia still face.

Chapter 4 (Legislative and Non-Legislative Recommendations) begins by analyzing the overall legislative landscape in Cambodia, in terms of existing legal safeguards for LGBT people, and provides generic, over-arching recommendations. It goes on to examine different thematic areas of LGBT people’s lives – such as families, communities, health, education, and so on – providing specific legislative and non-legislative recommendations for each thematic area. Throughout this section, applicable laws and initiatives in other relevant countries are referred to for the purposes of comparison and formulation of the recommendations.

Finally, **Chapter 5 (Conclusion)** summarizes the main issues and recommendations suggested throughout Chapter 4, and concludes that to establish a truly equal society, where everyone can be who they want to be and not suffer the consequences, there is an urgent need to establish specific legal mechanisms that fully protect and promote the human rights of LGBT people in Cambodia. Changing or enacting relevant legislation can go a long way towards changing public perceptions and stereotypes of LGBT people and thereby initiating positive change in the lives of LGBT people. Furthermore, the RGC needs to take appropriate steps to ensure that current legislation or policies are not used to discriminate against LGBT people. In addition to enacting relevant anti-discrimination legislation – including effective mechanisms to implement such laws – the RGC can help to raise awareness of LGBT people and issues, and initiate education for officials and authorities, the general public, and schools and universities. Ultimately, action is required by both the RGC and civil society to address discrimination against LGBT people, so that LGBT people can take their rightful place alongside all other people in Cambodia, and feel sufficiently empowered and protected that they can fully contribute to the economic, social and cultural development of the country. By embracing the values of tolerance and diversity, Cambodia will be a richer and more vibrant country, and establish itself as a beacon in the region.

1 Introduction

In the two years since the publication of CCHR's December 2010 report focusing on LGBT people in Cambodia – *“Coming Out in the Kingdom: Lesbian, Gay, Bisexual and Transgender People in Cambodia”* (the “2010 Report”)¹ – the world has seen a groundswell of support and activism to try to stem the tide of continuing discrimination against LGBT people. This international movement was best exemplified by the United Nations (“UN”) resolution passed by the Human Rights Council (the “UN HRC”) on 17 June 2011 (the “UN Resolution”), which requested a study on discrimination and sexual orientation.² Pursuant to the UN Resolution – which represented the first time that any UN body had issued such a strong and high level political statement affirming the rights of LGBT people – the UN High Commissioner for Human Rights, Navi Pillay, conducted a worldwide study on these themes, and presented her report to the HRC in December 2011 (the “UN Report”).³ Her report documented violations of the human rights of LGBT people, including discrimination, hate crimes and the criminalization of homosexuality, and provided recommendations for using international law to end violence and human rights violations based on sexual orientation and gender identity (“SOGI”). In March 2012, Navi Pillay called on the HRC panel to act and *“acknowledge that, while we have been talking of other things, terrible violence and discrimination has been perpetrated against lesbian, gay, bisexual and transgender (LGBT) people.”*⁴

The current US administration of President Barack Obama has also demonstrated its admirable support for the struggle for equality for LGBT people around the world, with US Secretary of State Hillary Clinton declaring publicly that *“gay rights are human rights, it should never be a crime to be gay.”*⁵ She also added that a country’s cultural or religious tradition was no excuse for discrimination.⁶ Furthermore, President Obama himself has explicitly supported the right to gay marriage, saying: *“I want everybody treated fairly [...] We have never gone wrong when we expanded rights and responsibilities to everybody. That doesn’t weaken families; that strengthens families. It’s the right thing to do.”*⁷

Finally, at a regional level, it is worth remembering that, in response to well-documented patterns of abuse, a distinguished group of international human rights experts met in Yogyakarta, Indonesia, in 2006, in order to outline a set of international principles relating to SOGI. The result was *“a universal guide to human rights which affirm binding international legal standards with which all*

¹ CCHR, ‘Coming Out in the Kingdom: Gay, Lesbian, Bisexual and Transgender People in Cambodia’ (Report) (December 2010) <www.cchrcambodia.org/index_old.php?url=media/media.php&p=report_detail.php&reid=8&id=5>.

² UNHRC Res (2011) UN Doc A/HRC/17/L.9/Rev.1 <http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/17/L.9/Rev.1>.

³ Navi Pillay ‘Report of the UN High Commissioner for Human Rights on Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity’ (the “UN Report”) (17 November 2011) UN Doc A/HRC/19/41 <www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-41_en.pdf>.

⁴ Navi Pillay , ‘Statement by UN High Commissioner for Human Rights Navi Pillay to the Panel on ending violence and discrimination against individuals on the basis of their sexual orientation and gender identity’ (Human Rights Council 19th Session, Geneva, 7 March 2012) <www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11917&LangID=E>.

⁵ Hillary Clinton, ‘Remarks in Recognition of International Human Rights Day’ (Palais des Nations, Geneva, Switzerland, 6 December 2011) <www.state.gov/secretary/rm/2011/12/178368.htm>.

⁶ *ibid.*

⁷ Barack Obama, ‘Remarks by the President at a Campaign Event’ (Rubin Museum of Art, New York, 14 May 2012) <www.whitehouse.gov/the-press-office/2012/05/14/remarks-president-campaign-event>.

States must comply...[and which] promise a different future where all people born free and equal in dignity and rights can fulfil that precious birthright”, otherwise known as the “Yogyakarta Principles”.

With Cambodia coming to the end of its year as Chair of ASEAN, now is a perfect opportunity for Cambodia to surf the tide of progress, showcase its growing reputation for tolerance towards LGBT people, and set an example in promoting equality and fighting discrimination. It is the aim of this Report to provide some recommendations, legislative and non-legislative, that are intended to support this process, to assist the RGC in leading Cambodia forward into a brighter future.

However, the most challenging task in promoting equality, and eliminating bias, prejudice and discrimination against LGBT people, is to effect a cultural shift in what is still a highly conservative society. The signs are positive; yet future successes will require not only the engagement of the RGC and NGOs, but also a collaborative approach between partners from a wide range of sectors.

2 Purpose, Scope and Methodology

The 2010 Report provided an overview of how homosexuality was viewed in Cambodia – including cultural, religious and political perceptions of SOGI – and analyzed some of the challenges facing LGBT people, most notably the pervasive discrimination encountered in workplaces, homes, communities, and in public, particularly from law enforcement agencies, such as the police. The 2010 Report affirmed that, under domestic and international law, LGBT people are entitled to all of the same rights as other individuals, and highlighted the emerging LGBT movement in Cambodia.

This Report does not aim to provide a similar overview of the current environment for LGBT people in Cambodia, but rather to establish a vision whereby LGBT people’s human rights are fully protected by law, respected in practice, and recognized universally. It takes a thematic approach, looking at different aspects of LGBT people’s lives in turn, and provides positive recommendations – both legislative and non-legislative – that are intended to support and accelerate the establishment of this vision. The status quo will naturally be referenced in order for such recommendations to make sense, but only by way of background, including a short section on the “Cambodian context” at the start of this Report. Whereas the 2010 Report identified the problem, this Report aims to provide some solutions.

As regards the legislative recommendations – addressed primarily to the RGC and opposition parties as actors that are able to instigate legislation – CCHR has analyzed the legislative landscape in Cambodia as it applies to LGBT people, and has identified areas in which improvements can be made. Furthermore, as part of this process, extensive research has been conducted into LGBT-related legislation in eight other jurisdictions – Hong Kong, India, Nepal, the Netherlands, Singapore, Thailand, the United Kingdom (the “UK”) and the US – so as to ascertain whether such legislation has been successful in protecting the rights of LGBT people in those countries, and to highlight to what extent equivalent legislation might have a similar positive effect on the rights and lives of LGBT people in Cambodia. Some countries, such as the Netherlands, Thailand, the UK and the US, were chosen for their – predominantly – liberal and progressive stances on LGBT people and issues; others were chosen as a result of their similar social and cultural heritage (Cambodia shares many similarities in this regard with Thailand, India and Nepal); and others still were chosen for their geographic proximity and as fellow members of ASEAN, such as Thailand and Singapore. Countries such as Brunei, Burma (Myanmar) and Malaysia, where homosexuality laws are repressive, were not considered, nor were countries where relevant legislation or access to relevant information was limited, such as Laos and Vietnam.

As regards the non-legislative recommendations – addressed primarily to civil society partners, including NGOs and institutions working in the fields of human rights, healthcare (including HIV/AIDS), LGBT issues, and education – CCHR has reviewed findings from its human rights advocacy work, engaged in consultations with domestic, regional and international partners, and conducted its own research. Such research was generated from CCHR workshops, field trips, and monitoring of existing LGBT networks, and was conducted in towns and cities where there are now significant communities of open LGBT communities, such as Phnom Penh, Siem Reap, Battambang and Poipet. Data was collected by way of semi-structured and unstructured interviews with around 300 participants, including LGBT people and their parents, LGBT activists, local authorities and police.

During the CCHR workshops, group discussions were instigated to discuss the following questions: (1) “What is your understanding of LGBT issues?”; (2) “What negative experiences or human rights violations have you encountered as an LGBT person in Cambodia?”; and (3) “How should relevant stakeholders address these problems?”

CCHR also collated relevant information on LGBT issues and initiatives throughout the world through regular monitoring of a wide range of news media and other publications in the public domain, in both English and Khmer, domestically and internationally, print and digital. The purpose of these non-legislative recommendations is to strengthen and develop the movement for equality for LGBT people by way of practical initiatives in which multiple stakeholders can partake.

3 Cambodian Context

As mentioned in the Purpose, Scope and Methodology section above, the 2010 Report discussed and analyzed the general cultural perceptions of LGBT people in Cambodia. This section aims to provide a brief but broad summary of how far the LGBT movement in Cambodia has come, and what challenges LGBT people in Cambodia still face. Since the 2010 Report was published, the LGBT movement in Cambodia has continued to expand and to grow in strength. Organizations and activists have continued to undertake activities that seek to increase awareness of SOGI and to build respect for the rights of LGBT people. In particular, there has been significant progress with establishing a network of LGBT organizations and individuals from across ASEAN, and therefore with increasing co-ordination, communication and knowledge-sharing, with a view to achieving regional respect for the rights of LGBT people.

Despite progress in building the LGBT movement, however, many issues remain that need to be urgently addressed, both through legislation and civil society actions. Although oppression of LGBT people in Cambodia is not as severe as in countries where homosexuality or homosexual sexual acts are illegal, or where strong homophobic religious traditions pervade, LGBT people are nevertheless subjected to human rights violations, discrimination and harassment. LGBT violations stem primarily from a lack of understanding by families and communities, which in turn lead to economic pressures, abuses from the State, and discrimination in multiple sectors, including in schools, the healthcare system and the workplace. Although systematic data on many of these issues is inadequate in Cambodia, anecdotal evidence and consultations with LGBT individuals suggest that these issues are of consequence. Specific areas where the rights of LGBT people are particularly at risk will be discussed in further detail in later sections of this Report. Within this context, there is significant room for the LGBT movement in Cambodia to push for an increase in civil society and other programs that are specifically geared towards promoting and protecting the rights of LGBT people.

However, the challenges faced by LGBT people in Cambodia are a result not only of a lack of understanding of SOGI and of little targeted programming, but also from the legal landscape in Cambodia as regards the rights of LGBT people. Generally speaking, the absence of legal prohibitions of homosexual sexual acts in Cambodia provides a greater level of protection than in countries where those acts are criminalized. However, as the International Lesbian, Gay, Bisexual, Trans and Intersex Association (“ILGA”) states in its May 2012 report on state-sponsored homophobia: *“The fact of living in a country where same-sex sexual acts between consenting adults are not criminalized does not imply automatically that a lesbian, gay or trans person are safe there, due to violence, persecution and other discriminatory practices carried out by non-state agents, organized or not, and in some cases even protected by the authorities.”*⁸

Cambodia has come a long way, but still has a long way to go. It is the aim of this Report to suggest practical steps, in response to specific areas of discrimination, to help Cambodia along that journey.

⁸ International Lesbian, Gay, Bisexual, Trans and Intersex Association, ‘State-sponsored Homophobia: A world survey of laws criminalising same-sex sexual acts between consenting adults’ (“State-sponsored Homophobia”) (May 2012) <http://old.ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2012.pdf>.

4 Legislative and Non-Legislative Recommendations

This section begins by analyzing the overall legislative landscape in Cambodia, in terms of existing legal safeguards for LGBT people, and provides generic, over-arching recommendations. It then goes on to examine different thematic areas of LGBT people's lives – such as families, communities, health, education, and so on – providing specific legislative and non-legislative recommendations for each thematic area. Throughout this section, applicable laws and initiatives in other relevant countries are referred to for the purposes of comparison and formulation of the recommendations.

4.1 Generic Discrimination against LGBT People

The Cambodian legislative landscape, as it stands, offers little specific protection for the rights of LGBT people, since it neither criminalizes SOGI nor explicitly protects it. For example, the Constitution of the Kingdom of Cambodia (the “Constitution”), which forms the basis of the legal system and of human rights standards in Cambodia, makes no specific mention of SOGI in its equality provision, stating in Article 31 only that: *“Every Khmer Citizen shall be equal before the law, enjoying the same rights and freedoms and fulfilling the same obligations regardless of race, color, sex, language, religious belief, political tendency, birth origin, social status, wealth or other status.”*

The lack of specificity in the Constitution as regards SOGI is problematic – especially given the absence of more specific legislation, such as anti-discrimination and anti-hate crime legislation – and opens the door to widespread discrimination in multiple areas of Cambodian society. Given that the Constitution is the highest law in the land, there is no doubt that LGBT people would be afforded additional legal protection if Article 31 were to be amended to include SOGI as a grounds on which discrimination is prohibited.

It is useful to compare the Constitution to that of other countries – such as Thailand, which has a similar constitution to Cambodia's – in order to suggest potential amendments. Section 30 of the Thai Constitution includes a provision which prohibits discrimination on “personal status”, which is still rather vague and unsatisfactory. However, in 2007, efforts were made to amend the Thai Constitution to include the term “sexual diversities” in the list of grounds for prohibiting discrimination. Although the proposal was ultimately outvoted by a margin of 54 to 23, these efforts suggest that Thailand is at least making progress in its attempts to incorporate notions of SOGI into its constitution.⁹

Even more positive developments have taken place in other countries. For example, in Nepal, a precedent was set in 2007 when the Supreme Court ruled against discrimination on the basis of SOGI. It is thought likely that the long-awaited Nepalese Constitution will follow this ruling and include provision for equal rights for LGBT people.¹⁰ In neighboring India, the longstanding British law which criminalized homosexuality as an unnatural offense was finally overturned in 2009 by the

⁹ Jason Armbricht, ‘Transsexuals and Thai Law’ (*Thailand Law Forum*, 11 April 2008) <<http://www.thailawforum.com/Transsexuals-and-Thai-Law.html>>.

¹⁰ Graeme Reid, ‘A globalized LGBT rights fight’ (*Global Post*, 2 November 2011) <<http://www.globalpost.com/dispatch/news/culture-lifestyle/111101/opinion-the-globalization-lgbt-rights-fight>>.

Indian High Court. The High Court ruled that the legislation violated articles within the Indian Constitution concerning the equal right to life and liberty, equal protection under the law, and anti-discrimination.¹¹ Significantly, the Indian Government decided not to appeal against the case, suggesting a welcome acceptance of protection of equal rights for LGBT people within the Indian Constitution.

Disappointingly, however, international legal instruments – such as the International Covenant on Civil and Political Rights (the “ICCPR”) and the International Covenant on Economic, Social and Cultural Rights (the “ICESCR”) – also fail to make specific mention of SOGI as prohibited grounds for discrimination. They do, however, include a catch-all “other status” as a category of prohibited grounds for discrimination, and UN treaty bodies have repeatedly held that the “other status” category is to be interpreted to include SOGI. For instance, in its General Comment 20, the UN Committee on Economic, Social and Cultural Rights (the “CESCR”) held that “other status” in the ICESCR “includes sexual orientation”, that “States parties should ensure that a person’s sexual orientation is not a barrier to realizing Covenant rights”, and that “gender identity is recognized as among the prohibited grounds of discrimination”.¹² Similar arguments have been made by the treaty bodies monitoring the ICCPR, the Convention Against Torture, the Convention on the Rights of the Child, and the Convention on the Elimination of Discrimination Against Women.¹³

These legal instruments are particularly relevant to Cambodia, because Article 31 of the Constitution states that “[T]he Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human rights, the covenants and conventions related to human rights, women’s and children’s rights.” These covenants and conventions have been directly incorporated into Cambodian domestic law by virtue of being ratified by Cambodia in 1992, with such incorporation confirmed by a decision of the Constitutional Council dated 10 July 2007, which stated that “international conventions that Cambodia has recognized” form part of Cambodian law.¹⁴ The cause of LGBT people in Cambodia would therefore be given a huge boost if the ICCPR and the ICESCR were amended to recognize SOGI as grounds on which discrimination is prohibited, and all relevant actors should continue to apply pressure at an international level to make these amendments a reality.

Furthermore, domestic legislation that focuses specifically on homophobic discrimination should be enacted in Cambodia, so that SOGI-based discrimination can finally be properly recognized for the societal scourge that it is. In the UN Report, Navi Pillay reports that the “absence of applicable national laws [to protect LGBT people] facilitates discrimination by private actors.”¹⁵ The UN Report further comments that Article 12(1) of the ICESCR, which Cambodia ratified in 1992, provides that “States party to the Covenant recognize the right of everyone to the enjoyment of the highest

¹¹ NAZ Foundation v. Government, 2010 CriLJ 94, 160 (2009) DLT 277 (India) <www.nazindia.org/advocacy.htm>.

¹² UN Committee on Economic, Social and Cultural Rights, ‘Comment 27’ in ‘General Comment 20: Non-Discrimination in Economic, Social and Cultural Rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)’, (2 July 2009) UN Doc E/C.12/GC/20 <<http://www2.ohchr.org/english/bodies/cescr/comments.htm>>.

¹³ Alli Jernow, ‘SOGI in international human rights law’ (*IntLawGrrls*, 9 March 2012) <www.intlawgrrls.com/2012/03/sogi-in-international-human-rights-law.html>.

¹⁴ Constitutional Council of the Kingdom of Cambodia, Decision No. 092/003/2007 (10 July 2007)

¹⁵ Navi Pillay, ‘UN Report’ (17 November 2011) 16.

*attainable standard of physical and mental health.*¹⁶ In Cambodia, the lack of adequate, appropriate and specific legislation impedes LGBT people from enjoying these standards.

In 2011 CCHR conducted several LGBT human rights workshops in Siem Reap and Battambang provinces, as well as in Phnom Penh. Participants voiced their concerns about the lack of protection of the human rights of LGBT people in Cambodia, and stressed the need for the National Assembly to adopt laws which protect and promote the rights of LGBT people. In recent years, the need for legislation that specifically tackles discrimination has become increasingly necessary, as a result not only of continuing discrimination against LGBT people by employers and healthcare service providers among others (please see the relevant sections below for more detail), but also because there is a trend for existing legislation to be misused in order to discriminate against LGBT people. According to LGBT networks in some of Cambodia's provincial towns, certain pieces of legislation – such as the Law on the Control of Drugs 2005 (the “LCD”) – allow officials a considerable amount of discretion when it comes to law enforcement, leading to frequent exploitation of such legislation by officials and thus discrimination against specific groups, such as LGBT people.

Specific laws that prohibit discrimination on the grounds of SOGI, enacted in other countries, have been proven to reduce such discrimination and at the same time increase the peace of mind of LGBT people. There is no logical or moral argument as to why a similar law outlawing SOGI-based discrimination would not be successful in Cambodia, given effective traction and enforcement in the Cambodian courts.

In considering enacting potential anti-discrimination legislation, it is useful to look at progressive legislation, such as has been implemented in the UK, the Netherlands and the US. The New York Sexual Orientation Non-Discrimination Act (the “SONDA”) of 2003 increases the level of protection for the human rights of LGBT people by amending the New York Human Rights Law.¹⁷ The SONDA prohibits discrimination on the basis of sexual orientation, including in the context of: employment; places of public accommodation; resorts or amusement parks; educational institutions; publicly assisted housing; private housing accommodations and commercial space; and in relation to credit.¹⁸ The SONDA provides comprehensive protection and attempts to eradicate discrimination towards LGBT individuals in every aspect of society, which is to be commended.

In the Netherlands, the Equal Treatment Act (the “ETA”) was enacted in 1994. The ETA extends the principle of anti-discrimination beyond what was already stipulated in the Dutch Constitution. Among the many innovative provisions, Articles 11-12 provide for the establishment of an “Equal Treatment Committee,” which consists of independent advisors and settles disputes that have arisen as a result of discrimination. The body also has the power to conduct investigations when allegations of discriminatory behavior have been made.¹⁹ All Cambodians would benefit from the creation of an equivalent “Equal Treatment Committee” which ensures human rights for all people, regardless of who they are. Such an accompanying mechanism would provide an appropriate and

¹⁶ *ibid* 17.

¹⁷ New York State Human Rights Law (New York Executive Law, Article 15 § 290-301) (US).

¹⁸ New York Sexual Orientation Non-Discrimination Act 2003 (US).

¹⁹ Janny R. Dierx & Peter R. Rodrigues, ‘The Dutch Equal Treatment Act in Theory and Practice’ (*European Roma Rights Centre*, 10 May 2003) < www.errc.org/article/the-dutch-equal-treatment-act-in-theory-and-practice/1400>.

potentially critical alternative access to remedy, of which Cambodian people and communities are so often deprived due to the lack of independence of the Cambodian courts.²⁰

In the UK, the Equality Act 2010 (the “Equality Act”) states that its over-riding objective is to achieve “*harmonization, simplification, and modernization of equality law*”.²¹ The Equality Act covers nine protected characteristics, including: 1) age, 2) disability, 3) gender reassignment, 4) marriage and civil partnership, 5) pregnancy and maternity, 6) race, 7) religion or belief, 8) sex, and 9) sexual orientation.²² The act sets out unlawful ways to treat someone, including “*direct and indirect discrimination, harassment, victimization*”.²³ The UK’s Equality and Human Rights Commission is empowered to enforce the Equality Act and offers information and advice through help lines, website and publications. It also helps to shape public policy and develop further equality legislation.²⁴

While anti-discrimination legislation is being discussed, a stepping stone towards this longer term goal would be for the RGC to develop a comprehensive strategy on SOGI to provide advice and clear policy across government departments. Similarly to the RGC’s 5-year strategic plan related to women and gender-mainstreaming,²⁵ a SOGI-specific strategy should be developed by the Council of Ministers and include guidance on how to incorporate SOGI into sector strategies. A good example is provided by the Netherlands’ 2008-2011 LGBT Policy, entitled “Simply Gay,” which provides overall strategic guidance to a wide range of Dutch ministries as to how to achieve the main objective of the policy: “promoting the social acceptance of LGBTs among the Dutch population.”²⁶

Recommendation to RGC/National Assembly: Amend the “other status” provision stipulated in the Constitution so that it includes specific reference to SOGI as a grounds for prohibiting discrimination.

Recommendation to RGC/National Assembly: Amend the Constitution to include provisions that specifically protect and promote the human rights of LGBT people.

Recommendation to RGC/National Assembly: Introduce an anti-discrimination law that refers explicitly to LGBT people, the aim being the promotion and protection of the human rights of LGBT people regardless of their SOGI.

Recommendation to RGC/: Create a body in Cambodia, for example an Anti-Discrimination Committee, whose explicit remit would be to protect the human rights of all people, regardless of who they are.

²⁰ CCHR, ‘Institution Series: The Separation of Powers and the Rule of Law’ (Factsheet) (2011) <www.cchrcambodia.org/index_old.php?url=media/media.php&p=factsheet_detail.php&fsid=3&id=5>.

²¹ Equality Act 2010 (UK) <www.homeoffice.gov.uk/equalities/equality-act/>.

²² *ibid.*

²³ *ibid.*

²⁴ Equality and Human Rights Commission, ‘Who we are and what we do’ <www.equalityhumanrights.com/uploaded_files/who_we_are.pdf>.

²⁵ Ministry of Women’s Affairs, ‘Neary Rattanak III’ (2009).

²⁶ See: www.dayagainsthomophobia.org/IMG/pdf/Simply_Gay_engelstalige_versie_Hnota.pdf.

Recommendation to RGC: Develop a comprehensive national strategy on SOGI to provide advice and clear policy to all government departments and administrative bodies.

4.2 ASEAN

The ASEAN LGBTIQ Caucus (the “LGBTIQ Caucus”) workshops – held in Phnom Penh on 29 and 30 April 2012 and on 14 November 2012 to coincide with the ASEAN Summits – were an opportunity not only to celebrate diversity but also to remind governments and members of civil society across the region that the recognition, promotion and protection of the rights of LGBT people are long overdue. Throughout ASEAN, basic human rights, such as the rights to healthcare, housing and education – not to mention the fundamental rights to freedom of expression and assembly – are often denied to LGBT people. Brunei, Burma, Malaysia and Singapore – as well as Marawi city in the Philippines and South Sumatra province in Indonesia at a local level – still have archaic colonial laws on their books that criminalize homosexuality. In most ASEAN countries, seemingly unrelated legislation is often used to harass, arrest, detain, persecute, and extort money or even demand sexual favors from LGBT people.

Discussions during the LGBTIQ Caucus workshops focused on the ASEAN Human Rights Declaration (the “AHRD”). The principal objective of the AHRD is to codify human rights across ASEAN and provide a common framework for all ASEAN countries. However, in the final version of the AHRD, signed by all ASEAN member states on 18 November 2012 at the annual ASEAN Summit in Phnom Penh, there exists no explicit protection of LGBT people nor is there any mention of SOGI as grounds for the prohibition of discrimination. The final version was adopted despite heavy lobbying by Thailand, the Philippines and Indonesia to include SOGI in the non-discrimination clause. Throughout the drafting process, ASEAN civil society groups have expressed their concerns in connection with this aspect of the AHRD, although they were generally excluded from taking part in any kind of consultation process. A joint statement and press release²⁷ expressing disappointment at the exclusion of SOGI from the draft AHRD was issued on 30 April 2012 by 14 signatory organizations, which was then endorsed by a further 12 organizations and officially supported by the International Gay and Lesbian Human Rights Commission (the “IGLHRC”) and the ILGA. Another joint statement²⁸ was issued by the LGBTIQ Caucus once the final version of the AHRD was adopted:

“We, the ASEAN LGBTIQ Caucus are outraged and disappointed by the decision of the ASEAN Head of States to adopt the AHRD that intentionally excludes sexual orientation and gender identity [...] This AHRD not only shows a lack of respect to LGBTIQ people but also makes a mockery of the international human rights values and principles that all nations and citizens abide by and are held accountable to.”²⁹

CCHR similarly expressed its disappointment with the AHRD, issuing a Press Release that highlighted CCHR’s concerns as regards the AHRD, including the exclusion of SOGI as a potential and recognized

²⁷ ASEAN LGBTIQ Caucus Press Release, ‘Inclusion of SOGI issues and rights in the ACSC/APF and in the ASEAN Human Rights Declaration’ (2012) <www.boell-southeastasia.org/downloads/PRESS_RELEASE_-LGBTQI.pdf>.

²⁸ ASEAN LGBTIQ Caucus Statement, ‘ASEAN Human Rights Declaration Refuse to Protect LGBTIQ Rights!’ (18 November 2012) <www.sithi.org/temp.php?url=media_view2.php&mid=6095>.

²⁹ Ibid.

ground for discrimination.³⁰ As outgoing Chair of ASEAN, Cambodia is in a perfect position to place the issue on the ASEAN agenda and advocate for the amendment of the AHRD to include such provisions, so that LGBT people are fully protected and so that discrimination on the grounds of SOGI is explicitly prohibited. CCHR urges the RGC to leverage its position as outgoing Chair to amend the AHRD and include these protections of the rights of LGBT people in the AHRD before it becomes too entrenched in the operations of ASEAN.

What the LGBTIQ Caucus press release does exemplify, though, is the power and potential of a coordinated ASEAN-wide LGBT network (the “LGBT Network”), whereby working in partnership and collaborating closely can establish a stronger voice in terms of lobbying governments and other key players across ASEAN in connection with the rights of LGBT people. However, the LGBT Network currently operates on an informal basis and would benefit from greater resources, formalization and formal governmental recognition. Again, the RGC is in a strong position as outgoing Chair to use its influence and leverage to recognize the LGBT Network officially, and encourage other member states to support it both in terms of financial funding and creating space for free expression in their respective states.

In addition to commenting on the AHRD, the LGBTIQ Caucus workshops also provided an opportunity to share examples of successful advocacy and campaigning initiatives between countries across the region – such as the ongoing movement towards the adoption of same-sex marriage legislation in Vietnam and the efforts of Malaysian activists to secure the rights of transgender people through the court system – and to explore how such approaches can be adopted successfully in other countries.

Therefore, in light of the serious threats to the security and rights to fundamental freedoms of LGBT people in many ASEAN countries, including Cambodia, it is vital that the development and strengthening of national level LGBT networks and activists are prioritized. While Cambodia has seen steady progress as regards effective human rights advocacy initiatives on behalf of LGBT people and the development of a community network of LGBT activists in Cambodia – including the training of emergent LGBT networks – over the two years since the 2010 Report was published, such approaches would benefit from greater cohesiveness and resources. Better communication between different LGBT projects or initiatives, and, in particular, between grassroots networks and national NGOs, would also serve to improve the status quo. Cambodia’s LGBT community would be well-served by the establishment of a shared vision, a strong common voice and shared resources.

Likewise, civil society groups across ASEAN can benefit the overall LGBT movement by coordinating closely with each other and collaborating with a view to ensuring a holistic and joined-up approach to LGBT advocacy. Competition and duplication – a problem generally in the NGO community – are particularly damaging to emerging human rights areas such as the LGBT movement in ASEAN. It is also important that advocacy and support for LGBT people is integrated across all human rights activity, since in advocating for “LGBT rights”, LGBT activists and advocates are actually just advocating for the ability of LGBT people to access and exercise the same human rights – as

³⁰ CCHR, ‘CCHR Highlights the Dangers of Adopting a Flawed ASEAN Human Rights Declaration’ (Press Release) (19 November 2012) <www.sithi.org/temp.php?url=media_view2.php&mid=6093>.

enshrined in the Universal Declaration of Human Rights (“UDHR”) and international conventions – which everyone else takes for granted. For this reason, we have avoided the term “LGBT rights” in this Report, as it may give the impression that they are a separate set of rights specific to LGBT people; instead we refer to the “rights of LGBT people”. The main objective of LGBT advocacy is to try to ensure that LGBT people have access to equal rights.

Recommendation to RGC: Use its position as the outgoing Chair of ASEAN to amend the AHRD to include an explicit reference to SOGI as a prohibited grounds for discrimination.

Recommendation to RGC: Use its position as the outgoing Chair of ASEAN to formally recognize the LGBT Network and encourage ASEAN member states to support it.

Recommendation to Civil Society: Work in partnership and collaborate closely with civil society partners across ASEAN to establish a stronger voice to lobby governments and other key players in ASEAN in connection with the rights of LGBT people.

Recommendation to Civil Society: Explore avenues to further formalize, fund and develop the LGBT Network, such as reviewing and developing existing training offered to the LGBT Network so that it also includes vocational, IT and literacy skills.

Recommendation to Civil Society: Develop and strengthen national-level LGBT networks and communication between them to support and advocate for the rights of LGBT people.

Recommendation to Civil Society: Continue to integrate support for LGBT people across all human rights activity and share the model with other human rights NGOs and partners across ASEAN.

4.3 Family Life

Many LGBT people in Cambodia are not able to live as they would like to due to both social stigma and internal family pressures. Many parents do not dare support their children publicly for fear of social stigma. The situation is often worse for lesbians, bisexual women and transgender people, as gender issues compound the discrimination.³¹ “Coming out” to their families is often a very negative experience. Sometimes parents disown their children afterwards, cutting them off from any emotional or financial support, which often drives young people onto the streets, where they are hounded by hunger, homelessness and vulnerability to further abuse by strangers and law enforcement officials. Some parents believe that being gay is a mental illness and can be cured pre-emptively by taking their son or daughter to the traditional doctor (“*groukhmer*”) to throw water on their child and “cure” their homosexuality,³² which naturally can be a very traumatic experience.

Furthermore, young people in Cambodia also face enormous pressure to marry – from both their family and society – which often adds to the difficulties that LGBT people face in trying to hide their sexuality. In many cases, this pressure leads to gay men marrying and still engaging in homosexual

³¹ Navi Pillay, ‘UN Report’ (17 November 2011) 21

³² Cambodia Network Men-Women Development (“CNMWD”) & CCHR Workshop (Phnom Penh, 18 December 2011).

activities. According to a 2000 study by Family Health International, nearly nine percent of men who have identified themselves as “men who have sex with men” (“MSM”) are currently married.³³ During a CCHR workshop held in Phnom Penh on 18 December 2011,³⁴ participants demanded that the RGC ensure equal treatment of human rights for everyone, so that LGBT people can love each other and live together openly rather than be forced into having a “cover”, at the expense of their own and their family’s happiness. Family members are important stakeholders in the process of reducing stigma, discrimination and human rights violations, and family tolerance and acceptance help lives change for the better.

In 1972, the Parents, Families and Friends of Lesbians and Gays (“PFLAG”) project was started in the US to unite parents, families, friends and straight allies of LGBT people in order to conduct more effective education and advocacy in support of the rights of LGBT people. Since then, similar projects – including some also using the name “PFLAG” – have been started in other countries, including Argentina, Australia, Belgium, China, Israel, Jamaica, Japan and others. On 11 May 2011, PFLAG Vietnam was launched, becoming the first resource in the country to provide support for families and friends of Vietnamese LGBT people.³⁵ During a November 2012 event in Ho Chi Minh City (Saigon), one PFLAG Vietnam participant stated *“I understand that my son and homosexuals have to suffer the social stigma. So I just hope that other parents whose children are homosexuals have a tolerant look on their beloved ones”*.³⁶

Judging by this example from Vietnam, there is huge potential for program development in Cambodia that addresses the perceptions and attitudes of parents and families of LGBT people. An initial “Family Acceptance” workshop took place in Phnom Penh on 17 May 2012 to mark the International Day Against Homophobia (“IDAHO”), which provided a decent starting point to the discussion.

Recommendation to Civil Society: Organize a discussion group to discuss a “Family Acceptance” project in Cambodia that would provide similar services to the PFLAG project and then pilot a PFLAG project in Cambodia.

4.4 Same-Sex Marriage

“The rights to marry and to found a family” are acknowledged in Article 16 of the UDHR and Article 23 of the ICCPR. Furthermore, Amnesty International asserts that marriage equality is part of human rights, stating: *“The denial of equal civil recognition of same-sex relationships prevents many people from accessing a range of other rights, stigmatizes those relationships and fuels discrimination and other abuses in communities, schools and homes against the human rights of sexual minorities.”*³⁷ In Cambodia, marriage is defined in both Article 45 of the Constitution and Article 3 of the Law on

³³ Family Health International, ‘Sexual behavior, STIs and HIV among men who have sex with men in Phnom Penh, Cambodia 2000’ (2000) 6 <www.fhi360.org/en/HIVAIDS/pub/survreports/MSMCambodia/index.htm>.

³⁴ CNMWD & CCHR Workshop (Phnom Penh, 18 December 2011).

³⁵ ‘The Start of PFLAG Vietnam’ (IGLHRC, 17 May 2011) <www.iglhrc.org/cgi-bin/iowa/article/takeaction/partners/1397.html>.

³⁶ Anna Leach, ‘800 celebrate sexualities diversity in Vietnam’ (Gay Star News, 27 November 2012) <www.gaystarnews.com/article/800-celebrate-sexualities-diversity-vietnam271112>.

³⁷ Amnesty International, ‘Love is human right’ <www.amnestyusa.org/our-work/issues/lgbt-rights/marriage-equality>.

Marriage and the Family as an agreement or contract between a man and a woman, while same-sex marriage is specifically prohibited in Article 6 of the Law on Marriage and the Family.³⁸

As of December 2012, a total of 11 countries had legalized same-sex marriage.³⁹ The first same-sex marriages took place in the Netherlands on 1 April 2001. The countries that followed were Belgium, Spain, Canada, South Africa, Norway, Sweden, Portugal, Iceland, Argentina and Denmark.⁴⁰ In addition, some countries have passed legislation for same-sex “partnerships” or civil unions, including France and the UK.⁴¹ In some countries, same-sex marriage or civil unions are allowed in certain jurisdictions – such as individual cities or states – but not in others, such as in Mexico,⁴² the US, and Australia. An international study undertaken by Health Day in the US state of Massachusetts in 2011 reported that gay men who live in states where same-sex marriage is legal are healthier, experience less stress, make fewer doctor visits, and are exposed to lower healthcare costs.⁴³

Although there have been no formal studies undertaken in Cambodia, there is anecdotal evidence that same-sex marriage can give rise to successful family life. In one case, a lesbian couple whom CCHR met at one of its workshops said that they had informally adopted four or five orphans who have grown up to be well-adjusted adults with good careers. The children have also now had children of their own who have respectful relationships with their grandparents. This is just one example of how, as one of the grandmothers stated, “*lesbian couples can help society by feeding and supporting orphans and giving them a good future.*” This type of anecdotal evidence corresponds with studies undertaken in other countries over the past three decades, which have found that the daughters and sons of same-sex parents are generally psychologically well-adjusted.⁴⁴ Participants

³⁸ In an exceptional case in 1995, a lesbian couple was allowed to legally marry in Kandal province. See: Tivea Koam and Menghourng, ‘Same same ... but married’ (*The Phnom Penh Post: LIFT*, 22 September 2010) <www.phnompenhpost.com/index.php/2010092242205/LIFT/same-same-but-married.html>.

³⁹ France’s (where same-sex “partnerships” are already legal) cabinet recently approved a draft bill that would legalize same-sex marriage. The bill is expected to pass in early 2013 after debate in French Senate, which would make France the 12th country in the world to have legalized same-sex marriage. See: Steven Erlanger, ‘French Cabinet Advances Gay Marriage Bill Despite Conservatives’ Opposition,’ *The New York Times*, 7 November 2012 <www.nytimes.com/2012/11/08/world/europe/gay-marriage-bill-advances-in-france.html>.

⁴⁰ Thomas Adamson, ‘A look at gay marriage and adoption worldwide’ *Associated Press* (5 November 2012) <<http://news.yahoo.com/look-gay-marriage-adoption-worldwide-154940786.html>>.

⁴¹ In many countries, civil unions (also called “civil partnerships” or “domestic partnerships” depending on the jurisdiction) have been introduced to allow same-sex couples to enter into legal agreements similar to marriage without fully legalizing same-sex marriage. While in some countries, such as the UK, marriage and civil unions are essentially the same with regards to the benefits and legal obligations, in others, including in some US states and in France, the differences result in some or many of the rights of same-sex couples being denied. Even in those countries where differences are minimal or non-existent, creating a separate legal structure for same-sex couples is in and of itself discriminatory. Cambodia should stay clear from any attempts to establish a similar separate and discriminatory legal structure for same-sex couples and instead legalize same-sex marriage. For a more comprehensive overview of the problems with civil unions, see: Australian Marriage Equality, ‘A failed experiment: Why civil unions are no substitute for marriage equality,’ (Factsheet) (2010) <www.australianmarriageequality.com/wp/wp-content/uploads/2010/12/A-failed-experiment.pdf>.

⁴² The Mexican Supreme Court ruled in 2010 that same-sex marriages performed in Mexico City must be recognized in all other Mexican states. See: ‘Mexico supreme court orders gay marriages recognized country wide’ (*LGBTQ Nation*, 10 August 2010) <www.lgbtqnation.com/2010/08/mexico-supreme-court-orders-gay-marriages-recognized-country-wide/>.

⁴³ ‘Legalized Same-Sex Marriage May Boost Gay Men’s Health’ (*HealthDay News*, 15 December 2011) <<http://news.yahoo.com/legalized-same-sex-marriage-may-boost-gay-mens-210409455.html>>.

⁴⁴ See Timothy Biblarz & Judith Stacey, ‘How Does the Gender of Parents Matter?’ (2010) 72.1 *Journal of Marriage and the Family* 3; American Civil Liberties Union, ‘Too High a Price: The Case Against Restricting Gay Parenting (Report) (2006) <www.aclu.org/lgbt-rights_hiv-aids/too-high-price-case-against-restricting-gay-parenting> ; Stonewall UK, ‘Different families: The experiences of children with lesbian and gay parents’ (Report) (2010) <www.stonewall.org.uk/what_we_do/research_and_policy/health_and_healthcare/3471.asp>.

in a workshop organized in Siem Reap on 10 December 2011 by the National MSM Network/Bandanh Chaktomuk and Men Health Cambodia also suggested that the RGC should adopt new legislation recognizing same-sex civil partnerships or even marriage.⁴⁵

Recommendation to RGC/National Assembly: Amend the Constitution and the Law on Marriage and the Family to allow for same-sex marriage.

Recommendation to Civil Society: Survey families with LGBT parents to raise awareness of the phenomenon, discuss potential issues, and inform future developments in this area.

4.5 Community

LGBT people are particularly vulnerable to homophobic attacks and abuse in their communities. The UN Report notes that *“young LGBT people and those of all ages who are seen as transgressing social norms are at risk of family and community violence. Lesbians and transgender women are at particular risk because of gender inequality and power relations within families and wider society.”*⁴⁶ As discussed in the 2010 Report, cultural, social and economic pressures in Cambodia help shape a society in which sons and daughters are often pressured to marry and have children, which in turn tends to lead to LGBT people being ostracized from their communities and society at large because of the “shame” that they have supposedly brought on their families as a result of who they are.

Although there is a growing gay scene in the urban centers of Cambodia, the impacts are not felt by all members of the LGBT community, and discrimination within the wider community continues. Hate crimes, motivated by victims’ SOGI, unfortunately remain common in Cambodia. Despite a lack of quantitative data on hate crimes in Cambodia, there are many reports of gangsters attacking LGBT people who gather in parks, as well as reports of “forced sex”, especially against those who are transgender or have long hair, even during religious ceremonies. Interestingly, the term “rape” is rarely used by the victims when describing the attacks,⁴⁷ which perhaps indicates a tendency of LGBT people to blame themselves for such hate crimes.

Fortunately, there does not seem to be a pattern of “corrective rape” or “curative rape” in Cambodia – where men rape lesbians to “cure” them – which has been particularly problematic in some countries, such as South Africa and Jamaica.⁴⁸ Moreover, Cambodia benefits from an inclusive definition of rape in its Penal Code 2009: *“Rape’ shall mean any act of sexual penetration with a sexual organ or an object committed against another person of either sex by violence, coercion, threat or by being opportunistic.”*⁴⁹ In contrast to some countries where definitions of rape and sexual assault in criminal codes only recognize the rape of women by men, an inclusive definition permits prosecution of rape and sexual assault of gay men or transgender women. Nevertheless,

⁴⁵ National MSM Network/Bandanh Chaktomuk & Men Health Cambodia Workshop (Siem Reap, 10 December 2011).

⁴⁶ Navi Pillay, ‘UN Report’ (17 November 2011) 8.

⁴⁷ CCHR Workshop (Phnom Penh, 18 December 2011)

⁴⁸ See for example: Human Rights Watch *“We’ll Show You You’re a Woman”: Violence and Discrimination against Black Lesbians and Transgender Men in South Africa* (Report) (5 December 2011) <www.hrw.org/reports/2011/12/05/we-ll-show-you-you-re-woman>.

⁴⁹ Penal Code 2009, Article 239: Definition of Rape.

there is still a need to ensure that the Cambodian police and judiciary investigate and prosecute all allegations of sexual assault against LGBT people.

There have been some reports of attacks on LGBT people in the national Cambodian media. For example, in December 2011, a group of female students in Battambang province filed a complaint against a high-ranking military officer who is alleged to have violently assaulted them and threatened to kill them. The officer – who was wearing his uniform at the time – was alleged to have been drunk and to have hit a girl’s head against a wall. It was suggested that he believed the girl to be having an affair with his daughter.⁵⁰

In addition to hate crimes, there are also multiple reports from Cambodian LGBT communities of harassment by the authorities and evidence of misuse of laws and policies to discriminate against and target LGBT people.⁵¹ Despite a lack of complete data, the sheer number of reports of laws being used against LGBT people suggests that it is a significant issue to be addressed.

The Village Commune Safety Policy (the “VCSP”) focuses on security and public order, and requires local authorities to eliminate all forms of crime in villages and communes with specific reference to illegal drugs, prostitution, human trafficking, domestic violence, gang activity, illegal gambling and illegal weapons. Judging by accounts from the field, however, this policy is being used as a means to suppress and control the Cambodian population in rural areas and provincial towns and villages, by empowering and authorizing police and local authorities to minutely scrutinize the lives of Cambodian people and to round suspicious people up pre-emptively, in severe contravention of their fundamental rights and freedoms. Furthermore, according to accounts from LGBT networks in the provinces, the VCSP is being used particularly to target LGBT people, who are more vulnerable than many due to the fact that they often have no option but to congregate in dark and inconspicuous parts of towns, such as unlit parks, in an attempt to avoid the attention of their families and the authorities. Due to pervasive discrimination and negative stereotyping, the authorities generally assume that such groups of LGBT people are sex workers, engaged in soliciting and prostitution, when often they are simply socializing and expressing themselves freely in as discreet a manner as they can.

A final major concern with the VCSP is that it is not a formal piece of legislation that has been debated and passed in the National Assembly, but rather an executive edict from the Ministry of Interior and the RGC more generally. Moreover, the VCSP contradicts Cambodian laws, such as the LCD, the Penal Code 2009 and the Criminal Procedure Code 2007, and curtails rights and freedoms guaranteed in the Constitution and in international treaties ratified by the RGC.⁵² Additional examples of legislation misused in Cambodia to discriminate against and violate the rights of LGBT people include the LCD – discussed in Section 3.1 above – and the Law on the Suppression of Human Trafficking and Sexual Exploitation 2008 (the “LHTSE”) – discussed further in Section 3.7 below.

⁵⁰ ‘RCAF officer accused of attacking students’ *The Phnom Penh Post* (Phnom Penh, 27 December 2011)

⁵¹ CCHR Workshop (Battambang, 17 January 2012).

⁵² CCHR ‘Law Classification Series: VCSP’ (Factsheet) (January 2012)

www.cchrcambodia.org/index_old.php?url=media/media.php&p=factsheet_detail.php&fsid=27&id=5.

Reports from the field suggest that both of these laws are being used to target LGBT people specifically and to remove them from public places.

One way to address such misuse of legislation is to implement training and sensitization programs for Cambodian police officers and other law enforcement officials. Otherwise, if LGBT people suffer discrimination at home, and yet cannot escape it on the street – often with far worse consequences – then there is really nowhere for them to go and express themselves freely. Such training has been suggested in documents such as the UN Report, which recommends that countries “*implement appropriate sensitization and training programs for police, prison officers, border guards, immigration officers and other law enforcement personnel, and support public information campaigns to counter homophobia and transphobia among the general public and [support] targeted anti-homophobia campaigns in schools*”.⁵³

Such programs could prove to be extremely effective in Cambodia and could eliminate the concerns of LGBT people that they are being targeted by law enforcement personnel. The UN notes that several member states have instituted training programs for law enforcement officials in order to sensitize them to the problem of violence against LGBT people and to help them recognize, register and respond appropriately to reports of such crimes. For example, the Service Workers in Group Foundation (“SWING”) in Thailand participates in a “Police Cadet Community Involvement Program”. This program allows third-year police the opportunity to intern at SWING, with a view to changing the prevailing culture by educating the new generation of police officers as regards issues faced by gay male sex workers in Thailand. At the end of the internship, the cadets must give a presentation to all students in the police academy in order to continue spreading the message.⁵⁴

Nevertheless, training and sensitization programs geared towards law enforcement officials do not preclude the need for programs and activities that continue to monitor and conduct research on the incidence of hate crimes and other forms of violence affecting the LGBT community. In the US, the National Coalition of Anti-Violence Programs (the “NCAVP”) works to prevent, respond to, and end all forms of violence against LGBT and HIV-affected communities. The NCAVP is a national coalition of local member programs, affiliated organizations and individuals, who aim to create systemic and social change.⁵⁵ They strive to increase power, safety and resources through data analysis, policy advocacy, education and technical assistance. The NCAVP published a report in 2011 called “*Hate Violence against Lesbian, Gay, Bisexual, Transgender, Queer and HIV-Affected Communities in the United States in 2010*”,⁵⁶ which provides details of violent crimes against LGBT people and proposes recommendations for civil society and the US Government to respond to. There is no doubt that Cambodia would also benefit from such a study in terms of reducing the prevalence of hate crimes against LGBT people.

⁵³ Navi Pillay, ‘UN Report’ (17 November 2011) 25.

⁵⁴ ‘Turning an enemy into an ally: SWING’s police cadet internships on HIV prevention among sex workers’ (*Pact*, undated post) <www.pactworld.org/cs/reach_news_and_media_swing_story>.

⁵⁵ National Coalition of Anti-Violence Programs (“NCAVP”), ‘About Us’ <<http://ncavp.org/about/default.aspx>>.

⁵⁶ NCAVP, ‘Hate Violence Against Lesbian, Gay, Bisexual, Transgender, Queer and HIV-Affected Communities in the United States in 2010’ (2011) <<http://avp.org/documents/NCAVPHateViolenceReport2011Finaldijfinaldits.pdf>>.

In the Philippines, LGBT Hate Crime Watch, developed by a coalition of NGOs and individuals working on ending anti-LGBT prejudice, enables people to report a hate crime or incident via a form on their website.⁵⁷ In conjunction with ongoing advocacy and legislative work, and with practical initiatives such as police training and sensitization programs, such initiatives can serve as a “watchdog” to ensure that the incidence of hate crimes does not rise.

Another way of helping to raise awareness of the human rights of LGBT people is for LGBT individuals, communities, networks, NGOs and other civil society organizations to be creative and develop eye-catching community initiatives in support of the movement. For example, CCHR designed and produced a rainbow “krama” – the traditional Cambodian scarf and a national symbol of Cambodia – and now sells them at various cultural and social venues in both Phnom Penh and Siem Reap. It is also planning to expand sales internationally in the near future, in order to raise awareness of violations of LGBT people’s rights, support victims, and increase respect for LGBT people generally.

Recommendation to RGC: Ensure that all allegations of violence against LGBT people, including sexual violence, is properly investigated and prosecuted.

Recommendation to RGC/National Assembly: Introduce anti-hate crime legislation which specifically protects LGBT people.

Recommendation to RGC/National Assembly: Debate the VCSP fully and transparently within the National Assembly and pass it as a genuine law.

Recommendation to RGC: Produce an implementation guide of the VCSP so that authorities can follow it clearly. It should target law enforcement officers, but also act as a guide for LGBT people, their communities and the general population, so that everyone can be aware of their rights.

Recommendation to Civil Society & RGC: Implement training and sensitization programs targeted at law enforcement agencies and secure national funding for community-level anti-violence programs to ensure better understanding between law enforcement agencies and LGBT people.

Recommendation to Civil Society & RGC: Introduce a system to monitor hate crimes in Cambodia.

Recommendation to Civil Society & RGC: Introduce awareness programs, including awareness of LGBT people and their rights and support the promotion and distribution of the Rainbow Krama to raise funds to support LGBT victims of human rights violations.

4.6 Education

Article 48 of the Constitution guarantees the rights to education for all children: “*The State shall protect the rights of children as stipulated in the Convention on Children, in particular, the rights to*

⁵⁷ ‘What is the Philippine LGBT Hate Crime Watch?’ (*The Philippines LGBT Hate Crime Watch*, 8 September 2011) <<http://thephilippinelgbthatecrimewatch.blogspot.com/2011/09/philippine-lgbt-hate-crime-watch.html>>.

[...] education [...]. The State shall protect children from acts that are injurious to their educational opportunities, health and welfare.”

In order to implement this constitutional provision, the RGC has introduced numerous policies and strategies over the past few years aimed at providing equitable access to education. For instance, the Education Strategic Plan for 2009–2013, adopted in September 2010, places emphasis on “ensuring that all Cambodian children and youth have equal opportunity for access to basic education, both formal and informal, without discrimination on grounds of race, skin colour, gender, languages, religion, political affiliations of parents, place of birth or social status.”⁵⁸ Unfortunately, these strategic plans and other policy documents all fail to mention SOGI specifically, despite strong indications that LGBT youth in particular tend to suffer discrimination in schools, both in Cambodia and throughout the world. As with the Constitution and the AHRD, SOGI should be included in all exhaustive lists of grounds on which discrimination must be prohibited.

According to the Ministry of Education, Youth and Sports, 19.6 percent of students at lower secondary level (grade 7 to 9) dropped out of school during the academic year 2010-2011.⁵⁹ Although there has been no study commissioned into the reasons why so many students have dropped out of school and whether this rate is connected at all with homophobic bullying, anecdotal evidence collected from a CCHR research mission to Siem Reap town in January 2012 suggests that drop-out rates are particularly high among young LGBT people. During the course of interviews in Siem Reap, students gave various reasons for dropping out, including not only economic hardship resulting from non-acceptance by their families, but also name-calling and bullying by their classmates in connection with their sexuality.

The UN recognizes that bullying of LGBT students is a serious global problem and poses a threat to the fundamental universal right to education, and, in December 2011, convened the first international consultation to address bullying of LGBT students. Bullying not only leads to students dropping out early, but also to depression, suicide and high risk behavior, such as drug use and unsafe sex.⁶⁰

On this year’s IDAHO, on 17 May 2012, the UN Educational, Scientific and Cultural Organization (“UNESCO”) launched an international campaign to address bullying of LGBT students, by bringing together UN agency experts, NGO staff, government officials and academics from around the world to share experiences and determine best practices for combatting bullying. The output, a publication on “Education Sector Responses to Homophobic Bullying”,⁶¹ provides an impetus for civil society partners, as well as UNESCO and the RGC, to strive to adopt this initiative in Cambodia. There is a wealth of good practice from around the world, documented by UNESCO, that Cambodian

⁵⁸ RGC Ministry of Education, Youth and Sports, ‘National Education Strategic Plan 2009-2013’ (20 September 2010).

⁵⁹ Ministry of Education, Youth and Sport, ‘Education Statistics and Indicators 2010 – 2011’ (March 2011) <http://moeys.gov.kh/km/component/joomdoc/doc_download/32-education-statistics-and-indicators2010-2011-kh.html>.

⁶⁰ Peter Gordon, ‘Review of Homophobic Bullying in Educational Institutions’ (Report commissioned by UNESCO and prepared for the International Consultation in Rio de Janeiro, Brazil, 6-9 December 2011, published 2012) <<http://unesdoc.unesco.org/images/0021/002157/215708e.pdf>>.

⁶¹ Available at: www.unesco.org/new/en/education/themes/leading-the-international-agenda/our-priorities-in-health-education/homophobic-bullying/.

institutions can draw upon. One successful model is the “Brazil Without Homophobia Initiative”, launched in 2004, which started as a series of conferences to initiate a general dialogue about homophobia and to coordinate engagement between State and civil society actors.⁶² This initiative is a partnership between civil society and the Brazilian Government, with young people participating in its development. Civil society organizations are the lead implementers, conducting teacher training on gender and discrimination, lending support to young people coming out, establishing a common approach to addressing negative behavior towards LGBT people, and developing broader school policy with regards to security and citizenship. The initiative has now developed into its own funded department, namely a program called “Schools without Homophobia”.

Good practice is also provided by Stonewall, a UK-based NGO which was started in 1989 to lobby against Section 28 of the Local Government Act, a piece of legislation aimed at preventing what legislators called the “promotion” of homosexuality in schools.⁶³ As part of a range of activities designed to decrease homophobic bullying in schools, Stonewall has developed a comprehensive pack of resources that teachers can order and use in schools and classrooms, including posters, postcards and stickers, as well as guides for teachers as to how to include LGBT people both in academic curricula and school life generally.⁶⁴ The resource packs are tailored to different levels of education and could be tailored to the Cambodian context in order to implement such an initiative in Cambodia.

Similarly, in the US, the Welcoming Schools Campaign, a project of the Human Rights Campaign, a US-based NGO which advocates for the rights of LGBT people, offers an inclusive approach, with tools, lessons and resources targeted at embracing family diversity, avoiding gender stereotyping, and ending bullying and name-calling in elementary schools. The project was initially piloted in a select number of schools and subsequently evaluated to determine the effectiveness of the program in achieving its goals. Most importantly, the evaluation concluded that the program had been particularly effective in terms of both determining that children of every age would benefit from discussing gender roles and expression, and increasing teachers’ abilities to discuss such topics.⁶⁵

Another successful initiative, which has already been piloted in Cambodia, is the creation of LGBT discussion groups in universities. CCHR has facilitated such workshops so as to bring LGBT issues into the mainstream of students’ lives: LGBT students were interspersed among the groups, and a speaker panel composed of both LGBT activists and normal LGBT people were invited to speak about their experiences.⁶⁶ Such workshops are a good opportunity to create LGBT-friendly environments in schools, and to increase understanding and awareness of LGBT people, their lives, their rights and the challenges that they face on a daily basis.

⁶² Peter Gordon, ‘Review of Homophobic Bullying in Education Institutions’ (2012) 28.

⁶³ Stonewall, ‘About Us’ <www.stonewall.org.uk/about_us/2532.asp>.

⁶⁴ Stonewall’s education resources are available at:

http://www.stonewall.org.uk/at_school/education_resources/default.asp.

⁶⁵ Human Rights Campaign, ‘Welcoming Schools Pilot and Evaluation Results’ (July 2010)

<www.welcomingschools.org/2012/03/evaluation-of-welcoming-schools/>.

⁶⁶ CCHR Workshop (Build Bright University, Phnom Penh, 14 September 2011)

These initiatives and ideas can provide direction for Cambodia in terms of addressing homophobic bullying. For example, a team of interested stakeholders could potentially undertake research, source ideas from international good practice, and develop actions to address homophobic bullying in Cambodia.

Recommendation to RGC/Ministry of Education, Youth and Sports: Include specific mentions of SOGI into future strategic plans and policies.

Recommendation to RGC & Civil Society: Undertake a survey to identify the extent to which LGBT youth are dropping out of schools and the reasons for it, with an eye to establishing policies that address these reasons.

Recommendation to Civil Society: Convene a working group/task force of civil society organizations, UNESCO and the Ministry of Education, Youth & Sports to establish a Cambodian “anti-bullying in schools” campaign and to develop resources for teachers to use in the classroom.

Recommendation to RGC/Ministry of Education, Youth and Sport & Civil Society: Introduce education on SOGI into the national curriculum and ensure that the curriculum takes the lives of LGBT people in Cambodia into account.

4.7 Employment

Discrimination against LGBT people in the workplace continues to be commonplace throughout the world despite obligations under international human rights laws, recognized by the RGC, to protect LGBT people from any discrimination as regards access to and maintenance of employment, including the recognition and provision of labor rights to such individuals once they are employed. The CESCR has confirmed that it “prohibits discrimination in access to and maintenance of employment on the ground of ...sexual orientation”.⁶⁷ Discrimination in employment is further prohibited by the International Labor Organization Convention concerning Elimination of Discrimination in respect of Employment and Occupation, ratified by Cambodia in 1999.⁶⁸

National laws are just as vital in protecting LGBT people’s rights in the workplace; currently, 52 countries have enacted legislation prohibiting SOGI-based discrimination in employment contexts.⁶⁹ However, the Cambodian Labor Law, enacted in 1997, fails to make explicit mention of SOGI as grounds on which discrimination is prohibited. Article 12 provides for equality in the workplace but does not effectively and explicitly protect LGBT people. Furthermore, the implementation of existing employment-related legislation – such as the LHTSE, which saw the brothels in which many LGBT individuals were working shut down in 2008 – has had a disproportionately negative impact on LGBT people. While there are of course good arguments for arguing against the existence of such establishments, many of the LGBT sex workers were forced to take to the streets and engage in

⁶⁷ UN CESCR, ‘Comment 12’ in ‘General Comment 18: The Right to Work (art. 6 of the ICESCR)’, (6 February 2006) UN Doc E/C.12/GC/18 <<http://www2.ohchr.org/english/bodies/cescr/comments.htm>>.

⁶⁸ Convention concerning Discrimination in Respect to Employment and Occupation (adopted 25 June 1958, entered into force 15 June 1960) International Labor Organization C111 <www.ilo.org/ilolex/cgi-lex/convde.pl?C111>.

⁶⁹ ILGA, ‘State-sponsored Homophobia’ (2012) 15.

criminal activity to support themselves, as they found themselves deprived of income as a consequence of the implementation of the legislation.

Although there has been no formal study undertaken on access to and maintenance of employment by LGBT people in Cambodia, a 2000 Family Health International study on the prevalence of HIV and other sexually-transmitted diseases among MSM in Phnom Penh reported that unemployment among MSM was extremely high – over half of respondents said that they were jobless.⁷⁰ Although more than a decade old now, there is little to indicate that much has changed since the study, which can still serve as a useful reference point as regards current LGBT unemployment in Cambodia. Over the course of multiple workshops and interviews conducted by CCHR with LGBT people throughout Cambodia, it has become evident that a great majority of LGBT people struggle to find and maintain employment.

LGBT people frequently face exclusion, harassment, name calling (for example “*Kteuy*” – a Khmer term often used derogatorily to refer to transgender people) and bullying in the workplace, which often leads to depression and economic hardships. A gay Cambodian man reported to CCHR that when he was open about his sexuality at work, the bullying was so severe that he was forced to leave his job. LGBT people often need to hide their identity when they work. A Cambodian lesbian told CCHR “*though my lesbians friends dress like boys, I dress like a girl because I need to find job and make money*”. Cambodian transgender women and men have reported that they are often turned down for jobs, including in restaurants and garment factories, even when they are university graduates, because of their appearance. Sometimes they are forced into the sex industry out of desperation.

There has unfortunately been little work undertaken in Cambodia to discuss SOGI issues with employers – including state organs such as the military, the police, the legislature and the judiciary – or with employer associations and unions. Such inertia is mainly due to other labor issues, including equal pay rights, taking priority over SOGI issues. However, the seriousness of SOGI-based discrimination in the workplace, and the potentially severe economic hardship that it causes people, means that it is high time that appropriate efforts and initiatives were instigated in this regard. One possible avenue for LGBT people in Cambodia is the fact that major economic growth in Cambodia is leading to increased opportunities to work with international companies, which tend to give more weight to corporate social responsibility, labor rights and general human rights, including targeting SOGI-based discrimination in the workplace.

Internationally there is good practice as regards protecting the rights of LGBT people and celebrating diversity in the workplace. In the US, for example, the Human Rights Campaign engaged major US companies in building respect for LGBT people by honoring 337 companies in a 2012 list of the “Best Places to Work for LGBT Equality” (the “LGBT List”).⁷¹ Furthermore, the Human Rights Campaign releases an annual “Corporate Equality Report”, which rates large US companies based on whether

⁷⁰ Family Health International, ‘Sexual behavior, STIs and HIV among men who have sex with men in Phnom Penh, Cambodia 2000’ (2000) 6.

⁷¹ Sheila Shayon, ‘LGBT Workplace Ranking Shows Progress in Corporate America’ (*Brandchannel*, 19 December 2011) <www.brandchannel.com/home/post/2011/12/19/HRC-2012-Corporate-Equality-Index-121911.aspx>.

their policies and benefits are LGBT-friendly. Companies which are given a 100% rating are recognized in the LGBT List and subsequently invited to apply for the Human Rights Campaign's "Award for Workplace Equality Innovation", which recognizes companies which go beyond current best practice regarding LGBT policies.⁷²

In the Philippines, the Ladlad (which means "to come out" in Tagalog) party, was recently officially recognized as an LGBT political party by the Philippines Supreme Court, and is now undertaking a number of national and community-level initiatives aimed at improving the lives of LGBT people, including with regards to employment. In addition to pushing for the reintroduction of the Anti-Discrimination Bill, Ladlad is also setting up micro-finance and livelihood projects targeted at poor and/or handicapped LGBT people.⁷³

There is much that can be done in Cambodia along these lines. CCHR's Business & Human Rights Project⁷⁴ (the "B&HR Project") monitors garment factories in Cambodia, speaks out on any human rights violations that relate to LGBT or SOGI issues (among others), and endeavors to integrate LGBT issues into conversations with businesses, promoting examples of programs piloted in other countries by way of example. The B&HR Project also provides advice on appropriate methods – including due diligence – as to how to consider effectively the rights of marginalized groups, including LGBT people.

Recommendation to RGC/National Assembly: Reform the Labor Law to include a provision to protect people from discrimination based on their SOGI.

Recommendation to Civil Society: Call on employers to respect the rights of sexual minorities by adhering to labor laws and other relevant laws that protect and promote the rights of LGBT people in their day-to-day activities and by including SOGI principles into internal rules and policies.

Recommendation to Civil Society: Build SOGI principles into wider activities with employers and employer associations including through business & human rights activities.

Recommendation to Civil Society: Empower LGBT people by raising awareness of their rights in the workplace and by ensuring that such initiatives are built on a sustainable model.

4.8 Healthcare

The right to healthcare and the right to not be discriminated against in the health sector is well documented in international law. Most importantly, the CESCR ruled that Article 12(1) of the ICESCR, which provides that State parties must "*recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health,*" further "*proscribes any*

⁷² Human Rights Campaign, Corporate Equality Index <www.hrc.org/corporate-equality-index/#.ULXYBIZe-Ys>.

⁷³ Patrick King Pascual, 'Ladlad adopts new 'open mind, open heart' campaign slogan' (VERA Files, 21 April 2012) <<http://ph.news.yahoo.com/blogs/the-inbox/ladlad-adopts-open-mind-open-heart-campaign-slogan-091949933.html>>.

⁷⁴ See CCHR, 'Business and Human Rights Project' <www.cchrcambodia.org/index_old.php?url=project_page/project_page.php&p=project_profile.php&id=3&pro=BHRP&show=show>.

*discrimination in access to health care and the underlying determinants of health, as well as to means and entitlements for their procurements, on the grounds of ... sexual orientation”.*⁷⁵ In respect of Cambodia, Article 72 of the Constitution states that *“the health of the people shall be guaranteed. The State shall give full consideration to disease prevention and medical treatment. Poor citizens shall receive free medical consultation in public hospital, infirmaries and maternities.”* Despite this and other international legal requirements to provide equitable healthcare regardless of SOGI, discrimination in the health services sector against LGBT people remains prevalent throughout Cambodia.

While reduced access to healthcare is a particularly acute problem in countries where homosexuality remains criminalized⁷⁶ – thus rendering disclosure of one’s sexual orientation potentially very dangerous⁷⁷ – a lack of adequate training of medical professionals and a lack of understanding within the medical profession of the issues faced by LGBT people result in widespread discrimination and a lack of access to adequate healthcare.⁷⁸ Discrimination – whether real or perceived – often means that LGBT people are not comfortable or able to disclose their SOGI to healthcare providers.⁷⁹ Yet in order for people to receive adequate testing and treatment, especially for HIV/AIDS and other sexually-transmitted infections (“STIs”), LGBT people need to be able to be open and honest about their sexual orientation and behaviors with medical professionals, without fear of discrimination. Furthermore, as a 2012 UN OHCHR report notes, transgender people in particular struggle to obtain appropriate healthcare, because *“gender reassignment therapy, where available, is often prohibitively expensive and State funding or insurance coverage is rarely available. Healthcare professionals are often insensitive to the needs of transgender persons and lack the necessary professional training.”*⁸⁰ Lesbians are also at disproportionate risk: widespread misconceptions that HIV transmission between women is inexistent and that gynecologists deal solely with contraception

⁷⁵ UN CESCR, ‘Comment 18’ in ‘General Comment 14: Substantive issues arising in the implementation of the International Covenant on Economic, Social and Cultural Rights,’ (11 August 2000) UN Doc E/C.12/2000/4 <www2.ohchr.org/english/bodies/cescr/comments.htm>.

⁷⁶ IGLA, ‘State-sponsored Homophobia’ 23.

⁷⁷ For instance, the Ugandan Parliament is currently considering anti-homosexuality legislation, nicknamed the “Kill the Gays Bill,” which would extend Uganda’s current penalties for consensual homosexual activity, implement life in prison for same-sex marriage, and force citizens to “denounce” suspected homosexual activity by fining and imprisoning those who do not. The bill may also implement the death penalty for “aggravated” acts. See: Senthoran Raj, ‘Love doesn’t deserve death’ (*Amnesty International Australia*, 5 December 2012) <www.amnesty.org.au/features/comments/30655/>. The bill would only make an already dangerous situation even more so: in January 2011, David Kato, an outspoken LGBT rights activist credited by many as the founder of the country’s nascent LGBT rights movement, was brutally murdered after receiving multiple death threats and being targeted in Ugandan newspapers. See: Jeffrey Gettleman, ‘Ugandan Who Spoke Up for Gay is Beaten,’ *The New York Times*, 27 January 2011 <www.nytimes.com/2011/01/28/world/africa/28uganda.html?_r=0>.

⁷⁸ In the US, for instance, research has shown significant disparities between heterosexual and LGBT adult, with LGBTs are less likely to have health insurance coverage, more likely to delay or not seek medical care and more likely to delay or not get needed prescription medicine. Reasons identified for these disparities include a reduced access to employer-provided health insurance, social stigma against LGBT people and a lack of cultural competence in the health care system. See Center for American Progress, ‘How to Close the LGBT Health Disparities Gap’ (Briefing Note) (21 December 2009) <www.americanprogress.org/wp-content/uploads/issues/2009/12/pdf/lgbt_health_disparities.pdf>.

⁷⁹ *ibid* 4.

⁸⁰ UNOHCHR, ‘Born Free and Equal: Sexual orientation and gender identity in international human rights law’ (September 2012) 51 <www.ohchr.org/Documents/Publications/BornFreeAndEqualLowRes.pdf>.

and pregnant women lead to very few lesbians receiving yearly medical tests that detect issues like STIs and certain cancers such as breast and cervical cancer.⁸¹

Despite a lack of systematic data specific to Cambodian LGBT people, studies from across the world suggest that there is also evidence that LGBT people are more prone to mental health problems and suicide. In Taiwan, for example, according to a survey conducted by the Friendly Taiwan Alliance – a coalition of several groups working on the rights of LGBT people – close to one-third of the survey respondents had contemplated suicide at least once in their lives.⁸² A 2008 report by the US-based Suicide Prevention Resource Center explained that *“a variety of studies indicate that LGB [sic] youth are nearly one and a half to three times more likely to have reported suicidal ideation than non-LGB youth [and that] research from several sources also revealed that LGB youth are nearly one and a half to seven times more likely than non-LGB youth to have reported attempting suicide. These studies do not include transgender youth.”*⁸³ In many of these cases, depression and thoughts of suicide stem from years of bullying, verbal abuse, social isolation and expectations to fit in to family and cultural traditions.

In Cambodia, these issues are compounded by a health service sector that is often unable to provide adequate care to many Cambodians. The 2012 Health Service Delivery Profile, compiled by the World Health Organization and the Cambodian Ministry of Health, notes that in 2010, *“only 43% of health centres provided the full minimum package of services [and that] constraints include the absence of key personnel, the inadequacy of essential drugs support and the absence of other operational guideline requirements.”*⁸⁴ According to a report by the International Planned Parenthood Federation (“IPPF”) on HIV prevention, HIV-positive MSM and transgender people in Cambodia face double challenges due to stigma by family, community and health services.⁸⁵

Thailand offers good practice as regards initiatives which support equal access for LGBT people. The Anjaree Group,⁸⁶ the first of its kind, is an activist group set up in Thailand in 1986 to fight for the rights of Thai lesbians, and was memorably involved in pressuring the Thai Ministry of Health in 2002 to issue an official public statement that homosexuality was not a mental illness. The Anjaree Group continues to work on this issue, working with the Ministry of Health to develop and organize trainings for psychiatrists and other professionals working in the mental health fields to ensure that medical professionals do not respond with prejudice when working with LGBT individuals.

In the US, the Human Rights Campaign undertakes a series of activities centered on healthcare for LGBT Americans, including surveying health providers as to their policies and practices as they relate

⁸¹ International Lesbian, Gay, Bisexual, Trans and Intersex Association, ‘Lesbians’ health: myths and realities’ (September 2011) <www.iglhrc.org/binary-data/ATTACHMENT/file/000/000/539-1.pdf>.

⁸² Edmund Broch, ‘Taiwan: Almost one in five gay people have attempted suicide’ (*Pink News*, 17 April 2012) <www.pinknews.co.uk/2012/04/17/taiwan-almost-one-in-five-gay-people-have-attempted-suicide/>.

⁸³ Suicide Prevention Resource Center, ‘Suicide Risk and Prevention for Lesbian, Gay, Bisexual, and Transgender Youth’ (2008) <www.sprc.org/sites/sprc.org/files/library/SPRC_LGBT_Youth.pdf>.

⁸⁴ World Health Organization, ‘Health Service Delivery Profile: Cambodia 2012’ (2012) <www.wpro.who.int/health_services/service_delivery_profile_cambodia.pdf>.

⁸⁵ International Planned Parenthood Federation (IPPF), ‘HIV Prevention Report Card for MSM and Transgender People: Cambodia’ (14 September 2011) <www.msngf.org/index.cfm/id/11/aid/4648>.

⁸⁶ <www.astraeafoundation.org/grants/meet-a-grantee/anjaree>.

to LGBT patients and their families.⁸⁷ In addition to helping identify emerging best practices for LGBT-sensitive health services, the Human Rights Campaign’s activities also involve working with healthcare providers to ensure that their services incorporate these best practices. Also in the US, the Gay and Lesbian Medical Association has developed guidelines for the care of LGBT people for medical professionals seeking to create clinical environments that are welcoming to LGBT people.⁸⁸ These guidelines should be adapted to the Cambodia context.

With regards to supporting access to healthcare for LGBT people, and especially those living with HIV/AIDS, the Rainbow Sky Association of Thailand, which works on prevention, education and support for LGBT Thais living with HIV/AIDS, has spearheaded projects such as: a community advisory board, workshops for people living with HIV/AIDS, training for new community organizations and individuals who want to assist the LGBT community, free telephone counseling for people with HIV/AIDS, community centers to provide a place for LGBT people to socialize with each other, “Life Skills Camp Initiative” (a weekend camp for young MSM), and “Miss Queen Rainbow Sky 2012” pageant for transgender people.⁸⁹

In Cambodia, the Positive MSM Network pilot project works with a network of 300 gay men and transgender people living with HIV/AIDS – most of whom are homeless and very poor and require support to find accommodation – and advocates for those members who face unequal access to healthcare due to healthcare providers’ lack of understanding of their specific needs. The project has reported a huge gap in services as regards their members, and strives to address that gap by approaching hospitals and clinics to discuss with and educate service providers as to the specific needs of LGBT patients. The project works to extend the network by visiting new communities and towns. A key area of improvement for the lives of MSM and transgender people living with HIV would be to create homestays or hostels where they are able to be treated and provided with vocational training to enable them to secure employment.

Recommendation to RGC/Ministry of Health: Introduce guidelines and training for health service workers to better protect the healthcare of LGBT people.

Recommendation to RGC/Ministry of Health: Conduct awareness-raising campaigns aimed at ensuring that LGBT people receive medical care, both to sensitize health workers to the needs of LGBT patients and to ensure that LGBT patients understand the necessity of regular health check-ups.

Recommendation to RGC/Ministry of Health & Civil Society: Work in partnership to survey the mental health of Cambodian LGBT people, identify best practices to support those with problems, and raise awareness of their specific needs with health service workers.

⁸⁷ Human Rights Campaign, Healthcare Equality Index <www.hrc.org/hei#.ULXIPIZe-Yt>.

⁸⁸ Gay and Lesbian Medical Association, ‘Guidelines for Care of Lesbian, Gay, Bisexual and Transgender Patients’ (2006) <[www.glma.org/ data/n_0001/resources/live/GLMA%20guidelines%202006%20FINAL.pdf](http://www.glma.org/data/n_0001/resources/live/GLMA%20guidelines%202006%20FINAL.pdf)>.

⁸⁹ <<http://old.msgmf.org/MSMGFdirectory/MSMGFbysize/RainbowSkyAssociationofThailand.htm>>.

4.9 Media

Although media can play an important role in raising awareness of human rights, including LGBT issues, it can also have a negative impact if it conveys negative images of the LGBT community. Too often, negative portrayals of LGBT people in the media – particularly on television where stereotypical characters appear with alarming regularity – tend to have negative repercussions for LGBT people and can lead to further discrimination.

In Cambodia, although LGBT issues are increasingly receiving attention in the national media, such attention is unfortunately not always positive. For instance, a 2006 horror film called “*Kmouch Prapun Ah Tuy*” (The Ghost of Ah Tuy’s Wife) included an episode showing a married woman having a lesbian affair with another girl and subsequently being “cured” of her lesbianism by being raped.⁹⁰ In contrast, in 2009, a film called “Who Am I?”, written and directed by Phoan Phuong Bopha, was the first film to positively depict a homosexual relationship in Cambodia and was shown dozens of times on CTN TV station.⁹¹ Similarly, the same year, the first lesbian-related novel “*Gentleman’s Love*” by Chan Sophal was published, which demonstrates the increasing preponderance of positive images of LGBT people in the media.

Civil society organizations also have an important role to play to ensure that the media portrays LGBT people in a positive light. In Thailand, the Bangkok Rainbow Organization (“BRO”) not only provides advice to local and foreign media as to how to portray LGBT issues in a positive light, but also lobbies against TV programs and commercials/advertisements that portray the LGBT community in a negative light. BRO also holds the “Rainbow Media Awards Presentation”, which recognizes media groups that actively support the LGBT community.⁹² Similarly, in the US, the Gay and Lesbian Alliance Against Defamation issues a yearly “Network Responsibility Index”, which provides an “*evaluation of the quantity, quality and diversity of images of lesbian, gay, bisexual and transgender (LGBT) people on television [in the US]*”.⁹³

Moreover, high profile LGBT celebrities and other famous people who support the rights of LGBT people can help change public perceptions, act as role models, and lead to a change in people’s attitudes. In Cambodia, the recently introduced Anachak Dara Awards included a category for Best Gay Actor. In February 2012, this award – won by “Miss Poppy”, a transgender actress – was covered in the media, thereby providing a platform for Miss Poppy to advocate for the rights of LGBT people using her personal experience: “*I felt so hurt by the discrimination and scorn towards me. It led me to rebel and escape from being gay, which is considered by many people as being useless.*”⁹⁴

⁹⁰ Ly Kimsrun (writer & director) ‘*KmouchPrapun Ah Tuy*’ (2006)

⁹¹ Tivea Koam and Menghourng, ‘Same same ... but married’ (*The Phnom Penh Post: LIFT*, 22 September 2010).

⁹² Bangkok Rainbow Organization, ‘About Us’ <www.bangkokrainbow.org/About_Us.html>.

⁹³ Gay and Lesbian Alliance Against Defamation, ‘Network Responsibility Index 2011 – 2012’ (August 2012) <www.glaad.org/publications/nri>.

⁹⁴ Transgender actress appeals for halt to discrimination after winning Best Gay Actor award’ (*The Cambodia Herald*, 29 February 2012)

<www.thecambodiaherald.com/cambodia/detail/1?page=14&token=ZDYxM2MxYjI0NWUwYWUwZmIwYjA1ZjE3MGZiMTA5>.

Another famous Cambodian transgender superstar, Miss Cindy, has supported LGBT awareness campaigns on a more practical level: Miss Cindy attended a CCHR LGBT workshop to inspire and motivate participants to fight discrimination by sharing her experiences. She has used her celebrity status to urge the RGC to amend relevant legislation so that it protects the right of LGBT people.⁹⁵ Support from such advocates is extremely powerful and should be encouraged and supported at every opportunity.

Celebrities visible on an international level have also been successful in raising awareness and increasing public support for LGBT people. For instance, in 2011, singer Lady Ga Ga, who has been vocal about her support for LGBT people for many years, launched the “Born This Way Foundation”, which aims to address the challenges faced by LGBT youth, such as homophobic bullying, by creating “a safe community that helps connect young people with the skills and opportunities they need to build a kinder, braver world”.⁹⁶ Similarly, singer Madonna was recently sued by conservative Russian activists for urging the audience to “show your love and appreciation to the gay community” during an August 2012 concert in St Petersburg, where a law was passed earlier in the year making it illegal to “promote” homosexuality to minors.⁹⁷

The Society of Transsexual Women of the Philippines (“STRAP”)⁹⁸ has maximized publicity for its LGBT campaigns by means of the support of high profile transgender people. In 2010, STRAP held the Sybil Awards as a way to honor individuals and organizations who combat SOGI-based intolerance and discrimination. The awards are named after the incarnation of the goddess or “Great Mother” Sybil, whose worship by transgender priestesses dates back to Ancient Greece and even earlier.⁹⁹

The Colors Rainbow Group – a Thailand-based group which brings together LGBT community organizations across Burma – provides a good example of a vibrant cohesive network. The Colors Rainbow Group uses a range of media to disseminate information across the diverse groups, including the Rainbow Magazine, the Rainbow Website and the Rainbow Online TV.¹⁰⁰

There is a pressing need to disseminate LGBT-related information around Cambodia, to target LGBT people and networks across the country – as well as the wider public. In Cambodia, emphasis needs to be placed on radio shows, because of low literacy rates, heavy censorship of national state-owned television channels, and the low rate of internet penetration in Cambodia, particularly in the countryside.¹⁰¹ CCHR currently airs a bi-monthly radio program on LGBT issues, which includes a live phone-in session that has successfully led to open debate on various LGBT issues. CCHR also issues regular press releases which are reported upon in the media, for example, a press release calling for

⁹⁵ CCHR Workshop (Phnom Penh, 18 December 2011)

⁹⁶ Born This Way Foundation, ‘Our Mission’ <<http://bornthiswayfoundation.org/pages/our-mission/>>.

⁹⁷ Julie Bolcer, ‘Russian Gay Rights Speech Case Against Madonna Dismissed’ (*The Advocate*, 23 November 2012) <www.advocate.com/news/world-news/2012/11/23/russian-gay-rights-speech-case-against-madonna-dismissed>.

⁹⁸ <www.tsphilippines.com/aboutstrap.htm>.

⁹⁹ Naomi Fontanos, ‘STRAP turns 10: A decade of support, sorority and sisterhood’ (*STRAP blog*, 26 February 2012) <<http://strapmanila.blogspot.com/2012/02/strap-turns-10-decade-of-support.html>>.

¹⁰⁰ Rainbow Colors Group <www.colorsrainbow.com/>.

¹⁰¹ As of September 2012, internet penetration in Cambodia stands at approximately 3.1%. Penetration is rapidly increasing however: the World Bank reports that internet users increased from 178,142 in 2010 to 443,461 in 2011. Joshua Wilwohl, ‘Number of Internet Users More Than Doubled Last Year’ *The Cambodia Daily*, 25 September 2012.

equality and the right to non-discrimination for LGBT people in the workplace to mark International Labor Day 2012.¹⁰² This press release was followed up with stories in five local publications, including an interview with Hem Sokly, an ex-Project Coordinator of the SOGI Project, in *The Cambodia Daily*, which demonstrates the positive impact of such media advocacy. Since 2009, organizations in Cambodia – including CCHR – have organized a series of events each May to celebrate Gay Pride Week and raise awareness in Cambodia. The 2012 Pride Week showcased film screenings, art exhibitions, parties, Buddhist blessings, workshops and roundtable discussions, and more, in both Phnom Penh and Siem Reap.¹⁰³

To increase its advocacy and to provide a resource for LGBT networks in Cambodia, CCHR will be launching the “Rainbow Khmer Portal” (the “Portal”) for Cambodia in early 2013. The Portal will serve as a practical tool for information dissemination, and the aim is for the Cambodian LGBT community to take ownership and contribute to its development. Furthermore, online television programming has tremendous potential for the development of the Portal: short informative videos, live broadcasts of radio talk shows and roundtable discussions, news programs, documentaries, and other types of videos related to the rights of LGBT people could be broadcast via the Portal in order to increase access to information about key LGBT issues. In addition, a publication could complement the Portal to reach those LGBT activists, individuals and communities without access to the internet.

Recommendation to Civil Society: Work closely with media outlets, including television stations, newspapers, magazines and radio stations, to promote positive and empowering images of LGBT people and issues, both in the news/non-fiction and fictional productions.

Recommendation to Civil Society: Recruit high-profile LGBT people or supporters of LGBT issues to act as advocates and work with the media to highlight their support.

Recommendation to Civil Society: Create an awards program to honor individuals and organizations who work to combat discrimination against LGBT people.

Recommendation to Civil Society: Strengthen and integrate LGBT networks’ media activity in Cambodia including by developing a regular magazine, increasing the number of press releases issued regarding LGBT Network activities and current events, further developing the Rainbow Khmer Portal, and producing online television or films.

¹⁰² CCHR, ‘CCHR calls for equality and non-discrimination for lesbians, gays, bisexuals and transgender people (“LGBT”) in employment’ (Press Release) (29 April 2012)

<www.cchrcambodia.org/media/files/press_release/245_202ccfeandflgbatp%28%29iee_en.pdf>.

¹⁰³ See the agenda at: www.camboguide.com/lifestyle/gay-cambodia/gay-pride-cambodia-2012-agenda.

5 Conclusion

Changing or enacting relevant legislation can go a long way towards changing public perceptions and stereotypes of LGBT people and thereby initiating positive change in the lives of LGBT people who continue to face discrimination in their daily lives. As Cambodia comes to the end of its year as Chair of ASEAN, now is an excellent opportunity for the RGC to take a lead and influence governments and public opinion in the region as a whole.

To establish a truly equal society, where everyone can be who they want to be and not suffer the consequences, there is an urgent need to establish legal mechanisms that fully protect and promote the human rights of LGBT people in Cambodia. The RGC can amend the Constitution, as well as enact new legislation that specifically addresses the rights of LGBT people and criminalizes SOGI-based discrimination and hate crimes. Furthermore, the RGC needs to take appropriate steps to ensure that current legislation or policies are not used to discriminate against LGBT people. In addition to enacting relevant anti-discrimination legislation – including effective mechanisms to implement such laws – the RGC can help to raise awareness of LGBT people and issues, and initiate education for officials and authorities who misuse current legislation.

There is an emergent LGBT network in Cambodia undertaking positive activities to fight for the rights of LGBT people. This network would benefit from further growth and strengthening through increased resources, membership and capacity-building. A strong cohesive LGBT network that espouses a shared vision can help drive change in society, advocate to reduce discrimination, and promote respect for LGBT people and their rights. This network can be supported through integration into regional and international efforts to promote and protect the rights of LGBT people, with more training – including vocational training – and shared resources.

Civil society organizations, including LGBT NGOs as well as NGOs from other sectors, including health, education and media, are well-placed to design and implement practical initiatives to drive change. Key areas to focus on should include working with (1) families to reduce stigma and increase acceptance, (2) employers and businesses to incorporate policies guaranteeing equality in the workplace, (3) the media to increase positive images and stories of LGBT people – using role models and award systems – and (4) health care services to sensitize and train health workers to provide better and more tailored care to LGBT patients.

Finally, changing attitudes is key, something which can be achieved most successfully through education campaigns, including not only advocacy and media campaigns aimed at the general public but also increasing awareness of LGBT people and their rights in schools and universities. Ultimately, action is required by both the RGC and civil society to address discrimination against LGBT people, so that LGBT people can take their rightful place alongside all other people in Cambodia, and feel sufficiently empowered and protected that they can fully contribute to the economic, social and cultural development of the country. By embracing the values of tolerance and diversity, Cambodia will be a richer and more vibrant country, and establish itself as a beacon in the region.

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Appendix: NGOs Working on LGBT Rights in Cambodia

Bandanh Chaktomuk (“BC”)

Cambodia People Living with HIV/AIDS Network (“CPN+”)

Cooperation for Social Services and Development (“CSSD”)

KANHNHA

KHEMARA

Khmer Development of Freedom Organization (“KDFO”)

Khmer Women’s Cooperation for Development (“KWCD”)

Men’s Health Social Service (“MHSS”)

Men Health Cambodia (“MHC”)

Network Men-Women Development Cambodian (“CNMWD”)

Rainbow Community Kampuchea (“RoCK”)

Reproductive Health Association of Cambodia (“RHAC”)

Women’s Network for Unity (“WNU”)