

**Fact Sheet: Legal Gender Recognition in Cambodia**

**Snapshot:** In Cambodia, there is no legislation which explicitly enables transgender people to receive legal and administrative recognition of their self-defined gender identity. However, there is no specific legal provision prohibiting it, either. The lack of clarity surrounding the present legal situation leaves transgender Cambodians subject to the individual decision of relevant officials. While some transgender Cambodians are issued with ID cards conforming to self-defined gender identity, most local officials deny such requests, for fear of breaking the law. It is necessary that this legal situation be clarified, in order that all transgender Cambodians can have their right to legal gender recognition, and related rights, fulfilled.

**1. Introduction**

The International Transgender Day of Visibility 2018 took place on 31 March 2018. To mark this occasion, this fact sheet provides an overview of the issue of legal recognition of self-defined gender identity (or ‘legal gender recognition’) for transgender and gender non-conforming people in Cambodia. This fact sheet is produced by the Cambodian Center for Human Rights (“CCHR”). CCHR is a non-aligned, independent non-governmental organization (“NGO”) that works to promote and protect democracy and respect for human rights – including lesbian, gay, bisexual, transgender, intersex, and queer (“LGBTIQ”) rights - throughout the Kingdom of Cambodia (“Cambodia”).

***What does the term “transgender” mean?***

The term ‘transgender’ (or ‘trans’) is used to describe individuals whose gender identity does not correlate with the sex they were assigned at birth. A transgender woman, for example, is an individual who identifies, feels, and typically lives as a woman but was assigned the male sex at birth. A transgender person will typically live and present themselves through their gender identity rather than the sex they were assigned at birth, and many will opt to permanently transition with medical or surgical procedures in a process known as gender reassignment.

***What is “legal gender recognition”?***

The legal recognition of gender identity requires that legislative and administrative procedures are put in place which enable transgender people’s self-defined gender to be reflected on their official identification documents, such as birth certificates, ID cards, passports and drivers’ licenses. The purpose of legal gender recognition is to overcome the gap between the stated sex on official identification (generally the sex assigned at birth) and a trans person’s actual gender identity, by aligning the official and self-defined genders. According to international human rights standards, gender reassignment surgery should never be a pre-requisite for accessing legal gender recognition.

Transgender persons face high levels of discrimination and exclusion and they are often not accorded the same respect, dignity or security as cisgender people<sup>1</sup>. This is exacerbated when their official documents do not match their gender identity, or when they have to go through extraneous procedures to alter them. The denial of legal gender recognition can result in the denial of a wide range of other human rights, including the right to health, the right to work, and the right to earn an adequate standard of living, as trans people without legal gender recognition are often excluded

---

<sup>1</sup> United Nations Development Program, ‘Legal Gender Recognition: A Multi-Country Legal and Policy Review in Asia’, 2017, page 23 .

from employment, education, health services, and banking facilities<sup>2</sup>. This exclusion even touches upon daily activities involving the most basic uses of ID, such as entering some buildings or receiving mail.

Globally, there has been an increasing movement towards legal gender recognition for transgender people, based on international human rights standards. Many states have introduced gender recognition laws, including Argentina, Colombia, Ireland, Malta, Denmark, Norway, and significantly, Viet Nam. Viet Nam introduced Article 37 of their Civil Code<sup>3</sup> in January 2017, allowing for legal recognition of gender identity on official documentation<sup>4</sup>. Argentina and Malta's gender recognition laws are seen as model systems, as they affirm the right of transgender people to self-determination of legal gender identity, without any requirement of medical or psychological interventions or diagnosis.

At the United Nations level, there has been significant discussion of legal gender recognition. Twelve UN agencies including the OHCHR, UNCHR, UN Women and the WHO released a joint statement in September 2015 specifically calling for *“legal recognition of gender identity without abusive requirements”*<sup>5</sup>. The UN High Commissioner for Human Rights, reporting to the Human Rights Council, has emphasized that States must respect the identity of trans persons by recognizing their self-identified gender to fulfill international human rights obligations, and this should be reflected on legal identity documents without additional requirements that may further violate human rights<sup>6</sup>.

## 2. Legal Gender Recognition in Cambodia

In Cambodia, there is no legislation which explicitly allows trans people to receive legal and administrative recognition of their self-defined gender identity. However, there is no specific legal provision prohibiting it, either. The lack of clarity surrounding the present legal situation leaves transgender Cambodians subject to the individual decision of relevant officials. While some transgender Cambodians are issued with ID cards conforming to self-defined gender identity, most local officials deny such requests, for fear of breaking the law. It is necessary that this legal situation be clarified, in order that all transgender Cambodians can have their right to legal gender recognition fulfilled.

### 2.1 Administrative and Technical Procedures regarding ID Cards in Cambodia:

- *Sub-Decree On Khmer Nationality Identity Cards, No 36 ANK/BK/ JULY 26, 1996*
- *Prakas 6375 on Procedure and Conditions for Requesting, Providing and Using Cambodian ID Cards, Ministry of Interior, 29 July 2015*

The issuance of identity cards is governed by Sub-Decree 36 ANK/BK and Prakas 6375. Applicants must go in person to the police station in their commune or district, with the following documents:

---

<sup>2</sup> Ibid, page 27.

<sup>3</sup> Civil Code and Decree No. 88/2008/ND-CP, Article 37

<sup>4</sup> International Lesbian, Gay, Bisexual, Trans and Intersex Association, 'Trans Legal Mapping Report', November 2017, page 49.

<sup>5</sup> ILO; OHCHR; UNAIDS; UNDP; UNESCO; UNFPA; UNHR; UNICEF; UNODC; UN Women; WFP; WHO, 'Discrimination and violence against individuals based on their sexual orientation and gender identity', 4 May 2015, A/HRC/29/23

<sup>6</sup> Report of the UN High Commissioner for Human Rights, 'Discrimination and violence against individuals based on their sexual orientation and gender identity'. (A/HRC/29/23), 2015, para. 79 (i).

- Birth certificate or old Khmer National ID card, or;
- Final judgment of the court which states that such persons were born from father or mothers who have Khmer nationality; or
- Documents or evidence proving that the concerned persons were born from father or mothers who have Khmer nationality; and
- Residence book or Family book.

The 2015 Prakas determined that applicants must complete the application form and pay a fee, currently set at 10, 000 Riel. However, the charge for identity cards, residence books, family books and a number of other administrative procedures were removed from the requirement by Prakas 14414 in December 2016.<sup>7</sup>

The 2015 Prakas suggests a birth certificate can be provided as proof of identity when applying for an ID card; however, it does not state that the personal details such as sex/gender in the ID card must be identical to those in the birth certificate. Further, the 1995 Sub-Decree at Article 4 provides a list of eight criteria which should be “*considered*” by the “*competent authority*”. Most of the criteria relate to proof of nationality, while “*birth certificates*” is also listed. Further, Article 8 of the Sub-Decree includes a punishment for officials who wrongfully issue ID cards to individuals who are not truly of Khmer nationality, but it makes no mention of any punishment related to the recording of gender on ID cards.

It should be noted that Cambodia has a positive obligation under international human rights law to ensure that domestic laws adequately protect the rights contained in the human rights treaties that Cambodia has ratified.<sup>8</sup> However, as the issue of changing sex or gender on ID cards is currently unaddressed by the relevant governing domestic regulations, this gap in the law should be interpreted in line with constitutional and international human rights standards, as outlined below.

### 3. Applicable Human Rights Law

Article 31 of the Constitution of the Kingdom of Cambodia (“the Constitution”) gives constitutional status to Cambodia’s international human rights obligations<sup>9</sup>. The direct applicability of these international legal provisions was recognized by a decision of the Constitutional Council of the Kingdom of Cambodia dated 10 July 2007<sup>10</sup>. This includes the Universal Declaration of Human Rights (“UDHR”)<sup>11</sup>, the International Covenant on Civil and Political Rights (“ICCPR”)<sup>12</sup> and the International Covenant on Economic, Social and Cultural Rights (“ICESCR”)<sup>13</sup>. Cambodia is bound to apply in good faith those international treaties to which it is a party, and it cannot rely on provisions of international law to justify a failure to meet treaty obligations<sup>14</sup>.

#### 3.1 The Right to Legal Gender Recognition

The right to legal gender recognition is not explicitly listed as a stand-alone right in any of the international human rights treaties. Rather, its realization is required in order to fulfill a range of other specifically protected human rights, including the right to be free from discrimination, the

<sup>7</sup> Inter-ministerial Prakas No 14414 on the Provision of Administration Fees of the Ministry of Interior adopted on 30 December 2016.

<sup>8</sup> See: UN Human Rights Committee General Comment No. 31, 29 March 2004, paras. 8, 13. Available at: <https://bit.ly/1OI6Pbl>

<sup>9</sup> Kingdom of Cambodia, ‘Constitution of the Kingdom of Cambodia’

<sup>10</sup> Kingdom of Cambodia, ‘The Constitutional Council’, 10 July 2008, Decision no. 092/003/2007

<sup>11</sup> ‘Universal Declaration of Human Rights’, United Nations General Assembly, adopted 10 December 1948.

<sup>12</sup> ‘International Covenant on Civil and Political Rights’, United Nations General Assembly, adopted 1966. Ratified by Cambodia in 1992.

<sup>13</sup> ‘International Covenant on Economic, Social and Cultural Rights’, adopted 1966. Ratified by Cambodia in 1992.

<sup>14</sup> Vienna Convention Law of Treaties, Art 27

right to self-determination, the right to recognition as person before the law (each outlined below). Principle 31 of the Yogyakarta Principles - the International Principles and State Obligations on the Application of International Human Rights Law in Relation to SOGI - outlines the scope of the right of legal gender recognition based on binding international human rights law. It states:

*“Everyone has the right to obtain identity documents, including birth certificates, regardless of sexual orientation, gender identity, gender expression or sex characteristics. Everyone has the right to change gendered information in such documents while gendered information is included in them”<sup>15</sup>.*

The principle also outlines that mechanisms to legally recognize a person’s self-defined gender identity should be *“quick, transparent and accessible”*, and should not be based on required *“medical or psychological interventions, a psycho-medical diagnosis, a minimum or maximum age, economic status, health, marital or parental status, or any other third party opinion”*.

In a 2017 Report, the UN’s Independent Expert on SOGI specified that not being able to have one’s self identified gender recognized by the State *“leads to violence and discrimination”<sup>16</sup>*. He recommended that States need to *“move towards legal recognition of self-defined gender identity without coerced methods”*, citing Argentina and Malta as model examples<sup>17</sup>.

UN treaty bodies have expressed concern regarding legal gender recognition in their recommendations to specific countries. The Human Rights Committee has recently made recommendations to Slovakia, Serbia, and South Korea regarding implementing legal gender recognition procedures.<sup>18</sup> The Committee on the Elimination of Discrimination against Women (“CEDAW”) has called for legal gender recognition procedures that are *“expeditious, transparent and accessible”*, and numerous treaty bodies including the Human Rights Committee, the Committee against Torture and CEDAW have recommended removing *“psychiatric assessments, sterilization or surgery”<sup>19</sup>* requirements as a precondition for obtaining legal recognition of self-defined gender.

### **3.2 The Right to Equality and Non-Discrimination**

#### *Cambodian Constitution*

The Constitution, at the top of the hierarchy of laws in Cambodia, makes no direct mention of LGBT people. Article 31, however, does guarantee equal rights to all Cambodians regardless of personal characteristics, stating 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... or other status.”*

---

<sup>15</sup> Yogyakarta Principles Plus 10, adopted 10 November 2017

<sup>16</sup> UNHRC, ‘Report by Independent Expert on the protection against violence and discrimination based on sexual orientation and gender identity’ (19 April 2017), A/HRC/35/36 at para 57

<sup>17</sup> Ibid.

<sup>18</sup> UN Human Rights Committee, ‘Concluding observations on third period review of Serbia’ CCPR/C/SRB/CO/3; UN Human Rights Committee, ‘Concluding observations on the fourth report on the Republic of Korea’ CCPR/C/SVK/CO/4; UN Human Rights Committee ‘Concluding observations on the fourth periodic report on the Republic of Korea’ CCPR/C/KOR/CO/4.

<sup>19</sup> CEDAW/C/BEL/CO/7

*ICCPR*

Article 2: *“1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”*

Article 3: *“The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.”*

Article 26: *“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”*

*UDHR*

Article 1: *“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”*

Article 2: *“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”*

Article 7: *“All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of the Declaration and against any incitement to such discrimination.”*

### **3.3 The Right to Self-Determination, the Right to Develop Personality, and the Right to Recognition as a Person before the Law**

Article 1 of both the ICCPR and ICESCR establishes that all people have the right to self-determination, to freely determine their political status and pursue their economic, social and cultural development<sup>20</sup>. Refusing legal recognition of self-defined gender identity on official documentation undermines the autonomy of the individual and inhibits their exercise of personal choice. In addition, Article 29 of the UDHR outlines that everyone is entitled to the *“free and full development of [their] personality”*. As clarified in principle three of the Yogyakarta Principles, which codifies international principles on sexual orientation, gender identity and human rights, each person’s self-defined sexual orientation or gender identity is *“integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom”*<sup>21</sup>.

Article 16 of the ICCPR states that everyone shall have the *“right to recognition everywhere as a person before the law”*. This right is also reflected in Article 6 of the UDHR, and Yogyakarta Principle

<sup>20</sup> ‘International Covenant on Economic, Social and Cultural Rights’, United Nations General Assembly, adopted 16 December 1966

<sup>21</sup> Yogyakarta Principles Plus 10

3. The inability of transgender people to be recognized true to their fundamental identity in official documents denies the full enjoyment of this right.

### **3.4 Right to Physical and Psychological integrity**

Principle 32 of the Yogyakarta Principles outlines the right to bodily and mental integrity, stating, “*Everyone has the right to bodily and mental integrity, autonomy, and self-determination irrespective of sexual orientation, gender identity, gender expression or sex characteristics*”.

The European Court of Human Rights (ECHR) found in *Garçon and Nicot v France* in April 2017 that requiring sterilization or other medical procedures as a prerequisite to legal gender recognition violates an individual’s right to physical integrity. Similarly, the UN Committee against Torture recommended to Hong Kong “*removing abusive preconditions for the legal recognition of gender identity*” such as sterilization or other medical requirements, in order to “*guarantee respect for the autonomy and physical and psychological integrity of transgender*” persons<sup>22</sup>.

## **4. Relevant International Judicial Decisions**

Nepal: In 2007, in the first decision of its kind in the Asia region, the Supreme Court in *Pant v Nepal* paved the way for transgender persons to access name changes along with gender marker changes, based on the sole criterion of an individual’s “self-feeling”, citing international human rights standards<sup>23</sup>.

India: India’s Supreme Court in 2014 upheld the right of transgender individuals to identify as either male, female or a third gender in the landmark case *NALSA v Union of India*<sup>24</sup>. Citing the Yogyakarta Principles, the NALSA judgment held that an individual’s self-identification was the principle governing legal gender recognition, rather than any other eligibility requirements such as surgeries / medical requirements. It is now possible in India to change gender markers to self-identified genders without additional requirements on numerous forms of ID, including Aadar cards (a unique, official identification system in India), voter IDs and tax identification cards, however not on passports.

ECHR: In April 2017, the European Court of Human Rights found that requiring a medical procedure or sterilization as a prerequisite for recognition of gender identity infringes the right to respect one’s physical integrity<sup>25</sup>. This follows a string of Court decisions developing a positive obligation on member states to provide for legal gender recognition<sup>26</sup>.

## **6. Conclusion & Recommendations**

There is no legal prohibition against authorities in Cambodia issuing ID cards in line with an individual’s self-defined gender identity. However, the lack of a law explicitly enabling legal gender recognition effectively denies many transgender Cambodians a range of their fundamental human

---

<sup>22</sup> CAT/C/CHN-HKG/CO/5

<sup>23</sup> Sunil Babu Pant and Others v. Nepal Government and Others (2007), Writ No. 917 of 2064 BS (2007). See also: UNDP, ‘Legal Gender Recognition: A Multi-Country Legal and Policy Review in Asia’, 2017, page 33.

<sup>24</sup> *National Legal Services Authority v. Union of India* (2014) 5 SCC. 438. See also UNDP pg 33

<sup>25</sup> A.P (no. 79885/12), *Garçon and Nicot v France*, 6 April 2017

<sup>26</sup> *Christine Goodwin v the United Kingdom* (11 July 2002), *Grant v the United Kingdom* (23 May 2006), TGEU Legal Gender Recognition in Europe pg 12

rights. As such, in the absence of a gender recognition law, local authorities should be guided by international human rights standards, and issue ID cards conforming to self-defined gender identity when such requests are received. Furthermore, the RGC should take action to introduce a gender recognition law without delay.

### **Recommendation to the Royal Government of Cambodia:**

- 1.1 Introduce a Gender Recognition Law, which guarantees:
  - 1.1.1 That every person who has reached 15 (mirroring the age of sexual consent) years of age has the right to have their self-defined gender identity recognized on all official documents issued by the state, including ID cards, family books, passports, etc.;
  - 1.1.2 That any child below the age of 15 has the right to have their self-defined gender identity recognized on all official documents issued by the state, with the consent of their parents or guardians;
  - 1.1.3 That any transgender person seeking legal recognition of their gender identity can do so simply by applying through an administrative process (possibly governed by the ID Card department of the Ministry of Interior);
  - 1.1.4 That no transgender people will be subject to medicalization or diagnosis of any condition as a precondition for legal gender recognition;
  - 1.1.5 That no transgender person will be forced to undergo any form of medical treatment or gender reassignment surgery as a precondition for legal gender recognition;
  - 1.1.6 That gender recognition will extend to all other areas of the law, including transgender people's right to marry their husband or wife.

### **Recommendation to Commune Councils and local officials:**

- 2.1 Ensure that all transgender applicants for ID cards are issued with cards which identify them according to their self-defined gender identity.

**For further information, please contact CCHR's SOGI Project Coordinator Nuon Sidara via email at [nuon.sidara@cchrcambodia.org](mailto:nuon.sidara@cchrcambodia.org) or via telephone at +855 97 9666 566**