CCHR Briefing Note – August 2014

Discrimination against LGBT people in the Cambodian legal framework

Executive summary

Although domestic law in the Kingdom of Cambodia ("Cambodia") does not criminalize homosexuality, lesbian, gay, bisexual and transgender ("LGBT") Cambodians face discrimination and abuse due to their sexual orientation and gender identity ("SOGI"), both at the hands of the State and within society in general. This is due in large part to the legal framework, which does not specifically protect LGBT people, failing to include SOGI in the list of prohibited grounds for discrimination. This impacts the way in which LGBT Cambodians are seen by society and contributes to fueling discrimination and marginalization.

The first section of this Briefing Note provides a brief introduction to the way SOGI is perceived in Cambodia. The second section looks at the low level of protection Cambodian laws offer to LGBT people, and the third section examines the level of discrimination and abuses experienced by LGBT people. The Briefing Note concludes with recommendations to the Royal Government of Cambodia (the "RGC"), including the National Assembly and relevant ministries, which would be not only in keeping with current global trends, but also send a clear message to both State actors and society in general that LGBT people are full members of society whose human rights are to be equally protected under the law. Key recommendations to the RGC include:

- Amending existing anti-discrimination laws, or introducing new laws, to include 'sexual orientation' and 'gender identity' as prohibited grounds, along side existing grounds such as sex, race and religious belief;
- Mainstreaming SOGI in national-level government policies and strategies; and
- Amending Article 45 of the Cambodian Constitution and removing the specification that marriage has to be between one "husband" and one "wife."

This Briefing Note is written by the Cambodian Center for Human Rights ("CCHR"), a leading, non-aligned, independent, non-governmental organization ("NGO") that works to promote and protect democracy and respect for human rights – primarily civil and political rights – in Cambodia.

Introduction: sexual orientation and gender identity in Cambodia

As a result of differences in culture and language, the Cambodian understanding of sexuality differs from western perspectives. Cambodia is a predominantly Buddhist country, a religion that has a general disposition to tolerate homosexual behavior and places less value on marriage and

procreation.[1] At the same time, Cambodian culture, tradition and society are prone to anti-gay sentiment, due to social and economic pressures to conform, to marry and to produce children. Being LGBT is not seen as an 'evil' that must be stamped out, but rather as an 'oddity' that renders the person less worthy.

Furthermore, the Cambodian understanding of sexual identity is not defined along the lines of "gay, straight and bisexual," as it is often understood in other parts of the world. Rather, the concept of sexual identity derives from concepts of gender, character and personality, with gender generally described in terms of both physical and behavioral characteristics. There is a focus on outwardly visible character traits rather than sexual orientation. As a result, many Cambodians who engage in same-sex sexual relationships do not identify themselves as homosexual.[2]

Whilst homosexuality is seen as an oddity, it does not attract the kind of aggressive State-sanctioned or dogmatic reaction observed in other countries. At the same time, LGBT people who are overt with their sexual identity with their family, in the workplace, when interacting with State actors (such as the police) or within society in general, often face discrimination and abuse.

This cultural context is important in two key ways. First, there are few hard religious or hard cultural barriers to legislative change aimed at improving the position of LGBT people. In that regard, Europe's and the Americas' experience of slowly equalizing the rights of LGBT people over a period of 50 years[3] or more can occur much more rapidly in Cambodia, with Cambodia reaping the benefits sooner. Secondly, a negative perception of LGBT people often underlies discrimination and abuse. As such, legislation to protect LGBT people would not only provide direct protection, but would also simultaneously offer indirect protection by improving the perception and social standing of LGBT people.

Although the Cambodian population has never been surveyed to determine the prevalence of different sexual orientations and gender identities, surveys in other countries suggest that LGBT people is generally between 5% and 10% of the population. In neighboring Thailand, a 2004 survey found that 9% of adolescent males and 11.2% of adolescent females identified themselves as homosexual or bisexual.[4] In a 2005 report, the British government estimated that 6% of the British population was gay or lesbian.[5] A 2012 survey in the United States determined that 6.4% of American adults aged 18 to 29 identified as LGBT.[6] In any event, LGBT people are likely to be a significant minority group within the Cambodian population, accounting for a proportion of the population similar to or higher than other minority groups, such as citizens with an ethnicity other

[1] Kerry Trambath, 'Buddhism and homosexuality' (Undated online article) http://bit.ly/1k1ebja.
[2] For a more in-depth analysis of relevant Khmer vocabulary, please refer to CCHR, '*Coming Out in the Kingdom: Lesbian, Gay, Bisexual and Transgender People in Cambodia*' (Report) (December 2010) http://bit.ly/1jsPjw6.
[3] For example, the UK's experience of equalizing rights for LGBT people spans nearly 50 years, starting with the de-criminalization of homosexuality in 1967, the formation of gay rights groups shortly thereafter, and culminating in 2014 with the legalization of same-sex marriage.
[4] Van Griensven et al, 'The prevalence of bisexual and homosexual orientation and related health risks among adolescents in northern Thailand', *Arch Sex Behav*, 33 April 2004, pages 137-47.
[5] Denis Campbell, '3.6m people in Britain are gay – official' *The Guardian* (11 December 2005) http://bit.ly/RAl7IM.
[6] Gary J. Gates and Frank Newport, 'Special Report: 3.4% of U.S. Adults Identify as LGBT', *Gallup Politics* (18 October 2012) http://bit.ly/TSR0hH.

than Khmer or a religion other than Buddhism.[7] As such, LGBT and SOGI issues are serious and real issues that warrant the attention of the RGC and Cambodian society in general.

Lack of protection in Cambodian law

Few Cambodian laws expressly discriminate against LGBT people. Rather, the main issue for LGBT people under Cambodian law is the lack of express protection; protection that is available to other minorities and vulnerable groups. This lack of express protection, in effect, makes it easy for State actors and others to discriminate on grounds of SOGI.

The Constitution of the Kingdom of Cambodia

Three aspects of the 1993 Constitution of the Kingdom of Cambodia (the "Constitution") are noteworthy for SOGI issues. First, the Constitution does not include SOGI among the grounds for which discrimination is prohibited. Article 31 lists the prohibited grounds, the relevant part of which reads as follows:

> "[…] *Every Khmer citizen shall be equal before the law, enjoying the same rights, freedom and fulfilling the same obligations regardless of race, color, sex, language, religious belief, political tendency, birth origin, social status, wealth or other status*."

Secondly, the preceding part of Article 31 imports instruments of international law directly into the Cambodian law:[8]

> "*The 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*."

The international law referred to in Article 31 includes the International Covenant on Civil and Political Rights (the "ICCPR") and the International Covenant on Economic, Social and Cultural Rights (the "ICESCR"), which were both acceded to by Cambodia in 1992. The treaty bodies that monitor the ICCPR and ICESCR have both communicated that LGBT people are equally protected under international law. In its communication *Toonen v Australia,* the Human Rights Committee ("HRC") stated the word 'sex' in Article 26[9] of the ICCPR includes *'sexual orientation'*.[10] In *Young v Australia*, the HRC again determined that unjustified difference in treatment based on sexual orientation comprised discrimination under Article 26.[11] Similarly, in its General Comment 20, the Committee on Economic, Social and Cultural Rights (the "CESCR") stated that '*other status*' in Article 2(2) of the ICESCR includes 'sexual orientation' and 'gender identity' as prohibited grounds of discrimination.

[7] Central Intelligence Agency, *The world factbook*: *Cambodia*. http://1.usa.gov/1k1fY7Z.
[8] As confirmed by the decision of the Cambodian Constitutional Council dated 10 July 2007.
[9] ICCPR, 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*."
[10] *Toonen v Australia* CCPR/C/78/D/941/2000 18 September 2003 at paragraph 8.7.
[11] *Young v Australia* CCPR/C/78/D/941/2000 and *X v Colombia* CCPR/C/89/D/1361/2005.

Accordingly, by its ratification and importation of the ICCPR and ICESCR, the Constitution provides a certain level of protection for LGBT people against discrimination. However, the lack of specific mention of SOGI in Article 31 of the Constitution, combined with a lack of widespread knowledge and understanding of the applicability of international law not only amongst those affected by discrimination but also by those in the judicial sector, provides for a vague legal framework.

Case Study 1: 1996 South African Constitution

In May 1996, the new, post-apartheid South African Constitution came into force, which includes 'sexual orientation' as a prohibited grounds for discrimination in Section 9(3), making South Africa the first country in the world to provide constitutional protection for sexual orientation. The 1996 Constitution replaced an interim constitution instituted in 1993, which had also included sexual orientation.[12] The inclusion of sexual orientation in the 1996 Constitution came about after sustained lobbying and advocacy efforts by LGBT activists, including a letter-writing campaign, and the support of key figures in South African politics and culture, including Nobel Peace Prize Laureate Archbishop Desmond Tutu.

Most importantly, the inclusion of 'sexual orientation' as an unacceptable ground for discrimination in the Constitution led to important subsequent legal developments, including, but not limited to, a ruling in 1998 by the Constitutional Court that a law prohibiting same-sex relations between consenting adults was unconstitutional and thus overturned; the passage, also in 1998, by the Parliament of the Employment Equity Act, protecting LGBT South African from labor discrimination based on sexual orientation; the passage in 2000 of the Promotion of Equality and Prevention of Unfair Discrimination Act, which provided protection to LGBT people in relation to public accommodation and services; and the legalization of same-sex marriage in 2006.

Although homophobia and hate crimes against LGBT people remain a widespread problem in South Africa,[13] the constitutional protection against discrimination based on sexual orientation provides legal avenues for LGBT people to fight against homophobia and discrimination – legal protections currently missing in Cambodian law.

In addition to failing to include SOGI in the list of prohibited grounds for discrimination, Article 45 of the Constitution describes marriage as "*between one husband and one wife,*" thereby implicitly prohibiting same-sex marriage, which as described in greater detail in the section on the Civil Code below, is inherently discriminatory against LGBT people.

The Criminal Code of the Kingdom of Cambodia

The 2009 Criminal Code of the Kingdom of Cambodia (the "Criminal Code") prohibits discrimination on certain grounds, but, similarly to the Constitution, neither 'sexual orientation' nor 'gender identity' are included. However, unlike the Constitution, Article 265 of the Criminal Code does not contain 'other status' as prohibited grounds for discrimination, only listing ethnicity or race, religion, political tendency, trade-union activity, family situation, sex, state of health, and disability.

[12] International Gay and Lesbian Human Rights Commission, 'South Africa: New Constitution Protects Gays and Lesbians' (1 May 1996) http://bit.ly/1uzNCDc.
[13] Human Rights Watch, 'South Africa: LGBT Rights in Name Only?' (5 December 2011) http://bit.ly/1vygs9n.

Under the Criminal Code, it is prohibited to discriminate through refusing to supply goods or services (Article 265); refusing to hire a person (Article 267); dismissal or discharge (Article 269); and denial of rights by civil servants (Article 270). Criminal liability arises for legal entities that breach Article 265 and Article 269, making these anti-discrimination laws powerful tools – for the protected groups listed above, but not for LGBT people.

Given the lack of a legal bar in the Criminal Code on a person's SOGI being used as a reason to refuse services, employment and other rights, LGBT people are therefore materially disadvantaged in Cambodian society when compared to other citizens. If 'sexual orientation' and 'gender identity' were added as prohibited grounds, these Articles of the Criminal Code would offer a legal mechanism to prevent and punish much of the discrimination faced by LGBT people in Cambodia.

The Civil Code

Until 2011, Article 3 of the 1989 Law on Marriage and the Family defined marriage as "*a solemn contract between a man and a woman*" and Article 6 expressly prohibited marriage between "*a person whose sex is the same sex as the other*". Article 78 of the 2011 Law on the Implementation of the Civil Code has made the majority of the Law on Marriage and the Family's provisions ineffective, including Articles 3 and 6.

The 2007 Civil Code now governs potential restrictions on the parties to a marriage in Cambodia. In its Chapter 3, "*Marriage*", there is no clear prohibition of same-sex marriage nor specific mention that a marriage be between a man and a woman. In addition, the reference to *"homosexual marriage"* in Article 1023 (2) about single adoption, is surprising given that the Constitution implicitly prohibits such a marriage. Although not implying that same-sex marriage is legitimate, this Article's unclear wording raises question on the legal status that it would have. It could be interpreted as an indirect recognition of same-sex marriage.

However, numerous provisions in the Civil Code seem to be designed to only address heterosexual relationships, as they often refer to a "husband" and a "wife". This wording is discriminatory because, even if same-sex marriage is not directly prohibited in the Civil Code, these articles would be difficult to apply to same-sex couples and thus create confusion around their rights. The majority of these provisions as they are currently written, in conjunction with Article 45 of the Constitution, are contrary to ICCPR Article 23(2), which guarantees the rights of adults to enter into consensual marriage.

The fact that marriage is an international human right law matter shows that fundamental rights are undeniably at stake when considering same-sex unions. Moreover, the denial of equal civil recognition of same-sex relationships often prevents many lesbian and gay couples from accessing a range of other rights, such as rights to social security and housing, which is inherently discrimination against LGBT people. Prohibiting or restricting same-sex marriage also stigmatizes those same-sex relationships and can indirectly increase SOGI-based discrimination and abuses.

Case Study 2: Same-sex marriage in Thailand and Vietnam

As of June 2014, same-sex marriage has been legalized in 17 countries: Argentina, Belgium, Brazil, Canada, Denmark, England & Wales, France, Iceland, Netherlands, New Zealand, Norway, Portugal, Scotland, South Africa, Spain, Sweden, and Uruguay, as well as in some states within Mexico and the United States. This list grows on a regular basis (with Scotland being the most recent jurisdiction to pass same-sex marriage laws in February 2014). Around 20 further countries have legalized civil unions or domestic partnerships for same-sex couples, which offer a similar legal recognition to traditional marriage.

Thailand

Among Cambodia's neighbors, both Thailand and Vietnam have considered same-sex marriage or similar legislation. In December 2012, the Thai government formed a committee to draft legislation giving legal recognition to same-sex couples.[14] In September 2013, it was reported that the government was preparing to review a 'civil unions' bill that would enable same-sex couples to receive the same rights and benefits, such as tax and pension benefits, as opposite-sex couples,[15] although the process of legalizing same-sex unions has unfortunately been sidelined by the ongoing political developments in Thailand.[16]

Vietnam

In November 2013, the Vietnamese government introduced a new decree which overturned a previous decree that provided for fines for people who organized or participated in same-sex marriage ceremonies.[17] The government has also proposed to amend the 2000 Law on Marriage and the Family to remove the prohibitions against same-sex marriage. However, the proposed amendments have been criticized for being vague and unclear as to whether the amendments would allow same-sex couples to officially register their marriage with the authorities – and thus access the same rights and benefits as opposite-sex couples.[18] The latest version of the amended law appears to have removed these prohibitions but provides that "the government does not recognize marriages between people of the same sex."[19]

Labor Law

Article 12 of the Labor Law 1997 prohibits discrimination on certain prohibited grounds, namely: race, color, sex, creed, religion, political opinion, birth, social origin, and membership of workers' union or the exercise of union activities. Article 12 prohibits these characteristics forming the basis of an employer's decisions regarding: hiring, defining and assigning of work, vocational training, advancement, promotion, remuneration, granting of social benefits, discipline or termination of employment contract.

[14] Anna Leach, 'Thai government drafting same-sex civil partnership law' (*GayStarNews*, 17 December 2012*)* http://bit.ly/1kvEtvB.

[15] Human Rights Campaign, 'Thailand Preparing to Review a Civil Unions Bill' (blog post, 19 September 2013) http://bit.ly/1kzQzCu.

[16] Gay Asia News, 'Thai marriage equality bill unable to proceed due to political crisis' (*Fridae*, 12 April 2014) http://bit.ly/1odAzYc.

[17] Human Rights Watch, 'Vietnam: Give Marriage Rights to Same-Sex Couples' (20 November 2013) http://bit.ly/1iZQzYv.

[18] Ibid.

[19] -- 'New bill could make de facto same-sex marriage OK in Vietnam' (*Thanh Nien News*, 22 March 2014) http://bit.ly/1pSQPwQ.

Again 'sexual orientation' and 'gender identity' are not included within the list of prohibited grounds and, as with the Criminal Code, 'other status' is also absent from the list. Accordingly, there is no legal bar on employers using a person's SOGI as a ground for refusing to hire, firing or limiting their career prospects. LGBT people are therefore materially disadvantaged in the workforce. If 'sexual orientation' and 'gender identity' were listed as prohibited grounds, the Labor Law would offer a legal mechanism to prevent much of the discrimination faced by LGBT people in the workplace and the job market.

Case Study 3: the United Kingdom's Equality Act, 2010

The United Kingdom's 2010 Equality Act covers discrimination at work, as well as equal access to good and services, education and access to public premises and associations/public groups. For LGBT people, the Equality Act is particularly significant as it includes specific provisions prohibiting discrimination on the basis of sexual orientation and gender reassignment.

Of particular significance, the Equality Act is inclusive of both direct and indirect discrimination: Chapter 2 (13) defines direct discrimination as when "*a person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favorably than A treats or would treat others*", while indirect discrimination is defined in Chapter 2 (19) as when "*a person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's*."

Moreover, the Equality and Human Rights Commission is empowered to enforce the Equality Act and offers information and advice through help lines, its website and publications. It also helps to shape public policy and develop further equality legislation.

The legal framework's influence on perception and its facilitation of discrimination and abuse

Before giving specific examples of discrimination and abuse against LGBT people in Cambodia, it is worthwhile considering why this abuse arises. The effect of Cambodia's current laws on LGBT people is more complex than a bar on same-sex marriage and the absence of SOGI as a prohibited ground of discrimination, as the discrimination and abuse that LGBT people face in Cambodia is not confined to what the law expressly allows.

Cambodia's legal framework also has indirect negative effects. The legal framework creates an atmosphere of intolerance towards LGBT people that influences State actors and society, relegating LGBT people to second-class citizens. Other countries have tackled similar trends.

The section below offers examples of how Cambodia's current laws negatively affect LGBT people in practice, both directly and indirectly.

Discrimination against LGBT people in Cambodia

CCHR has seen evidence of discrimination and abuses via various sources, including: CCHR's interviews with LGBT people conducted at various locations in Cambodia, CCHR's ongoing support of

the LGBT community via its SOGI project, studies conducted by third-parties, and reports in the media. A summary is given below.[20]

Discrimination in the workplace

LGBT people frequently face exclusion, harassment and bullying in the workplace. A gay Cambodian man reported to CCHR that when he was open about his sexuality at work, the bullying became so severe that he was forced to leave his job. It is common that LGBT people hide their sexual identity. A Cambodian lesbian told CCHR that "*though my lesbian friends dress like boys, I dress like a girl because I need to find a 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 if they are university graduates, due to their appearance.

As stated above, there is no legal recourse for LGBT employees who face this discrimination, as SOGI is not a prohibited ground of discrimination under the Labor Law. Employers and colleagues can exercise discrimination with impunity, within the confines of the law. Discrimination against LGBT people in the workplace, or when trying to obtain employment, can be seen in a higher rate of unemployment. LGBT Cambodians, in particular transsexuals, often drift into the sex trade for lack of other alternatives (see below).

Discrimination by State actors

Local authorities – including local police – often take advantage of the lack of protection for LGBT people under the law to discriminate against and abuse the human rights of LGBT people. For example, there have been reports that gay men are targeted by the police for financial gain. Those targeted have reported being arrested under false charges (often relating to human trafficking, drug use or prostitution) and that their release was secured by paying-off the police.[21]

Both Human Rights Watch and the United States Agency for International Development ("USAID") have reported transgender sex workers' descriptions of their abuse at the hands of the police. While reading the quotes below, it is important to keep in mind that sex work often becomes the only option for transgender Cambodians due to the discrimination that they face in wider society.

> "*Three police officers beat me up seriously at Wat Phnom commune police station after I was taken from the park. One of the police officers pointed his gun at my head and pulled the trigger, but the bullet did not fire. They kicked my neck, my waist, and hit my head and my body with a broom stick. It lasted about half an hour. I begged them not to beat me. The police officers were cruel and they did not tell me any reason why they did this to me.*"[22]

> "*I am srey sros (transgender). I am single and live with my family. I do this work for 3-4 years because my family discriminates against me. My family members don't like me to be half man and half woman like this. I do this work in the park, road, and in the nightclub. I have*

[20] For further details, see CCHR, '*Coming Out in the Kingdom: Lesbian, Gay, Bisexual and Transgender People in Cambodia*', (Report) (December 2010) and CCHR, '*Rainbow Khmer: From Prejudice to Pride*' (Report) (December 2012) http://bit.ly/1jsPjw6.

[21] Interview conducted by CCHR in Siem Reap, 29 September 2010.

[22] Human Rights Watch, 'Off the Streets: Arbitrary Detention and Other Abuses against Sex Workers in Cambodia' (July 2010) http://bit.ly/1qmZsTx.

been abused by policemen working in the park and by male clients, such as hitting and rape without a condom and without pay."[23]

The mistreatment of LGBT people by the police can be explained by the low social standing attached to LGBT people. A theme running through the negative experiences of LGBT Cambodians is that abuse is perceived as a 'punishment' for LGBT people not adhering to the majority's social norms; both victim and perpetrator often share this view, either consciously or subconsciously. These examples show how the inequality in the existing legal framework creates an atmosphere of intolerance that affects State actors behavior towards LGBT people.

It should be acknowledged that the Authorities can sometimes show good will. Indeed, some local authorities provided LGBT couples with marriage certificates or family books, although no study has been undertaken to give exact figures yet. However, those benefits result from individual initiatives and are not based on the legislation.

Discrimination in the community and the family

Similarly, society in general is prone to treating LGBT people unequally due to their SOGI. Discrimination and harassment are common in the education system. The drop-out rate for all children in Cambodian schools is alarmingly high by international standards, with the Ministry of Education, Youth and Sports reporting that 19.6% of school children at lower secondary level (grade 7-9) dropped out of school in the 2011-2012 school year.[24] Anecdotal evidence collected from a CCHR research mission to Siem Reap town in January 2012 suggested that drop-out rates are particularly high among LGBT youth, who stated various reasons for dropping-out, including economic hardship resulting from non-acceptance by their families but also homophobic bullying by their classmates.

It is well established that LGBT people have specific health needs due to their SOGI and that these needs cannot be addressed unless LGBT people can be open about their sexuality without fear of discrimination or abuse. Due to the pervasive nature of discrimination on the ground of SOGI, LGBT people often do not feel comfortable or able to disclose sexual identity to healthcare providers.[25] Inadequate testing and treatment, especially for HIV/AIDS and other sexually-transmitted infections, is therefore common.

Finally, most LGBT Cambodians are not able to live as they would like due to both social stigma and family pressures. Many LGBT Cambodians face enormous pressure to marry. One lesbian in Battambang commented to CCHR: "*how is it that my parents can force me to get married without society or the authorities punishing them? I want to live with the person I love.*"[26] Family members are important stakeholders in the process of reducing stigma, discrimination and human rights violations.

[23] Carol Jenkins, 'Violence and Exposure to HIV among Sex Workers in Phnom Penh, Cambodia' (USAID, 2006) http://bit.ly/1oISxku.
[24] RGC, Ministry of Education, Youth and Sport, 'Education Statistics and Indicators 2010-2011' (March 2011) http://bit.ly/1itxLCj.
[25] CCHR, 'Rainbow Khmer: From Prejudice to Pride' (December 2012) http://bit.ly/1jsPjw6.
[26] Interview conducted by CCHR in Battambang City, 30 November 2010.

Conclusion and recommendations

Even if violent rejection against LGBT people rarely occurs in Cambodia, SOGI can be a ground of discrimination in various aspects of their everyday lives: in the workplace, in their family, in their community or in front of States actors for instance. The continuation of this negative trend results from a lack of protection by Cambodian laws. Neither the Constitution, nor the laws of relevance such as the Labor law, the Civil Code and the Criminal Code, include SOGI as a prohibited grounds for discrimination, despite United Nations bodies interpreting international law in this sense.

Changes in the legal framework are an indispensable sign of acceptance of LGBT people within the society. It is a first step toward real equality between people, no matter their SOGI, which would be in line with the RGC's international human rights commitments. Throughout this Briefing Note, several countries' policies have been presented as potential examples for reforms aiming at establishing equality in various areas. Changes to Cambodian law along those lines would have a dual effect: expressly protecting LGBT Cambodians from discrimination and abuse and simultaneously, by positively influencing society's view of LGBT thus making them less prone to discrimination and abuse.

The legal protections that would assist LGBT Cambodians are already offered to other minority and vulnerable groups in existing legislation. By extending those protections to LGBT Cambodians, Cambodia would join a growing list of nations fulfilling their duties to protect all citizens equally against human rights abuses.

<u>Legislative Recommendations</u>

CCHR recommends to the RGC and in particular the National Assembly and the Senate, to consider the following amendments to existing legislation and new legislative and administrative recommendations. These recommendations seek equal treatment, not special treatment, as recognized in international law and across multiple other jurisdictions.

- **Amending Article 31 of the Constitution to include 'sexual orientation' and 'gender identity' as prohibited grounds of discrimination** will have wide-reaching positive effects for LGBT Cambodians. LGBT Cambodians will have the express protection of the highest body of law. Moreover, expressly amending the Constitution will be a very public means of the RGC to express that the LGBT people possess the same rights as other Cambodians.

- **Amending the Labor Law to include 'sexual orientation' and 'gender identity' as prohibited grounds of discrimination** will outlaw the discrimination faced by LGBT Cambodians in the workplace and in the jobs market and, again, sends a very public message.

- **Amending the Penal Code to include 'sexual orientation' and 'gender identity' as prohibited grounds of discrimination** will merely give LGBT people the same protection that already exists for other minorities and vulnerable groups.

- Amending Article 45 of the Constitution to remove the implicit prohibition against same-sex marriage to enhance coherence between the Constitution and the Civil Code, which contains no such restrictions against same-sex marriage. A harmonization on the basis of those latter

provisions is indispensible to send a clear message to Cambodian society that LGBT people are full members of society with the same rights as others.

- Amending Articles of the Civil Code concerning marriage which make specific mention of "a husband and wife", to ensure that all provisions are inclusive of same-sex couples. It could easily be replaced by gender-neutral terms, such as "*spouses*" or "*parties to a marriage*".

- **Creating an Anti-Discrimination Committee**, whose explicit remit would be to protect the human rights of all people regardless of who they are. Alternatively, this work could be undertaken in the framework of a National Human Rights Institution (NHRI) when Cambodia will have one. The creation of this kind of institution, which should follow the 1991 Paris Principles' guidelines, is supported by the UN.

Policy Recommendations

CCHR recommends the RGC, and in particular the relevant Ministries, consider the following measures to mainstream SOGI/LGBT issues:

- **Including SOGI / LGBT issues in RGC policies and strategies.** Various government ministries can help improve the situation of LGBT Cambodians, and the perception of them in society, by including SOGI / LGBT issues in their policies and strategies.

- **Producing a guide to the Village Commune Safety Policy (VCSP)** so that authorities can follow it as intended, without it facilitating discrimination and abuse to LGBT people. The guide should be aimed at law enforcement officers across the various hierarchical levels, but also act as a guide for LGBT people, their communes and the general population.

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