

Universal Periodic Review of Cambodia

18th Session

January/February 2014

Joint submission by:

Cambodian Center for Human Rights (CCHR)

www.cchrcambodia.org



មជ្ឈមណ្ឌលសិទ្ធិមនុស្សកម្ពុជា
Cambodian Center for Human Rights

&

Asia Pacific Network of People Living with HIV/AIDS (APN+)

<http://www.apnplus.org>



&

Sexual Rights Initiative (SRI)

www.sexualrightsinitiative.org



Key Words: HIV, comprehensive sexuality education, sexual orientation and gender identity, access to sexual and reproductive health services, discrimination, human rights.

Executive Summary:

1. This submission was written by the Cambodian Center for Human Rights¹ and the Asia Pacific Network of People Living with HIV (APN+),² in collaboration with the Sexual Rights Initiative³ (SRI).
2. This submission provides an overview of the general situation of sexual and reproductive health and rights (SRHR) in Cambodia, looking at the legislative context. The submission includes a detailed account of specific aspects of SRHR, starting off with an assessment of the level of **access to quality health services** in Cambodia, which includes a discussion of the overall status of the health care sector, particular **challenges caused by the criminalization of sex work**, difficulties faced by **people living with HIV** (PLHIV) and the **lack of adequate sexuality education**. Following that, the submission includes a discussion of discrimination based on **sexual orientation and gender identity** across a wide range of sectors, including families and communities, the workplace, healthcare and law enforcement. Within this context, the submission looks at the implementation thus far of some recommendations made by UN member states during Cambodia's 2009 Universal Periodic Review, in relation to these sub-topics. **The submission concludes with Recommendations** to the Royal Government of Cambodia (RGC) on how to improve the situation of SRHR in Cambodia.

Legal Context

3. Article 31 of the Constitution of the Kingdom of Cambodia (the Constitution) states 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 Constitution makes no mention of sexual orientation and gender identity (SOGI) or health as grounds on which discrimination is prohibited. Article 72 of the Constitution states that "The health of the people shall be guaranteed. The State shall pay attention to disease prevention and medical treatment. Poor people shall receive free medical consultations in public hospitals, infirmaries and maternity clinics."

¹ CCHR is a leading non-aligned, independent, non-governmental organization that works to promote and protect democracy and respect for human rights – primarily civil and political rights - in Cambodia. CCHR's empower civil society to claim its rights and drive change; and through detailed research and analysis, develops innovative policy, and advocates for its implementation. CCHR is an advocacy organization facilitating grassroots participation by empowering local communities through education of their civil and political rights. It facilitates constructive interaction between Cambodian civil society and the international community in order to advocate the progressive realization of Cambodian human rights. (<http://www.cchrcambodia.org/>)

² APN+ is the network of PLHIV living in the Asia Pacific region. It was established in response to the need for a collective voice for PLWHA in the region, to better link regional PLHIV with the Global Network of PLHIV (GNP+) and positive networks throughout the world, and to support regional responses to widespread stigma and discrimination and better access to treatment and care. (<http://www.apnplus.org/>)

³ The Sexual Rights Initiative is a coalition including: Action Canada for Population and Development (Canada); Coalition of African Lesbians (Africa), Creating Resources for Empowerment and Action (India), AKAHATA (Latin America), Egyptian Initiative for Personal Rights (Egypt), Federation for Women and Family Planning (Poland), and others (www.sexualrightsinitiative.com)

4. Article 31 of the Constitution recognizes and respects the Universal Declaration of Human Rights (UDHR). Cambodia ratified the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1992, making the provisions within legally binding upon Cambodia. The fact that the ICCPR is incorporated into Cambodian domestic law was 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.⁴ While international instruments ratified by Cambodia such as the ICCPR and the ICESCR fail to make specific mention of SOGI as prohibited grounds for discrimination, UN treaty bodies have repeatedly held that the “other status” catch-all category – also present in the Constitution – is to be interpreted to include SOGI.
5. The Cambodian Criminal Code 2009 identifies the following as prohibited grounds for discrimination: (1) membership or non-membership of a given ethnic group, nationality or race; (2) membership or non-membership of a given religion; (3) political affiliation; (4) union activities; (5) family situation; (6) gender; (7) state of health; and (8) disability.⁵ There are no supplementary anti-discrimination laws to address discrimination on the basis of SOGI.
6. Marriage is defined in both Article 45 of the Constitution and Article 3 of the Law on 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.
7. The Law on the Suppression of Human Trafficking and Sexual Exploitation 2008 (LHTSE) criminalizes the solicitation of “another in public for the purpose of prostituting himself or herself” and the procurement of prostitution (Chapter IV, Articles 23-32), in other words rendering all forms of prostitution illegal.
8. Article 18 of the Law on the Prevention and Control of HIV/AIDS states that “any practice or acts of those who is HIV positive, which have intention to transmit HIV/AIDS to other people, shall be strictly prohibited [sic].” Article 50 provides for prison terms of ten to fifteen years for people who violate Article 18. Chapter VIII, Articles 36-42 further prohibit all forms of discrimination based on HIV status.
9. Article 23 of the Cambodia Education Law gives the Ministry of Education power to determine the curriculum for all levels of education in Cambodia. The Ministry of Education, Youth and Sport’s Education Strategic Plan 2009-2013, under sub-program 1.6, includes “Strengthening and Expanding the School Health Promotion Program,” which provides for training for “sub-national staff on sexual, re-productive health, HIV/AIDS, awareness on violence, gender, drug and relevant topics.” According to the Strategic Plan, 7,600 million riels is meant to be budgeted for “enhancing awareness health

⁴ Constitutional Council of the Kingdom of Cambodia, Decision No. 092/003/2007, 10 July 2007.

⁵ Chapter 5, Section 2 ‘Discrimination’, Art. 265, paras. 1-8.

education focus on sexual, reproductive health and right including HIV/AIDS, STI, Drug and Relevant topics.”

Implementation of Specific UPR Recommendations

10. Cambodia accepted all 91 recommendations made during its first UPR in December 2009, including several recommendations mentioning the need for the RGC to address the state of the health care sector.⁶ No recommendations from 2009 addressed specific issues of SOGI, sexual rights, reproductive health, sex work, the rights of People Living with HIV (PLHIV) or other such issues.

Access to Quality Health Care Services

11. Recommendation 12 from the Russian Federation asks the RGC to “Continue its efforts to combat poverty; ensure sustainable development; improve access to health care and education; and achieve the Millennium Development Goals.” Recommendation 76 suggests the RGC “Intensify its public expenditure on the implementation of economic, social and cultural rights (Netherlands); continue efforts in allocating more resources to ensure the betterment of economic and social rights of citizens, in particular in the areas of poverty reduction, urban-rural equality, education, public services, etc. (Viet Nam); carry out the necessary efforts to increase expenditures for social programmes, particularly relative to education and access to housing (Mexico); further increase its national spending on health and education sectors to meet the targets of the Millennium Development Goals (Azerbaijan).”

12. While there has been some improvement in health care in Cambodia since 2009, the sector remains severely underfunded and understaffed. This has a wide-ranging impact on all aspects of health care, including sexual health and on the prevention and treatment of sexually-transmitted diseases (STDs). Moreover, the failure to provide comprehensive and integrated health services is a violation of individuals’ right to attain the highest possible standard of physical and mental health.

13. 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.”⁷ Gyneco-obstetric issues remain at the top of the list of the top-ten leading causes of morbidity in Cambodia.⁸

14. The continued limitations of the education system in Cambodia – including at the university level – and of adequate training opportunities for health care workers results in large segments of the health sector being unable to provide adequate care and counsel. For instance, a study conducted by APN+ found that many women with HIV said they were given misinformation by health care

⁶ See paragraph 9, regarding 1st cycle UPR recommendations #12 and #76.

⁷ World Health Organization, ‘Health Service Delivery Profile: Cambodia 2012’ (2012) <www.wpro.who.int/health_services/service_delivery_profile_cambodia.pdf>.

⁸ Ibid.

workers at the time of their diagnosis. One woman interviewed by APN+ was warned of the virus "switching" between her and her husband.⁹

15. The criminalization of prostitution through the LHTSE has had significant negative impacts on health care for sex workers and in particular on HIV prevention. Sex workers are no longer as easily identifiable and targetable by health workers, due to the closure of many brothels and of increased risks of police harassment. Moreover, police have been reported to use possession of condoms as evidence of prostitution, which has resulted in many sex workers stopping to carry condoms and less NGOs being willing to distribute them.¹⁰
16. PLHIV in Cambodia are particularly threatened by deficiencies in the health care sector. Discrimination against PLHIV remains a regular occurrence, especially in the health sector, where a lack of appropriate training results in many health workers being under-qualified to appropriately treat, counsel and refer PLHIV to other health-care providers. In turn, this results in many PLHIV being afraid to disclose their HIV status to health professionals and family members.
17. The study conducted by APN+ on pregnant HIV-positive women found that many women in Cambodia face discrimination after disclosure of HIV status to in-laws, who often blame the woman for bringing HIV into the family. Several women admitted not disclosing their HIV status to their gynecologists because of fear of discrimination and refusal of services. 35% of women interviewed had been encouraged to consider sterilization, usually by a gynecologist or HIV clinician, and in some instances, by members of home-based care teams, because of their HIV status.¹¹
18. The lack of adequate sexuality education in Cambodia results in many being unaware of the health risks and of the health care services available. A primary reason for this is cultural taboos in Cambodia, which result in almost no discussions of SRHR within the family. Young people receive almost all of their knowledge on SRHR from the media and their peers, which are often unreliable sources of information. Despite the development of a national Comprehensive Sexuality Education (CSE) curriculum to be implemented in schools throughout the country, sexual education in school remains extremely rare. The CSE curriculum has been implemented in very few instances; teachers remain reluctant to discuss SRHR in the classroom and little time is allocated for sexual education classes.
19. The stigma associated with being LGBT – which is perpetuated by families, communities, local authorities, employers and health services workers – deters many LGBT Cambodians from regularly accessing available health services. Data, however, suggests that LGBT, and in particular men who have sex with men (MSM), are at greater risk of HIV transmission and thus of sexual health services.

⁹ Asia Pacific Network of People living with HIV, 'Positive and Pregnant – How Dare You' (2012)

¹⁰ Center for Health and Gender Equity (CHANGE) & Center for Human Rights and Humanitarian Law at American University Washington College of Law, 'Human Trafficking, HIV/AIDS, and the Sex Sector: Human Rights for All' (2010) <www.genderhealth.org/files/uploads/change/publications/Human_Trafficking_HIVAIDS_and_the_Sex_Sector.pdf> 31.

¹¹ Asia Pacific Network of People living with HIV, 'Positive and Pregnant – How Dare You' (2012)

In 2010, HIV prevalence among MSM on a national level was estimated at 2.1%,¹² as opposed to 0.7% in the general population. The following section deals specifically with the stigma and discrimination faced by those with diverse sexual orientations and gender identities, focusing on the contexts in which their human rights are violated.

Discrimination Based on Sexual Orientation & Gender Identity

20. Many lesbian, gay, bisexual and transgender (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. “Coming out” to their families is often a very negative experience. Parents sometimes disown their children afterwards, cutting them off from emotional and financial support, which often drives young people onto the streets, where they face hunger, homelessness and vulnerability to further abuse by strangers and law enforcement officials. Social misconceptions lead some parents to believe that being gay is a mental illness and can be cured by taking their son or daughter to the traditional doctor (“*groukher*”) to throw water on their child and “cure” their homosexuality.¹³
21. 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 freely expressing their sexualities and gender expressions and identities, which leads them to hide or suppress them. In many cases, this pressure leads to gay men marrying and still engaging in homosexual activities.¹⁴ According to a 2000 study by Family Health International, nearly nine percent of men who identified themselves as “men who have sex with men” (MSM) were married.¹⁵ Information pertaining to discrimination experienced by lesbian and trans women is lacking, in part because female to female HIV transmission remains low.
22. 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, especially for those outside of the main urban centers, and discrimination within the wider community continues. Hate crimes, motivated by victims’ SOGI, remain common in Cambodia. Despite a lack of quantitative data, 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.
23. There are also multiple reports from LGBT Cambodians of harassment by the authorities and evidence of misuse of laws and policies to discriminate against and target LGBT people. The Village Commune Safety Policy (VCSP) focuses on security and public order, and requires local authorities to

¹² UNDP, ‘Country Snapshot Cambodia – HIV and men who have sex with men,’ (December 2012) <<http://www.snap-undp.org/elibrary/Publications/HIV-2012-MSM-Snapshots-Cambodia.pdf>>.

¹³ Cambodian Network Men-Women Development & CCHR Workshop (Phnom Penh, 18 December 2011), in CCHR, ‘Rainbow Khmer: From Prejudice to Pride’ (Report) (December 2012) <www.cchrcambodia.org/index_old.php?url=media/media.php&p=report_detail.php&reid=85&id=5>.

¹⁴ CCHR, ‘Rainbow Khmer: From Prejudice to Pride’ (Report) (December 2012)

¹⁵ Family Health International, ‘Sexual behavior, STIs and HIV among men who have sex with men in Phnom Penh, Cambodia 2000’ (2000) <www.fhi360.org/en/HIVAIDS/pub/survreports/MSMCambodia/Index.htm>.

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. 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 target suspicious people, in severe contravention of their fundamental rights and freedoms. 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.¹⁶ This puts LGBT Cambodians at risk of aggressive and discriminatory treatment by law enforcement and in some cases, criminal prosecution.

24. Discrimination against LGBT people in the workplace continues to be commonplace in Cambodia. The Cambodian Labor Law, enacted in 1997, failed 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. The lack of specific prohibitions of discrimination in the workplace against LGBT people leads to LGBT people regularly being denied jobs because of their physical appearance and perceived sexual orientation. In turn, many LGBT people are forced to turn to sex work in order to make ends meet.
25. Moreover, as a result of the LHTSE (which shut down the brothels in which many LGBT individuals were working) has had a disproportionately negative impact on LGBT people. Many of the LGBT sex workers were forced to take to the streets and engage in criminal activity to support themselves, as they found themselves deprived of income as a consequence of the implementation of the legislation.

Recommendations

26. Recommendations to the RGC in support of Cambodians' access to: quality health care services, improved quality of health through strengthened access to sexual and reproductive health information and services, and reductions in the stigma and discrimination experienced by LGBT people:
 - a. The Ministry of Health should introduce rights-based, non-discriminatory guidelines and trainings for health workers to better protect the healthcare, human rights and needs of Cambodians, specifically LGBT people and PLHIV;
 - b. In its "Strengthening and Expanding the School Health Promotion Program," the Ministry of Education should ensure the full implementation of comprehensive sexuality education that is accessible to all young people, is rights-based, non-discriminatory and

¹⁶ CCHR, 'Rainbow Khmer: From Prejudice to Pride' (Report) (December 2012)

includes specific strategies to address negative gender stereotypes and harmful cultural traditions.

- c. The National Assembly should work towards an amendment of the “other status” provision stipulated in the Constitution so that it includes specific reference to SOGI as a ground for prohibiting discrimination. Specific legislation should eliminate stigma and discrimination experienced by LGBTI individuals in the workplace;
- d. The National Assembly should amend the Cambodian Labor Law 1997 to include a provision to protect people from SOGI-based discrimination;
- e. The National Assembly should amend the Constitution and the Law on Marriage and the Family to allow for same-sex marriage;
- f. The Ministry of Interior should produce an implementation guide of the VCSP so that local authorities can follow it clearly; and
- g. The National Assembly should decriminalize sex work and legalize brothels, in order to reduce negative health outcomes, stigma and discrimination experienced by sex workers.
- h. The RGC should develop and implement a cross-sector strategy aimed at sensitizing police and law enforcement officials to the needs and realities of marginalized individuals; specifically sex workers, PLHIV and LGBT people.
- i. The RGC should ensure all above-mentioned policies are fully funded and implemented throughout the country.