



**មជ្ឈមណ្ឌលសិទ្ធិមនុស្សកម្ពុជា**  
**Cambodian Center for Human Rights**

## ***CAMBODIA'S RAINBOW FAMILIES***



***Marriage, Adoption & Gender Recognition Rights in the Kingdom***

Generously supported by



**NOVEMBER 2017**

## Cambodian Center for Human Rights (CCHR)

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.

## About the Report

This Report is an output of CCHR’s Sexual Orientation and Gender Identity (“SOGI”) Project. The SOGI Project was launched in 2009 with the aim of empowering Lesbian, Gay, Bisexual, Transgender, Intersex and Queer (“LGBTIQ”) people, advocating for their rights and networking with various partners to increase the promotion and protection of LGBTIQ rights in Cambodia.

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## Queries and Feedback

Should you have any questions or require any further information about the Report, or if you would like to give any feedback, please email CCHR at [info@cchrcambodia.org](mailto:info@cchrcambodia.org).

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## Acronyms

<b>CCHR</b>	Cambodian Center for Human Rights
<b>CSO</b>	Civil Society Organization
<b>FTM</b>	Female to male
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>LGBTIQ</b>	Lesbian, Gay, Bisexual, Transgender, Intersex, Queer
<b>MSM</b>	Men who have sex with men
<b>MTF</b>	Male to female
<b>NGO</b>	Non-Governmental Organization
<b>OHCHR</b>	Office of the High Commissioner for Human Rights
<b>RGC</b>	Royal Government of Cambodia
<b>RoCK</b>	Rainbow Community Kampuchea
<b>SOGI</b>	Sexual Orientation and Gender Identity
<b>SOGIE</b>	Sexual Orientation and Gender Identity and Expression
<b>TGM</b>	Transgender Man
<b>TGW</b>	Transgender Woman
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UN</b>	United Nations

## Definitions

<b>Cis-gender</b>	A person whose sexual preference and gender identity conforms to their biological sex at birth; not transgender.
<b>Gender</b>	Refers to the socially constructed roles, behaviors, activities and attributes that a given society considers appropriate for men and women.
<b>Gender Expression</b>	Refers to how a person presents their gender. This can include behavior and outward appearance such as dress, hair, make-up, body language, voice, chosen name and pronoun.
<b>Gender Identity</b>	A person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth.
<b>Rainbow Couple</b>	An umbrella term used throughout this report to describe couples with two partners of the same sex, or in which one or both partners identifies as transgender.
<b>Rainbow Family</b>	Rainbow couples (see definition above) that may have children in their care.
<b>Sex</b>	Refers to the biological and physical characteristics that define men and women.
<b>Sexual Orientation</b>	A person's capacity for profound emotional, sexual attraction to and intimate and sexual relations with individuals of a different gender or the same gender or both.
<b>Third Gender</b>	A term usually used where a culture recognizes three or more genders, to describe those who identify as neither a man nor woman.
<b>Trans</b>	Short for 'transgender'; a term that refers to an individual whose gender identity is different from their sex assigned at birth.
<b>Transgender</b>	A term that refers to an individual whose gender identity is different from their sex assigned at birth.
<b>Transgender Woman</b>	Someone who was assigned male at birth, but whose gender identity is that of a woman.
<b>Transgender Man</b>	Someone who was assigned female at birth, but whose gender identity is that of a man.

## Executive Summary

***“Love is not wrong, or against the law”*** - Dalin<sup>1</sup>, transman, Phnom Penh

The family is one of the most fundamental institutions of Cambodian life, but the ability of lesbian, gay, bisexual, transgender, intersex and queer (“LGBTIQ”) Cambodians to form families of their own is severely hindered by a legal framework and social structure which denies basic equality.

This report presents empirical evidence regarding the situation for LGBTIQ people in Cambodia in relation to marriage, adoption, and gender recognition rights; and provides comprehensive recommendations to address issues that are identified. In order to provide a complete picture – and reflecting the reality of Cambodia’s inconsistent enforcement of national laws at the local level – the findings detail the lived experiences of rainbow couples, in addition to the legal status of their rights.

The right to family life comprises multiple constituent rights, and for LGBTIQ Cambodians, three issues are at the fore, due to their central importance, and due to the fact that they are completely or partially denied to LGBTIQ people in Cambodia: marriage, adoption, and legal recognition of self-defined gender identity (“legal gender recognition”). The denial of these rights not only constitutes an undue restriction of the fundamental right to private and family life, but fuels further exclusion and discrimination at the community level. As long as LGBTIQ Cambodians are prevented from forming their own families, they are less likely to be accepted by their families of origin and wider communities.

The findings presented in this report are based on a combination of desk and field research focusing on these three thematic issues. Research was conducted from February to June 2017, including 121 interviews conducted across 10 provinces with co-habiting rainbow couples, former couples, local authorities, and representatives of the Royal Government of Cambodia (the “RGC”). The findings reveal previously unreported information about families in Cambodia which include same-sex or gender non-conforming couples (hereafter “rainbow families”).<sup>2</sup>

This report reveals that – despite the fact that marriage equality is not possible according to the Cambodian Constitution – many currently co-habiting rainbow couples across Cambodia already live as spouses, some conduct unofficial wedding ceremonies, and many (21.50%) have received important legal recognition in the form of family books issued by Commune authorities. In order to navigate legal restrictions, these family books predominantly classify the couples as husband and wife (39.13%) or siblings (21.74%), or simply list one individual as the head of the family (13.04%). Among rainbow couples who have adopted a child, a significant proportion (45.71%) had a family book, compared to couples who have not adopted a child (9.71%). Furthermore, there are significant disparities between different provinces regarding the availability of family books for rainbow couples. In some provinces, the vast majority of rainbow couples receive family books; in others, the practice is non-existent.

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<sup>1</sup> All names used in this report have been changed to safeguard respondents’ privacy.

<sup>2</sup> An umbrella term used throughout this report to describe families including couples with two partners of the same sex, or in which one or both partners identifies as transgender.

Married couples in Cambodia receive rights and benefits that unmarried couples do not, including in relation to joint ownership of property, custody of children, taxation, and inheritance. However, the vast majority of currently co-habiting rainbow couples surveyed displayed a lack of understanding of their legal rights, or lack thereof. For example, a large majority (80.37%) believes that unmarried same-sex couples have equal rights to each other's property during their relationship. Similarly, most (76.64%) believe that if a member of a same-sex couple dies, their partner has a legal claim to their property. This lack of awareness leaves rainbow couples in an exceptionally vulnerable position. While steps could be taken to mitigate the lack of privileges and rights afforded to them (such as making a will), this lack of legal knowledge means that rainbow couples are far less likely to take such steps. This is reflected in the findings; the vast majority of respondents had not made any provisions for inheritance upon death (90.65%).

Adoption and marriage rights are intertwined, because the Civil Code establishes that full adoption is only available to married couples, effectively denying full adoption rights to rainbow couples. However, despite the lack of an enabling legal framework, many currently co-habiting rainbow couples across Cambodia (32.71% of those interviewed) already have children in their care. Over two-thirds of these adoptions are based on simple adoption or informal agreements (67.64%), with many couples stating that they've adopted family members such as nieces or nephews (40%). Having a child is very important to the overwhelming majority (87.85%) of rainbow couples surveyed. Among those who feel that having a child is important, a large proportion (70.53%) give the reason that their children would be able to provide and take care of them when they are older.

Legal gender recognition is also unavailable under Cambodian law, yet some transgender Cambodians have been issued with ID cards conforming to their gender identity. Strikingly, 99.17% of all couples surveyed included at least one partner who identifies as transgender or gender non-conforming. This finding is highly significant from a legal perspective. It means that a gender recognition law (which, unlike the introduction of marriage equality law, would *not* require a constitutional amendment) would enable the vast majority of Cambodia's rainbow couples to marry, without requiring any change to marriage laws. This is also relevant from a political perspective, as a gender identity law could be more politically palatable than changing the constitution to allow for same-sex marriage. This is supported by the views expressed by RGC representatives interviewed for this report: while the representative of the Ministry for Information expressed support for marriage equality, officials of the Ministries of Interior and Justice were less supportive, with one official of the Ministry of Interior telling CCHR that "*there is no chance of a change*" in marriage law. He suggested it would take up to "*20 to 30 years*" for social trends to change and for the law to reflect this.

Encouragingly, rainbow families report high levels of acceptance from their communities. Almost half feel that their community is 'very accepting' (48.60%), and just under a third feel that they are 'somewhat accepting' of them (29.91%). Many report an improvement in this regard because of Cambodia's LGBTIQ rights movement gaining in prominence. Encouragingly, this suggests that further advances in the legal recognition of LGBTIQ rights could lead to increased levels of acceptance, inclusion and understanding of sexual orientation and gender identity / expression ("SOGIE").



## 1. Introduction

Parenthood and marriage are the core elements of family life, and access to legal rights in respect of both areas is vital for LGBTIQ Cambodians to be able to form happy, healthy, and legally protected families of their own. As discussed in section 5, below, legal recognition of gender identity is a third area which must be addressed in order for LGBTIQ people's right to private and family life to be fully realized.

The theme of 2017's International Day Against Homophobia, Transphobia and Biphobia ("IDAHOT") was selected as "family", including "*respect of the rights of LGBTIQ families (rainbow families)*". The IDAHOT Committee summarized why family is such a relevant theme for LGBTIQ people, as follows:

*"In many countries, Rainbow Families, that is families where members are LGBTIQ, are faced with unsuitable domestic laws, if not a total legal void. This lack of proper recognition of Rainbow Families exposes their members and especially their children to all sorts of legal risks. These families live with the thought that if a tragedy touches their life, for instance, the death or accident of the legal parent, the bond of the social parent to the child may not be recognised by the Law and basically their family life can be severely disrupted."*<sup>3</sup>

Whether a nuclear or multigenerational structure, family is central to the survival and well being of the individual in Cambodia.<sup>4</sup> Family obligations and responsibilities are reciprocal; when children are young their parents look after them and when the parents are old their children look after them. In the absence of a pension scheme, the elderly are heavily reliant on their children in order to survive after retirement. This is more than just a matter of tradition; children's obligations to care for their parents is actually written into the Cambodian Constitution at Article 47, which states:

*"Children shall have the duty to take good care of their elderly parents according to Khmer customs"*

Families are often concerned about their reputation among the local community and, as a consequence, react negatively towards LGBTIQ family members. As reported by CCHR in 2012 and 2015, LGBTIQ people are still ostracized and excluded by their own families for failing to conform to expected social standards.<sup>5</sup> In a further 2016 survey of the life of transgender women in Cambodia, 69% of respondents said their families did not support them when they came out, and a further 49% reported that they felt they had to leave the family home because of their trans identity.<sup>6</sup>

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<sup>3</sup> International Day Against Homophobia, Transphobia and Biphobia (IDAHOT) Committee, 'IDAHOT-IFED 2017: Celebrate Family Diversity' (2017). <<http://bit.ly/2pVpG1T>>

<sup>4</sup> Lorna McKenzie-Pollock, 'Cambodian Families' in Monica McGoldrick, Joe Giordano and Nydia Garcia-Preto (eds.), *Ethnicity & Family Therapy* (3<sup>rd</sup> Ed., Guildford Press, 2005).

<sup>5</sup> CCHR, 'Rainbow Khmer: From Prejudice to Pride' (Report) (December 2012), 12. <<http://bit.ly/2sDxPcK>>; CCHR, 'LGBT Bullying in Cambodia's Schools' (Report) (December 2015), 11. <<http://bit.ly/1p71s4t>>

<sup>6</sup> CCHR, 'Discrimination Against Transgender Women in Cambodia's Urban Centers' (Report) (September 2016), 14. <<http://bit.ly/2mu3kDV>>



The same study revealed that 92% of respondents experienced verbal harassment, 43% physical assault and 31% sexual assault in public spaces.<sup>7</sup> Furthermore, according to a report by RoCK, 82% of LGBTIQ respondents put discrimination related to sexual orientation and gender identity as the top problem LGBTIQ people face. It also reported that 29% of LGBTIQ people never come out for fear of being discriminated against, judged, bullied and harassed.

## 1.1 Marriage Equality

There has been significant progress towards equal marriage globally in recent years. At the time of writing, 25 countries have legalized same-sex marriage. In May 2017, Taiwan set down the path to become the first jurisdiction in Asia to legalize marriage for same-sex couples, creating momentum for marriage equality across the continent. The Taiwan Constitutional Court ruled that a ban on same-sex marriage was *“incompatible with the spirit and meaning of the freedom of marriage”*.<sup>8</sup>

The institution of marriage is exceptionally highly valued in Cambodia, with only five percent of the population remaining unmarried throughout their lives.<sup>9</sup> Excluding LGBTIQ persons from the institution of marriage excludes them from one of the foundations of Cambodian society.

There is little political resistance to legislating for same-sex marriage and adoption rights in Cambodia. Moreover, there have been many statements made by influential public figures about LGBTIQ issues. In 2004, the revered late King Norodom Sihanouk expressed his approval of same sex marriages in Cambodia.<sup>10</sup> In 2012, Prime Minister also called for an end to LGBTIQ discrimination.<sup>11</sup> The Ministry of Information has also repeatedly expressed support for LGBTIQ rights, and is often a visible presence at LGBTIQ Pride events and other initiatives organized by the LGBTIQ community. More recently, a Council of Ministers spokesperson stated that *“no Cambodian laws discriminate against [LGBTIQ people in Cambodia], and nothing is banning them from loving each other or getting married.”*<sup>12</sup> While these statements are encouraging, they have not been accompanied by any legislative action thus far.

Aside from the positive statements made by certain senior figures of the ruling Cambodian People’s Party (the “CPP”), some opposition parties have also expressed openness to – if not firm support for – marriage equality. In June 2017, an event addressing issues facing the LGBTIQ community highlighted the positions of opposition parties in relation to marriage equality.<sup>13</sup> The Cambodia National Rescue Party stated that they would hold a referendum on marriage equality in order to *“hand this [decision] over to the people.”* Similarly, the Grassroots Democracy Party stated that their party would be open to introducing same-sex marriage legislation if there was support among the population.

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<sup>7</sup> CCHR, ‘Discrimination Against Transgender Women in Cambodia’s Urban Centers’ (Report) (September 2016), 10,13. <<http://bit.ly/2mu3kDV>>

<sup>8</sup> The Constitutional Court of the Republic of China (Taiwan), ‘Press Release on the Same-Sex Marriage Case’ (24 May 2017). <<http://bit.ly/2uW770R>>

<sup>9</sup> Dorine Van De Keur, ‘Legal and Gender Issues of Marriage and Divorce in Cambodia’, *The Cambodia Law and Policy Journal*, Vol. 3:2 (2004).

<sup>10</sup> Michelle Vachon and Kevin Doyle, ‘King Lends Support to Same Sex Marriages’, *The Cambodia Daily* (21 February 2004). <<http://bit.ly/2xasaxs>>

<sup>11</sup> CCHR, ‘CCHR applauds Prime Minister Hun Sen’s call to end discrimination against LGBT Cambodians’ (Press Release) (14 September 2012). <<http://bit.ly/2b8IHwd>>

<sup>12</sup> Chea Takihiro, ‘Cambodia Welcomes Same-Sex Marriage Gov’t Spokesman Says’, *Khmer Times* (24 September 2015). <<http://bit.ly/1KVogxH>>

<sup>13</sup> Touch Sokha, ‘Parties open to gay marriage’, *The Phnom Penh Post* (1 June 2017). <<http://bit.ly/2fRNpR4>>

## 1.2 Adoption Equality

Encouragingly, previous research by local LGBTIQ rights NGO Rainbow Community Kampuchea (“RoCK”) has shown that there is support among the Cambodian public for allowing LGBTIQ persons to adopt children.<sup>14</sup> One commonly cited basis for supporting adoption for LGBTIQ persons was that it would alleviate poverty and enhance Cambodia’s development. A recent study showed that there are an estimated 48,775 children living in residential care institutions in Cambodia; equal to nearly 1 in every 100 Cambodian children.<sup>15</sup>

Reducing this exceptionally high number of children in Cambodia’s orphanages is a stated objective of the RGC. The Ministry of Social Affairs, Veterans and Youth Rehabilitation set out plans in February 2015 to decrease the number of children in care by 30 percent over three years.<sup>16</sup> Facilitating adoption – with the protection of full adoption rights – for rainbow families could go some way toward ensuring that all Cambodian children are provided with a loving, protective family environment, which would be far more beneficial to the child’s health and development than residential care.

## 1.3 Legal Gender Recognition

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 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 through the use of medical or surgical procedures in a process known as gender reassignment. They may also opt to change their sex on official identity documents in countries where it is possible to do so.

Legal recognition of self-defined gender identity on official documents is inextricably linked to the right to found a family, marry and adopt children – especially in Cambodia. This is because the vast majority of cohabiting same-sex couples in Cambodia (99% of those surveyed for this report) are comprised of one partner who identifies as transgender, and one who does not. Among couples with one transgender partner and one cisgender partner of the opposite gender (e.g. a transman and a cisgender woman), legal gender recognition would enable them to marry and adopt under the existing laws governing marriage and adoption, without requiring any further legislative changes.

Internationally, progress has also been made in the advancement of the right of transgender persons to have official documents revised in line with self-defined gender identity. Argentina, Colombia,

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<sup>14</sup> Due to the complex presentation of the data in this report, it is not possible to extract an exact figure of those who support adoption for LGBTIQ couples. The report still nonetheless uncovers high levels of support. See: TNS and Rainbow Community Kampuchea, ‘Research Report on Opinion, Attitudes and Behavior toward the LGBTIQ Population in Cambodia’ (December 2015), 72.

<sup>15</sup> Lindsay Stark *et al*, ‘National estimation of children in residential care institutions in Cambodia: a modelling study’, *BMJ Open* 2017, 1.

<sup>16</sup> Audrey Wilson and Vandy Muong, ‘Homeward bound? How to fix a damaged system’, *The Phnom Penh Post* (30 September 2016). <<http://bit.ly/2dJiqUF>>

Denmark, Ireland and many more countries, significantly Viet Nam, have legislated to facilitate this right.<sup>17</sup>

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. In some countries, trans people must be subject to a medical process (a process known as *medicalization*) in order to access this right, whereby they can only have official documents altered if they have been diagnosed with a medical condition, such as '*gender dysmorphia*' or '*gender identity disorder*'. Such a system is fundamentally problematic because it treats transgender identity as a disorder (to be *treated*), rather than a difference (to be *celebrated*). The process can further involve the traumatization of trans people, and can exacerbate cost and accessibility issues.

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<sup>17</sup> Kneela Ghoshal and Kyle Knight, 'Rights in Transition: Making Legal Recognition for Transgender People a Global Priority' Human Rights Watch (2016). <<http://bit.ly/1ZSywZ9>>; Agence France-Presse, 'Vietnam law change introduces transgender rights', *The Guardian* (24 March 2015). <<http://bit.ly/2fRB27x>>

## 2. Purpose, Scope and Methodology

### 2.1 Purpose

This report aims to present empirical evidence regarding the situation for LGBTIQ people in Cambodia in relation to three interlinked thematic areas: marriage, adoption, and gender recognition rights; and to provide comprehensive recommendations to address any issues that are identified. The themes of marriage equality, adoption and gender recognition have consistently been highlighted as a priority in CCHR's formal and informal interactions with LGBTIQ communities. In order to gain a complete picture – and reflecting the reality of Cambodia's inconsistent enforcement of national laws at the local level – this research not only focuses upon the current legal situation, but also the experiences and perspectives of co-habiting rainbow couples in respect of each of these areas.

### 2.2 Scope

Unpublished desk research previously conducted by CCHR revealed that the legal status of marriage equality was highly ambiguous, requiring a more thorough analysis and investigation. While apparently prohibited under the Cambodian Constitution, statements by prominent RGC figures suggested an alternative understanding of the law. In 2015, a government spokesperson stated, “*nothing is banning [LGBTIQ people] from loving each other or getting married*”<sup>18</sup>, and “*If a gay couple [...] wants a marriage certificate, they should apply for one, and if it's refused, take their case to court.*”<sup>19</sup> Aside from considering the right to marry, the report also considers rights and privileges flowing from marriage, including, but not limited to, joint ownership of property, joint parenthood, taxation, inheritance and protection from domestic abuse.

The issue of child adoption is deeply linked to that of marriage equality, with both issues being central to the overarching theme of family life. There was a lack of research regarding access to adoption rights for rainbow couples in Cambodia, although CCHR had previously encountered significant anecdotal evidence that the practice was already widespread. As such, this was identified as a priority area for both desk and field research.

Prior to conducting the research for this report, CCHR was aware that legal recognition of self-defined gender identity would be a major factor affecting the issues of marriage and adoption equality. This is due to the fact that transgender people, who have had their self-defined gender legally recognized, could enter into marriages without requiring a change to the law governing marriage, provided their partner is legally recognized as having a different gender. For example, a male-to-female transgender person, if legally recognized as a woman, could marry a man without requiring any change to marriage laws. For this reason, the issue of gender recognition was included within the scope of this research.

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<sup>18</sup> Chea Takihiro, ‘Cambodia Welcomes Same-Sex Marriage Gov’t Spokesman Says’, *Khmer Times* (24 September 2015). <<http://bit.ly/1KVogxH>>

<sup>19</sup> David Elliot and Sen David, ‘For many LGBTs, a secret life’, *The Phnom Penh Post* (15 December 2015) <<http://bit.ly/1MeiUHJ>>

## 2.3 Methodology

In order to understand the current situation regarding marriage and adoption equality and gender recognition, desk research was carried out in order to assess the legal framework governing these areas. CCHR focused on: the right to marry and adopt under international and domestic law; the right to legal recognition of self-identified gender identity under international and domestic law; and the rights and privileges arising from legal marriage, adoption and gender recognition in Cambodia. Desk research also focused on the social and cultural context surrounding family life in Cambodia.

Field research, in the form of interviews across a selection of Cambodia's provinces, was also undertaken to obtain qualitative and quantitative data. Four surveys were created, consisting of between 43-81 questions. The surveys, predominantly made up of open-ended questions and some multiple-choice questions, were carried out in interview style, mimicking a casual two-way conversation. The interviews were conducted with: a) co-habiting rainbow couples; b) former co-habiting rainbow couples; c) local authorities (including the village, commune and district levels); and d) with representatives of the RGC. In total, 121 current or former members of rainbow couples, nine local authority representatives and three government representatives took part in the surveys.

CCHR undertook field missions in March and April 2017, collecting data in nine provinces: Kampong Cham; Tbong Kmum; Stung Treng; Preah Vihear, Svay Rieng, Takeo, Ratanakiri, Siem Reap and Kampong Thom, as well as Phnom Penh Municipality. These provinces were selected based on information received from LGBTIQ networks and activists, with experience of working with rainbow families in Cambodia. In each location, CCHR made use of contacts within LGBTIQ organizations and networks to locate suitable interviewees. Interviews were conducted in a mixture of public and private settings, provided the respondents were comfortable with the surroundings. For the interviews with RGC ministry representatives, request letters were sent to the Ministries of Justice, Information, and Interior, and interviews were later conducted at their respective Ministry offices. Ministry representatives ranging in rank from minister to under-secretary of state were interviewed. During the data analysis stage, trends were identified amongst answers to open-ended qualitative questions. The answers were then placed into categories based on these trends in order to be quantified and analyzed. Four follow-up in-depth interviews were later conducted by telephone for the purpose of including detailed case studies.

## 2.4 Limitations

The time available when conducting the field missions was limited, due to resource constraints. Although the original research plan envisioned spending more days each in fewer provinces, the research team decided to expand the geographic scope of the research because of difficulties in reaching target numbers of interviewees in certain provinces. Seasonal pre-Khmer New Year internal migration was identified by the families and friends of recently-departed rainbow couples and LGBTIQ individuals as a major factor in the unavailability of potential participants, while long-term migration to Thailand was also frequently cited. Similarly, due to resource and budget restrictions, not all provinces were covered by the field research and as a result the sampling method does not include rainbow families from all areas of Cambodia.

The views of local authority figures interviewed for this report are unlikely to be representative, due to limitations of the sampling method employed: CCHR were reliant on local LGBTIQ activists for introductions, and as such, the likelihood of being introduced to LGBTIQ-friendly local authority figures was likely increased. Additionally, there was an imbalance in terms of gender among the couples and former couples surveyed. Despite seeking out equal numbers of men and women, CCHR could find very few co-habiting couples involving gay men and/or transgender women. Possibly due to cultural factors, the vast majority of co-habiting couples encountered were made up of one self-identified lesbian woman and one self-identified transgender man. While CCHR did encounter some couples involving gay men and/or transgender women, only 17 (or 14% of all couples interviewed) were cohabiting and therefore met the criteria for inclusion in this research.

### 3. Marriage Equality

This section presents the findings of desk and field research in respect of marriage for rainbow couples in Cambodia. It first considers the right to marry, and then examines the rights and privileges flowing from marriage.

#### 3.1 The Law

SNAPSHOT: MARRIAGE EQUALITY
STATUS: ILLEGAL
<ul style="list-style-type: none"><li>• Article 45 of the Cambodian Constitution determines marriage is between a “husband” and a “wife”, which effectively excludes the possibility of same-sex marriage.</li><li>• The abrogation of Article 6 of the 1989 Law on Marriage and Family means the right of same-sex couples to marry is no longer <i>explicitly</i> prohibited under Cambodian law.</li><li>• International human rights law has not yet recognized an explicit right to marriage equality, though it does prohibit discrimination in all forms.</li><li>• Principle 24 of the Yogyakarta Principles states that “everyone has the right to found a family regardless of sexual orientation or gender identity.”</li><li>• Preventing same-sex couples from marrying denies them other rights and privileges arising out of marriage, for example in relation to taxation and child custody.</li><li>• Presently, 25 countries have legalized same-sex marriage and Taiwan is set to become the first Asian country to do so, likely in 2017.</li></ul>

##### 3.1.1 The Constitution apparently prohibits same-sex couples from marrying

The Cambodian legal framework largely ignores LGBTIQ people. There is a lack of explicit anti-discrimination protections, no defined sanctions for those who commit hate crimes and, significantly for the purposes of this report, no legal recognition of rainbow partnerships. The Constitution, at the top of the hierarchy of laws in Cambodia, likewise makes no direct mention of LGBTIQ citizens. Article 31 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 fulfilling the same obligations regardless of race, color, sex... or other status.”*

While LGBTIQ persons arguably fall under the “*other status*” category, the explicit inclusion of nine other categories appears to diminish this argument. Furthermore, other areas of Cambodian law, including the Criminal Code, do not include protections LGBTIQ anti-discrimination provisions. However, the Constitution does incorporate international human rights treaties into domestic law. Article 31 states:



*“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 rights and children’s rights.”<sup>20</sup>*

This article has been interpreted by Cambodia’s Constitutional Council to mean that international human rights treaties are directly applicable in Cambodian law.<sup>21</sup> Given that the International Covenant on Civil Political Rights (the “ICCPR”) is directly applicable, and the ICCPR has been authoritatively interpreted by the UN Human Rights Committee to prohibit LGBTIQ discrimination (see 3.3.3, below), it must be concluded that discrimination against LGBTIQ persons is also prohibited under Cambodian law.

However, this anti-discrimination guarantee does not encompass the right to marriage equality, either internationally or domestically. The right to marriage is enshrined in Article 45 of the Cambodian Constitution, which states:

*“[M]arriage shall be conducted according to law, based on the principle of mutual consent between one husband and one wife.”*

The phrasing of Article 45 theoretically excludes the possibility of same-sex marriage. Encouragingly, the adoption of the 2007 Civil Code repealed a previous explicit prohibition on same-sex marriage. The 1989 Law on Marriage and the Family, at 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 1989 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 the 2007 Civil Code’s Book Seven, Chapter Three, “Marriage”, there is no prohibition on same-sex marriage. This constitutes a positive development, and it means that couples or officials involved in same-sex marriages – should they occur in the present legal climate - should not be subject to any punishment or sanction for doing so. However, there is equally no explicit provision facilitating same-sex marriage, and as such, there is no justification for questioning the plain meaning of Article 45 of the Constitution, i.e. that only heterosexual marriages should be legally recognized.

Article 1023 (2) of the Civil Code, which governs simple adoption, alludes to same-sex marriage, albeit in a peculiar context. It states “*the court must not permit the establishment of an adoption if it finds that the adoption is being abused for heterosexual or homosexual marriage or any other unjust purpose.*” While this reference could be interpreted to equate heterosexual and homosexual marriages in legal terms, the Explanatory Note to Domestic Adoption, which clarifies the meaning of the legal framework, unfortunately runs counter to this interpretation. It states, “*Article 1023 prohibits the parties from abusing the system of simple adoption for any immoral purposes, such as a camouflage of a parent-child relationship or a homosexual marriage.*” The use of the word “immoral” to describe homosexual marriage is deeply troubling. It appears to negate the notion that “*homosexual marriage*” has been codified in Cambodian law and is conversely quite damning of it.<sup>22</sup>

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<sup>20</sup> Constitution of the Kingdom Cambodia, 21 September 1993, Article 31.

<sup>21</sup> Constitutional Council of the Kingdom of Cambodia, Decision No. 092/003/2007, 10 July 2007.

<sup>22</sup> UNICEF, ‘Explanatory Notes to Domestic Adoption Based on Civil Code and Non-Litigation Civil Procedure: Kingdom of Cambodia’ (2016), 90.

### 3.1.2 International law does not yet recognize a specific right to marriage equality, but guarantees equality and non-discrimination in all areas of life

The principle of non-discrimination is pervasive throughout international human rights law, and the legal obligation of states to protect and uphold LGBTIQ rights is well established. The Universal Declaration of Human Rights (the “UDHR”), the ICCPR and the International Covenant on Economic, Social and Cultural Rights (the “ICESCR”) guarantee equal rights to all individuals without regard for personal status or characteristics.

Article 1 of the UDHR states that “*all human beings are born free and equal in dignity and rights*”, and prohibits discrimination of any kind including “*race, color, sex... or other status.*” Similarly, Article 2 of the ICCPR determines that a state guarantees rights “*to all individuals within its territory and subject to its jurisdiction... 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.*” The addition of “*other status*” indicates this list is non-exhaustive and can include other categories, such as sexual orientation and gender identity. Indeed, “*other status*” has been referenced consistently as including sexual orientation and gender identity by treaty bodies and in decisions of the UN Human Rights Committee.<sup>23</sup>

However, despite non-discrimination and equality being fundamental principles of human rights law, embodied in the UDHR, ICCPR and ICESCR, there continues to be inequality in the way in which the legal framework governing marriage and adoption is interpreted and applied.

Article 16(1) of the UDHR states that, “*men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and found a family.*” Once again, sexual orientation and gender identity are not explicitly included. ICCPR Article 23(2) determines, “*the right of men and women of marriageable age to marry and found a family.*” This is a broader formulation than is contained in the UDHR. Nevertheless, in *Joslin v New Zealand*,<sup>24</sup> an individual communication considered by the UN Human Rights Committee, it was stated that Article 23(2) did not protect the rights of same-sex couples to marry. It is worth noting that although it is the only authority in this area, this decision is 15 years old.

Since 2002, certain UN bodies and initiatives have made significant efforts to show support for equal marriage. In 2013, the UN’s Free and Equal campaign, which canvasses for LGBTIQ equality, was launched. In a 2014 report, UNICEF stated that it “supports the enactment of laws which provide LGBTIQ couples and their children with the legal recognition of their family ties.”<sup>25</sup> Equally, the Committee on Economic, Social and Cultural Rights has commended countries such as Argentina for implementing an Equal Marriage Law.<sup>26</sup>

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<sup>23</sup> United Nations Economic and Social Council, ‘General Comment No. 20 ‘Non-discrimination in economic, social and cultural rights (art. 2, para 2, of the International Covenant on Economic, Social and Cultural Rights)’ (E/C.12/GC/20) (2009); United Nations Human Rights Committee, *Toonen v Australia*, Communication No 488/1992 (CCPR/C/50/D/488/1992) (31 March 1994).

<sup>24</sup> United Nations Human Rights Committee, Communication No. 902/1999, UN Doc A/57/40 at 214 (2002).

<sup>25</sup> UNICEF, ‘Eliminating Discrimination Against Children and Parents Based on Sexual Orientation and/or Gender Identity’, *UNICEF Current Issues No.9* (2014), 4.

<sup>26</sup> United Nations Committee on Economic, Social and Cultural Rights, ‘Consideration of reports by States parties under Article 16 and 17 of the Covenant’ (E/C.12/ARG/CO/3) (2 December 2011), 2.

The 2006 Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity (the “Yogyakarta Principles”) provide guidance in respect of the application of international human rights law to issues of sexual orientation and gender identity / expression. Although the Yogyakarta Principles are non-binding, they have been referenced by multiple UN bodies as enriching and setting precedents for future LGBTIQ legal developments.<sup>27</sup> Specific Yogyakarta Principles are relevant to the context of marriage rights for rainbow couples. Principle 24 provides, “*everyone has the right to found a family regardless of sexual orientation or gender identity.*” Traditionally, marriage has acted as the foundation of building a family. By denying rainbow couples the ability to be married, rainbow couples are also being deprived of their right to found a family. The right to social security and to other social protection measures is found within Principle 13. It states “*Everyone has the right to social security and other social protection measures, without discrimination on the basis of sexual orientation or gender identity.*” In most jurisdictions, and certainly in Cambodia, the benefits of many social protections arise from marriage. Denying the right of rainbow families to marry excludes them from access to many rights afforded to married couples.

### **3.1.3 Family books are legally and culturally important in Cambodia; every family must own one**

Family books are government-issued documents which are used to detail family relationships and record information such as date of birth, date of marriage, number of children and date of death.<sup>28</sup> The 1997 Anukret (Sub-Decree) on the Family Record Book governs the management of family books.<sup>29</sup> According to Article 2, “*the family record book is a book used to identify members of the family with Khmer nationality and blood relationship of each family including spouse, their own blood children or adopted children.*” The wording “*spouse*” would appear to exclude rainbow couples, who cannot marry.

## **3.2 Field Research Findings: Marriage**

### **3.2.1 Many co-habiting rainbow couples receive family books and celebrate weddings, despite the lack of a legal basis**

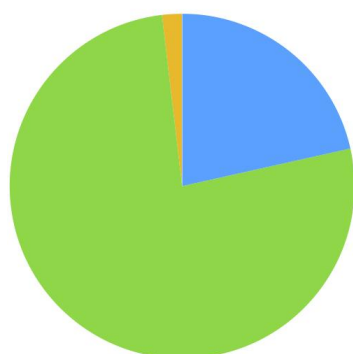
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<sup>27</sup> Paula L Ettelbrick and Alia Trabucco Zerán, ‘The Impact of the Yogyakarta Principles on International Human Rights Law Development: A study of November 2007-June 2010’ (2010), 13-24. <<http://bit.ly/2fR7C9J>>

<sup>28</sup> Phann Ana, ‘Family Book Bribes Forbidden by Governor’, *The Cambodia Daily* (18 December 2000). <<http://bit.ly/2wXrmg2>>

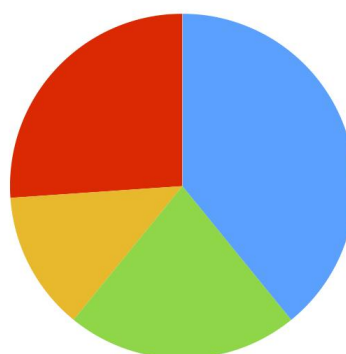
<sup>29</sup> Anukret (Sub-Decree) on the Family Record Book No 74 ANK.BK (4 November 1994).

**Do you and your partner have a family book?**



- Yes (21.50%)
- No (76.64%)
- Unsure (1.81%)

**Please give details of the contents of your family book, including the classification of the partners**



- Husband and wife (39.13%)
- Siblings (21.74%)
- One partner as head of the family (13.04%)
- Other (26.09%)

A considerable number of currently co-habiting rainbow couples (21.50%, 23 respondents) surveyed reported having a family book, which they received from local authorities. These family books predominantly classify the couples as husband and wife (39.13%, nine respondents) or siblings (21.74%, five respondents), or simply list one individual as the head of the family (13.04%, three respondents). The remaining 26.09% (six respondents) do not explicitly classify the relationship of the couple. Those couples that have a family book are also more likely to have adopted children. A significant majority of couples with family books - 69.57% (16 respondents) - also have children. These findings support similar evidence previously conducted by Rainbow Community Kampuchea (RoCK).<sup>30</sup> None of the former couples interviewed reported to have obtained a family book during the course of their relationship.

There were significant disparities between different provinces regarding the availability of family books. Among the currently cohabiting rainbow couples who secured family books, a large proportion come from one province (39.13%, nine respondents). In fact, family books have been given to the significant majority of rainbow couples in this province (69.23%, nine respondents).<sup>31</sup> There were no family books given to rainbow couples in certain provinces, including Phnom Penh. These findings are a testament to the ambiguity or uncertainty surrounding the legal status of rainbow couples, and in turn the inconsistent interpretation and application of laws.

<sup>30</sup> TNS and Rainbow Community Kampuchea, 'Research Report on Opinion, Attitudes and Behavior toward the LGBTIQ Population in Cambodia' (December 2015), 22.

<sup>31</sup> The name of this province has been withheld in order to protect the privacy and interests of the respondents from that province.

### Case Study #1: Ritthy & Lin, Tbong Khmum

*“In 1976, I fell in love with my partner and first realized my sexual orientation. Since 1979, we’ve lived and worked together. We love each other and take care of each other when we are sick.*

*I feel disappointed by not being able to get married. I am a human, too. Why won’t they let me get married and be equal to other people? First, I requested a family book from my community but they refused, even if me and my partner were listed as siblings. But the LGBTIQ community has since built a voice and now they let me get a family book. The authorities said that, even though we now have these legal documents, we can only celebrate our wedding through a normal party — not an official wedding ceremony.*

*I think that the law is important in reducing discrimination. If there is a law, the authorities and people have to follow it. The law also changes people’s perceptions because it spreads information and raises awareness of our situation.*

*We have a family book, but it does not classify us as husband and wife — it lists us as siblings, with me as head of the family. But in our daily lives, I am the husband and my partner is the wife.”*

When asked whether same-sex couples are eligible for family books in their community, local authority figures were equally split in their answers — a third said yes, a third said no, and a third were unsure (33.33%, three respondents per response). However, of those that said yes, they were all unclear about how same-sex couples should be classified in their family book.

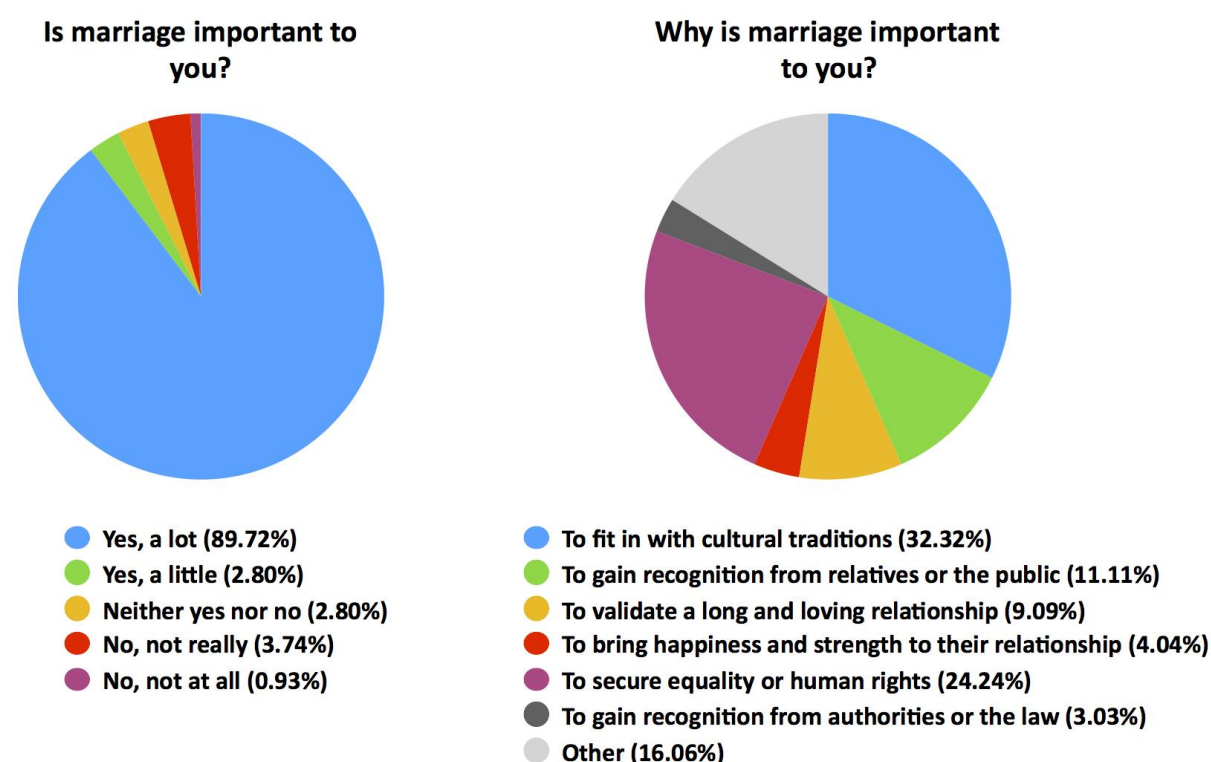
Two current couples and one former couple reported to have gotten married in traditional Khmer ceremonies. This is perhaps a result of a lack of any explicit provision against same-sex marriage, and is possibly due to the current legal ambiguity surrounding marriage equality, as well as the poor enforcement of laws at the local level in Cambodia.

### Case Study #2: Sreyleak & Polin, Kampong Thom

*“We have a family book which classifies us as husband and wife. We play different roles in our relationship — one is a man, and one is a woman. My partner is the husband and obtained an identity card which classifies him as male. He did not request his gender to be changed on this identify card. The authorities simply did it because the whole community knows him as a man. He presents himself as a man — he has short hair and wears male clothes. My husband is illiterate, and because of this he did not even realize his identity card had been changed to classify him as a male! When I told him, he was very happy and smiled.”*

### 3.2.2 Marriage equality is perceived as vital by the vast majority of rainbow couples, with cultural, social and legal factors commonly cited as reasons

When asked if marriage was important to them, an overwhelming majority of currently co-habiting rainbow couples responded with “yes, a lot” (89.72%, 96 respondents) or “yes, a little” (2.80%, three respondents). A small number of respondents responded with either “no, not really” (3.74%, four respondents) or “no, not at all” (0.93%, one respondent). The remaining 2.80% (three respondents) responded with “neither yes nor no”. Those respondents who view marriage equality as unimportant mainly gave personal reasons, such as their old age or poor financial situation, rather than making general statements about its value for rainbow couples.



Of those respondents who feel marriage is important, a large number cited cultural factors, viewing marriage as fundamental in order to fit in with Khmer customs and traditions (32.32%, 32 respondents). This highlights how an absence of marriage equality acts as a form of sociocultural exclusion and alienates rainbow couples from their own communities.

*“[Marriage equality] is needed due to Khmer traditions and culture.”*

- Pao, Phnom Penh

A large number of respondents cited social factors, such as that marriage will ensure recognition from their relatives or the public (11.11%, 11 respondents), validate their long and loving relationship (9.09%, nine respondents), or bring happiness and strength to their relationship (4.04%, four respondents). A significant proportion also cited legal factors, mainly that marriage is important to secure equality and human rights (24.24%, 24 respondents) or to gain recognition from the authorities and the law (3.03%, three respondents). The remaining 16.16% (16 respondents) provided a wide

range of answers, such as its importance in preventing their parents breaking up their relationship, or raising awareness of the LGBTIQ community.

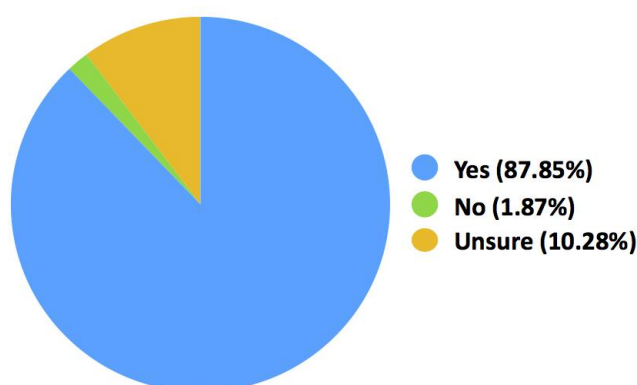
*"If I were young, I would wish to get married. Me and my partner are too old now.  
We live together and take care of each other, and this is just a normal thing even without marriage.  
But I feel disappointed that we've never been able to get married."*

- Sally, Preah Vihear

### 3.2.3 Marriage equality is perceived as vital in reducing discrimination

The overwhelming majority of currently co-habiting rainbow couples feel that discrimination would be reduced if they were legally permitted to marry their partner (87.85%, 94 respondents), whilst only a small number feel it would remain the same (1.87%, two respondents) or are unsure (10.28%, 11 respondents).

**Do you think that you would be the subject of less discrimination if you were permitted to legally marry your partner?**



Among those who felt discrimination would be reduced, many emphasized the importance and power of the law. For example, many stated that the law provides equal rights (20.43%, 19 respondents), 'protects' or 'supports' their relationship (13.98%, 13 respondents), 'automatically' reduces discrimination (6.45%, six respondents), must be enforced or followed (4.30%, four respondents), or raises awareness about LGBTIQ people (4.30%, four respondents). This reveals the high degree of faith that many LGBTIQ place in the law in reducing discrimination in their lives. The other 50.54% (47 respondents) provided miscellaneous answers.<sup>32</sup>

### 3.2.4 A large number of rainbow couples believe that their relationship is legally recognized

In the absence of equal marriage laws, a large number of currently co-cohabiting rainbow couples still believe that their relationship is legally recognized (52.34%, 56 respondents).

*"Love is not wrong or against the law."*

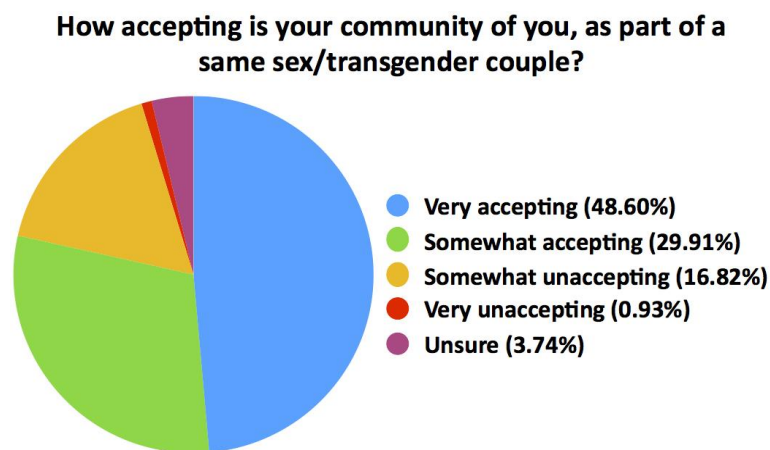
<sup>32</sup> 1 respondent skipped this question.



Of those that believe that they have legal recognition, the main reasons provided included the fact that legal recognition is their human right (25.93%, 14 respondents), their relatives or the authorities recognize and support them (22.22%, 12 respondents), or there is no explicit law against them (18.52%, 10 respondents). The remaining 33.33% (18 respondents) provided other answers, such as the fact that their love does not cause problems for society.<sup>33</sup>

### 3.2.5 Most rainbow couples feel accepted by their communities, and increasingly so

Encouragingly, most currently co-habiting rainbow couples report acceptance from their communities. Almost half of rainbow couples feel that their community is 'very accepting' of them (48.60%, 52 respondents), and just under a third feel that they are 'somewhat accepting' of them (29.91%, 32 respondents).



A small number reported that their community was 'somewhat unaccepting' of them (16.82%, 18 respondents), whilst only a single respondent said that their community was 'very unaccepting' of them (0.93%, one respondent). The remaining 3.74% (four respondents) were unsure. These findings are significant, and individual responses suggest that many communities become more accepting and supportive once they get to know and understand rainbow couples.

<sup>33</sup> Two respondents skipped this question.

### Case Study #3: Pich & Chenda, Svay Rieng

*"We hid our relationship to begin with so our community did not really react. When we would go somewhere together, some people would gossip and wonder if we were a lesbian couple. When we revealed our relationship, everybody was surprised. They would discriminate against us and ask: "Why does a woman love another woman?" They were surprised because we were the first lesbian couple in the community. In the newer generations, there are a few more.*

*Now, there is much less discrimination and most people understand us. I think that, back then, lesbian couples just did not exist. If they did, they were hidden. But many have appeared now, and they are able to build a voice to claim their rights. That's why things have changed. My partner's relatives had a negative reaction to us and did not respect our relationship. My parents, however, have always supported us."*

Individual responses reflect these statistics, with the majority of respondents describing how their community recognizes, respects, and supports them. Moreover, seven of those who reported being accepted detailed how community perceptions had changed for the better over time. This suggests that Cambodian society is becoming more open-minded and accepting of same-sex couples.

*"At first they made jokes and tried to separate us, but now they accept us and cheer."*

- Rachana, Siem Reap

*"In the past, our relatives attempted to break our relationship apart, but now it's okay."*

- Makara, Takeo

*"Previously, it was difficult for them to accept us. But now they accept LGBTIQ issues."*

- Sopheap, Preah Vihear

### Case Study #4: Kunthea & Bopha, Stung Treng

*"I first realized that I was a lesbian in 1979. My partner and I started to love each other then, but she soon left. She came back in 2000.*

*When I first revealed my sexual orientation, my community responded with: "What is a lesbian? Women are supposed to love men! Why don't you think about your future?" They thought being a lesbian was just frivolous pursuit, and that it was a waste of time. A lot of people in my community were full of hatred, and many people did not talk to us. It was a new thing in my community. At first, there was a lot of discrimination. Now, there is much less discrimination.*

*When I first lived in the pagoda, I made garments and textiles and taught disabled people in the community how to make clothes. The master monk, the pagoda committee and all other monks allowed me to stay at the pagoda. They accepted me and did not discriminate against me. My whole district knows about my sexual orientation now — not just in my village. I'm very happy to be accepted into the pagoda. All of the monks accept me here. If not, I would have no house to live in.*

While most respondents describe how their community is increasingly accepting of them, a significant number report experiencing discrimination to this day (33.64%, 36 respondents). This includes neighbors believing they are ‘against nature’, refusing to use their business, or even mocking, bullying, and insulting them.

*“In my community, some people say, ‘if you are a woman, why don’t you act like a real woman’.”*

- Sophorn, Ratanakiri

### **3.2.6 Many local authority figures support same-sex marriage, but lack understanding of the law**

All local authority figures interviewed identified as supporters of same-sex marriage, and a significant number of them claimed that they personally raise awareness of issues affecting LGBTIQ people and same-sex couples in their community (44.44%, four respondents).<sup>34</sup> Further, all nine local authority figures interviewed expressed a belief that their community is welcoming of LGBTIQ people, and supportive of rainbow couples.

*“In my community, many are supporters, because they understand the LGBTIQ community.”*

- Village Chief, Kampong Cham Province

The majority of local authority figures surveyed believe that it is legal for two people of the same biological sex to marry (66.67%, six respondents), whilst only one believed it was illegal (11.11%) and two were unsure (22.22%). Of those that believe marriage equality is legal, over half believe so because it is a right (55.56%, five respondents). The remaining 44.44% (four respondents) provided a range of reasons, such as same-sex marriage being commonly accepted or same-sex couples being normal people.

### **3.2.7 There is no consistent RGC position on marriage equality for LGBTIQ people**

Representatives of the RGC all expressed different positions on marriage equality for LGBTIQ people. Encouragingly, a representative of the Ministry of Information stated that he had no objection to the introduction of a marriage equality law. However, a representative of the Ministry of Interior was unmoved in his belief that, because marriage is codified in the Constitution as between a “husband” and “wife”, it cannot include same-sex couples. A representative of the Ministry of Justice declared that he was not in support of marriage equality; however, he would agree with marriage equality if a law were passed enabling it.

The representative of the Ministry of Interior estimated that only 10% of the public are accepting of LGBTIQ people, and suggested that in order for RGC policy to change, this percentage would need to reach 50-70% acceptance. Moreover, he stated that *“there is no chance of [a] change”* in legal procedure to enable equality for rainbow families. He suggested it would take up to *“20 to 30 years”* for social trends to change and for the law to reflect this.

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<sup>34</sup> It is important to note that these figures are not necessarily representative of all local authorities due to the sampling method used for this report. The majority of local authority figures interviewed were recommended by local activists, significantly increasing the chances that they are familiar with LGBTIQ issues and in turn show pro-equality sentiment.

The representative of the Ministry of Information had a more positive outlook and stated that “*Khmer society seems to accept LGBTIQ people.*” He identified a number of issues facing LGBTIQ people, including discrimination from families and bullying in schools. He also noted that the Ministry of Information had encouraged LGBTIQ communities and helped to build networks. This is demonstrative of the lack of clarity or consistent position on where the RGC stands regarding LGBTIQ rights.

### 3.3 Rights Arising from Marriage

Married couples in Cambodia receive rights and benefits that unmarried couples do not, according to the Civil Code. This section examines the rights and privileges arising from marriage, including joint ownership of property, custody of children, taxation, inheritance and protection from domestic abuse. The findings of desk and field research are combined in the subsections below.

LEGAL SNAPSHOT: RIGHTS ARISING FROM MARRIAGE
THE CIVIL CODE
<ul style="list-style-type: none"> <li>Article 1161(1) provides that only the “<i>spouse of a decedent shall become a successor in every case.</i>”</li> <li>Article 1268 determines that where property is jointly accumulated over a marriage, the <i>spouse</i> is prioritized as the successor over other successors.</li> <li>Articles 917 and 972 outline the allocation of property within a marriage. Provisions refer to “<i>husband and wife</i>” and therefore exclude rainbow families from having shared property.</li> <li>Under Article 1140, relatives are obliged to care for each other and provide support between the “<i>surviving spouse and the relatives of the deceased spouse.</i>”</li> </ul>
THE LAW ON THE PREVENTION OF DOMESTIC VIOLENCE AND THE PROTECTION OF VICTIMS
<ul style="list-style-type: none"> <li>Article 2 defines domestic violence as between a “<i>husband or wife,</i>” or other dependents meaning rainbow couples are not protected by the domestic violence law.</li> </ul>
TAXATION LAW
<ul style="list-style-type: none"> <li>Article 46(2) states that “<i>a spouse having only an occupation as a house[keeper]</i>” may be entitled to tax reductions.</li> </ul>
CRIMINAL CODE

<ul style="list-style-type: none"> <li>Article 529(2) exempts “<i>a spouse of the perpetrator</i>” from reporting a felony their spouse has committed.</li> <li>Article 539(3) exempts “<i>a spouse of the perpetrator</i>” from producing evidence that could help to prove the an accused or convicted person’s innocence.</li> <li>Article 544(2) exempts “<i>a spouse of the perpetrator</i>” where they have acted as an accomplice by facilitating the escape of the perpetrator.</li> </ul>
<b>CODE OF CRIMINAL PROCEDURE</b>
<ul style="list-style-type: none"> <li>Article 156(5) allows for “<i>the spouse of the accused person</i>” to make a statement without swearing on their beliefs.</li> <li>Under Article 313, “<i>a civil party may... be represented by a lawyer [or] his/her spouse.</i>”</li> <li>Article 556 governs a challenge against the appointment of a judge. Where “<i>the judge or his/her current or former spouse is one of the parties</i>” a challenge may be admissible.</li> </ul>

### 3.3.1 Property and Succession

Articles 971 and 972 of the Civil Code govern the allocation of property within marriage.<sup>35</sup> Article 971 states that “*husband and wife share the expenses of married life, taking into account their property, income and all other circumstances.*” For rainbow couples who are not married, there is no law facilitating the division of property, income and expenses. Articles 972 and 973 provide for exceptions to the general rule of shared ownership. These provisions do not protect property rights of couples, such as rainbow couples, who have cohabited over many years and consider their property to be shared.

One provision that poses a unique problem for rainbow couples who cannot marry is the right to succession by a spouse.<sup>36</sup> Article 1161(1) of the Civil Code determines “*the spouse of the decedent shall become a successor in every case.*” In this circumstance, the property of the deceased in a marriage – where no valid will has been made - may be automatically passed to their spouse. The Civil Code also outlines provisions for making a will or “Testamentary Concession”.<sup>37</sup> It is possible that wills can be created to ensure property is awarded to any person whom the testator chooses, but this practice and area of law in Cambodia is relatively undeveloped, meaning that rainbow couples do not routinely create wills for succession of property to their partners, especially in rural and impoverished communities.

Field research revealed that a majority of currently co-habiting rainbow couples jointly own properties (56.73%, 59 respondents), with the remainder owning individual property (42.31%, 44 respondents) or stating that they were unsure about the ownership of their property (0.96%, one respondent).<sup>38</sup>

<sup>35</sup> The Civil Code of the Kingdom of Cambodia (8 December 2007), Articles 971 and 972.

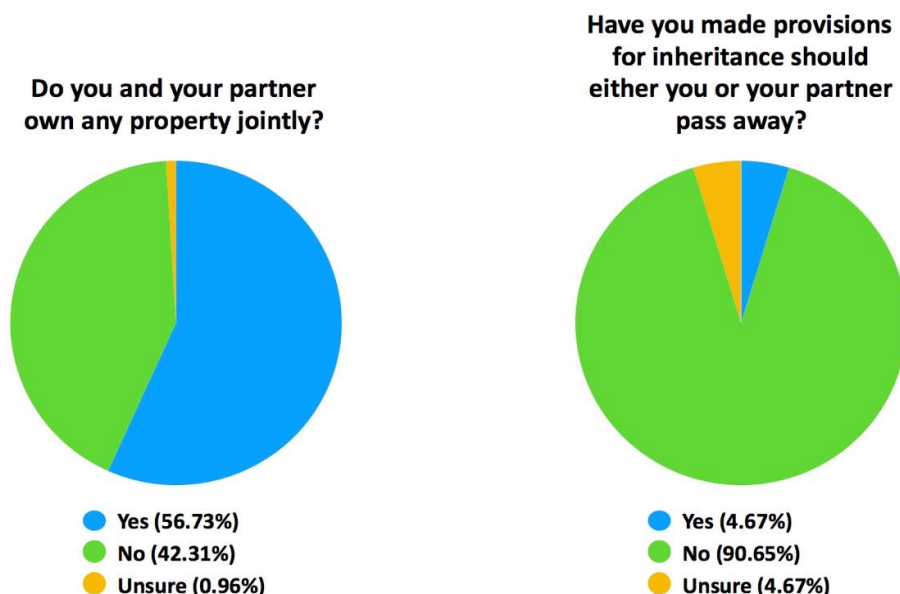
<sup>36</sup> Ibid., Article 1161.

<sup>37</sup> Ibid., Articles. 1170-1229.

<sup>38</sup> Three respondents skipped this question.

Further, the vast majority have not made any provisions for inheritance on the death of their spouse (90.65%, 97 respondents). A marginal number of respondents had made inheritance provisions (4.67%, five respondents) or were unsure whether they had or not (4.67%, five respondents).

Similarly, the majority of respondents had not agreed on spousal support in the instance of separation, but were planning to do so in the future (53.85%, 56 respondents). A considerable number had not discussed an agreement and did not plan to in the future (38.46%, 40 respondents). The remaining couples said that they had discussed an agreement but not yet achieved a consensus (6.73%, seven respondents), or that they had discussed an agreement and reached a consensus (0.96%, one respondent).<sup>39</sup>



The fact that 56.73% of respondents report jointly owning property is problematic, considering that rainbow couples' rights after death or separation are not protected in the same way that married couples' rights are. This means that in circumstances of death or separation, individuals are not protected by the law and may lose access to their possessions, homes and businesses. This vulnerable position is perhaps in part due to the widespread legal uncertainty over property rights, as discussed in section 3.4.2, below.

### 3.3.2 Damages Upon Death & Disappearance

The Civil Code provides that where a person has disappeared for five years, the spouse of this person has the option of petitioning the court to make a judicial declaration of disappearance.<sup>40</sup> Additionally, where a person has died "*as the result of a tortious act*" the person's spouse is entitled to damages from the emotional stress caused by the death.<sup>41</sup> If one partner in a rainbow couple were to die as a result of a tortious act, then the partner who they are survived by is not entitled to damages.

<sup>39</sup> 1 respondent skipped this question.

<sup>40</sup> The Civil Code of the Kingdom of Cambodia (8 December 2007), Article 41.

<sup>41</sup> Ibid., Article 760(3).

### 3.3.3 Obligation to support

Article 1140 determines the obligation of spouses to provide support to one another. Relatives are obliged to care for each other under this clause, but it also obligates *“support between the surviving spouse and the relatives of the deceased spouse in cases where a marriage is dissolving by reason of death.”*<sup>42</sup> This Article creates a relationship of support between the family of the deceased and surviving spouse of the deceased. For unmarried rainbow couples, where one dies, a legal obligation of support between the surviving partner and the deceased’s family is not created, leaving the surviving spouse in a highly vulnerable position, especially considering the widespread rejection of rainbow relationships by their families of origin.

### 3.3.4 Domestic Violence

The 2005 Law on the Prevention of Domestic Violence and the Protection of Victims defines domestic violence as that which happens towards *“husband or wife”, “dependent children”* or other dependents.<sup>43</sup> Therefore, the protective measure of this act excludes rainbow couples. The restrictive choice of the wording *“husband and wife”* ignores violence that might occur between same-sex couples. During field research, 14.29% (two respondents) of former couples reported having experienced domestic violence, and neither respondent reported the abuse to the police.

### 3.3.5 Taxation

The 2004 Law on Taxation provides tax breaks for couples with *“minor dependent children”* and *“a spouse having only an occupation as a housewife.”*<sup>44</sup> It might be the case that some rainbow families have *“minor dependent child”* and may be allowed a reduction in tax. However, the terms *“spouse”* and *“housewife”* means that these benefits are not available to rainbow couples.

### 3.3.6 Employment

The 1997 Labor Law defines an *“artisan”* as a person *“who practices a manual trade personally on their own account... or with the help of their spouse or family members who work without pay.”*<sup>45</sup> The classification of *“artisan”* allows parties to employ apprentices. This allows *“artisans”* to train individuals for a maximum period of two years in exchange for receiving labor from the apprentice in return. This means that if one party in a rainbow relationship was an artist and the other partner was assisting them in their work without pay, the artist may be unable to employ an apprentice, as their partner is not legally recognized as their spouse.

### 3.3.7 Privileges under Criminal Law & Procedure

The Criminal Code of the Kingdom of Cambodia (the *“Criminal Code”*) also provides many rights to married couples, which rainbow families cannot benefit from. Article 529 of the Criminal Code protects

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<sup>42</sup> Ibid., Article 1140(2).

<sup>43</sup> The Law on the Prevention of Domestic Violence and the Protection of Victims (16 September 2005), Article 2.

<sup>44</sup> The Law on Taxation (8 January 1997), Article 46(2).

<sup>45</sup> The Labor Law of Cambodia (13 March 1997), Article 7.



spouses from being compelled to report felonies that their partner may have committed.<sup>46</sup> Rainbow couples are not afforded the same protection and consequently are liable to punishment if they do not report the criminal activity of their partner. Second, Article 539 states that spouses of perpetrators are exempt from producing evidence against their partner that could prove the innocence of another accused person.<sup>47</sup> This does not apply to rainbow couples, who could be punished for withholding such information.

Article 544 offers protection from punishment to the spouse of a perpetrator where the spouse has assisted the perpetrator in the commission of a felony.<sup>48</sup> It provides that where the spouse has provided lodging, a hiding place or means of living to escape from investigation, they are exempt from legal punishment. Rainbow couples are not offered the same protection, meaning that should one member of a rainbow couple face criminal investigation, their partner could be punished should they provide assistance. The punishments for accomplice liability can be severe, with imprisonment and heavy fines resulting from any breach under this article.

Articles 156, 446 and 556 of the Code of Criminal Procedure of the Kingdom of Cambodia (the “Code of Criminal Procedure”) also provide protections to spouses. Article 156(5) excludes the spouse of the accused person from the requirement to swear on their beliefs when acting as a witness.<sup>49</sup> This means that rainbow couples are required to swear on their beliefs in order to become an authorized witness, whereas heterosexual couples are not.

Article 313 governs assistance and representation by a lawyer or another person of a civil party’s choosing. Under Article 313, the civil party can be represented by their spouse. This in turn means that their partner will have written power of attorney. Rainbow couples therefore cannot be represented by their partner and also cannot gain power of attorney in the same way that heterosexual couples can.

Article 556 allows for certain parties to a criminal trial to challenge the appointment of trial judges. If the judge or their current or former spouse is one of the parties, a challenge against the judge’s appointment can be made.<sup>50</sup> Once again, the use of the term spouse excludes rainbow couples, which in turn could result in accused parties being unable to appeal against the appointment of an unfavorable judge.

### **3.3.8 There is a lack of knowledge of legal rights and privileges arising from marriage among rainbow couples**

The vast majority of currently cohabiting rainbow couples displayed a lack of knowledge and understanding of their legal rights or lack thereof. In fact, not a single respondent answered all five questions surrounding legal knowledge correctly. For example, a large proportion believe that unmarried same-sex couples have equal rights to each other’s property during their relationship

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<sup>46</sup> The Criminal Code of the Kingdom of Cambodia (10 December 2010), Article 529(2).

<sup>47</sup> Ibid., Article 539(3).

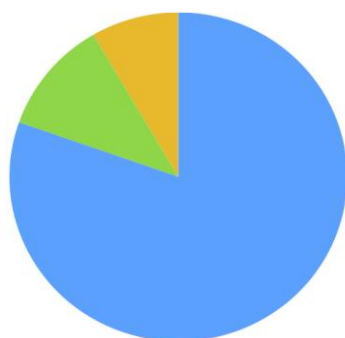
<sup>48</sup> Ibid., Article 544(4).

<sup>49</sup> The Criminal Procedure Code of the Kingdom of Cambodia (6 July 2007), Article 156.

<sup>50</sup> Ibid., Article 556(12).

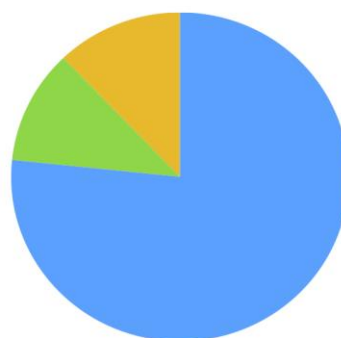
(80.37%, 86 respondents). Similarly, most believe that if a member of a same-sex couple dies, their partner has a legal claim to their property (76.64%, 82 respondents). Other legal rights prompt more uncertainty, including the significant number of respondents who were unsure if same-sex couples were protected from domestic abuse laws (46.73%, 50 participants).

**Do same-sex, unmarried couples have equal rights to each other's property during the course of their relationship?**



● Yes (80.37%)  
● No (11.21%)  
● Unsure (8.41%)

**If a member of a same sex couple dies, does their partner have a legal claim to their deceased partners property?**



● Yes (76.64%)  
● No (11.21%)  
● Unsure (12.15%)

This lack of awareness is highly problematic and leaves rainbow couples in an exceptionally vulnerable position. While certain steps could be taken to mitigate the lack of privileges and rights afforded to them (such as making a will), this lack of legal knowledge means that rainbow couples are far less likely to take such steps.

## 4. Adoption

### 4.1 The Law

SNAPSHOT: ADOPTION FOR RAINBOW COUPLES
STATUS: LEGAL, BUT LIMITED
<ul style="list-style-type: none"><li>• Marriage and adoption rights are intertwined, because the Civil Code establishes that full adoption is only available to married couples, effectively denying full adoption rights to rainbow couples as long as marriage equality remains unavailable.</li><li>• There are two types of adoption under the Civil Code: full adoption and simple adoption.</li><li>• Full adoption creates a relationship between adoptive parents and child which is equal to that between child and birth parents; however, this is not available to same-sex couples because of the requirement of marriage.</li><li>• Simple adoption allows one member of a same-sex couple to adopt but it lacks essential legal protections, e.g. it does not terminate the relationship between the adopted child and its birth parents.</li><li>• Article 21 of the Convention on the Rights of the Child provides that, within a system of adoption, the paramount consideration shall be “the best interests of the child”; in Ireland, this provision of the convention was interpreted to recognize the right of same-sex couples to adopt children jointly.</li></ul>

#### 4.1.1 The Civil Code establishes that full adoption is restricted to married couples

The Civil Code outlines two types of adoption: full adoption and simple adoption.<sup>51</sup> The process and effects of full adoption are addressed in Articles 1008-1015. Full adoption creates a legal relationship between the child and their adopted parents equal to the relationship between a child and its birth parents. Under full adoption, the child acquires “*the same status as that of a natural child of the adopter(s)*.”<sup>52</sup> Article 1008 states that, for full adoption, a person who becomes an adoptive parent needs to have a spouse. It also states that one parent will not become an adoptive parent unless the other spouse does as well. Based on the current state of the law, rainbow couples are excluded from full adoption, given that it is only available to married couples.

The process and effects of simple adoption are outlined in Articles 1020-1025 of the Civil Code. Simple adoption does not completely terminate the child’s relationship with their natural parents. The process of simple adoption enables one person to adopt.<sup>53</sup> In theory, this permits one person in a rainbow family to adopt a child on behalf of the couple. However, the partner who has not adopted the child is left without essential legal protection in the event of the death of the adoptive parent, the end of the relationship, or other unforeseen events.

The rights of the adoptive parent under simple adoption are also not as protected as they are in respect of full adoption. Simple adoption maintains a relationship between the child and their biological

<sup>51</sup> The Civil Code of the Kingdom of Cambodia (8 December 2007), Book Seven, Chapter Four.

<sup>52</sup> Ibid., Articles 1014-1015.

<sup>53</sup> Ibid., Article 1020.

parents, and apparently does not establish any hierarchy of rights between the adoptive parent and the biological parents. This creates legal uncertainty and vulnerability for the adoptive parent. This is especially the case given the fact that the law potentially allows for the dissolution of a simple adoption upon a complaint filed by a party to the agreement. If the adoptee is a minor, this must be filed by somebody on their behalf.<sup>54</sup> This precarious situation may act as a deterrent, discouraging rainbow couples from adopting and forming a family.

#### **4.1.2 The right of rainbow couples to adopt is arguably covered by existing international human rights law**

International human rights law has remained relatively silent on the right of rainbow couples to adopt. However, given that discrimination on the grounds of SOGIE is prohibited under international human rights law, rainbow families should not be disqualified from adopting. In South Africa, same-sex couples had their right to adopt recognized in law on the basis of the fact that discrimination on the grounds of sexual orientation is illegal in their constitution.<sup>55</sup> Article 20(2) of the Convention on the Rights of the Child (the “CRC”), to which Cambodia is a party, provides that “*State Parties shall act in accordance with their national laws to ensure alternative care*” for a child who is temporarily or permanently deprived of his or her family environment.<sup>56</sup> The Convention also states that within a system of adoption the paramount consideration shall be “*the best interests of the child.*”<sup>57</sup>

In Ireland, Article 45 of the Children and Family Relationships Act 2015 was drafted in line with the CRC, stating that the “*best interest of the child [is] to be paramount*”.<sup>58</sup> The Irish judiciary subsequently interpreted this provision to incorporate the right of same-sex couples to adopt children. This is a positive example of how Article 20(2) should be interpreted, and it is especially relevant to Cambodia given the direct applicability of the CRC, according to Article 31 of the Cambodian Constitution.

Principle 24 of the Yogyakarta Principles, concerning the right to found a family, also addresses the right of rainbow couples to adopt. It acknowledges that “*families exist in diverse forms*” and urges states to “*take all necessary legislative, administrative and other measures to ensure the right to found a family, including through access to adoption [...], without discrimination on the basis of sexual orientation or gender identity.*”

## **4.2 Field Research Findings: Adoption**

### **4.2.1 Almost all rainbow couples believe having a child is of paramount importance**

The currently co-habiting rainbow couples interviewed were asked whether having a child was important to them. The overwhelming majority answered with either “yes, a lot” (87.85%, 94 respondents) or “yes, a little” (0.93%, one respondent). The remaining responded with either “no, not

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<sup>54</sup> Ibid., Article 1031 (1) to (3).

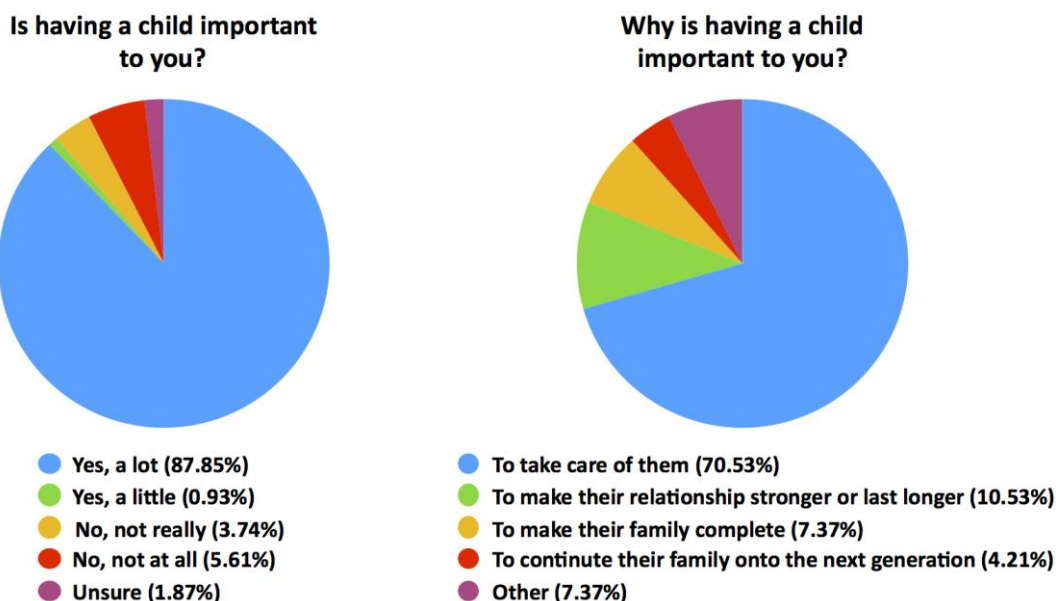
<sup>55</sup> BBC, ‘South African gays can adopt children’, *BBC News World Edition* (10 September 2002). <<http://bbc.in/2vPmXoQ>>

<sup>56</sup> United Nations General Assembly, *Convention on the Rights of the Child*, United Nations Treaty Series Vol. 1577 (20 November 1989).

<sup>57</sup> Ibid., Article 21.

<sup>58</sup> Children’s Rights Alliance, ‘Briefing Note on Children and Family Relationships Bill 2015’ (March 2015), 1.

really” (3.74%, four respondents), “no, not at all” (5.61%, 6 respondents), or were unsure (1.87%, two respondents). The few who felt that having a child was unimportant to them mostly stated that they personally don’t want children, and often still emphasized the importance of adoption for other same-



sex couples.

Of those who felt that having a child is important, a large proportion (70.53%, 67 respondents) gave the reason that their children would be able to take care of them when they are older. This reveals how the denial of adoption to rainbow couples has a negative effect on their future livelihoods and social security, especially given Cambodia’s lack of social protections and state welfare.

The other reasons given included the belief that having a child would make their relationship stronger or last longer (10.53%, ten respondents), make their family complete (7.37%, seven respondents), or allow them to continue their family onto the next generation (4.21%, four respondents). The remaining 7.37% (seven respondents) offer reasons outside of these categories, such as adoption being vital because rainbow families cannot biologically have children.

#### 4.2.2 Adoption is already common practice among Cambodia’s rainbow couples

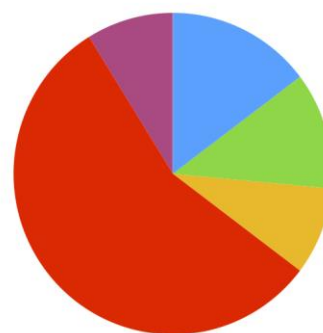
In a significant number of currently co-habiting rainbow couples, one partner has adopted a child (32.71%, 35 respondents). Over two-thirds of these adoptions were reported to be based on simple or informal agreements (67.64%, 23 respondents), with many couples stating that they’ve adopted family members such as nieces or nephews (40.00%, 14 respondents). Amongst former rainbow couples surveyed, fewer 14.28% (two respondents) reported to have adopted a child, both through simple or informal agreements.

**Have you or your same-sex partner ever adopted a child, either formally or through an informal arrangement?**



● Yes (32.71%)  
● No (67.29%)

**If yes, what was your relationship with the child?**



● My partner is the biological parent (14.71%)  
● My partner adopted the child via simple adoption (11.76%)  
● My partner and I adopted the child together via full adoption (8.82%)  
● The child was living with us in an informal arrangement (55.88%)  
● Other (8.82%)

#### 4.2.3 Accessing full adoption rights is important to rainbow couples

When asked if they believed they would face less discrimination if they were permitted to fully adopt their child, a large majority of currently co-habiting rainbow parents responded with either “yes, a lot” (69.70%, 23 respondents) or “yes, a little” (21.21%, seven respondents). There were only a small number of respondents who said “no, not really” (6.06%, two respondents) or “unsure” (3.03%, one respondent).<sup>59</sup>

Of those who answered either “yes, a lot” or “yes, a little”, the main reason given was that a full adoption law would ‘protect’ or support’ them (24.24%, eight respondents). This again highlights the value placed on the law by many LGBTIQ people as discussed in section 3.3.3.

#### Case Study #5: Thida & Pov, Kampong Cham

<sup>59</sup> 2 respondents skipped this question.

*"I have adopted three children. I adopted a one-and-a-half year old girl who is now married, a three-month old boy who is now ordained as a monk, and a one-month old girl. My children or I don't have any contact with their biological parents now.*

*My commune chief issued a letter of recognition for my adoptive children. However, I've tried and cannot get a family book. The commune said that, because both mine and my partner's birth certificates classify us as females, it is illegal to register us as husband and wife like we are in a family book. They also said that we must provide the birth certificates of all my children, which we cannot obtain. The commune did give us a family book at one point, but they took it back from us because they became confused and were worried it was illegal. A family book is good for a family. It's important because it accelerates legal recognition.*

*I cannot predict anything about my future. I won't force my children to do anything. If they want to take care of us when we are older, it's okay. If they want to leave, it's also okay. A legal family book would make things more comfortable.*

*The first time I saw my adopted children, I felt pity for them. I adopted them because I wanted to support them. I expect that they will take care of us when we are older.*

*My neighbors used to complain about us. They would say: "Why is a woman with another woman? What is the benefit? What is your future if you love the same sex?" But since we've adopted our children and had a good standard of living, our community admires us."*

#### **4.2.4 There is a lack of knowledge about adoption law amongst rainbow couples**

The vast majority of current or former rainbow couples stated that they had no knowledge of simple adoption (85.95%, 104 respondents) or full adoption (79.34%, 96 respondents). Of those that said they do understand these adoption procedures, however, a large number provided vague or incorrect answers. Of those current or former couples who reported to have actually adopted a child, a significant number said that they had no knowledge of simple adoption (70.27%, 26 respondents) or full adoption (64.86%, 24 respondents).

#### **4.2.5 There is support for same-sex couples adopting children amongst national and local government figures**

Almost all local authority figures surveyed expressed that their community would be supportive of same-sex couples adopting children (88.88%, eight respondents). The single chief whose response did not describe support simply stated that there are no same-sex couples in their community that want to adopt children.

A representative of the Ministry of Information also expressed his support for rainbow couples adopting saying, *"I support and have no objection to [adoption rights for rainbow couples] because they want children too."*



## 5. Gender Recognition

### 5.1 The Law

LEGAL SNAPSHOT: THE RIGHT TO LEGAL GENDER RECOGNITION
STATUS: EFFECTIVELY ILLEGAL
<ul style="list-style-type: none"><li>• In Cambodia, there is no legislation which supports transgender people's right to be legally recognized according to their self-defined gender.</li><li>• Implementation of a gender recognition law would allow couples, where one partner identifies as trans, to enter into marriage by fulfilling the legislative requirement of "husband" and "wife".</li><li>• Whilst there is no universal international law recognizing the right of transgender people to have their self-defined gender recognized on official documents, there have been positive legislative changes towards this in many countries, including in neighboring Viet Nam.</li><li>• Principle 3 of the Yogyakarta Principles calls on states to <i>"Take all necessary legislative, administrative and other measures to ensure that procedures exist whereby all State-issued identity papers which indicate a person's gender/sex — including birth certificates, passports, electoral records and other documents — reflect the person's profound self-defined gender identity."</i></li></ul>

### Case Study #6: Phearo

*"In 2001, I was supposed to get married to a man. But I did not want to get married to him and escaped on my wedding day. I ran away with my partner. I'm still with her today. I ran because I consider myself as a boy and wanted to change my gender identity. I made my hair short, wore male clothes, and totally acted like a man. I was just following my feelings and my nature.*

*My identity card classifies me as a female. I've requested a male identity card from the commune chief two times. The chief said he doesn't know what the outcome will be, but told me to ask the commune authorities. I'm still waiting.*

*I'm a man, and act and dress like a man, but some older people still see me as a woman. I still sometimes face verbal discrimination. They say: "Why do you act like a boy?" I just respond: "What should I do? I'm just following my feelings." But I get support from a lot of people, especially my friends, who admire my appearance and recognize my true gender identity. My parents did not accept me at first, but now they respect my gender identity.*

*I want to get married to my partner now. I think that marriage is very important because our neighbors will all recognize us as a legal couple, even though we are both born females. My parents and relatives all support us getting married."*

### 5.1.1 Under Cambodian law, there is no possibility of having identity documents revised in line with gender identity

In Cambodia, there is no legislation which would allow trans people to receive legal and administrative recognition of their self-defined gender identity. The effect of a gender recognition law in Cambodia would be far-reaching – likely much more so than in many of the western countries which have already adopted such laws. First, it would realize a range of fundamental rights for transgender people. Specifically, Article 16 of the ICCPR grants *‘recognition everywhere as a person before the law’*. The inability of transgender people to be recognized true to their fundamental identity in official documents denies them this right. Principle Three of the Yogyakarta Principles elaborates on the duties surrounding this right, emphasizing that it requires states to take legislative or administrative measures to ensure that people can have their self-defined gender identity reflected on official documents. Moreover, Article 22 of the UDHR states that everyone is entitled to the *“free development of [their] personality”*. A similar provision in the Colombian Constitution was interpreted by their Constitutional Court to include a right to choose one’s own gender identity.<sup>60</sup>

Second, a gender recognition law would enable many couples, in which one partner identified as trans, to get married under existing marriage law. In these circumstances, couples would fulfill the legislative requirement of “husband” and “wife” under the Cambodian Constitution. Consequently, where rainbow couples are able to marry, they would also be entitled to the benefit of full adoption.

### 5.1.2 Internationally, progress has been made toward realizing the right to legal gender recognition for trans people

Internationally, progress has been made toward the legal recognition of transgender identities. Argentina, Colombia, Denmark, Ireland, Viet Nam and many more countries have legislated to remove strict barriers on legal gender identity.<sup>61</sup>

Argentina’s gender recognition law, passed in 2012, is considered to be one of the most progressive systems in the world.<sup>62</sup> The requirements for persons requesting that their records be changed in official documents are outlined in Article 4 of the law; significantly, *“in no case will it be needed to prove that a surgical procedure for total or partial genital reassignment, hormonal therapies or any other...treatment has taken place.”*<sup>63</sup> Article 4 only requires that the person is 18 years old (with exceptions), has submitted a request to the appropriate bureau and has provided the name they would like to be given on their documents. The law eliminates diagnostic conditions, such as surgery, forced sterilization and psychiatric assessment, which some countries demand are met before self-defined gender is recognized on official documents. It also enables people to change their gender through a simple administrative process, rather than a judicial or confrontational procedure. This is close to the ideal model of a gender recognition law.

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<sup>60</sup> OutRight Action International, ‘Mapping Trans Rights in Colombia’ (2016). <<http://bit.ly/2xazNnh>>

<sup>61</sup> Kneela Ghoshal and Kyle Knight, ‘Rights in Transition: Making Legal Recognition for Transgender People a Global Priority’ Human Rights Watch (2016). <<http://bit.ly/1ZSywZ9>>; Agence France-Presse, ‘Vietnam law change introduces transgender rights’, *The Guardian* (24 March 2015). <<http://bit.ly/2fRB27x>>

<sup>62</sup> Emily Schmall, ‘Transgender Advocates Hail Law Erasing Rules in Argentina’, *The New York Times* (May 24 2012). <<http://nyti.ms/2v8wEmI>>

<sup>63</sup> Transgender Europe, ‘English Translation of Argentina’s Gender Identity Law as approved by the Senate of Argentina on May 8, 2012’ (2013). <<http://bit.ly/2wnOhDf>>

## 5.2 Field Research Findings: Gender Recognition

### 5.2.1 One partner identifies as transgender in almost all co-habiting rainbow couples in Cambodia, entailing significant legal and advocacy implications

When asked to self-identify, a remarkable 99.17% of all respondents (to the couples and former couples surveys) identified as transgender or gender non-conforming. This is an exceptionally high proportion, and there is no reason to conclude that the research sampling method was unrepresentative of co-habiting rainbow couples in Cambodia. This startling statistic raises a number of issues when considering the issue of access to marriage, adoption and gender recognition rights in Cambodia.

First, in the context of marriage equality, this finding means that the vast majority of Cambodia's rainbow couples could marry if a gender recognition law were introduced, without requiring any change to marriage law. This is encouraging, as the introduction of a gender recognition law would not require a constitutional amendment, whereas a marriage equality law likely would require such a change. Further, the introduction of a gender recognition law may be more politically palatable than the introduction of a marriage equality law, making it a more realistic prospect in the short term. As discussed under section 4.2, above, this would also enable full adoption rights for the vast majority of co-habiting rainbow couples.

Second, this finding raises questions about the formation of gender identities and sexualities in Cambodia. While an sociological dissection of this topic is beyond the scope of this research, it merits further research. One potential factor is the stereotypical and misogynistic gender norms which are deeply embedded in Cambodian society. In a romantic relationship, the roles of the "man" and the "woman" are expected to be fulfilled in accordance with stereotypical gender roles. Heteronormative social standards are propagated by influential texts such as the *Chhap Srey* and the *Chhap Pros*. These "codes of conduct", dictate which behaviors are befitting the ideal Cambodian man and woman. The *Chhap Srey* embodies the principle of female submissiveness, instructing women to be "sweet" and "shy". The *Chhap Pros* allegorizes men as "gold". These traditional codes perpetuate the conception of two opposing genders, of which one is categorically masculine and the other categorically feminine. Although the RGC has recently made efforts to phase out these codes from the school curriculum, the traditional gender norms which they represent remain powerful forces in Cambodian society and culture.

In the vast majority of the interviews conducted for this research, both partners were either present or available to take part; however, only one partner could respond on behalf of each couple. While the surveys employed for this research did not record the gender identity of the survey respondent's partner, it is highly relevant to note that 68.22% (73 respondents) of respondents to the current couples survey assumed the 'masculine' role in the relationship, whereas CCHR researchers noted that the 'feminine' partner often displayed a reluctance to take part in surveys in place of their 'masculine' partner. Researchers noted the gender dynamics at play, with the 'masculine' partner speaking on behalf of the couple in the vast majority of interviews. Further, while the occupation of the respondents' partners was also not systematically recorded, researchers found that in most cases the partner assuming the 'feminine' role was also engaged in highly feminized work, such as homemaking,

or hair and beauty services, whereas the ‘masculine’ partner was far more likely to be engaged in stereotypically masculine work, such as construction, moto-taxi driving, farming, or military or police service. Among couples with children, the ‘feminine’ partner was also far more likely to be the primary caregiver and homemaker.

The perspective provided by one village chief was illuminating in respect of how community acceptance of rainbow couples may also be dependent on the couples’ level of conformism to heteronormative gender roles:

*“At first, people in the village used to discriminate against [rainbow couples resident in the village].  
But after some time, the villagers saw that they lived as a normal family, like husband and wife,  
and they started to accept them”*  
- Village chief, Kampong Thom

These observations suggest that, even among rainbow couples, stereotypical gender norms are powerful determinants of both community acceptance and the formation of partner roles, and may also influence the formation of gender identities. It also suggests that the introduction of a gender identity law would lead to greater community acceptance of trans people. However, these findings are based on limited data, and thus should not be viewed as definitive. This area requires further, targeted research.

### **5.2.2 Representative of the Ministry of Information supports the introduction of a Gender Recognition Law**

There have been some encouraging signs of support for greater legal recognition of LGBTIQ rights amongst some members of the RGC. When interviewed for this report, the representative of the Ministry of Information expressed support for LGBTIQ people to have access to identification cards which reflect their self-defined gender identity. He referred to European countries which have implemented gender recognition laws, and concluded that the same system should be introduced in Cambodia. Although the views of other members of the RGC in respect of this issue are unknown, this is an encouraging starting point for transgender Cambodians.

## 6. Conclusion and Recommendations

This report has revealed that Cambodia's rainbow families lack essential legal protections in multiple areas of family life, including the right to marry, full adoption rights, and the right to legal gender recognition. However, despite the existence of an exclusionary and discriminatory legal framework, rainbow couples are already living together as families across Cambodia, with certain forms of legal recognition by local authorities and informal adoptions already widespread.

The ability of Cambodia's rainbow couples to build loving and stable family relationships, despite the legal limitations on their rights, is testament to the power of their love. During the course of this research, CCHR encountered multitudes of happy, healthy and loving rainbow couples across the length and breadth of Cambodia, caring for each other and their beloved children just as any traditional family would.

The ongoing denial of legal rights to Cambodia's rainbow families must be addressed as a matter of priority by the RGC. Legislative changes, such as the introduction of a gender recognition law and the legalization of same-sex marriage, would go a long way to remedying the current, discriminatory situation. Aside from the enormous legal impact that such legislative developments would have, they would also likely lead to increased acceptance and inclusion of LGBTIQ people by their families of origin and the general public. Such changes would also benefit Cambodia's development, due to likely increases in the number of children in need who could be adopted into loving and supportive rainbow families. This would support the Sustainable Development Goals' principle of *"leaving no one behind"*.

Based on the findings of this research, CCHR wishes to make the following recommendations to relevant stakeholders:

### 1. Recommendations 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 years of age (mirroring the age of sexual consent in compliance with Article 239 of the Criminal Code) 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 person 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.
- 1.2 Introduce a Marriage Equality Law, which guarantees:
  - 1.2.1 That any two consenting adults (with the exception of situations of polygamy, bigamy or incest) can marry each other in the same manner currently available to heterosexual couples;
  - 1.2.2 That same-sex or gender non-confirming couples receive the exact same rights and benefits flowing from marriage as heterosexual couples including, but not limited to, joint ownership of property, custody of children, taxation, inheritance and protection from domestic abuse.
- 1.3 Amend the relevant provisions of the Civil Code governing adoption to guarantee that full adoption right are made available to any co-habiting couple, provided it can be shown that the adoption is "*in the best interests of the child*" without discrimination on the basis of SOGIE or any other status.
- 1.4 Introduce an Anti-Discrimination Law explicitly prohibiting discrimination of all kinds, including on grounds of sexual orientation and gender identity / expression, which:
  - 1.4.1 Guarantees equality and prohibits discrimination on the basis of SOGIE in all areas of private and family life by all private and state actors;
  - 1.4.2 Introduces the specific offence of "hate crimes" to the Criminal Code, in line with international best practice, including appropriate punishments for the perpetrators of hate crimes against trans women and other minorities;
- 1.5 Issue a directive which clearly articulates the right of all rainbow families to receive family books that classify them according to their self-defined gender identities and actual family relationships.
- 1.6 Ensure that the legislative process in respect of recommendations 1.1 – 1.5, above, follows the principles of transparency and participatory democracy, by meaningfully consulting with LGBTIQ communities, civil society, and the general public.
- 1.7 Expand the current process of including SOGIE awareness in the "Life Skills Handbook" to the mandatory educational curriculum for primary and secondary school students, in order to teach inclusion of LGBTIQ people from an early age.
- 1.8 Ensure that the Ministry of Health is equipped with the personnel, skills and knowledge to provide free or affordable surgical intervention for transgender individuals who are seeking to undergo gender reassignment surgery, as well as other forms of medical treatment that are needed to facilitate transgender individuals' transition, such as hormone therapy and mental health services.

## **2. Recommendations to Commune Chiefs, Commune Councils and other local authorities:**

- 2.1 Ensure that rainbow families who are resident in your communes are issued with family books, should they request them.
- 2.2 Take every opportunity to raise awareness of LGBTIQ rights at the commune level, and promote a message of diversity and inclusion among the residents of the commune.

## **3. Recommendations to all Political Parties:**

- 3.1 Publicly adopt an unambiguous policy position in support of LGBTIQ rights in advance of the National Assembly election set for July 2018.
- 3.2 In advance of the 2018 National Assembly election, make a public commitment to legislate for a Gender Recognition Law if elected into government.
- 3.3 In advance of the 2018 National Assembly election, make a public commitment to legalize marriage equality within two years of taking office, if elected into government.
- 3.4 Ensure that your party's commune chiefs and commune councilors are trained in LGBTIQ rights and inclusion, and initiate a commune-level awareness raising and inclusion campaign.
- 3.5 Ensure that LGBTIQ communities and relevant civil society organizations working on LGBTIQ rights are consulted in the formation of policy, to ensure LGBTIQ inclusivity.

## **4. Recommendations to the International Community:**

- 4.1 Ensure that LGBTIQ rights are among the priority issues to be addressed in any bilateral or multilateral intergovernmental discussions with the RGC.
- 4.2 Utilize the upcoming third UPR of Cambodia to make recommendations on LGBTIQ rights, specifically those contained in recommendations 1.1 – 1.8, listed above.
- 4.3 In respect of development funding, ensure that grassroots LGBTIQ activists in Cambodia are financially supported to conduct advocacy and educational initiatives of their own, and ensure that grassroots communities are empowered to set their own advocacy priorities.

## **5. Recommendations to international and domestic civil society organizations working on LGBTIQ issues in Cambodia:**

- 5.1 Conduct educational programs with LGBTIQ communities in order to educate them about their rights under domestic and international law;

- 5.2 Ensure that advocacy priorities are set by LGBTIQ communities themselves, and further endeavor to ensure that such discussions are grounded in informed debate about gaps in the legal framework.
- 5.3 Endeavor to train LGBTIQ communities on advocacy and human rights, with a feminist perspective, in order to tackle widespread and deep-seated gender norms among the communities.
- 5.4 Endeavor to build upon existing online safe spaces in which LGBTIQ Cambodians can become connected, and share their perspectives and experiences in an online community setting.



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