



JOINT SUBMISSION
TO HUMAN RIGHTS COUNCIL

SUBMITTED BY:

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LGBT Joint Submission to the Universal Periodic Review of the United Nations Human Rights Council

1. Background:

Discrimination, Exclusion and Stigma have major impacts on lives of people who are openly lesbian, gay, bi-sexual and transgender (LGBT); the traditional safety net—the family, becomes an oppressor so LGBT turn to friends more often for support during critical shocks.

Male to Female Transgender in appearance (and behavior) seem more likely to be discriminated compared to lesbians and gays, and report higher rates of exclusion from schooling, education, certain types of jobs, being subject to police harassment and arbitrary arrest and detention and association with having HIV. They are frequently pre-judged as “criminals”, “gang members”, “thieves” or “drug users”.

Social Exclusion on the basis of gender identity and sexual orientation (SOGI) is complex and may not be readily acknowledged by authorities. Other factors that can influence exclusion are poverty, illiteracy, lack of awareness about social protection mechanisms and how these can be accessed, some religious practices, cultural norms about males and females, husbands and wives, and families, and type of occupation (such as sex work); however SOGI-based exclusion appears to be a major cross-cutting feature that cannot be disregarded. Many LGBT are mobile and even while living together with a partner in a stable relationship, they are not officially and legally recognized as partners, a husband-wife team, a couple, or as a family.

In addition, Rape and violence of female and transgender entertainment and sex workers in Phnom Penh is clearly driven by stigma and social prejudices against.¹ While this goes some way to explain alarming incidence of rape, sexual violence and harassment of sex workers, it also extends to LGBT and sex workers’ ability to access health services and their interactions with health care practitioners.

2. Introduction

While special vulnerable groups have been described in the National Social Protection Strategy (NSPS) 2011-2015, it is likely that persons who do not conform to usual gender norms (such as effeminate, homosexual males, masculine females, transgender persons, etc.) are subject to various forms of exclusion, stigma and discrimination, which in turn exacerbate poverty and vulnerability. The expression of gender identity is an innate characteristic cutting across all categories, and exclusion on the basis of gender identity can seriously affect human capital development and potential.

For example, children who are born and raised as male but who might behave as females, are subject to teasing and ridicule at home and in school, and may drop out earlier. Females who are lesbian are subject to rape and violence and forced marriages. A transgender, who is HIV positive, is even subject to more stigma than HIV positive people who are not transgendered in their

¹ See Jenkins, above n 19.

appearance and expression. Transgender people also do not seem to be included in programs that specify sex of beneficiaries as either “male” or “female”. Thus the overt expression of gender characteristics that are opposite to the sex or gender assigned at birth tends to be a major source of exclusion and discrimination.

While Cambodia is classified as a “Neutral”² country in terms of its written policies on sexual diversity, findings from several reports³ indicate that there is a significant degree of stigma and discrimination on Cambodians who may be gay, lesbian or transgendered. LGBT report being verbally abused, beaten up, and excluded from school activities, family gatherings, and work opportunities. This rejection and exclusion leads to people leaving schools, families and hometowns at a relatively young age, thus eliminating a valuable source of social support: family and relatives. The lack of education and suitable work opportunities, coupled with discriminatory attitudes of family, teachers, local leaders and law enforcers limits options for employment.

In some health care settings in Cambodia, Gays, MSM and Transgender have experienced varying degrees of stigma and exclusion from health care professionals and other clinic staff. While health authorities maintain that the discrimination comes from within the group itself (i.e., “*the health providers do not discriminate, but they (MSM and Transgender) exclude themselves from the health services*”), it may not be apparent to the authorities that this is in part due to certain attitudes in providers, which can only be felt by clients. Since the past experiences of these groups are one of exclusion and discrimination, it may be difficult to expect anything else. Thus, LGBT persons prefer to lie or hide about their sexuality, a phenomenon that non-LGBT persons have generally little, if any, understanding of.

Gender Identity is more complicated. The definition used is adapted from the landmark document, the Yogyakarta Principles (2007), which outlines the application of international human rights law in relation to sexual orientation and gender identity. In the Yogyakarta principles⁴, **Gender Identity** is **understood** to refer to each person’s deeply felt internal and individual experience of gender, which may or may not correspond to the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms. **Sexual Orientation** is **understood** to refer to each person’s capacity for profound emotional, affection and sexual attraction to, and intimate and sexual relations with, individuals of a different gender, or the same gender or more than one gender.

There were two ways of categorization: the primary one was by self-**identification**, where the respondent said, “I am: (gay, lesbian, *kteuy*, MSM, LG, LB, LT, *Sim Pi*, *Sim Bi*, *bros slan boros*, *srey sros*, *MSM long hair*, *MSM short hair*, etc.)”. **Lesbians** were identified as women who preferred to have emotional, affectionate and sexual attraction primarily to other women. **Gays (male)** were understood to be men who preferred to have emotional, sexual, and affectionate attraction to other men or to others “like themselves”. The **Male transgender** was understood to be someone who may have been born or raised a male, but who felt that they had been born into the wrong

² Cambodian laws and the constitution does not prohibit homosexuality, neither is it recognized, condoned or punished. (Caceres et al)

³ These reports include the following: Coming Out in the Kingdom: Lesbian, Gay, Bisexual and Transgender people in Cambodia (CCHR, December 2010) and the Report card on HIV Prevention for MSM and Transgender persons in Cambodia (RHAC, September 2011)

⁴ The **Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual orientation and Gender Identity** were developed by a distinguished group of human rights experts from 25 countries. The aim was to develop a set of international legal principles on the application of international law to human rights violations based on sexual orientation and gender identity to bring greater clarity and coherence to States’ human rights obligations. The principles were adopted following the expert’s meeting at Gadjah Mada University in Yogyakarta, Indonesia from 6 to 9 November 2006.

body, and felt and acted like women, and preferring emotional and sexual relations primarily with men. One of the helpful questions to ask in this regard, was *“Who (or what type of person) do you love? Please describe this person”*. The researchers did not specifically ask about **“Bisexuality”**, which is the capacity to form intimate physical, emotional and sexual relations with persons of similar, or different, sex than your own. However, in the survey, several people referred to themselves as *“Sim-pi”*, literally, “two SIM cards” and indicating that they were attracted to, and had sex with, people of both sexes. For purposes of consistency the acronym “LGBT” is used since this is globally recognized.

“A few of transgender were waiting for client along the street near Watphnom, one among those has been arrested by polices. During arresting, one police (nick name of 33) has beaten her on face made her nose bleeding. One day after she got releases from social affairs department she got support to file complain against that police at the police post. During case report she got verbal threaten by other police that he will sued her back about deformation case as she report about his name who were beaten but he did not act against her at all. After that she was very afraid and said sorry, signed on complain letter that she agreed to withhold the case.”

Arrests have been associated with reports of rape and assaults by police and guards at detention centers and bribes. Police behaviour in respect of gender based violence Phnom Penh has been reported internationally.⁵ Convictions of police in respect of gender based violence are rare and non-existent in respect of assaults on sex workers. People, particularly those living with HIV, cannot maintain either physical or psychological health if they are subject to, or in fear of, violence and detention. Not only have a significant number of rapes in detention been reported but a defining feature of these attacks is that sex workers are raped by multiple men at the same time.⁶

The Cambodian National AIDS Authority and UNAIDS, among others, have expressed concern that enforcement of the LTSE is undermining HIV prevention efforts.⁷ This includes (but is not limited to) condoms being banned from sex venues and sex workers avoiding carrying them in public for fear of arrest. It has also meant that the sex industry has shifted to places that are more hidden and therefore more dangerous or more protected from authorities, which usually means more exploitative.⁸

Many women and girls are victims of exploitation and trafficking which gives rise to a range of potential claims for compensation and costs and prosecutions. According to WNU information about legal rights, particularly of migrants, is very poor across all sections of the entertainment and sex industries in Phnom Penh. All genders are vulnerable to ‘gangsters’ and exploitative employers, landlords and agents. MSM and transgenders have specific issues, often linked to violence and access to HIV or drug treatment. Legitimate law enforcement to locate abused children or adults held against their will is hampered by the hidden and dispersed nature of the entertainment industry in Phnom Penh.

3. Impact of Exclusion, Discrimination and Gender base violent

⁵ Robert Carmichael, ‘Cambodia Cracks Down on the Sex Industry’

⁶ Jenkins, above n 19, 5.

⁷ Cacha, 2008 and UNAIDS 2008

⁸ Ibid.

It is clear that the exclusion and discrimination have major impacts on the lives of lesbian, gay and transgender and sex workers in Cambodia. This has resulted in the following:

- Dropping out of school earlier, leaving Home and Family/ Kick out of the house
- Unable to find regular jobs, have less options than others and some are fired from jobs after identifying
- Being Ignored in the community, isolated, depression, sadness and lonely
- Unable to access various services and Unaware of what they are entitled to
- Mobility, Move to other areas or other countries, (such as the city and urban areas)
- Lack of family and Social support
- Rejected from Religion (Esp. Muslim and some Christian Fundamentalist sects)⁹
- Decide to follow their parents to marry opposite sex and then divorce
- Cannot be easy to find the real partners
- thief/robber/street people/
- Suffer from HIV/AIDs/Drug user as no specific LGBT health services
- Be forced to tell lies about yourself or partners
- Being sex workers
- Rape and violence by police, clients and men pretending to be clients
- Motivating and supporting sex workers to report crimes against them
- The belief that sex workers are an illegal class of persons
- Gender based violence and Domestic violence
- Self-harm and commit suicide

In the end, Exclusion leads to a loss of valuable human capital, and therefore the potential to contribute to village, commune and national life is decreased. Some will turn to negative coping strategies in order to survive (such as leaving home and school; or joining gangs and engaging in illegal activities like stealing, drug selling, etc.), while others may sell sex, use alcohol and drugs. These coping strategies also have their own effects and impacts on the individual, community and society.

4. Conclusions

Various forms of social exclusion are experienced by LGBT in Cambodia. This can range from being ignored, not being allowed to be “who I am” or to express themselves, not being included or

⁹ According to the FGD with Muslim gay men and one interview with transgender who used to follow Christianity; gay and transgender Muslim youth felt the impact of being doubly discriminated because of their religion as well as their sexual and gender identities.

recognized in the community activities and processes, to being insulted, attacked, and more severe forms of both domestic as well as gender-based violence

Social Exclusion on the basis of gender identity and sexual orientation is complex and may not be readily acknowledged by authorities. Other factors that influence exclusion are poverty, illiteracy, lack of awareness about social protection mechanisms and how these can be accessed, some religious practices, cultural as well as religious norms about males and females, husbands and wives, and the composition of families, and type of occupation (such as sex work); however it is a major cross-cutting feature that cannot be disregarded. Many LGBT are mobile and even while living together with a partner in a stable relationship, they are not officially and legally recognized as partners, a husband-wife team, a couple, or as a family.

Discrimination, Exclusion and Stigma have major impacts on lives of people who are openly LGBT; the Traditional safety net—the family, becomes an oppressor so LGBT turn to friends more often for support during critical shocks.

Male to Female Transgender in appearance (and behavior) seem more likely to be discriminated compared to lesbians and gays, with higher proportions reporting exclusion from schooling, education, certain types of work or jobs, to being subject to more police harassment and arbitrary arrest and detention, association with having HIV). They are frequently pre-judged as “criminals”, “gang members”, “thieves” or “drug users”.

LGBT can be included in community social protection activities and access to Health Equity Fund (HEF), but they have to be accepted within the community and the village, and exert extra effort, talk to authorities and negotiate, to demand for what is due to them. Others who are ignored or excluded from the start may not even be aware of their rights and entitlements in the village. Some authorities are flexible and find ways to allow inclusion (i.e. recording information on family books as “sisters”, “twins” for same-sex partners who live together) but this seems to be dependent on whether the partners are well known and established in the community. Thus, there are gaps in social policy, such as lack of recognition of same-sex partnerships as “households” and “families”, even if these same-sex partners have raised children and are performing as a family unit. Policies to support social protection are “blind” with regards to these types of family arrangements, though it is clear that the policy does not prohibit or discriminate such arrangements.

5. Recommendation

- Policy Makers should consider Sexual Orientation and Gender Identity as cross-cutting factors that can consciously or unconsciously influence participation, delivery of social services, access to education, work opportunities and access to justice. Suitable references for this include the Yogyakarta Principles as well as recent UN publications, “Born Free and Equal”.
- Local authorities, policy makers, schools and family need more education on accepting gender-variant children, and in treating people of different sexuality and gender identity equally, and in applying policies and programs in a “friendly” manner, rather than being hostile
- Possible Violations of Human Rights as well as Child Rights may need to be investigated – The Rights to Education, Work, Health, Earning a Decent Living, Social Security, Self-expression, and Participation in community life

- When monitoring ID-Poor implementation and selecting beneficiaries, the reasons for excluding households (or partners living together who belong to the same sex) may also need to be monitored and tracked
- Organizations working for HIV prevention and Care, the Prevention of Gender Based Violence and Domestic Violence, need to be aware of SOGI and integrate SOGI principles into their work.
- Systematic review of the Implementation of the Commune Safety Policy with regards to its inappropriate application
- Raise awareness of legal rights and among LGBT and entertainment and sex workers;
- Support those affected by the entertainment and sex industry to challenge discriminatory unfair and unlawful treatment
- Support efforts by police to respond appropriately to crimes against entertainment workers, transgenders and men who have sex with men regardless of HIV or migration status.
- Pursue justice in civil and criminal matters;
- Document the abuse of rights and publicize and challenge breaches collectively in a manner that is recognized by the state and its institutions.
- Support for informal groups – friends association, friendly pagodas/monks, etc. and LGBT associations who can support their members to advocate for their rights
- Further research particularly in younger age groups (i.e. 12-18) will be useful as this is usually the age when gender orientation and sexuality start to be prominently recognized. At these ages the youth are also more vulnerable to shocks if there is no family support, or schooling. Another subset of the population of LGBT that needs more research are older LGBT (50 years and up) who may have no family or children, or are not entitled to government support through pension funds
- Similar research is recommended in other provinces of Cambodia to have a better picture of the patterns and processes of social exclusion on the basis of gender identity from community life and other protection mechanisms (such as pagodas, community savings mechanisms, funeral assistance, major community festivals, village decision making, etc.)
- Highlight good practice in Inclusion and in “friendly” application of policies, (such as experienced in Takeo, and the testimonies of village officials) and share this with other villages.