

# Rainbow Legal Aid

Access to legal aid services  
by the LGBTIQ Community in Cambodia



DESTINATION  
**JUSTICE**



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Access to Legal Aid for the LGBTIQ Community in Cambodia



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### About Destination Justice

Established since 2011, Destination Justice is a social change organisation. We are changemakers who believe that justice is key to a peaceful society — particularly a society where people can resolve their issues by resorting to independent, fair and transparent justice; a society where laws are made by the people, for them, and freely accessible to them; and furthermore, a society where everybody is equal no matter who they are, what they think, or who they love.

To achieve this, we work according to the idea that from little things big things can grow: one mind changed; one piece of information put out there; one practice improved. We set ideas in motion, we provide tools, and we take action when necessary.

Through our Rainbow Justice Project, Destination Justice aims to foster dialogue in Southeast Asia, in particular in Cambodia, on sexual orientation, gender identity and gender expression, and sexual characteristics (SOGIESC), and to provide advocacy tools to changemakers for the promotion and protection of the lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) community's rights.

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# Abbreviations and Defined Terms

ADHOC	Cambodian Human Rights and Development Association (NGO)
ASEAN	Association of Southeast Asian Nations
BAKC	Bar Association of the Kingdom of Cambodia
CCHR	Cambodian Center for Human Rights (NGO)
CSOs	Civil society organisations
LAC	Legal Aid of Cambodia (NGO)
LGBTIQ	Lesbian, Gay, Bisexual, Transgender, Intersex, and Queer
LICADHO	Cambodian League for the Promotion and Defense of Human Rights (NGO)
LTC	Legal Training Center
MoJ	Ministry of Justice of Cambodia
MoWA	Ministry of Women's affairs
MRI	Micro Rainbow International (NGO)
OHCHR	United Nations Office of the High Commissioner for Human Rights
RGC	Royal Government of Cambodia
RoCK	Rainbow Community Kampuchea (NGO)
SOGIESC	Sexual Orientation, Gender Identity and Expression, and Sexual Characteristics
UNDP	United Nations Development Programme
UPR	Universal Periodic Review

# Introduction

## Background

Worldwide, Lesbian, Gay, Bisexual, Transgender, Intersex and Queer (**LGBTIQ**) communities have advanced the recognition of their rights through advocacy activities, including in the political sphere but mainly through the power of the courts. Whether in the United States, India, France or Taiwan, justice systems have played a major role either in decriminalizing consensual same-sex sexual activities or recognising the right to same-sex marriage.

In Cambodia, while there is no criminalisation of LGBTIQ individuals based on their Sexual Orientation, Gender Identity and Expression, and Sexual Characteristics (**SOGIESC**), neither there is legal protection<sup>1</sup> nor specific LGBTIQ or SOGIESC sensitivity trainings for judicial professionals and police officers. In other words, the justice system is silent when it comes to LGBTIQ individuals, despite the social and economic vulnerabilities the community faces. As a result, LGBTIQ individuals often find themselves in dire situations when attempting to access the Cambodian justice system, relying on too few civil society organisations (**CSOs**) providing free legal advice and/or a handful of lawyers providing pro bono services.<sup>2</sup>

Compounding these issues is the fact that donor fatigue has resulted in significantly diminishing funds to CSOs for legal aid services. In 2017, a mere 37 legal aid lawyers were employed by 15 CSOs, which is 53% less than in 2006.<sup>3</sup> Similarly, State-sponsored legal aid is likewise limited, with the current budget able to cover funding for only 40% of cases (2000 out of 5000 requests) received by the Bar Association of the Kingdom of Cambodia (**BAKC**).<sup>4</sup> While the Ministry of Justice of Cambodia (**MoJ**) has been designated by the Royal Government of Cambodia (**RGC**) as the institution which receives the annual public legal aid budget, this

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<sup>1</sup> "Being LGBT in Asia: Cambodia Country Report", United Nations Development Programme and United States Agency for International Development, 2014, p.29, available at [http://www.asia-pacific.undp.org/content/dam/rbap/docs/Research%20&%20Publications/hiv\\_aids/rbap-hhd-2014-blia-cambodia-country-report.pdf](http://www.asia-pacific.undp.org/content/dam/rbap/docs/Research%20&%20Publications/hiv_aids/rbap-hhd-2014-blia-cambodia-country-report.pdf) (last accessed 21 January 2019).

<sup>2</sup> "Achieving Justice for Gross Human Rights Violations in Cambodia: Baseline Study", International Commission of Jurists (ICJ), October 2017, p. 22, available at <http://www.refworld.org/pdfid/5a212f144.pdf> (last visited 24 January 2019).

<sup>3</sup> Kai Hauerstein, Assessment Report: Assessing the provision of legal aid and proposing policy recommendations, Final Draft, June 2018, pp. 51, 59.

<sup>4</sup> Kai Hauerstein, Assessment Report: Assessing the provision of legal aid and proposing policy recommendations, Final Draft, June 2018, p. 47.

funding is passed on to the BAKC to implement, since the BAKC has the responsibility of 'providing income to lawyers who defend poor people'<sup>5</sup> with legal representation mandatory for criminal cases involving felonies or minors.<sup>6</sup> In 2018, the first Law Firm providing pro bono services in Cambodia was created in a hope to inspire more Cambodian lawyers to take on pro bono cases.<sup>7</sup>

The MoJ, acknowledging a need to improve legal aid in Cambodia, and with the support of the Cambodian country office of the United Nations Office of the High Commissioner for Human Rights (**OHCHR-Cambodia**) is currently drafting a new law on Legal Aid which should be enacted soon. In the meantime, the public legal aid budget received an increase of 300 million riels (USD75,000.00) bringing the budget for 2019 to 1,200 million riels (USD300,000.00) according to the MoJ<sup>8</sup>, noting that 400,000.00 riels (USD100.00) is allocated per case. Additionally, each lawyer student entering the Legal Training Center (**LTC**) of the BAKC needs to pay a fee of 8 million riels (USD2,000.00) of which one fourth will be attributed to the legal aid fund. Finally, the Ministry of Women Affairs (**MoWA**) is planning to allocate a budget to provide legal aid to vulnerable girls and women, although no public announcement was made at the date of this report.

Across all the data gathered through this research (interviews and data), we estimate the current caseload before the Cambodian courts specifically related to SOGIESC legal issues to be 30.

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<sup>5</sup> Law on the Bar, Article 29, 1995, [https://www.wto.org/english/thewto\\_e/acc\\_e/khm\\_e/WTACCKHM3A3\\_LEG\\_50.pdf](https://www.wto.org/english/thewto_e/acc_e/khm_e/WTACCKHM3A3_LEG_50.pdf) (last visited 24 January 2019).

<sup>6</sup> Annotated Cambodian Code of Procedure, Annotations to ECCC and select International Jurisprudence, Article 301, 2014, available at <http://cambodia.ohchr.org/~cambodiaohchr/sites/default/files/Annotated%20Cambodian%20Code%20of%20Criminal%20Procedure%20%5BEN%5D%20%5BMaster%20-%20Final%5D.pdf> (last visited 17 February 2019).

<sup>7</sup> See Pro Bono & Advisory Law Group at <https://twitter.com/probonocambodia> (last visited 20 February 2019).

<sup>8</sup> Voun Dara, "Legal aid for kingdom's vulnerable", The Phnom Penh Post, 10 December 2018, available at <https://www.phnompenhpost.com/national/legal-aid-kingdoms-vulnerable> (last visited 25 January 2019).

## Purpose and Methodology

At the crossroads of Destination Justice (DJ)'s two main projects in Cambodia, Rainbow Justice Project and Justice Matters Project, this report, **Rainbow Legal Aid** (the **Report**), comprehensively analyses the level of access to legal aid by LGBTIQ individuals in Cambodia. It documents both the legal framework and the factual reality nationwide.

This Report aims to foster a dialogue to improve access to legal aid services by LGBTIQ individuals who need it. In particular, it hopes to empower CSOs, lawyers and Cambodian institutions as a means through which such improvements may be achieved. To that end, the Report offers specific as well as general recommendations for CSOs, lawyers and Cambodian institutions to consider when assisting LGBTIQ individuals in engaging the justice system in Cambodia.

This Report's baseline measure is a survey that was conducted online and in-person (see Annex 1 for the questionnaire). Answers to the questionnaire were analysed taking into account age group, capital/provincial area, and SOGIESC. 96 LGBTIQ individuals (representative of Cambodian demographics in terms of age group and living areas) answered the survey while 14 key informants were interviewed in-depth. All interviewees were asked similar, open-ended questions that were provided to them in advance and adapted to their personal situation and that of their institution. All interviews were recorded. The interviewees consented to being interviewed and to the publication of the information given in the relevant sections of this Report.

A Stakeholders Consultation was also held on Tuesday 12 February 2019 to present the primary findings of the research, and to receive informed feedback and recommendations from 8 experts in the field of SOGIESC/gender and/or legal aid.



## Terminology

**Legal Aid:** It can be simply defined as a payment from public funds allowed to help pay for legal advice or proceedings for people who are required a lawyer and would not otherwise be able to afford one',

**LGBTIQ:** Acronyms used to identify the queer community vary throughout Cambodia and between different CSOs and individuals. For consistency, this Report utilises the broad acronym "LGBTIQ" to encompass the various identities of the Cambodian queer community, except where a cited source uses a different acronym.

**SOGIESC:** Traditionally, 'SOGIE' has been used to denote sexual orientation (SO), gender identity (GI) and gender expression (E). However, with a slowly-evolving understanding of diverse identities within the LGBTIQ community in Cambodia, this Report instead uses the expanded acronym SOGIESC, since this also includes the notion of sexual characteristics (SC).

## Key Findings

Some of the key findings of the Report includes:

1. There is **widespread lack of knowledge by the LGBTIQ community** in Cambodia on how and where to access lawyers when they face a discriminatory and/or legal issue;
2. In general, and when relevant, most LGBTIQ individuals surveyed **feel confident in mentioning their SOGIESC to their lawyer**;
3. There is **a low understanding of the concept of legal aid** among the LGBTIQ community in Cambodia, coupled with **very low access to information** relevant to legal aid and resulting mistrust in lawyers providing legal aid;
4. More than half of the LGBTIQ individuals who do not receive legal aid, **do not proceed to court with their cases because of a lack of financial means** (civil and/or criminal);
5. There is a recognised **lack of government funding** towards legal aid to meet the needs of the population, in particular of the vulnerable groups as the LGBTIQ community, although hope is placed in current budget increases and the **new draft Law on Legal Aid which would increase access to legal aid for LGBTIQ individuals**;
6. **Donor fatigue** drastically limits the capacity of CSOs including to provide significant, high-quality legal aid and related assistance to LGBTIQ individuals and the community at large;
7. There is a near-total **absence of a voluntary pro bono culture** among Cambodian lawyers;
8. Encouragingly, there is **will among all the stakeholders**, including the MoJ, to improve access to legal advice and legal aid by the LGBTIQ community in Cambodia, in particular in **offering trainings to lawyers to mainstream the understanding of SOGIESC-related legal issues**.

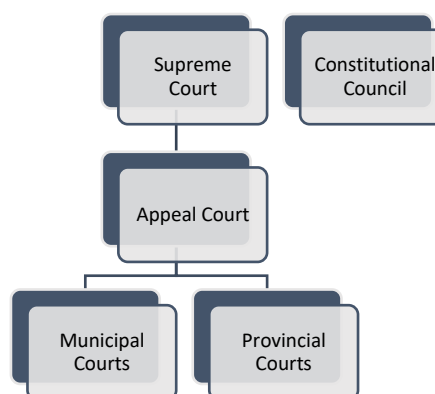
# Context

## The Cambodian Judicial System

The Cambodian judicial system offers a traditional courts system alongside informal dispute resolution mechanisms relying on mediation. However, under the current legal dispositions, State-sponsored legal aid is only available for criminal offences involving felonies or minors.<sup>9</sup>

### Courts System (Civil and Criminal Cases)

The Cambodian court system has been inherited from the civil law. For civil and criminal cases, this system comprises a three-tier process starting from Municipal and Provincial courts as first instance, then the Appeal Court, with the Supreme Court being the last resort court. The Constitutional Council can hear questions of conflict/interpretation of the law regarding the Constitution.



### Other Dispute Resolution Mechanisms

Alongside the courts system, which can be costly, traditional dispute resolution mechanisms are still used throughout the country. Indeed, "if disputes are not very serious, parties often submit them to elderly people, or other respected or prominent persons in their villages or communes for reconciliation".<sup>10</sup> This is for example the purpose of the 66 '*Maisons de la Justice*' [Houses of Justice] run by the Ministry of Justice in their district centres in 10 provinces where government officers provide legal advice and resort to mediation before sending cases to court.<sup>11</sup> Similarly, individuals can resort to arbitration, where the decision of the arbitrator will

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<sup>9</sup> Annotated Cambodia Code of Procedure, Article 301, op. cit.

<sup>10</sup> Koy Neam, "Introduction to the Cambodian Judicial Process", The Asia Foundation, 1998, extracts available at <http://www3.online.com.kh/users/kid/pdf/The%20Cambodian%20Judicial%20Process.pdf> (18 February 2019).

<sup>11</sup> Note: There is currently no independent assessment of the efficiency of those '*Maisons de la Justice*' with some perplexity of some stakeholders when it comes to their functioning.

bear the same binding legal effect as a court judgement. As an example, the Arbitration Council is in charge of all matters related to employers-employees. Finally, Cambodians can submit civil disputes to the King during Royal hearings which serve as an extra-judicial forum.<sup>12</sup>

## The Most Common SOGIESC-Related Legal Issues in Cambodia

In a nationwide survey conducted by Rainbow Community Kampuchea (RoCK) in 2015, 86% of straight respondents and 82% of LGBTIQ respondents have identified the first issue faced by the LGBTIQ community in Cambodia as being discrimination based on SOGIE. Neither the Constitution nor the law protects the LGBTIQ against discrimination. However, Article 31 of the Cambodian Constitution guarantees equal rights to all Cambodians 'regardless of race, color, sex, language, beliefs, religions, political tendencies, birth origin, social status, wealth or other situations'.<sup>13</sup> It can be argued that following interpretations by UN human rights mechanisms or regional human rights courts, sexual orientation and/or gender identity and expression could fall within the locus of 'other situations' and that accordingly, LGBTIQ individuals in Cambodia could be entitled to constitutional protection.<sup>14</sup> However, such interpretation has not yet been made by either the Constitutional Council or any Cambodian courts.

Aside from discrimination, most key SOGIESC issues in Cambodia touch upon family relationships, including physical and mental violence by family members against LGBTIQ individuals; bullying at school and work; and harassment of LGBTIQ (some of who are also sex workers) by authorities. Three sets of laws have been identified as routinely being used to separate LGBTIQ partners, namely: the anti-kidnapping law, the anti-trafficking laws and the commune safety policies.<sup>15</sup>

A survey conducted by the Cambodian Center for Human Rights (CCHR) in 2015 reveals that '93.59% of the participants who had been bullied felt the bullying was either partly or entirely because of their sexual orientation or gender identity'.<sup>16</sup> Additionally, 92% of transgender

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<sup>12</sup> Koy Neam, "Introduction to the Cambodian Judicial Process", The Asia foundation, 1998, op. cit.

<sup>13</sup> The Constitution of the Kingdom of Cambodia, Chapter III Article 31, 21 September 1993, available at <http://pressocm.gov.kh/en/archives/9539> (last visited 23 January 2019).

<sup>14</sup> See for instance: International Commission of Jurists, SOGI Casebook, 2018 available at <https://www.icj.org/sogi-casebook-introduction/> (last visited 19 February 2019).

<sup>15</sup> "Being LGBT in Asia: Cambodia Country Report", United Nations Development Programme and United States Agency for International Development, 2014, p. 36, op. cit.

<sup>16</sup> Cambodian Center for Human Rights, "LGBT Bullying in Cambodia's schools", December 2015, p. 16, available at [https://cchrcambodia.org/admin/media/report/report/english/2015\\_12\\_17\\_CCHR\\_REPORT\\_LGBT\\_Bullying\\_in\\_Cam\\_School\\_\(ENG\).pdf](https://cchrcambodia.org/admin/media/report/report/english/2015_12_17_CCHR_REPORT_LGBT_Bullying_in_Cam_School_(ENG).pdf) (last visited 24 January 2019).

women surveyed by CCHR in 2016 reported experiencing verbal abuse in public spaces because of their SOGIE, while 43% reported experiencing physical violence and 31% experiencing sexual assault.<sup>17</sup> As a result, it is estimated almost one-third of Cambodian LGBT people never come out of the closet, forced to deny who they are for fear of becoming social outcasts.<sup>18</sup>

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<sup>17</sup> Cambodian Center for Human Rights, "Discrimination against Transgender Women in Cambodia's Urban centers, September 2016, p-10-12, available at [https://cchrcambodia.org/admin/media/report/report/english/2016\\_09\\_21\\_SOGI\\_Report\\_Eng.pdf](https://cchrcambodia.org/admin/media/report/report/english/2016_09_21_SOGI_Report_Eng.pdf) (last visited 24 January 2019).

<sup>18</sup> Rainbow Community of Kampuchea, Research Report on Opinions, Attitudes and Behavior toward the LGBT population in Cambodia, December 2015, p. 9.

# Access to Legal Aid for the LGBTIQ community in Cambodia

In the following section, we have analysed the data collected during the survey and interpreted it in light of the information gathered during the interviews and stakeholder's consultation. Our group of respondents has the following characteristics which are consistent with the demographics of the Cambodian population regarding the age group.<sup>19</sup>

Demographic characteristic		% Participants
Age group	Under 35	68.75%
	35 and older	29.17%
	No response given	2.08%
Location	Phnom Penh	39.58%
	Provinces	60.42%
Gender Identity	Female	37.50%
	Male	29.17%
	Queer	1.04%
	Transgender Female (TGW)	6.25%
	Transgender Male (TGM)	20.83%
	No response given	3.13%
	Prefer not to say	2.08%
Sexual Orientation	Bisexual	8.33%
	Hetero	7.29%
	Gay	25.00%
	Lesbian	57.29%
	Prefer not to say	2.08%

## Need to Access a Lawyer

Three-quarters of respondents reported that they had never needed a lawyer. Among the respondents who answered positively, most live in the provinces (57.89%) and most are lesbians (84.21%), with 43.75% identifying themselves as Transgender Male.<sup>20</sup> Those results find

<sup>19</sup> Note: Cambodia's National Institute of Statistics, 68.5 percent of the population was under the age of 35 in 2013. See <https://www.cambodiadaily.com/news/baby-boom-after-khmer-rouge-led-to-cambodias-young-population-127415/> (last visited 18 February 2019).

<sup>20</sup> Note: In Cambodia, it is common for individuals identifying themselves as Transgender male to also identifying themselves as Lesbians although one could assume that a Transgender male having intercourse with a woman would identify themselves as straight. No sociological study has yet been conducted on the Cambodian LGBTIQ community self-identification processes and cultural meanings.

an explanation in the fact that the respondents living in Phnom Penh might face different issues than those living in the countryside and therefore not requiring the use of a lawyer. Moreover, the high number of NGOs providing legal aid in Phnom Penh might contribute in a reduce number of Phnom Penh resident to access a lawyer, coupled with the perception that NGOs providing legal aid are not perceived as lawyer as such.

When the respondents were asked where to look for when in need of a lawyer, the answers<sup>21</sup> were very diverse with a notable difference based on location. Indeed, respondents living in Phnom Penh have a better access to CSOs known to provide legal aid, although some of those CSOs have offices in the Provinces, to private lawyers, and to the Ministry of Justice. However, respondents living in the Provinces will find it easy to contact RoCK or the Police. Consequently, it appears easier to access legal assistance, either private or public, in Phnom Penh, that's why the MoJ has recently taken the decision to dispatch 4-5 lawyers in each of the Cambodian provinces. There is currently not enough recoil to analyse the impact of this measure.

Organisations	Nb. Respondents	%	<i>Phnom Penh</i>	% of total living Phnom Penh	<i>Provinces</i>	% of total living in Provinces
CCHR	5	20.83%	4	80.00%	0	0.00%
Ministry of Justice	3	12.50%	2	66.67%	1	33.33%
Private Law Firm	5	20.83%	4	80.00%	0	0.00%
ADHOC	3	12.50%	1	33.33%	1	33.33%
LICADHO	3	12.50%	2	66.67%	0	0.00%
RoCK	7	29.17%	0	0.00%	6	85.71%
The Bar Association of the Kingdom of Cambodia (BAKC)	1	4.17%	1	100.00%	0	0.00%
Legal Aid of Cambodia (LAC)	1	4.17%	1	100.00%	0	0.00%
N/A	1	4.17%	0	0.00%	1	100.00%
Police	2	8.33%	0	0.00%	2	100.00%
International Bridges to Justice (IBJ)	0	0.00%	0	0.00%	0	0.00%
Others	0	0.00%	0	0.00%	0	0.00%
Total of answers	31		15		11	
No location: 5 respondents			48.39%		35.48%	

Therefore, in this Report, we have chosen to respect the respondents' self-identification, although it might cause some confusion to the reader.

<sup>21</sup> Note: Respondents were able to submit several answers, therefore 24 respondents gave 31 answers.

Of the 25% of respondents who acknowledged having ever needed a lawyer, 66.67% of them mentioned their SOGIESC to their lawyer, 62.50% mentioned that it was not relevant to their case, and 25% mentioned a fear of being discriminated against by their lawyer. However, of the respondents who mentioned their SOGIESC, most of them did so to NGOs or private lawyers hired by NGOs. Our research did not clearly identify if the 25% who mentioned a fear of being discriminated were dealing with lawyers provided by NGOs or no.

When asked specifically about lawyers providing legal aid to LGBTIQ individuals, the 25 individuals<sup>22</sup> identified the following institutions as providers of legal aid lawyers: 68% RoCK, 24% ADHOC, 24% CCHR, 16% LICADHO, 8% LAC, 4% IBJ, 4% MoJ and 4% OHCHR-Cambodia. However, those answers do not entirely reflect the information gathered through the interviews as most stakeholders refer their cases involving SOGIESC issues to CCHR. It is important to note that each of the organisations mentioned above implement different criteria based on thematic issues, quality of the case, and internal committee review. This contributes to the lack of clarity of a uniform referring mechanism related to SOGIESC issues (see Phlong Srey Rann case for instance).

#### **Example of the runaround LGBTIQ cases face in search of legal aid**

In August 2011, Phlong Srey Rann, a transgender man to woman, was arrested after being accused by her girlfriend's brother of illegal detention and human trafficking. In November 2011, she was convicted under criminal offence for having sexual intercourse with a minor (her girlfriend) and was sentenced to five years in prison. However, she claimed that the documents provided by the family claiming that the girl was only 14 years old were falsified and it was only a mean to put an end to their daughter's same-sex relationship. She wanted to appeal.

Her mother contacted CCHR but the latter had no legal service and so referred Ms. Srey Rann's mother to another CSO specialised in legal aid which was not able to help. RoCK, after trying to get the case information from the latter organisation, contacted OHCHR-Cambodia which agreed to help. In the meantime, the case had been transferred to Legal Aid of Cambodia but the lawyer in charge was on maternity leave, with no one to take on

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<sup>22</sup> Note: Respondents were able to submit several answers, therefore 25 respondents gave 40 answers.



her workload. OHCHR-Cambodia therefore hired a new lawyer on Ms. Srey Rann's behalf who, unfortunately, appeared less concerned with seeking justice for LGBTIQ individuals but with money. Ultimately, therefore, ROCK had to hire another lawyer from LICADHO to continue defending the case.

On 31 December 2012, the Appeal Court overturned the Phnom Penh Municipal Court's 2011 guilty verdict on the basis of lack of evidence proving that the girl was underage.

## The Understanding of Legal Aid by the LGBTIQ Community

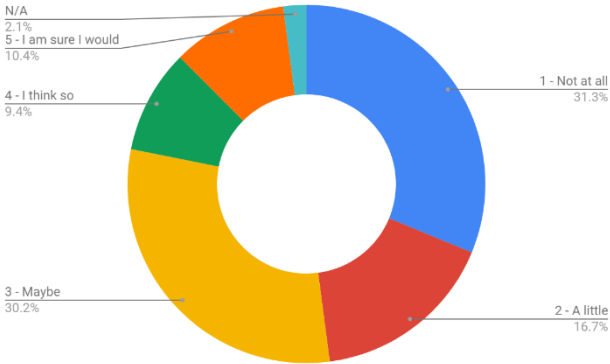
When given the basic definition of legal aid as 'payment from public funds allowed to help pay for legal advice or proceedings for people who are required a lawyer and would not otherwise be able to afford one', 34.38% of all the respondents do not understand the concept of legal aid compared to 38.54% who reported that they did. This result is reinforced by the fact that 53.13% of all respondents never received any information on legal aid, with only 5.25% reporting receiving regular information on legal aid.

Consequently, 62.50% of all the respondents think they would not qualify for legal aid although no criteria were given to the respondents other than the broad definition above. In the absence of the Law on Legal Aid, no clear and measurable criteria have been laid out for state-sponsored legal aid other than 'being poor', which may be relative or a matter of perception.

Throughout the collection of our data we found inconsistencies in the respondents' answers due to the lack of understanding of legal aid. Indeed, for some of our respondents, lawyers working for NGOs and therefore providing free legal assistance are not perceived as "true" lawyers. This may explain why, although only 25% of respondents mention having ever needed a lawyer at the beginning of our survey, the higher number of 28.13% mention having applied to legal aid in the past. This attitude has been confirmed by CSO stakeholders, some of whom adding that not all cases need the assistance of lawyer, and that advice from a paralegal or mediation between parties is sufficient.

# Degree of LGBTIQ Individuals' Trust in the Legal Aid Mechanism

Asked if they would trust a lawyer providing legal aid, 47.92% of the LGBTIQ individuals who responded reported that they would not really trust such a lawyer, while only 10.42% would. This finds its rationale in the common assumption that lawyers working for free (or a small stipend) are not good lawyers. Moreover, it had been observed by several stakeholders that there is a significant difference in quality in the legal aid provided by NGOs and the services provided by the lawyers of the BAKC, in which NGOs' legal aid services are recognised as more thorough and competent on thematic issues, which could contribute to the perception above.



At least two CSOs have mentioned preexisting projects providing legal assistance on SOGIESC-related issues which have been terminated in recent years noting that their lawyers received numerous trainings to learn how to deal with those specific issues. Indeed, while both lawyer students and magistrate students receive training on human rights issues, none currently receive training on SOGIESC/LGBTIQ issues. The MoJ however mentioned its openness in co-delivering such trainings on an ad hoc basis with the right UN and/or CSO partner(s).

## Experience of LGBTIQ individuals in accessing legal aid

Among our respondents, 28.13% reported having already applied to legal aid, among whom 75% reported that this was in relation to an act of discrimination based on their SOGIESC.

62.86% of those who applied to public legal aid but did not receive it mentioned that they are still looking for the money to be able to pay for their lawyer while a majority of the respondents has mentioned having dropped the case due to a lack of financial means. Of the 37.14% who did not receive public legal aid but were able to go through with their case, 20% received help through an NGO and 5.71% mentioned the lawyer took the case pro bono. Although there is no previous similar data with which to draw a comparison, the fact that CSOs' lawyers have been

reduced by 53% in the past 13 years,<sup>23</sup> coupled with a rise in the apparent need for legal assistance by the LGBTIQ community, shows how significant increases in legal aid funding, both from the RGC and the donor community, could be in affecting the lives of LGBTIQ individuals in Cambodia.

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<sup>23</sup> Kai Hauerstein, Assessment Report: Assessing the provision of legal aid and proposing policy recommendations, Final Draft, June 2018, pp. 51, 59.

## Conclusion

While cases involving discrimination based on SOGIESC are scarce compared to the overall caseload in Cambodian courts, the need to improve access to the judicial system, in particular through legal aid, is dire for the realisation of the Cambodian LGBTIQ community's rights. Both the respondents surveyed, and the key informants interviewed, highlighted the precarious situation of LGBTIQ individuals when needing to advocate for their rights in the justice system. The widespread lack of knowledge by the LGBTIQ community in accessing affordable legal representation is being tackled by decentralisation measures taken by the MoJ and an increase in communication between the stakeholders from the civil society. However, there are still large gaps that needs to be covered in order to make sure that no one is left behind, and that every member of the LGBTIQ community knows where and how to find help when needed.

We would like to stress that a certain number of issues raised in that report could be tackled by the adoption of the draft Law on Legal Aid. We believe it could create a more accessible and comprehensible process for obtaining public legal aid which would also encourage members of the LGBTIQ community to submit civil cases in relation to their right to marry, their right to gender recognition and their right to adopt, the three top priorities identified by the community.<sup>24</sup> Those are also the three issues with anti-discrimination on which the RGC received recommendations during the recent third cycle of the UN Universal Periodic Review (UPR), and on which the representant of the RGC pledged to focus in the next 5 years.

Although there is a long way to go, we are hopeful the LGBTIQ community in Cambodia will see an increase in affordable representation in the coming years if all the stakeholders, including public and private funding, remain committed in working together. We also believe it will be facilitated by the nascent development of a voluntary pro bono culture from the lawyers.

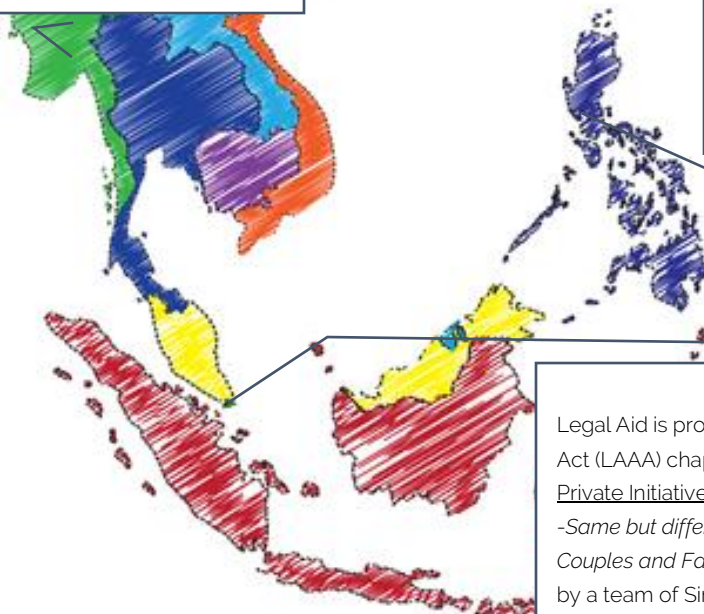
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<sup>24</sup> Rainbow Community of Kampuchea, Research Report on Opinions, Attitudes and Behavior toward the LGBT population in Cambodia, op. cit.

# Comparison: Best Practices across Asia

## Legal Aid Initiatives for LGBTIQ Communities in ASEAN

In the region of the Association of Southeast Asian Nations (ASEAN), 5 countries still criminalise same-sex intercourse, namely Brunei-Darussalam, Indonesia, Malaysia, Myanmar and Singapore. Therefore, although there are legal dispositions organising legal aid in Indonesia, Malaysia and Singapore, LGBTIQ communities cannot benefit from them, on cases related to discrimination based on their SOGIESC. In Thailand and Vietnam, access to legal aid by LGBTIQ community is theoretically available as both countries are the most progressive on LGBTIQ issues in the region and possess respectively a pro bono culture and a legal aid framework.



**Myanmar**  
No proper legal aid but a culture of Pro Bono.  
Private Initiative:  
Colors Rainbow Myanmar has a hotline with paralegals who can offer guidance and assistance to LGBTIQ individuals.

**Philippines**  
Legal Aid is provided by the "Free Legal Assistance Act of 2010", although it does not contain any specific reference to the LGBTIQ community.  
CSOs providing Legal Aid to LGBTIQ:  
Rainbow Rights Project.

**Singapore**  
Legal Aid is provided through the Legal Aid and Advice Act (LAAA) chapter 160.  
Private Initiative:  
-Same but different: A legal guide book for LGBT Couples and Families in Singapore which was created by a team of Singaporean lawyers to help the LGBTIQ community navigate through the law and obtain some protection although the law still criminalises same-sex intercourses.

Map by Surassawadee, Royalty-free stock vector images, ID: 152408471 sketch ASEAN Map, Vector illustration - Vector

## Legal Aid initiatives for LGBTIQ Communities in East Asia

The 3 initiatives highlighted below are quite similar to the initiative developed by Singapore and rely on the lawyers rather than on a government or NGO-powered initiatives.

### People's Republic of China

- **The Shanghai Hotline for Sexual Minorities** was started in 2003 by Zhou Dan, only openly gay lawyer focusing on helping the LGBTIQ Community in China by providing free legal advice.

### Hong Kong

- **The Hong Kong LGBT+ Attorneys (HKGALA) network** aims to promote LGBTIQ diversity and inclusion in the legal profession, increase awareness of LGBTIQ legal issues in Hong-Kong and abroad, as well as encourage LGBT-focused pro-bono work. As of February 2019, it counts 50+ supporting firms and 700+ individual members and supporters.

### Japan

- **Lawyers for LGBT Allies Network** is a legal entity created to promote the understanding of LGBTIQ and to eliminate discrimination based on SOGIESC by providing legal assistance to these communities.

The initiatives developed in ASEAN and East Asia could serve as examples of good practices which could be adapted to the Cambodian context. Moreover, the East Asian countries chosen here are known to be donors and/or providing technical assistance to the RGC in the legal and judicial systems, with some private lawyers also practicing in Cambodia. However, those best practices and initiatives are non-exhaustive and focus on the neighboring countries. We do believe there are a lot of other good practices in the world which could be adapted to the Cambodian context.

# Concluding Recommendations

Destination Justice's concluding recommendations stem from two basic considerations:

- To increase the communication among all stakeholders working around the topic of legal aid for the LGBTIQ Community in Cambodia, by creating/fostering existing channels of discussions including the RGC, United Nations institutions, lawyers and CSOs;
- To ensure the LGBTIQ community has access to information on legal services in Cambodia, in particular legal aid, through the dissemination of comprehensive and up-to-date information.

The following recommendations specifically address the RGC and its institutions.

## Recommendations to the Cambodian Government

- To adopt, in a timely manner, and ensure the implementation of the Law on Legal Aid, in particular for vulnerable groups;
- To pursue the efforts in increasing the budget for legal aid to ensure that no one is left behind, in particular the LGBTIQ community;
- Through the MoJ and the BAKC, to provide SOGIESC training to all judicial professionals in Cambodia, in particular lawyers and government officials at the local level.

## Recommendations to Law Firms and Individual Lawyers

- To participate in regular training on SOGIESC legal issues delivered by the BAKC;
- To continue to develop a voluntary pro bono culture with a focus on vulnerable groups, in particular LGBTIQ individuals;
- To liaise with the CSOs working on legal aid and/or LGBTIQ issues and assist in developing tools/mechanisms to ensure LGBTIQ individuals receive proper legal advice.

## Recommendations to the United Nations in Cambodia

- To take the lead and assist the BAKC in developing trainings on SOGIESC legal issues for lawyers in Cambodia.

## Recommendations to Donors

- To support the current efforts of improving access to legal aid for the Cambodian LGBTIQ community by providing, at least, sufficient funds to cover all pending cases.

## Recommendations to Civil Society

- To create a special fund for legal aid for LGBTIQ cases in order to support advocacy efforts and advance the rights of the LGBTIQ in Cambodia;
- To centralise LGBTIQ judicial cases in order to enhance the cooperation with the lawyers by creating clear and comprehensive communication and referral procedures.



# Annex 1: Questionnaire

## Legal Aid & LGBTIQ in Cambodia

This survey is part of a research conducted by Destination Justice with the support of the European Union through the Gender Voices Project in Cambodia.

The survey aims to highlight the (non)-accessibility of the LGBTIQ individuals to the justice system in Cambodia, in particular their access to Legal Aid.

All the data gathered is strictly for the purpose of the research, the names gathered will stay confidential unless mentioned otherwise by the respondents.

The survey should take 5min to fill in.

We very much appreciate your contribution to our research,

Thank you

Destination Justice Team

\*mandatory answer

Email Address\*

.....

### 1. About you

Before starting the survey we would like to know a little bit more about you.

What is your name?\*

.....

How old are you?\*

.....

Where are you living? (Please specify the city and/or Province)\*

.....

What is your gender identity?\*

Female

Male

Transgender Female

Transgender Male

Prefer not to say

Other

What is your sexual orientation?\*

Homosexual – Lesbian

Homosexual – Gay

Bisexual

Heterosexual (Straight)

Prefer not to say

## 2. Access to a lawyer

We would like to know more your level of access to law professionals

Have you ever needed to access a lawyer?\*

- Yes
- No
- I don't remember
- Prefer not to say

Where did you ask for a lawyer?\*

- Ministry of Justice
- The Bar Association of the Kingdom of Cambodia
- Legal Aid Cambodia (LAC)
- ADHOC
- CCHR
- LICADHO
- IBJ
- Private Law Firm
- Other

Did you mention to the lawyer your SOGIESC?\*

- Yes
- No
- I don't remember
- Prefer not to say
- Other

Why did you not mentioned your SOGIESC to the lawyer?\*

- By fear of being discriminated
- It was not relevant to the case
- I didn't thought about it
- Other

## 3. Your understanding of Legal Aid

Legal Aid is payment from public funds allowed to help pay for legal advice or proceedings for people who are required a lawyer and would not otherwise be able to afford one.

From the definition above, do you understand what is legal aid?\*

1 to 5 scale with 1 being not at all and 5 very clearly

Did you previously had access to information on legal aid?\*

- Never
- Occasionally
- Sometimes
- Often
- Always

Do you think that you would qualify for legal aid if you ever need a lawyer?\*

1 to 5 scale with 1 being not at all and 5 very likely

Would you trust a lawyer providing Legal Aid?\*

1 to 5 scale with 1 being not at all and 5 very likely

Do you know of any lawyers providing Legal Aid to LGBTIQ individuals?\*

- Yes
- No
- I don't know

For which organisation(s) are those lawyers working for?\*

- I don't know
- Ministry of Justice
- The Bar Association of the Kingdom of Cambodia
- Legal Aid of Cambodia (LAC)
- CCHR
- LICADHO
- ADHOC
- IBJ
- RoCK
- Other

4- Your relationship with Legal Aid

Did you ever applied for Legal Aid?\*

- Yes
- No
- I don't remember
- Prefer not to say

If you received Legal Aid, was the case in relation to a discrimination based on your SOGIESC?\*

- Yes
- No
- I don't remember
- Prefer not to say
- Other

If you received Legal Aid, were you satisfied by the lawyer assistance?\*

1 to 5 scale with 1 being not at all and 5 very much

If you didn't received Legal Aid, did you proceed with the case?

- Yes – I have sufficient means to pay for a lawyer
- Yes – Family and Friends helped me to pay for a lawyer
- Yes – The lawyer took the case pro bono
- Yes – An NGO helped me
- No - I didn't find the money to pay for the lawyer and add to abandon the case
- No – I am still looking for fund
- I do not remember
- I prefer not to say
- Other

# Acknowledgements

This Report would not have been possible without the invaluable contribution of LGBTIQ individuals throughout Cambodia, including our survey respondents and key informants of whom we have chosen to keep the identity anonymous.

The research presented in this Report was conducted with the support of the Gender Voices Project through DanChurchAid (DCA) and the European Union (EU). Destination Justice also thanks Rainbow Community Kampuchea (RoCK) for their ongoing support, not only for this Report but for the Rainbow Justice Project more broadly.

This Report was produced by Destination Justice. Key contributors included Céline Martin, Puy Suo, Remicard Sereme and Doreen Chen.

In Cambodia, while there is no criminalisation of LGBTIQ individuals based on their Sexual Orientation, Gender Identity and Expression, and Sexual Characteristics (**SOGIESC**), neither there is legal protection nor specific LGBTIQ or SOGIESC sensitivity trainings for judicial professionals and police officers. In other words, the justice system is silent when it comes to LGBTIQ individuals, despite the social and economic vulnerabilities the community faces. As a result, LGBTIQ individuals often find themselves in dire situations when attempting to access the Cambodian justice system, relying on too few civil society organisations (**CSOs**) providing free legal advice and/or a handful of lawyers providing pro bono services.

The Report therefore looked at the knowledge of the LGBTIQ community on where and how to access free or affordable legal representation, the context and the understanding of legal aid for the LGBTIQ community and the experiences of the community's members.

Rainbow Legal Aid is part of Destination Justice's **Rainbow Justice Project**. Through this Project, Destination Justice aims to foster dialogue in Southeast Asia, in particular in Cambodia, on sexual orientation, gender identity and gender expression, and sexual characteristics (SOGIESC), and to provide advocacy tools to changemakers for the promotion and protection of the lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) community's rights.



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