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និងការពារសិទ្ធិមនុស្ស

លីកាដូ



LICADHO

CAMBODIAN LEAGUE FOR THE
PROMOTION AND DEFENSE OF
HUMAN RIGHTS



NO PUNISHMENT, NO PROTECTION: CAMBODIA'S RESPONSE TO DOMESTIC VIOLENCE

A briefing paper issued in
December 2017



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LICADHO

CAMBODIAN LEAGUE FOR THE PROMOTION
AND DEFENSE OF HUMAN RIGHTS

CAMBODIAN LEAGUE FOR THE PROMOTION AND DEFENSE OF HUMAN RIGHTS (LICADHO)

LICADHO is a national Cambodian human rights organization. Since its establishment in 1992, LICADHO has been at the forefront of efforts to protect civil, political, economic and social rights in Cambodia and to promote respect for them by the Cambodian government and institutions. Building on its past achievements, LICADHO continues to be an advocate for the Cambodian people and a monitor of the government through wide ranging human rights programs from its main office in Phnom Penh and 13 provincial offices.

MONITORING & PROTECTION



PROMOTION & ADVOCACY

Monitoring of State Violations & Women's and Children's Rights:

Monitors investigate human rights violations perpetrated by the State and violations made against women and children. Victims are provided assistance through interventions with local authorities and court officials.

Medical Assistance & Social Work:

A medical team provides assistance to prisoners and prison officials in 14 prisons, victims of human rights violations and families in resettlement sites. Social workers conduct needs assessments of victims and their families and provide short-term material and food.

Prison Monitoring:

Researchers monitor 18 prisons to assess prison conditions and ensure that pre-trial detainees have access to legal representation.

Paralegal & Legal Representation:

Victims are provided legal advice by a paralegal team and, in key cases, legal representation by human rights lawyers.

Supporting Unions & Grassroots Groups and Networks:

Assistance to unions, grassroots groups and affected communities to provide protection and legal services, and to enhance their capacity to campaign and advocate for human rights.

Public Advocacy & Outreach:

Human rights cases are compiled into a central electronic database, so that accurate information can be easily accessed and analyzed, and produced into periodic public reports (written, audio and visual) or used for other advocacy.

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Cover Photo: Weapons used in a case of domestic violence investigated by LICADHO

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A law on domestic violence (“Domestic Violence Law”) has been in force in Cambodia since 2005.¹ It defines domestic violence, gives powers to local authorities to intervene in cases of domestic violence, gives authority to the courts to issue protection orders, and states that domestic violence should be punished under the criminal code. However, recent studies suggest that the majority of women who experience domestic violence are not properly protected by the law. The National Survey on Women’s Health and Life Experiences in Cambodia² (“the National Survey”) found that 21% of women aged 15-64 who had ever been in a relationship with an intimate partner reported experiencing physical or sexual violence. Of that 21%, 49% had not reported it to anyone. Those who had reported it had mostly told friends, relatives or neighbours. Only 24% had sought help through authorities or formal agencies such as police or a local leader. The Cambodia Demographic and Health Survey of 2014³ found that 31% of ever married women aged 15-49 reported experiencing spousal violence, including physical, sexual, emotional and economic violence. Thirty-eight percent of women who experienced any type of physical or sexual violence from anyone never sought help and never told anyone.

During the period covered by this report (2014-2016), LICADHO investigated nearly 400 cases of domestic violence. All of the LICADHO cases were reported to some kind of authority figure. The findings of the National Survey would suggest that the LICADHO cases were a fraction of the total number of domestic violence cases in the country. The outcomes of the LICADHO cases that are now closed show that even in cases where there is intervention from a state agent, the results are far from encouraging: more than 40% ended with the victim remaining with her violent partner and only 20% ended with any kind of criminal proceedings.

There are many reasons for these results, amongst them, the low social value given to women by Cambodian society, the high value given to maintaining family integrity, religious beliefs, flawed legislation and weak rule of law, and economic factors. The report concludes that, whilst the introduction of a law on domestic violence was an important first step in providing the support for women to escape violent situations, the law will remain largely ineffective until the issues above are addressed.

¹ Law on the Prevention of Domestic Violence and the Protection of Victims, 2005.

² UNWOMEN (2015) National Survey on Women’s Health and Life Experiences in Cambodia New York: UNWOMEN. http://www.wpro.who.int/mediacentre/releases/2015/vaw_full-en.pdf

³ 2014 Cambodia Demographic and Health Survey Key Findings, National Institute of Statistics, Directorate General for Health and ICF International. 2015.



LICADHO has been providing services to victims of domestic violence for over 20 years. The organisation currently has offices in Phnom Penh and 13 provinces and all offices provide legal advice, material support and medical treatment to victims should they need it. The majority of victims approach LICADHO directly but some cases are referred by other NGOs and others come to the attention of LICADHO through media reports.

Almost all cases of domestic violence investigated by LICADHO involve couples who are married or who are living together as if they are married and the violence is committed by the man against the woman. In a small number of cases other family members are involved.⁴ Almost all cases involve physical assault of the victim, often accompanied by sexual violence; in a few cases the abuse is verbal and psychological.

As part of their work, LICADHO staff interview victims and witnesses and record the facts of each

case. In cases where victims request it, they help to file criminal complaints to the police or the court and monitor the progress of those cases, with the aim of ensuring that all steps are taken to prosecute perpetrators. As well as providing legal support in criminal cases, LICADHO staff often help to draft divorce complaints.

When a case is opened, all the information collected by staff is saved in a central database. As the case progresses, further information is recorded, and when the case comes to an end, a note is made of how the case closed. This report is based on an analysis of domestic violence cases opened by LICADHO in 2014, 2015 and 2016, which had closed by July 2017. As well as using recorded case information, six LICADHO clients were interviewed after their cases closed to ask them about their experiences and the factors affecting decisions they had made. The experience of senior LICADHO staff in dealing with domestic violence cases has also informed the findings of this report.

⁴ LICADHO does not investigate domestic violence cases in which men are the victims as domestic violence falls within the mandate of the women's rights monitoring team.

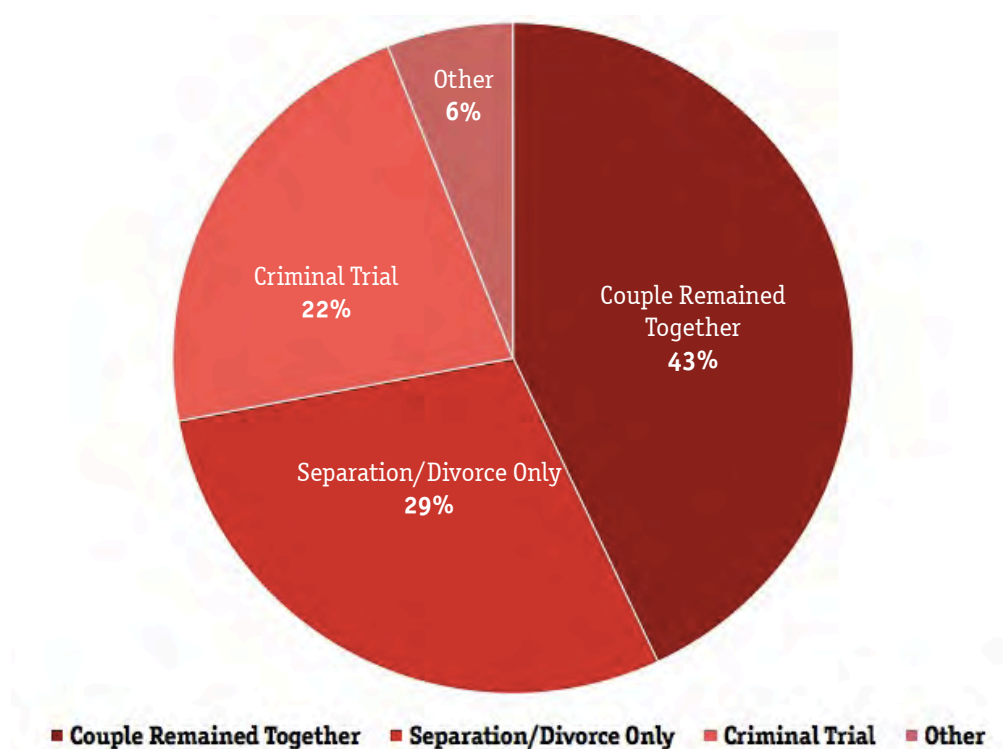
Case Outcomes



Between the beginning of 2014 and the end of 2016 LICADHO investigated 392 cases of domestic violence, 237 of which are now closed.⁵ These closed cases can be divided into three main categories: 101 (43%) ended with the victim deciding to drop the case and to return to live with her violent husband; 69 (29%) ended

with the couple separating or divorcing but with no criminal case being brought against the perpetrator; and 53 (22%) ended with a criminal trial. Another 14 (6%) of cases ended in other ways, for example the perpetrator committed suicide. The three main categories of closed cases will be examined in more detail below.

Outcomes of closed domestic violence cases investigated by LICADHO in 2014-2016



⁵ Cases remain open for a number of reasons. In some cases it is because of their slow progress through the justice system, however in many cases, it is because of loss of contact with the client. Clients are often poor and live in remote areas. Some migrate away for work and others are no longer able to pay for their phones.

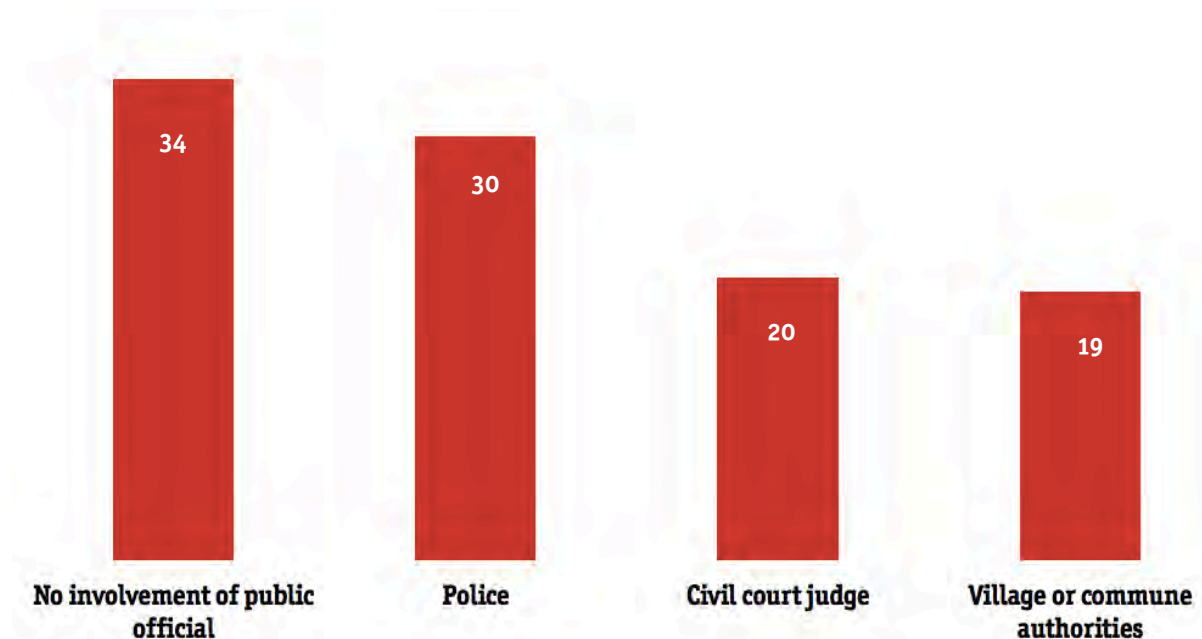
Reconciliation



The process by which a wife decides to drop her case against her husband and live with him again is often referred to by the parties involved and officials as “reconciliation”. In the cases investigated by LICADHO which end this way, before reconciliation takes place, the victim typically reports the case to the village or commune chief or to the police. In some cases, they may have filed a criminal complaint which has progressed to a prosecutor or investigating judge and the husband may be detained pending charges being brought. The victim may also have filed a civil complaint for divorce at the court. The decision to drop the case and return to her

husband is often made by the woman alone or under the influence of her family, but there are also many cases in which the authorities to whom the case has been reported are involved in negotiating an agreement between the husband and wife. Of the 101 victims who decided to drop the case and return to their husbands, 34 (34%) made the decision without the intervention of an official, 19 (19%) reconciled after a negotiation facilitated by the village or commune authorities, 30 (30%) reconciled after a negotiation facilitated by the police and 20 (20%) were reconciled by a civil court judge during their divorce proceedings.⁶

Involvement of public officials in reconciliation of domestic violence cases



⁶ Numbers add up to more than 101 because in some cases both police and local authorities were involved.




A commune office

The manner of reconciliation is similar from case to case. When a woman approaches the village or commune chief or the local police for help in a case of domestic violence, the most common response is to discourage her from taking action. The authorities typically do this by urging the woman to give her husband another chance or asking her if she really wants to be alone, suggesting that it is dangerous for her and her children. They may also blame the woman for her behaviour and suggest that she and her husband are equally culpable, saying that she is at fault for not preparing food on time or speaking too loudly or arguing with her husband in a way that makes him become violent. The authorities will often ask the husband to attend together with his wife so that they can “negotiate”. This negotiation usually involves criticism of both parties and culminates in an agreement by both that they will improve their behaviour.

In cases that are negotiated by the police it is common for the parties to sign a contract in which each party agrees to the points of behaviour they will change, for example the

woman will promise to stop criticizing her husband and the man will promise to stop using violence or having affairs. In some cases, the man states that he will be responsible under the law if he breaks his promises. These contracts are generally kept at the police station. Sometimes, a woman requests that the police carry out this negotiation of her own accord. In seven of the 30 cases negotiated by the police, the victim told LICADHO staff that she had asked the police to intervene in this way. The women state that they hope that the involvement of the police and the threat of action should the husbands not comply will make them change their behaviour. In some cases, this may work for a short time but it is never a long-term solution. LICADHO staff have seen many cases in which couples have made multiple contracts with the police. There is no legal basis for such contracts and the Criminal Procedure Code explicitly prohibits police from not acting on a case where the victim has withdrawn the complaint or there has been a negotiated settlement between the victim and the suspect.⁷ Despite this, the practice of reconciliation by the police is routine.

⁷ Article 75, Cambodian Code of Criminal Procedure, 2007.

A woman is shown from the chest up, sitting on a wooden bench. She is wearing a bright blue short-sleeved shirt and a colorful patterned shawl draped over her shoulders. Her right hand is held out, showing a significant injury on the back of the hand and wrist area, which appears to be a laceration or deep bruise. The background shows an outdoor setting with a tree and a wooden structure.

A couple had been living together for 20 years and the husband had been physically violent towards his wife on many occasions, pulling her by her hair up the stairs and punching her face so she needed stitches. She had sought help from the commune chief and the police many times and the couple had signed many contracts. Eventually, the husband beat his wife unconscious and she had to spend two days in hospital. She decided to file for divorce but did not want to pursue a criminal complaint against her husband so the police took no action against him. After a short time, she changed her mind about the divorce and the couple remained together.

A domestic violence victim shows her injuries

In some cases women do file a divorce complaint at court but these cases may also end up with the couple being reconciled. The procedure is similar to that which takes place at the commune office. Once the complaint is filed, the civil judge calls the wife and sometimes both parties to the court and asks the wife what she wants and if she is sure she wants to divorce. There may then be

a discussion of each party's grievances and an attempt by the judge to get both parties to agree to change their ways. If an agreement is reached, the judge asks the wife to drop the divorce complaint and closes the case. This can happen even in cases of very prolonged and serious violence.



A husband and wife had been married for 24 years and the husband had been violent for much of that time. They had separated for a period in the past but had got back together again. One night, the husband went out drinking and returned at 2AM. His wife didn't open the door to let him in so he broke into the house and attacked his wife with an axe, striking her six times on her head and body and then running away. She initially filed a criminal complaint and a divorce complaint. By the time the civil court judge called her to court, her husband had returned and the judge negotiated a reconciliation between the two. She dropped the divorce complaint and the criminal complaint.

A LICADHO domestic violence client at home

When the victim files a criminal complaint which proceeds to the court, it is rare for the prosecutor or the investigating judge to overtly try to reconcile couples. However, when they call the victim to give evidence, it is common for them to ask her what she wants and at this stage she often decides to drop the case in order to reunite with her husband. In most cases this is because she believes she will not be able to support herself and her family without her husband's financial contribution. If her husband has been detained by the police or in pre-trial detention in prison, she may have to pay a bribe to secure his release. In some cases, the court officials claim that this is a fine to discourage future violence and to stop the couple wasting police and court time.

There are a variety of factors pushing women towards reconciliation. These will be examined below.

FAMILY

Marriage is an important institution in Cambodia, particularly for women. Women marry at a young age⁸ and whilst more women have begun to work outside the home over the last decade, their main role in society is still one of wife, mother and homemaker. Moreover, Cambodian society places a high value on women's sexual modesty, and marriage is seen as the institution which provides women with protection from possible physical danger and safeguards their reputation. This view persists even when a marriage places a woman at significant risk of harm.

It is not only women who face pressure from their families and from wider society to be and stay married.



A husband and wife were married for over twenty years. Throughout the marriage the husband frequently beat his wife, leaving her unconscious. Her parents always persuaded her to reconcile with her husband and the reconciliations were negotiated by the local authorities and the police. The wedding had taken place when the wife was a teenager, after she was raped one night by her future husband while going to the toilet. She didn't want to get married and always hated her husband but her parents told her that being married to him was the only way to protect her from gossip.

A LICADHO domestic violence client at home

⁸ Half of Cambodian women are married by age 20.5. 2014 Cambodia Demographic and Health Survey Key Findings, National Institute of Statistics, Directorate General for Health and ICF International, 2015.

Cambodia is a country in which the family is the primary source of social insurance and members are expected to subordinate their needs to those of the wider group in order to maintain harmony. However, the expected behaviour of each party in a marriage is very different and the burden of self-sacrifice in order to maintain the marital unit seems to fall disproportionately on women.

For example, one of the women interviewed for this report whose husband was physically violent and who had affairs with other women said that her mother-in-law, with whom she lived, used to tell her to be patient with her husband and not to complain because all men behave like him; it is just their nature. This is a common argument and it is not only parents-in-law who make it; in many cases, when violence takes place, the woman runs away to her own family for safety and it is her family that persuades her to return to her husband.

RELIGION

The idea that one must be patient and exercise forbearance in order to end conflict is one that is commonly expressed by victims of domestic violence in Cambodia and it has its roots in Cambodians' adherence to Buddhism. Many women say that the violence they experience at the hands of their husbands is their bad fortune and results from wrongdoing in previous lives. It must therefore simply be borne. Furthermore, pursuing a criminal complaint against a violent partner is not perceived as seeking justice but as seeking revenge and this is discouraged in the Buddhist worldview. One of the women interviewed for this report explained that seeking revenge perpetuates a cycle of violence. In order to prevent future violence at the hands of her husband, she decided against taking any action that would inflict harm on him. She cited the appalling conditions of Cambodia's prisons as the particular harm from which she was sparing her husband. By not taking revenge she believed she was saving herself from the very real threat of more violence from her husband when he was later released from prison, but also from possible violence in the life to come should she have the bad fortune to meet him again.

Alongside Buddhism, animist beliefs remain widespread in Cambodia and the two are often interwoven. Many people believe that good and bad spirits are responsible for people's behaviour

and some see bad spirits as an explanation for domestic violence. To people who hold this view, a response involving the justice system is largely irrelevant. One of the women interviewed, who experienced violence nearly every day at the hands of her husband and who had already made contracts with the police several times, sent her husband to a monk because she believed he was possessed by a bad spirit. The monk confirmed this, saying that the spirit had been sent by an unhappy relative. He then removed the spirit. After that the woman commented that her husband's behaviour was much better so they continued living together. Later in the interview she revealed that her husband was having a relationship with another woman and that she had noticed that this woman often has bruises on her face. She said that she felt sorry for this woman but was relieved that her bad fortune had passed to another person.

POLICE, THE COURTS AND THE LAW

As described above, local authorities, police and the courts play an important role in steering victims of domestic violence towards reconciliation. This is unsurprising; they are part of the same society and hold many of the same social attitudes, in relation to the overriding importance of community harmony and maintenance of the family unit, as the people whose cases they are intervening in. In most cases, when a victim of domestic violence goes to the commune chief asking for a divorce, often bearing the marks of the latest physical assault on her, the commune chief will tell her to calm down, wait for a while and think about the well-being of her children, making the assumption that it is best for the children if the parents remain married, even in a home where there is violence.

This tendency towards reconciliation is sanctioned by the Domestic Violence Law which has as its purpose not only "to establish a mechanism to prevent domestic violence [and] protect victims"⁹ but also "to preserve the harmony within the household in line with the nation's good custom and tradition".¹⁰ As illustrated above, there is a clear tension between these two purposes as, in many cases, the harmony of the household can only be preserved if the victim of domestic violence is prepared to forgo her right to protection.

⁹ Article 1, Law on the Prevention of Domestic Violence and the Protection of Victims, 2005.

¹⁰ As above.



The latter purpose, to preserve harmony, is elaborated in provisions later on in the Domestic Violence Law which permit local reconciliation if the parties involved wish it¹¹ and so long as the offences are psychological or economic, or the violent acts are characterized as minor misdemeanours.¹² Under Cambodian law, offences are categorized as petty offences, misdemeanours or felonies according to the length of the associated sentence;¹³ there is no legal distinction between severe and minor misdemeanours. This means that the decision about whether a misdemeanour is minor or not and therefore whether a reconciliation can take place can be made at the local level and arbitrarily. It also means that cases in which there is sustained abuse over a long period but where no single incident amounts to a felony often end with the couple being reconciled. As well as allowing for local reconciliation, the law gives permission to the courts to reconcile couples in cases of domestic violence should the couple wish it.¹⁴ The Civil Code provisions on divorce also allow for local reconciliation¹⁵ and reconciliation by the court.¹⁶ In the latter case, this is allowed even when one party is strongly demanding divorce.

The flaws in the domestic violence law are exacerbated by the weaknesses in the

Cambodian justice system. Local authorities and police are under-resourced, poorly trained and are in general unfamiliar with the law. As a result they are not in a position to conduct proper investigations or make use of the law to pursue a judicial solution for the victim. For example, in the countryside it is common for police to complain to victims that they do not have the money to buy petrol in order to travel to their house and arrest a violent husband. They also have very little in the way of resources to give victims the support they need if they do leave their husbands. In these circumstances it is just much easier, quicker and cheaper for local authorities to carry out reconciliations.

In some cases, where the suspect holds a higher position than the local authority representative or has access to the use of force, the local authorities simply do not have the power to use the law even if they want to. In one case, a woman was repeatedly beaten by her soldier husband. She tried to complain to her husband's unit leader but he had no interest in helping her and sent her to the commune chief. The commune chief was too afraid to take any action because he knew the victim's husband had a gun so he sent the victim to the nearest LICADHO office and LICADHO helped her to file a divorce complaint. In another case a woman was

¹¹ Article 26, Law on the Prevention of Domestic Violence and the Protection of Victims, 2005.

¹² As above.

¹³ Articles 46, 47 and 48, Cambodian Criminal Code, 2009.

¹⁴ Article 27, Law on the Prevention of Domestic Violence and the Protection of Victims, 2005. This seems to apply to all cases including felonies although the law is not clear on this.

¹⁵ Article 982, Cambodian Civil Code, 2007.

¹⁶ Article 984 Cambodian Civil Code, 2007.



Property destroyed in an incident of domestic violence

repeatedly beaten and threatened with death by her gun-wielding soldier husband. The victim filed a criminal complaint and both parties were called for questioning by the investigating judge. The husband arrived at court with a truck full of soldiers which sat outside the court during the questioning. Instead of taking her testimony, the investigating judge persuaded the victim to drop the complaint and to reconcile with her husband. The judge then closed the case.¹⁷

This very apparent weakness of the justice system increases the use of informal reconciliation in another way; because of the mistrust it generates, many people are very reluctant to resort to legal avenues. It is widely known that the police lack resources and expertise and that they are likely to ask the victim for money before taking any action. The same is true of the courts. Judicial corruption is widespread and most people know that pursuing an action in the courts will take them a long time, cost them a lot of money in formal and informal fees and may well bring them no benefit.¹⁸ Knowing this, it is a rational decision to choose a solution, however unsatisfactory, that avoids engaging with the formal justice system. For example, if a woman is legally married and decides that all she wants is a divorce without bringing any criminal proceedings, she can only obtain one by going to court. Because this is complicated and expensive, she is likely to prefer to go to the commune chief, however, the commune chief

has no power to order a divorce and can only offer reconciliation.

MONEY AND RESOURCES

A final factor influencing a woman's decision about whether or not to reconcile with her husband is her economic position. In almost all cases investigated by LICADHO, the couples involved are poor or very poor and their economic survival depends on their having at least two adults to provide financial and other resources as well as child care. There is no state-provided social security system in Cambodia and other than a few NGOs providing limited safe shelter to victims of domestic violence, there is no provision to assist women leaving a violent situation. It is therefore practically very difficult for them to do so. Local authorities often remind women of this fact when encouraging them to reconcile.

Financial pressure may be exerted in other ways. In Cambodia the payment of a bride price on marriage (from the husband's family to the wife's family) is still a common practice and this can be used as leverage to prevent a wife from leaving her husband. In one case in which the husband beat his wife and threatened her and her mother with a knife, the wife filed a divorce complaint at the court but later dropped it and decided to stay with her husband when he demanded return of the US\$1,750 bride wealth payment which she did not have the means to pay.

¹⁷ The case was opened in 2013, before the main research period of 2014-2016 but is included because it is particularly noteworthy.

¹⁸ See LICADHO, *Getting Away With It: The Treatment of Rape in Cambodia's Justice System*, November 2015, <http://www.licadho-cambodia.org/reports/files/210LICADHOReport-GettingAwayWithRape2015English.pdf>.

A woman was beaten and kicked regularly by her husband. He used drugs and often accused her of having affairs. She had complained to the police on several occasions and they had made a number of contracts between her and her husband. Eventually she decided to leave him and asked LICADHO for help to file a divorce complaint. She did not want to file a criminal complaint. LICADHO referred her to an NGO that provides shelter for victims of domestic violence but because the shelter does not accept any male residents she was not able to take her young son with her. She had nowhere else to go and so decided to move back home and drop the divorce complaint.



A victim of domestic violence and her son

Divorce Without Criminal Proceedings



Of the LICADHO cases which form the basis of this report, 69 (29%) ended in separation or divorce with no criminal charges being brought. As described above, many cases which start with the woman seeking divorce end with the couple being reconciled. However, LICADHO does see some cases in which the commune chief supports the wife's decision to leave her husband and sometimes it is commune chiefs who refer cases to LICADHO for legal advice. These tend to be cases with repeated violence or cases in which the husband drinks and provides no support to the family.

Divorce normally takes place at the commune level and sometimes in court. It is common for couples to have only traditional marriage ceremonies and not get a marriage certificate so in those cases a non-legal divorce can take place without going to court. Often couples go to the commune chief to get a letter saying that they are divorced and where the couple has children or property the commune chief may be involved in negotiating custody and division of assets. Where there is a marriage certificate or where negotiation over children and property is unsuccessful at the local level, the couple has to go to court for a legal divorce or to get an order for child custody and division of property.

In some cases which end in divorce, a criminal case is also brought (see next section) but in the majority, the victim never starts criminal proceedings or she starts them and later drops them. There are several reasons for this. Firstly, neither local authorities nor police encourage women to take criminal action, nor do they routinely report cases to the prosecutor despite there being a legal duty for them to do so.¹⁹ One of the main reasons for this is that they do not regard domestic violence as a criminal matter but rather as a private dispute that should be resolved within the family. Police often tell victims attempting to report a case of domestic violence that it's not something they can deal with and that the victim should go home and

work things out with her husband. This is something that LICADHO staff have witnessed frequently when accompanying victims to the police station.

Even in cases where the violence includes rape, the fact that it happens inside marriage seems to have the effect of exonerating the perpetrator. In three of the cases which ended in divorce, the victim reported that she had been repeatedly raped by her husband. In all three cases, the couple had no marriage certificate and the terms of the separation were negotiated by the commune chief. In none of the cases did the commune chief report the rapes to the police. The Criminal Code definition of rape does not exclude rape inside marriage and it should therefore be treated as a felony and prosecuted according to the relevant provisions.²⁰ However, the definition does not explicitly include it and there is still a pervasive attitude that it is not possible for a husband to rape his wife. As a result, and as demonstrated by these three cases, it tends to go unpunished.

In some cases, if there is a criminal complaint and a divorce complaint, the criminal complaint is used as a point of negotiation in divorce proceedings. For example, in one case a wife filed a criminal complaint for domestic violence and also a civil complaint for divorce and custody of the children as well as child support. The civil judge made a final order for divorce, awarding her custody of the children and making the husband responsible for ongoing support of the children but only after she agreed to drop the criminal complaint. The extent of the judge's involvement in negotiating this deal is not clear but he would certainly have been aware of the arrangement. Negotiation over the criminal complaint also happens in cases in which the couple has no marriage certificate. In one case the victim initially filed a criminal complaint but when her husband agreed to separate and pay her \$500 she dropped it.

¹⁹ Article 9 of the Law on the Prevention of Domestic Violence and the Protection of Victims, 2005 requires the "nearest authorities" to intervene in cases where domestic violence is occurring or is likely to occur and to report these cases to the prosecutor.

²⁰ Article 239 of the Cambodian Criminal Code, 2009 states that any act of rape shall be punishable by five to 10 years in prison.

In many cases, women never file a criminal complaint. Once they have made the decision to leave their husbands, they want to do this as quickly and simply as possible. A criminal complaint takes time and effort, ties them to their past situation and is unlikely to have a particularly good outcome. They therefore see it as a waste of time. For others, bringing a criminal complaint is actually a risk. As discussed above, some women fear that if they do so, their husbands will take revenge against them. This is quite reasonable; it is not unusual for husbands to serve prison sentences and on release to return home immediately and attack their wives. In one case, a husband served eight months in prison for domestic violence and after he was released he returned home and chased his wife with a meat cleaver before running away. This is despite the fact that there are several legal measures available to the court to protect victims from this. For example, under the Domestic Violence Law, if a woman files a complaint against her husband and he is not put in pre-trial detention, the court can issue a protection order to cover the period of investigation.²¹ Also, under the Criminal Code, the court has the power to order

a variety of penalties as well as a custodial sentence and these include exclusion from a local area.²² Furthermore, if a sentence is suspended, which many are in domestic violence cases (see next section), the court has powers to order that a person not be present in certain places²³ and that a person not associate with certain people including victims.²⁴ However, LICADHO has not seen any examples of these powers being used in domestic violence cases.

One final reason why there are so few criminal complaints alongside divorce complaints seems to be that many women only file for divorce when they really have no choice, for example when their husband leaves them for another woman. In one case, the husband beat his wife whenever he was drunk. She did not make any kind of complaint but eventually he left home and began a relationship with another woman. She was legally married to him and so after about a year she went to court for a legal divorce order. In this situation, the police would be extremely unlikely to take any action so there would be nothing to gain from filing a criminal complaint.

²¹ Article 23 (2) Law on the Prevention of Domestic Violence and the Protection of Victims, 2005.

²² Article 53 (5) Cambodian Criminal Code, 2009.

²³ Article 120 (9) Cambodian Criminal Code, 2009.

²⁴ Article 120 (12) Cambodian Criminal Code, 2009.



ព្រះរាជាណាចក្រកម្ពុជា
ROYAL DEPARTMENT OF CAMBODIA
PROVINCIAL COURT OF FIRST INSTANCE

A woman was regularly beaten by her alcoholic husband. After one particular bout of violence during which her husband punched her several times in the face leaving her very visibly bruised and swollen, the woman approached her local commune police station for help but they refused to take action. She then came to LICADHO asking for help to file a criminal complaint. A LICADHO staff member accompanied her to the district police station but the police criticised her for reporting the case to them saying she should go back to the commune authority and ask them to invite her husband so they could negotiate a reconciliation. LICADHO drafted a complaint directly to the prosecutor but by that stage the victim had changed her mind about bringing a criminal complaint saying that it was useless to do so and decided just to leave her husband.

Entrance to a provincial court



Of the LICADHO cases which form the basis of this report, 53 (23%) ended in a criminal trial. The Domestic Violence Law does not contain any criminal penalties but states that where domestic violence amounts to a felony or severe misdemeanour, it should be prosecuted under the Criminal Code.²⁵ This means that in theory there is a range of possible charges and penalties depending on the nature of the violence.

For example, where domestic violence results in the victim's death, the case almost always goes to a criminal trial and the suspect is usually charged with murder. Of the 53 cases, 12 resulted in the victim's death. The sentences in these cases varied but eight of them fell within the correct range for murder of 10 to 15 years,²⁶ or murder with aggravating circumstances of 15 to 30 years.²⁷

However, in four cases the sentences fell below this range. In two cases, the sentence was only seven years. In one of those, the sentence was shortened because the perpetrator was judged to be suffering from a mental disorder.²⁸ In the other case, the reason, if any, for the shortened sentence is unclear. In another case the perpetrator doused his wife in gasoline and set her alight but the sentence was only four years. Given the particular cruelty of the offence, and in the absence of other considerations, this seems a totally inappropriate sentence. In one final case, the perpetrator beat his mother-in-law with a stick and killed her as she tried to stop him attacking her daughter. He was originally charged with intentional violence resulting in death for which there is a penalty of seven to 15 years but this was changed at trial to manslaughter for which the penalty is one to three years. He was sentenced to two years in prison but with 16 months suspended and so only served eight months. Again, this sentence would seem to be far too low given the circumstances.

Whilst the Domestic Violence Law does not specify which article of the Criminal Code should be used in domestic violence cases, the Criminal Code does contain a specific article on domestic violence: Article 222 states that violence committed by a spouse or partner shall be punished with imprisonment from two to five years. Where convictions do take place, it is not always clear whether this article has been used or not but in the majority of the cases which do not result in the victim's death, the sentence is five years or below. Other than that, it is hard to discern much consistency in sentencing.

In 40 of the 53 cases which went to trial the victim did not die²⁹ and the perpetrators were convicted and ordered to serve a range of sentences. In 12 cases, the sentence was under two years and in five of those it was under one year. In four of the 12 cases, LICADHO staff reported that the conviction was under article 222 of the Criminal Code so it seems that the judges may have ignored the sentencing requirements in those cases. In the other cases, it is not clear what article of the Criminal Code was used but the nature of the violence recorded by LICADHO staff in these cases suggests that the sentences were unjustifiably lenient. For example, in one case in which the perpetrator was sentenced to eight months' imprisonment, the victim sustained head injuries after a severe beating; in another, in which the perpetrator was sentenced to seven months in prison, he beat his wife repeatedly with a piece of wood.

In 26 of the 40 cases, the sentence ordered was between two and five years but in 11 of those cases, it was partly suspended. Under Cambodian law, any sentence less than or equal to five years can be suspended as long as the perpetrator hasn't been sentenced to a term of imprisonment in the previous five years.³⁰ The reasons for the suspensions in these cases are not known but

²⁵ Article 19, Law on the Prevention of Domestic Violence and the Protection of Victims, 2005.

²⁶ Article 199 Cambodian Criminal Code, 2009.

²⁷ Article 202 Cambodian Criminal Code, 2009.

²⁸ This is allowed under Article 31 of the Cambodian Criminal Code, 2009.

²⁹ There were five other closed cases in which the victim died that did not go to trial. In two, the perpetrators committed suicide, in another, the perpetrator was killed by his son and in one case the husband and wife killed each other.

³⁰ Articles 106 and 107, Cambodian Criminal Code, 2009.

as a result, some of the sentences are extremely short, with the shortest time served being five months. In some of these cases, the sentence was reduced to the amount of time already served in pre-trial detention meaning that the perpetrator was released immediately after trial. Clients have told LICADHO staff that suspension of sentences often happens following a corrupt payment from the perpetrator to the judge so this may have been a factor although we have no evidence of it in these cases. In domestic violence cases, suspension may also happen if the victim requests a short sentence because she will be unable to support herself and her children if her husband is in prison.

In two of the 40 cases,³¹ the victim did not die but the violence was considered serious enough

for the perpetrator to be convicted of attempted murder. The sentences were 18 years and 10 years. The charge seems appropriate as the cases involved a very serious repeated knife attack and an attempt to burn a house down with the victim inside. Even still, the decision to charge with attempted murder seems to be inconsistently applied. As discussed above, cases involving very serious violence can end in reconciliation, and other cases that would seem to merit a charge of attempted murder end with relatively low sentences. For example, in one of the 40 cases the perpetrator tried to cut his wife’s throat and in another he shot her, but both perpetrators received sentences of five years suggesting that they were charged with violence against a spouse.

Sentences following convictions in cases of domestic violence



— **Minimum sentence for domestic violence according to the Criminal Code is 24 months**

³¹ In one of the cases which went to trial the suspect was found innocent.

Conclusion



Over the last two decades, LICADHO has investigated several thousand cases of domestic violence. Most of those cases involved women who had experienced physical injury, emotional trauma and fear, often for many years. Recent research on the prevalence of domestic violence in Cambodia suggests that those women make up a small fraction of the total number of women in Cambodia living in violent relationships and that many more bear their suffering alone and in silence.

This report focuses on the women who do report the violence they experience. It demonstrates that the government is failing them and that an effective response to the problem of domestic violence in Cambodia is not yet in place. As LICADHO's case outcomes show, far too many women are given no option but to remain in violent situations and perpetrators are rarely punished. Where punishment under the law does take place, it is often inadequate. Given this

situation, it is unsurprising that so many women see little point in seeking help and choose instead to remain silent.

There are complex, deep-rooted social, economic, religious and legal factors that need to be addressed in order to bring about change. It requires the commitment of significant effort and resources by the Cambodian government and the process must be led by those at the highest levels. They must be clear in their condemnation and unequivocal about the criminal nature of domestic violence; they must address inadequacies in the law and in the judicial system responsible for upholding the law; and they must ensure that the authorities charged with enforcing the law have all the resources necessary to fulfill their duties effectively. Until these changes take place, the government will continue to fail not only those women who do seek help but the many more who suffer alone.



A bicycle ride on International Women's Day 2016 calling for an end to violence against women

RECOMMENDATIONS

Domestic violence is a complex problem with many aspects. This report has touched on just some of them and the recommendations below are limited to those that directly address the issues raised in the report.

- ▶▶ Repeated condemnation of domestic violence by those at the highest levels of the Cambodian government, as well as by the police and the judiciary, and recognition of its nature as a criminal offence.
- ▶▶ Dissemination to the public of information on the harm done by domestic violence using all forms of media and social media.
- ▶▶ Provision of sufficient resources to local authorities and police to enable them to investigate cases of domestic violence and provide protection and support for victims in accordance with their legal duties.
- ▶▶ Establishment of a government-funded nationwide network of domestic violence shelters for women and children leaving violent situations.
- ▶▶ Establishment of a special fund for victims of domestic violence whose poverty prevents them from pursuing criminal prosecutions and civil divorce proceedings, to cover amongst other things, court fees, transport costs and compensation for days of work lost.
- ▶▶ Amendment of the Domestic Violence Law to remove any provisions that allow or encourage reconciliation of domestic violence cases by local authorities or the courts.
- ▶▶ Prosecution of all cases of domestic violence that fall under the Criminal Code, regardless of the rank, influence or wealth of the suspect, including in cases where the victim has not filed a complaint or has filed a complaint and later withdrawn it.
- ▶▶ Enforcement of provisions in article 75 of the Criminal Procedure Code against police officers who fail to proceed with a criminal case after withdrawal of the complaint by the victim or settlement between the victim and the suspect.
- ▶▶ Training for police and judges on the use of protection orders under the Domestic Violence Law and on additional sentences under the Criminal Code and additional resources to ensure they can be enforced.
- ▶▶ Amendment of article 35 of the Domestic Violence Law to clarify that acts of violence must be punished under all relevant provisions of the Criminal Code and not only article 222 and that the full range of sentences should be applied.
- ▶▶ Amendment of the Criminal Code to make it explicit that the offence of rape in the Criminal Code includes rape inside marriage and that rape inside marriage should not be prosecuted using provisions on violence committed by a spouse or partner.