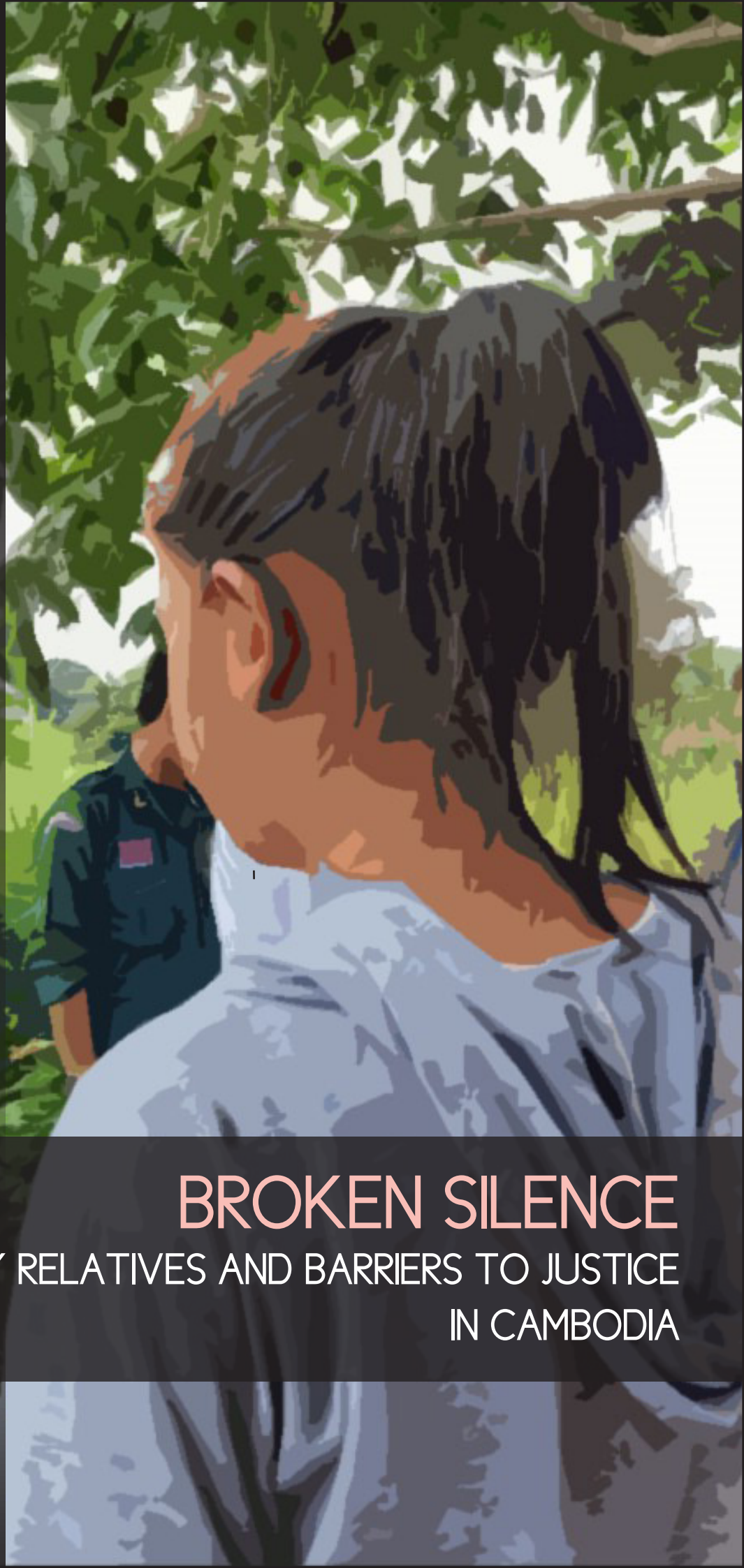


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LICADHO

CAMBODIAN LEAGUE FOR THE  
PROMOTION AND DEFENSE OF  
HUMAN RIGHTS



# BROKEN SILENCE

RAPE BY RELATIVES AND BARRIERS TO JUSTICE  
IN CAMBODIA

A report issued in  
December 2020



# Broken Silence:

## Rape by Relatives and Barriers to Justice in Cambodia

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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 urban and rural 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 urban and rural 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.

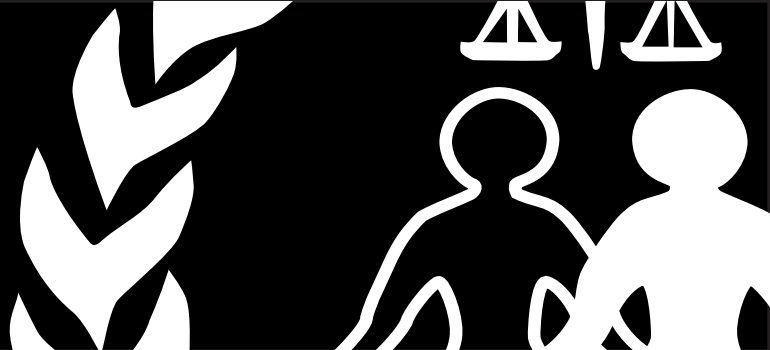
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A child who was raped by a relative approaches a police officer

***This report is only based on the number of cases received and investigated by LICADHO staff and does not reflect the wider prevalence of rape and sexual abuse in Cambodia.***

***The number of cases that LICADHO receives is limited by many factors, such as fear of social stigma and other barriers that stop people from reporting rape, authorities' tendency to encourage cases to be settled out of court and LICADHO's limited human and technical resources, particularly in rural areas.***





A girl reports attempted rape to a LICADHO monitor

## Introduction



Rape by relatives is widespread in Cambodia, and the legal system is failing many people who experience abuse. Nearly one-third of all the rape or attempted rape cases investigated by the Cambodian League for the Promotion and Defense of Human Rights (LICADHO) from January 2017 to December 2019 involved a suspect who was a relative of the person who reported being abused.<sup>1</sup> This report considers some of the responses that are needed to ensure that people who are raped by relatives are provided the justice and safety to which they are entitled.

Of the total 446 cases of rape or attempted rape investigated during the three-year period, 88 involved women aged 18 years or over (20%) and 358 involved children under 18 (80%). The suspect was a relative of the person who reported sexual violence in 137 of these cases (31%). While LICADHO handles cases involving the rape or attempted rape of women, girls and boys - regardless of the suspect's gender - the suspect was a man or boy who reportedly abused a woman or girl in each of the 137 cases. This could partially be the result of greater barriers to reporting rape faced by both adult women and boys. About half of the women and girls in these cases (46%) reported abuse by a blood relative and 54% reported abuse by another relative, such as an in-law or step-relative.

The long-standing and persistent barriers to justice for people who are raped in Cambodia are compounded for women and girls who are raped by a relative. These individuals face additional barriers of family pressure to ignore sexual violence, and often rely financially on the perpetrator. Despite often living in close proximity

to relatives, few women or girls are afforded practical protections from suspects during and following legal proceedings. These factors make it difficult to report rape, and push many people to withdraw civil complaints. Authorities often use the withdrawal of a civil complaint as a reason to improperly drop or stall criminal proceedings or apply a more lenient sentence. As a result of the legal system's failure to adequately prosecute rape, many women and girls who are raped by a relative move to live elsewhere, simply in an effort to live free from violence.

Rape by relatives takes place within the broader context of the long-running failure of Cambodia's justice system to adequately address all forms of rape. LICADHO has published numerous reports over the past two decades outlining serious and systemic flaws in the prosecution of rape cases ranging from endemic corruption, discriminatory attitudes towards women and frequent misapplication of the law in convictions.<sup>2</sup> These challenges are outlined in the "Background" section of this report.

The issue of rape by relatives has only become more pressing as the COVID-19 pandemic has kept people in their homes, pushing many people into closer proximity to perpetrators. Cambodia did not see extended nationwide lockdowns, but schools across the country closed from March into December 2020, leaving many children at home. Other people have similarly spent more time at home, due to having returned from abroad or increased unemployment. It is likely that the risk of rape within families has only grown in recent months, and comprehensive responses are more urgent than ever.

<sup>1</sup> Relatives include blood relatives, in-laws and step relatives. Intimate partner rape, including marital rape, is not within the scope of this report because these cases often face unique challenges to seeking justice in comparison to cases involving other family members. "Rape" throughout the report may refer to cases involving either rape or attempted rape, because both rape and attempted rape are felonies which are punishable with the same penalties under the Criminal Code. Article 27, Criminal Code (2009).

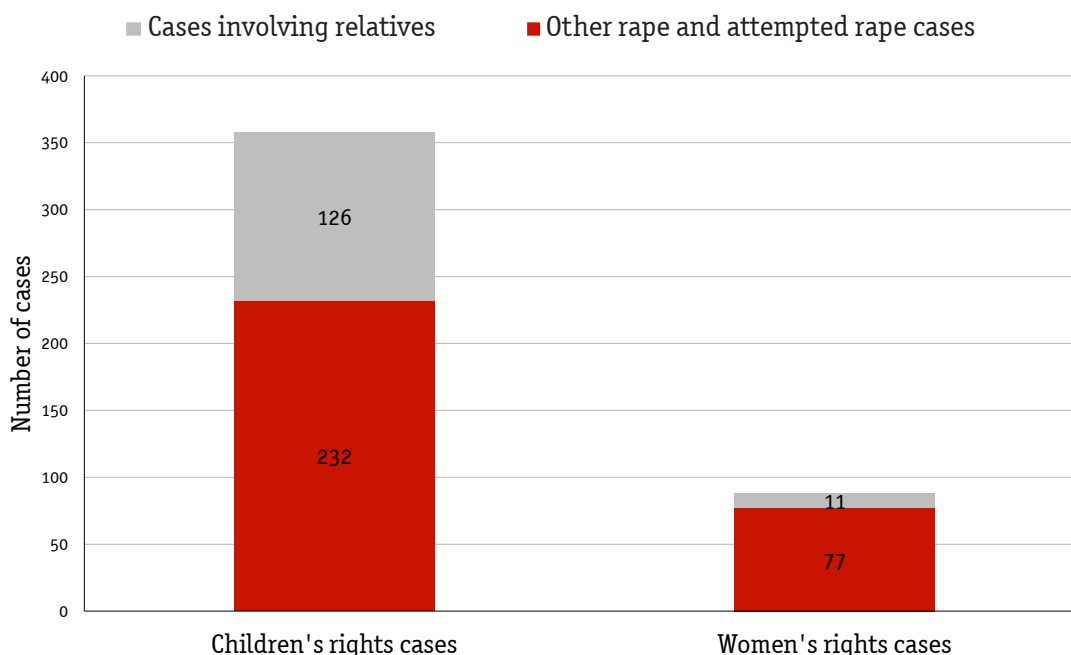
<sup>2</sup> See "Rape and Indecent Assault: Crimes in the Community", LICADHO, February 2001, available at: [www.licadho-cambodia.org/reports.php?perm=25](http://www.licadho-cambodia.org/reports.php?perm=25); "Rape and Indecent Assault", LICADHO, March 2004, available at: [www.licadho-cambodia.org/reports.php?perm=48](http://www.licadho-cambodia.org/reports.php?perm=48); "Getting Away With It: The Treatment of Rape in Cambodia's Justice System", LICADHO, November 2015, available at: [www.licadho-cambodia.org/collection/33/get\\_away\\_with\\_rape](http://www.licadho-cambodia.org/collection/33/get_away_with_rape)

# Summary of Findings



Over the span of three years, LICADHO investigated 137 rape or attempted rape cases in which the suspect was a relative. Violations were documented in 17 provinces and Phnom Penh, mostly based on the locations of LICADHO's offices.<sup>3</sup> This report is only based on the number of cases received and investigated by LICADHO staff and does not reflect the wider prevalence of rape and sexual abuse in Cambodia. The number of cases that LICADHO receives is limited by many factors, such as fear of social stigma and other barriers which stop people from reporting rape, authorities' tendency to encourage cases to be settled out of court and LICADHO's limited human and technical resources, particularly in rural areas.

## Rape and attempted rape cases opened by LICADHO from 2017 to 2019



From June to August 2020, LICADHO monitors followed up with the 137 cases involving relatives and obtained up-to-date information about the outcome or status of 135 cases. Of these:

- 53% resulted in a conviction with the perpetrator serving a prison sentence that fully applied the relevant law
- 19% resulted in a light conviction, a short sentence and/or the perpetrator being convicted in absentia without an arrest
- 2% resulted in the suspect being found innocent at trial
- 15% are still moving through legal proceedings
- 10% have stalled or show little hope of reaching justice
- <1% was settled out-of-court with no further criminal proceedings

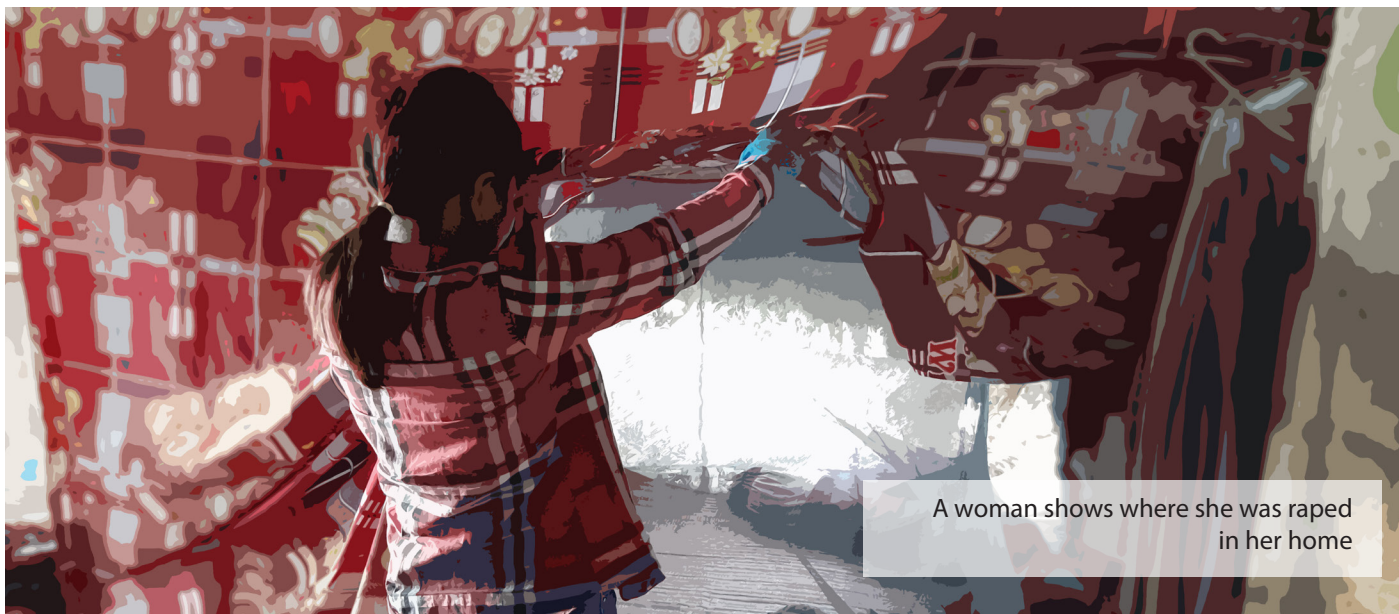
- In <1% the suspect died before a trial took place

Out-of-court settlements involving compensation are less common in cases involving rape by relatives than in other cases documented by LICADHO. This is most often because women and girls face family pressure or have joint finances with the perpetrator, making out-of-court compensation impractical. Instead, families are likely to agree to simply withdraw complaints.

Not only did these cases demonstrate the frequent failure to adequately hold perpetrators accountable, but they shed light on many of the challenges women and girls who had been raped by a relative faced as they sought justice.

**Pressure to not report:** Many women and girls faced pressure from other family members not to report rape perpetrated by relatives or to later withdraw complaints. This can, in part, arise from values which seek to avoid conflict within the home and to ensure that family

<sup>3</sup> Banteay Meanchey (11 cases), Battambang (17 cases), Kampong Cham (6 cases), Kampong Chhnang (17 cases), Kampong Speu (13 cases), Kampong Thom (3 cases), Kampot (8 cases), Kandal (10 cases), Kratie (1 case), Phnom Penh (1 case), Prey Veng (1 case), Pursat (9 cases), Ratanakiri (16 cases), Siem Reap (13 cases), Sihanoukville (4 cases), Svay Rieng (1 case), Takeo (1 case) and Tbong Khmum (5 cases)



matters remain private to protect a family's reputation, often at the expense of women's and girl's rights. Women – particularly mothers – are also often wrongly blamed for failing to protect children from rape, even when the perpetrator is a family member. Blaming other people for the perpetrator's behaviour encourages abuse to be ignored and enables impunity.

**Financial reliance on the perpetrator:** Financial pressure also pushed many women and girls not to pursue justice or drop complaints, particularly if they rely on the perpetrator to contribute to household income or care for other relatives. This pressure disproportionately hinders people who are poor or financially dependent from seeking justice.

**Unprotected from perpetrators:** Fear of retribution by the perpetrator delayed many women and girls from reporting abuse. In 50% of cases women and girls reported that perpetrators threatened to kill them, or their family members, if they told anyone about being raped.

Many women and girls who are raped by a relative also continue to live with or near perpetrators. Despite this, comprehensive protections during and following legal proceedings are either non-existent or inaccessible.

**Judgements without justice:** In the 97 cases that resulted in a conviction, 23 cases - almost a quarter - resulted in a light conviction and/or a short sentence while an additional three cases resulted in a perpetrator being convicted in absentia and never arrested. In particular, aggravating circumstances were inconsistently applied, resulting in short sentences. Charges were also often lessened from aggravated rape to indecent assault or sexual intercourse with a minor under 15 years old.

**Inaccessible civil compensation:** Even when compensation was ordered by a court, many complainants reported not having received the amount owed or had little hope of ever receiving it, due to the burdensome and ineffective process to claim it.

The Cambodian government must do a better job of ensuring justice for people who are raped, including those who are raped by relatives. More specific recommendations appear later in this report, but broadly the government should work to:

- ▶▶▶ Create an enabling environment for people to report rape and remove pressures for them to withdraw complaints
- ▶▶▶ Strengthen protections for people who have been raped and their families during and following legal proceedings
- ▶▶▶ Guarantee the proper and consistent implementation of the law when prosecuting rape
- ▶▶▶ Systematically document and periodically release comprehensive data about the number of rape cases that are reported and their outcomes, disaggregated by gender, age, disability, ethnicity, sexual orientation, location, relationship between the parties, and other status as relevant.





## Background: The Systemic Failure to Prosecute Rape



Cambodia continues to lack comprehensive, public information about the number of reported rape cases and their outcomes. In a 2013 survey supported by the UN, 20.4% of Cambodian men surveyed reported having raped a woman or girl. Of these men, 45% reported sexual entitlement and 42% reported anger or punishment as among their motivations for rape, yet 44.5% reported facing no legal consequences.<sup>4</sup> While it is clear that rape is prevalent, the lack of comprehensive information blurs the scale of rape and makes it challenging to identify how to prevent and respond to it. While LICADHO cannot fill this gap, the organisation is well placed to shed light on some trends that are evident through its work.

People who experience sexual violence are primarily impeded from obtaining justice by several broad factors, including entrenched cultural norms that permeate families as well as the institutions meant to investigate and prosecute rape; widespread corruption within every layer of the justice system; and persistent misapplication of proper legal procedures and regulations.

### Harmful Gender Norms

Persistent gender norms in Cambodia create an enabling environment for sexual violence and impunity, including within families. The *Chbab Srey*, a traditional code of conduct for women, continues to broadly define socially acceptable behaviour for women and girls. It encodes men's sexual and other entitlements and creates expectations for women to be submissive and obedient, particularly to their husbands.<sup>5</sup> In contrast, men are expected to display strength and leadership. While the piece of literature was largely removed from formalised school curriculums in 2007, its influence is still felt in families, workplaces, schools and institutions. Similarly, the loss of virginity, even as a result of rape, can be perceived to bring shame and diminish a woman or girl's "marriageability". The well-known proverb that "men are gold, women are white cloth", is understood to mean that once a woman loses her virginity she, like a stained cloth, is ruined. In contrast men, like gold, retain value. The high value placed on a woman's virginity can deter women and

<sup>4</sup> The survey assessed the prevalence of partner and non-partner rape, defined as forced or coerced sex including if she was too drunk or drugged to consent. Emma Fulu, et al, "Why Do Some Men Use Violence Against Women and How Can We Prevent It? Quantitative Findings from the United Nations Multi-Country Study on Men and Violence in Asia and the Pacific", UNDP, UNFPA, UN Women and UNV, p. 40, 44-45, 2013, available at:

[www.undp.org/content/dam/rbap/docs/Research%20&%20Publications/womens\\_empowerment/RBAP-Gender-2013-P4P-VAW-Report.pdf](http://www.undp.org/content/dam/rbap/docs/Research%20&%20Publications/womens_empowerment/RBAP-Gender-2013-P4P-VAW-Report.pdf)

<sup>5</sup> See Trude Jacobsen, "Misogyny, Malice, and Male Privilege in Cambodia: The Chbab Srei [c.1800]", available at:

[www.academia.edu/15042099/Misogyny\\_Malice\\_and\\_Male\\_Privilege\\_in\\_Cambodia\\_The\\_Cbpab\\_Srei\\_c\\_1800](http://www.academia.edu/15042099/Misogyny_Malice_and_Male_Privilege_in_Cambodia_The_Cbpab_Srei_c_1800)



girls from pursuing justice, because doing so means that more people are likely to learn that she has been raped.<sup>6</sup>

These gender norms are interwoven through the legal system. When people do report rape, legal processes often subject complainants to additional trauma. Victim-blaming is rife and perpetrated at all levels of society, including by medical professionals, police, judges, prosecutors and at the highest levels of government.<sup>7</sup> During legal proceedings, complainants may have to constantly repeat their experiences and endure insensitive questioning, while providing statements to police, the prosecutor, the investigating judge, at trial, and during appeal procedures. The underrepresentation of women among law enforcement and the judiciary heightens this insensitivity. As of February 2020, only 15% of judges, 14% of prosecutors and 22% of lawyers were women.<sup>8</sup> Reports suggest even lower percentages of women among law enforcement; as of 2019, approximately just 8% of Cambodia's police officers were women.<sup>9</sup>

### Corruption

Corruption remains one of the largest impediments to justice in many rape cases.<sup>10</sup> Courts often side with the most well-connected or wealthy party, and while judges and public officials are prohibited from requesting or accepting bribes,<sup>11</sup> this is rarely enforced. Instead, informal payments are often required at each stage of proceedings for a case to proceed or to receive a favourable outcome. Many people are deterred from pursuing justice because they are aware of the unaffordable bribes that are commonly required. Due to the nature of corruption, it remains difficult for LICADHO to document concrete evidence of its use and prevalence. Payments may be negotiated between the perpetrator and authorities privately or authorities may swear complainants to secrecy if they are part of

negotiations, with threats of prosecution if they tell others.<sup>12</sup>

### Reliance on Medical Evidence

Courts' excessive, and often exclusive, reliance on medical evidence excludes many people who have been raped from justice. The reliance on medical evidence is the result of some judges' and prosecutors' flawed understandings of what constitutes rape as well as the police's limited resources, skills, equipment or will to conduct the thorough investigations necessary to gather comprehensive evidence. Many people who have been raped do not have physical injuries, do not immediately report rape, or do not have immediate access to a medical examination, meaning that injuries may have healed or evidence may no longer be apparent. Certified medical examiners are only located in each provincial capital, which may require a two-day round trip for people living in rural areas. Examiners are also at-risk of being corrupted by perpetrators or their family members, who have been known to bribe examiners to produce a false report.<sup>13</sup>

### Long and Expensive Travel

Compounding each of these barriers are the impracticalities of time-consuming, expensive travel and time away from work to attend court proceedings. Complainants and witnesses can be summoned for questioning multiple times by police and may have to travel to the provincial capital on separate trips for each a medical examination, questioning by the prosecutor, questioning by the investigating judge, to attend the trial, to hear the judgement and to file an appeal. If the case is appealed, complainants and witnesses have to travel even greater distances to an appeal court in a neighbouring province or to the Supreme Court in the country's capital Phnom Penh.<sup>14</sup>

<sup>6</sup> See Trude Jacobsen, "Lost Goddesses: The Denial of Female Power in Cambodian History", p. 1, 264-265, 2008; and "Getting Away With It: The Treatment of Rape in Cambodia's Justice System", LICADHO, p. 10, 2015

<sup>7</sup> For example, in February 2020, Prime Minister Hun Sen declared that women's revealing clothing choices can provoke sexual violence and trafficking and undermine traditional values and Khmer culture. See "Women's Rights are Human Rights: Cambodia Needs to Respect Women's Rights to Self Determination, Expression and Bodily Integrity: An Open Letter to Samdech Akka Moha Sena Padei Techo Hun Sen, the Prime Minister of Kingdom of Cambodia", February 2020, available at: [https://cchrcambodia.org/media/files/press\\_release/748\\_oltpwa1e\\_en.pdf](https://cchrcambodia.org/media/files/press_release/748_oltpwa1e_en.pdf)

<sup>8</sup> "The Challenges of Women in Leadership: Key Findings from Gender Statistics Analysis", General Secretariat of the National Assembly, p. 3, 2020, available at: [http://nac.org.kh/Images/Women%20in%20leadership-Eng-Final.pdf?fbclid=IwAR3cd1-pB470oO2T9SDMSnqxDTxXdSajMPKr0\\_qISph0vnmMm-DHJmZxJlg](http://nac.org.kh/Images/Women%20in%20leadership-Eng-Final.pdf?fbclid=IwAR3cd1-pB470oO2T9SDMSnqxDTxXdSajMPKr0_qISph0vnmMm-DHJmZxJlg)

<sup>9</sup> "Women in Law Enforcement in the ASEAN Region", UNODC, INTERPOL and UN Women, p. 33, 2020, available at:

[https://www.unodc.org/documents/southeastasiaandpacific/Publications/2020/women\\_in\\_law\\_enforcement\\_in\\_the\\_asean\\_region\\_full.pdf](https://www.unodc.org/documents/southeastasiaandpacific/Publications/2020/women_in_law_enforcement_in_the_asean_region_full.pdf)

<sup>10</sup> For example Cambodia ranked 162 out of 180 countries - and scored the lowest in Southeast Asia - in "Corruption Perceptions Index 2019", Transparency International, p. 3, January 2020, available at: [https://images.transparencycdn.org/images/2019\\_CPI\\_Report\\_EN\\_200331\\_141425.pdf](https://images.transparencycdn.org/images/2019_CPI_Report_EN_200331_141425.pdf); Cambodia ranked 127 out of 128 countries in "Rule of Law Index 2020", World Justice Project, p. 6, 2020, available at: [https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2020-Online\\_0.pdf](https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2020-Online_0.pdf); Cambodia scored 0 out of 4 points regarding judicial independence in "Freedom in the World 2020", Freedom House, available at: <https://freedomhouse.org/country/cambodia/freedom-world/2020>

<sup>11</sup> Articles 517 and 594, Criminal Code; Article 35, Anti-Corruption Law (2010)

<sup>12</sup> Delivery of a bribe to a public official is punishable with five to 10 years in prison. Article 605, Criminal Code; see "Getting Away With It: The Treatment of Rape in Cambodia's Justice System", LICADHO, p. 8, 2015

<sup>13</sup> See LICADHO, "Getting Away With It: The Treatment of Rape in Cambodia's Justice System", p. 17, 2015

<sup>14</sup> Until 2020, when three provincial appeal courts began operations, all cases under appeal required travel to Phnom Penh. Appeal courts began operating in Battambang and Tbong Khmum in May 2020 and in Preah Sihanouk in September 2020.

## Out-of-Court Settlements

Out-of-court settlements, in which perpetrators or their families often pay people who have been raped in return for the withdrawal of their complaint, are commonly encouraged by authorities in place of criminal proceedings. Authorities may corruptly profit from facilitating the deal, and in return improperly

ensure that criminal proceedings end. In comparison to Cambodia's corrupt and time-consuming legal system, some complainants see out-of-court settlements as the best available option, because they may be quicker, cheaper, more private and more accessible than courts.<sup>15</sup> Yet out-of-court settlements are not legal grounds for authorities to end criminal proceedings.



A woman discusses an attempted rape case with a LICADHO monitor

## What happens when a complaint is filed or withdrawn under Cambodian law?

Criminal or civil cases may be brought before a court. Criminal cases seek to determine whether a crime has been committed and hold the person accountable in accordance with the law.<sup>16</sup> Prosecutors are responsible for initiating criminal proceedings upon learning about a crime for the general interest of society. A criminal action may be initiated following a complaint made to the prosecutor, the judicial police or the investigating judge.<sup>17</sup> Upon receiving a complaint, judicial police may conduct an investigation or forward the case directly to the prosecutor.<sup>18</sup> In addition, all public authorities and officers who learn about a felony or misdemeanour during the course of their work must immediately report it.<sup>19</sup>

In contrast, civil actions are brought by a victim or their guardian in order to seek compensation for the injuries suffered.<sup>20</sup> Criminal and civil actions can be heard in conjunction by a criminal court.<sup>21</sup> Importantly, the victim's decision not to seek civil compensation or to withdraw their civil complaint is not grounds to stop or suspend criminal proceedings.<sup>22</sup> In contrast, judicial police are explicitly prohibited from and may be held liable for withholding a criminal case because the victim has revoked or withdrawn their complaint or because there has been an out-of-court settlement.<sup>23</sup> Therefore, if a victim's complaint is withdrawn a civil action may end, but criminal proceedings should continue. In practice, this often does not occur.

<sup>15</sup> See "Getting Away With It: The Treatment of Rape in Cambodia's Justice System", LICADHO, p. 9-10, 2015

<sup>16</sup> Article 2 and 4, Code of Criminal Procedure of the Kingdom of Cambodia (2007)

<sup>17</sup> Articles 5, 40 and 71, Code of Criminal Procedure

<sup>18</sup> Article 74, Code of Criminal Procedure

<sup>19</sup> Article 42, Code of Criminal Procedure

<sup>20</sup> Articles 2, 13 and 15, Code of Criminal Procedure

<sup>21</sup> Article 22, Code of Criminal Procedure

<sup>22</sup> Article 25, Code of Criminal Procedure

<sup>23</sup> Article 75, Code of Criminal Procedure



LICADHO has documented the cases of and supported women and children who have been raped for over 20 years. This report is based on the rape and attempted rape cases opened by the organisation over a three-year period, from January 2017 to December 2019, which involve a suspect who is a relative of the person who reported being abused. Rape by relatives was selected as the focus because these cases comprise a sizeable percentage of the rape cases handled by LICADHO and face unique challenges to accessing justice. LICADHO monitors document and investigate cases of rape or attempted rape from Phnom Penh and 13 provincial offices. Cases are identified through direct complaints by women, children or their family members, traditional and social media and referrals from authorities or other organisations. LICADHO monitors interview women, children and/or their family members and record the facts of each case. LICADHO offers to provide legal advice and representation, contact authorities to encourage full investigations, provide basic social and medical support, and make referrals to other organisations and support services as needed. Monitors regularly follow-up with cases in an effort to ensure that all steps are taken towards justice.

Information about each case and its current status is periodically and systematically documented by LICADHO. From June to August 2020, LICADHO monitors sought to confirm up-to-date information about the status or outcome of each of the 137 cases involving relatives by contacting women and children, their families, local authorities, police, court and prison staff and/or perpetrators. In some cases, when LICADHO was unable to obtain a copy of the verdict directly, clients reported the outcome of cases to the organisation based on their understanding of the outcome. These findings are also included. LICADHO obtained information up-to-date as of August 2020 about 135 cases. In some cases, monitors were not able to find information, for example if a client had migrated and could not be contacted. The

findings also draw upon the experience and knowledge of LICADHO's monitors, many of whom have years of experience working on rape cases to support women and children at all stages of legal proceedings.

All identifying information has been removed from the report and names have been changed to protect client confidentiality and privacy.

## Limitations

This report is not representative of the prevalence or outcome of all rape cases in Cambodia. The number of cases is largely determined by LICADHO's capacity and resources. The cases analysed here may reflect more just outcomes in comparison to all rape cases in the country. For example, previous analysis suggests that rape cases involving children are more likely to receive a just outcome through court processes than other cases.<sup>24</sup> It is also likely that the cases supported by an organisation such as LICADHO receive a more just outcome than others. Many people who have been raped do not have access to legal or other services, and many people only approached LICADHO for assistance after authorities initially failed to act on their complaint.

The above context means that underreporting is likely among all groups of people who experience rape, including women, girls, men and boys. These barriers are further heightened for some groups, resulting in their experiences being absent from this analysis. For example, from 2017 to 2019, only two cases involving rape of a boy were reported to LICADHO. *Cambodia's Violence Against Children Survey 2013* suggests that roughly the same number of girls and boys experience sexual abuse, yet boys were significantly less likely to seek help.<sup>25</sup> This is likely due to stigma and harmful gender expectations placed on men and boys, with many people believing that male rape is not possible. Some police, prosecutors and judges hold similarly discriminatory views resulting in their failure to adequately prosecute male rape.<sup>26</sup>

<sup>24</sup> See "Getting Away With It: The Treatment of Rape in Cambodia's Justice System", LICADHO, p. 6-7, 2015

<sup>25</sup> Of respondents aged 18 to 24 years old, 4% of females and 5% of males reported at least one incident of sexual abuse before the age of 18; of respondents aged 13 to 17 years, 6% of females and 5% of males reported sexual abuse prior to the age of 18. "Findings from Cambodia's Violence Against Children Survey 2013", Royal Government of Cambodia and UNICEF, p. 47 and 88, 2014, available at: [https://violenceagainstchildren.un.org/sites/violenceagainstchildren.un.org/files/documents/political\\_declarations/east\\_asia\\_and\\_pacific/cambodias\\_violence\\_against\\_children\\_survey.pdf](https://violenceagainstchildren.un.org/sites/violenceagainstchildren.un.org/files/documents/political_declarations/east_asia_and_pacific/cambodias_violence_against_children_survey.pdf)

<sup>26</sup> See "Getting Away With It: The Treatment of Rape in Cambodia's Justice System", LICADHO, p. 4, 2015



Reporting and prosecution of marital rape is similarly low. LICADHO only received three cases in which a woman reported rape by a current or former husband between 2017 and 2019, despite surveys to suggest that marital rape is common.<sup>27</sup> Many people, including some authorities, do not believe that marital rape is possible.<sup>28</sup> As a result, marital rape cases are more commonly mediated out-of-court or result in divorce without a prosecution, if they are reported at all.<sup>29</sup>

LICADHO also did not document any cases in which someone identified themselves as a sex worker, despite the likelihood that sex workers are at high risk of rape, including gang rape. “Soliciting” by sex workers is prohibited,<sup>30</sup> meaning that many may be fearful of being arrested themselves when reporting violence. Police also are known to frequently harass and abuse sex workers and often conduct raids sending them to “rehabilitation”

centres akin to prisons, which are known for their appalling conditions and use of torture.<sup>31</sup>

LICADHO did not document any cases in which someone identified themselves to LICADHO as lesbian, gay, bisexual, transgender, intersex or queer (LGBTIQ), despite likely high levels of sexual violence faced by LGBTIQ people.<sup>32</sup> In a 2016 survey of 135 transgender women, 25% reported being raped while in a public place. However, 85% also responded that they had not reported any incidence of harassment to authorities, with most believing that there was no hope of receiving support.<sup>33</sup> Instead, police themselves frequently harass, assault and arrest trans women based on their gender identity.<sup>34</sup> More work is urgently needed to enable all people who have been raped to access support and justice, and for their voices and experiences to come to the fore.



LICADHO monitors meet with police about a rape case

<sup>27</sup> 10% of women surveyed reported experiencing sexual violence by an intimate partner. “National Survey on Women’s Health and Life Experiences in Cambodia: Report”, Ministry of Women’s Affairs, WHO, UN Women Cambodia and the Royal Government of Cambodia, p.47, 2015, available at:

<https://asiapacific.unwomen.org/en/digital-library/publications/2015/11/national-survey-on-women-s-health-and-life-experiences-in-cambodia>

<sup>28</sup> For example, 42% of men and 50% of women surveyed agreed or strongly agreed with the statement that “a woman cannot refuse to have sex with her husband”. Emma Fulu, et al, “Why Do Some Men Use Violence Against Women and How Can We Prevent It? Quantitative Findings from the United Nations Multi-Country Study on Men and Violence in Asia and the Pacific”, UNDP, UNFPA, UN Women and UNV, p. 53, 2013

<sup>29</sup> See “Getting Away With It: The Treatment of Rape in Cambodia’s Justice System”, LICADHO, p. 15, 2015

<sup>30</sup> Article 24, Law on Suppression of Human Trafficking and Sexual Exploitation (2007)

<sup>31</sup> See “Substance Abuses: The Human Cost of Cambodia’s Anti-Drug Campaign”, Amnesty International, p. 18, 2020, available at:

<https://www.amnesty.org/download/Documents/ASA2322202020ENGLISH.PDF>

<sup>32</sup> See “Being LGBT in Asia: Cambodia Country Report”, UNDP and USAID, p. 54, 2014, available at:

[https://www.asiapacific.undp.org/content/rbap/en/home/library/democratic\\_governance/hiv\\_aids/being-lgbt-in-asia--cambodia-country-report.html](https://www.asiapacific.undp.org/content/rbap/en/home/library/democratic_governance/hiv_aids/being-lgbt-in-asia--cambodia-country-report.html)

<sup>33</sup> “Discrimination Against Transgender Women in Cambodia’s Urban Centers”, Cambodian Center for Human Rights, p. v, 24, September 2016, available at:

[https://cchrcambodia.org/index\\_old.php?url=project\\_page/project\\_page.php&p=report\\_detail.php&reid=115&id=3](https://cchrcambodia.org/index_old.php?url=project_page/project_page.php&p=report_detail.php&reid=115&id=3)

<sup>34</sup> Ibid, p. 18-20 and 22-23

# Findings

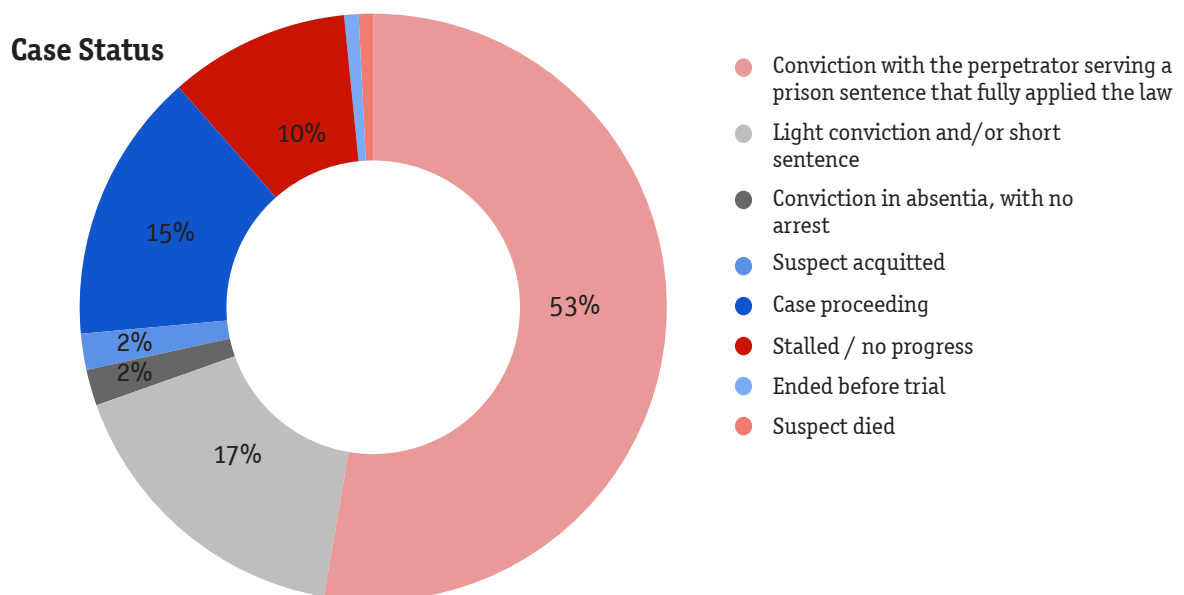


Over the span of three years, LICADHO investigated 137 rape or attempted rape cases in which the suspect was a relative. Violations were documented in 17 provinces and Phnom Penh, mostly based on the locations of LICADHO's offices.<sup>35</sup> While LICADHO handles cases involving rape or attempted rape of women, girls and boys - regardless of the suspect's gender - the suspect was a man or boy who raped or attempted to rape a woman or girl in each of these 137 cases.

## Case Outcomes

The findings below assess the 135 cases in which LICADHO was able to obtain up-to-date information about the case status or outcome as of August 2020. Of these:

- 100 cases ended with a final judgement, including
  - 71 cases that resulted in a conviction with the perpetrator serving a prison sentence that fully applied the relevant law (53%)
  - 23 cases that resulted in a light conviction and/or a short sentence (17%)
  - Three cases in which the perpetrator was convicted in absentia and never arrested (2%)
  - Three cases in which the suspect was found innocent at trial (2%)
- 20 cases are still moving through legal proceedings (15%)
- 13 cases have stalled or show little hope of moving towards justice (10%)
- One case was settled out-of-court and ended before trial (<1%)
- One case in which the suspect died before a trial was held (<1%)



<sup>35</sup> Banteay Meanchey (11 cases), Battambang (17 cases), Kampong Cham (6 cases), Kampong Chhnang (17 cases), Kampong Speu (13 cases), Kampong Thom (3 cases), Kampot (8 cases), Kandal (10 cases), Kratie (1 case), Phnom Penh (1 case), Prey Veng (1 case), Pursat (9 cases), Ratanakiri (16 cases), Siem Reap (13 cases), Sihanoukville (4 cases), Svay Rieng (1 case), Takeo (1 case) and Tbong Khmum (5 cases)

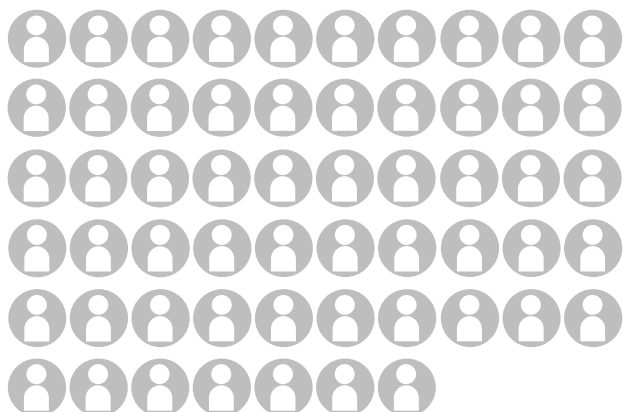
In some cases, a suspect reportedly abused multiple women or girls within their family. In other cases, a woman or girl reported abuse by more than one family member. Within the 137 cases, a total of 152 women or girls reported rape or attempted rape, including 140 children (92%) and 12 women (8%). The number of women may be lower in-part due to specific barriers to reporting, as discussed below. Their ages spanned from 2 to 68 years, with an average age of 13. Nine children were under 6 years old (6%), 57 children were aged from 6 to 11 years (37.5%), and 74 children were aged 12 to 17 years (48.5%).

## Age of women and girls

### Under 6 years



### 6 - 11 years



### 12 - 17 years



### 18 and older



The cases involved 139 suspects, including eight children (6%). Suspects ranged from 13 to 78 years in age, with an average age of 38. There were only three cases, each involving adults, in which the suspect was younger than the person who reported sexual violence. Violence was committed by blood relatives, step-relatives and in-laws. Of the 152 women and girls, 46% reported abuse by a blood relative and 54% reported abuse by another relative.

- 45 women or girls reported abuse by their step-father (30%)
- 33 women or girls reported abuse by their father (22%)
- 19 girls reported abuse by their uncle (13%)
- 15 women or girls reported abuse by their brother-in-law (10%)
- 13 girls reported abuse by their uncle-in-law (9%)
- 9 girls reported abuse by their grandfather (6%)
- 6 girls reported abuse by their cousin (4%)
- 4 girls reported abuse by their step-grandfather (3%)
- 2 women reported abuse by their son-in-law (1%)
- 1 woman reported abuse by her brother (<1%)
- 1 girl reported abuse by her great-grandfather (<1%)
- 1 girl reported abuse by her step-uncle (<1%)
- 1 girl reported abuse by her adoptive father (<1%)
- 1 girl reported abuse by two step-fathers (<1%)
- 1 girl reported abuse by her uncle and her step-father (<1%)





## Reporting Rape, Withdrawing Complaints

Women and girls who are raped by relatives often face specific barriers to pursuing justice. In nearly every case, a woman or girl only approached LICADHO or filed a complaint to authorities with the support of another person, which is particularly essential for cases involving young children. Many women and girls initially remained silent for fear of retribution by the perpetrator. In 69 out of the 137 cases (50%), perpetrators threatened to kill the woman or girl, or their family members, if they told anyone about being raped. An additional eight cases involved other threats, such as use of violence (6%). Considering that perpetrators often remained in close proximity to the person they raped, these threats carried grave weight for many women and girls. Women or girls who have been raped by a relative may also experience confusion, shame or self-blame, particularly if the perpetrator is someone they have perceived as trustworthy or authoritative. These factors often delayed women and girls from confiding in anyone. Many people only confided in someone after they faced repeated violence or disclosing abuse became

unavoidable, such as due to visible pregnancy, health concerns or behaviour change. Normalising conversations about sex and consent, such as through comprehensive sexual education, could assist to counter feelings of shame and create a more enabling environment to report rape.

Confiding in someone else was often only the first step towards reporting rape. Family dynamics regularly heightened the challenges of filing complaints and increased the likeliness of withdrawing them at a later stage. Gender norms, as discussed above, impart on women a responsibility to ensure that family matters remain private, both to protect the family's reputation and to avoid conflict within the home, particularly between a husband and wife.<sup>36</sup> Pressure to protect the family could have contributed to the lower number of recorded cases involving women in comparison to children, with women carrying this burden more heavily. Similarly, women are also often wrongly blamed for failing to protect children from rape, even when the perpetrator was another family member. Outsourcing blame for the perpetrator's behaviour makes it more likely that abuse is ignored.

## A difficult road to reporting

When 14-year-old Kunthea's\* brother-in-law was killed in a traffic accident in Phnom Penh, her parents rushed to the city. That evening, Kunthea's 44-year-old uncle came to her house and raped her, causing her severe injuries. Kunthea told her aunt that she had hurt herself from falling over while running, but when her injuries worsened, Kunthea's mother and grandmother took her to hospital. She required immediate surgery, with doctors concluding that her injuries were not the result of falling. Doctors spoke to Kunthea about her injuries, at which point she told them that her uncle had raped her. The doctors then filed a complaint to the police. While Kunthea's uncle was arrested and later convicted of sexual intercourse with a minor under 15 years old, her aunt continued to claim that Kunthea was injured from falling.

\* All names have been changed.

<sup>36</sup> See Trude Jacobsen, "Lost Goddesses: The Denial of Female Power in Cambodian History", p. 120, 2008

In the 137 cases involving relatives, two factors consistently arose which pushed women, girls and the family members supporting them to withdraw complaints. First, complainants were often under immense pressure from other family members not to pursue justice. Second, many complainants financially relied on the perpetrator to contribute to the household income or to care for other relatives and could not afford to see them imprisoned, disproportionately excluding people who are poor or financially dependent from justice. As seen throughout the findings, authorities often improperly dropped or stalled criminal proceedings or applied a more lenient sentence after a complaint was withdrawn.

The barriers of reporting rape by relatives are likely disproportionately higher for people with disabilities. In comparison to the total rape or attempted rape cases opened by LICADHO from 2017 to 2019, only a small proportion of cases involving relatives were reported by a woman or girl with a disability. This is likely because some

people with disabilities rely on members of their household to access services. In one survey, women with disabilities reported higher levels of sexual violence, emotional violence and controlling behaviour by a member of their household (excluding intimate partners) than women without disabilities. Notably, the majority of women with disabilities reported that family members expected them to seek permission before accessing health care.<sup>37</sup>

The barriers to reporting rape within families are high, yet the commitment of women, girls and some members of their families to pursue justice can be unrelenting, as witnessed through many of the cases documented by LICADHO. Comprehensive responses are urgently needed to create an environment that enables all women and girls to move towards justice unhindered. Working to dismantle harmful gender norms, raising awareness about the harms and illegality of rape, and strengthening protections, access to services and financial support for people who report rape would assist to overcome these challenges.



A young girl reports a rape case to a LICADHO monitor

## Repeated questioning, no accountability

Sokhom, a 23-year-old woman, was repeatedly raped by her 40-year-old brother-in-law. He threatened to kill her if she told anyone. When Sokhom did confide in other family members, Sokhom's sister first accused her of slandering her husband, but eventually supported her to file a complaint to the commune police.

The commune police summoned the family for questioning two further times. The questioning took a lot of time, the transportation was expensive, and they were repeatedly asked the same questions. The family also began to worry that the perpetrator's imprisonment would negatively affect his children, and other family members started asking questions about tension in the family. When Sokhom's sister was due to give birth to another child, it became even more challenging to commit time to lengthy proceedings and travel and they relied more heavily on the perpetrator for support. Given this, Sokhom and her family withdrew the complaint, and police have taken no action to hold anyone accountable.

<sup>37</sup> Jill Astbury and Fareen Walji, "Triple Jeopardy: Gender-based violence and human rights violations experienced by women with disabilities in Cambodia", AusAID, p. 24, January 2013, available at: [https://iwda.org.au/assets/files/20130204\\_TripleJeopardyReport.pdf](https://iwda.org.au/assets/files/20130204_TripleJeopardyReport.pdf)

## What is a reasonable sentence for rape under Cambodian law?

According to the Criminal Code, rape is punishable by five to 10 years in prison.<sup>38</sup> A range of aggravating circumstances can be applied depending on the circumstances of the case such as the means used, status of the perpetrator, status of the victim including their age, rape resulting in disability, use of torture or acts of cruelty, or the victim's death. Aggravated rape is punishable from seven to 30 years in prison, depending on the applicable circumstances.<sup>39</sup> An attempt to commit rape or aggravated rape, which are felonies, is punishable by the same penalties.<sup>40</sup>

The age of criminal responsibility is 18 years and over.<sup>41</sup> However, minors over 14 years may face penalties if warranted by the circumstances of the offence or the character of the minor.<sup>42</sup> If a criminal sentence is imposed on a minor, the minimum and maximum sentence are reduced by half.<sup>43</sup>

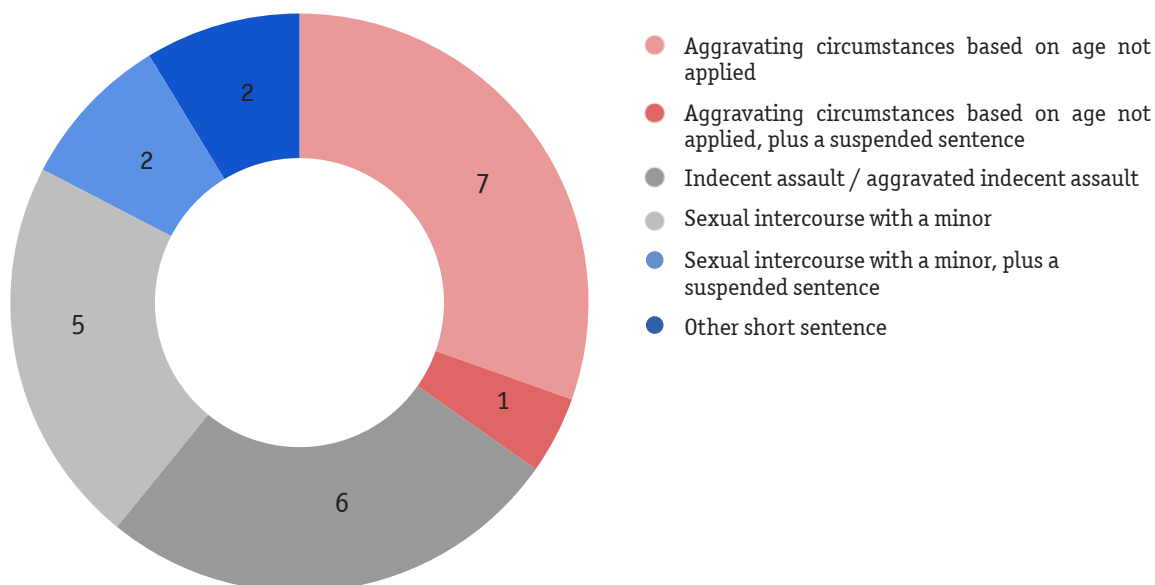
Sentences of five years or less may be suspended if the perpetrator has not been sentenced to another term of imprisonment in the previous five years.<sup>44</sup> While the minimum sentence for rape is five years, which enables some sentences to be suspended, there is no guidance as to when or why suspended sentences should be used. Sentences may therefore be suspended at judges' discretion without providing any reasoning.

The statute of limitations for a felony, such as rape, is 15 years.<sup>45</sup> After this time, the perpetrator cannot be held liable. Some children who are raped may not want or be able to file a complaint until they are adults, by which stage the statute of limitations may have lapsed along with any hope of obtaining justice.

## Judgements versus Justice

Based on the information available to LICADHO, of the 97 cases that resulted in a conviction, 23 cases resulted in a light conviction and/or a short sentence (24%). While it is often difficult to determine why this might have happened, it is most likely the result of either a lack of legal understanding among some prosecutors and judges, such as being unaware of aggravating circumstances, or corruption. In some cases, perpetrators may have been able to successfully influence the outcome of the case, resulting in a lesser sentence. An additional three of these cases never resulted in an arrest, despite a guilty verdict.

### 23 cases resulted in light convictions and /or short sentences



<sup>38</sup> Article 239, Criminal Code.

<sup>39</sup> Articles 240-244, Criminal Code

<sup>40</sup> Article 27, Criminal Code

<sup>41</sup> Article 38, Criminal Code

<sup>42</sup> Article 39, Criminal Code

<sup>43</sup> Article 160, Criminal Code

<sup>44</sup> Articles 106-108, Criminal Code

<sup>45</sup> Article 10, Code of Criminal Procedure



## Failure to Apply Aggravating Circumstances

Aggravating circumstances were inconsistently applied when charging and convicting perpetrators, resulting in unreasonably short sentences. If rape is committed “against a person who is particularly vulnerable by reason of his or her age”, the perpetrator should be convicted of aggravated rape which is punishable with seven to 15 years in prison.<sup>46</sup> The Criminal Code provides no guidance about the age at which a person is “vulnerable”, however several laws can provide guidance. The Law on Suppression of Human Trafficking and Sexual Exploitation defines a minor as a person under the age of 18.<sup>47</sup> Similarly, the age of criminal responsibility is 18 years old.<sup>48</sup> The legal age of sexual consent is 15 years old.<sup>49</sup>

Of the 97 cases which reached a conviction, 91 cases involved a child under 18 years. In at least eight of these cases, aggravating circumstances were not applied, with the perpetrator instead convicted of rape and given a sentence of less than seven years. In six of these cases, children were younger than 15 years old at the time of the violation. In fact, aggravating circumstances based on the child’s age were not applied in a case involving a child as young as 10 years old. Regardless of how judges are interpreting “vulnerable by reason of his or her age”, it is inconsistent and enables perpetrators to receive lesser sentences. In one case, the use of a lesser conviction enabled the sentence to also be partially suspended, with a perpetrator serving just two-and-a-half years in prison.

## Indecent Assault

Out of the 97 cases which resulted in a conviction, at least six cases resulted in a conviction of indecent assault or aggravated indecent assault, despite an initial complaint of rape. Indecent assault is punishable by one to three years in prison, while aggravated indecent assault is punishable by two to five years in prison – far less than rape.<sup>50</sup> In each of the six cases, perpetrators received a sentence of just two-and-a-half years or less.

The use of indecent assault charges often seems to rest on a flawed understanding by judges and prosecutors of what constitutes rape. In accordance with the Criminal Code, rape is defined as “All acts of sexual penetration, of



Children sit at the home of a 3-year-old who was raped

<sup>46</sup> Article 241(1), Criminal Code

<sup>47</sup> Article 7, Law on Suppression of Human Trafficking and Sexual Exploitation

<sup>48</sup> Article 38, Criminal Code

<sup>49</sup> Article 239, Criminal Code

<sup>50</sup> Article 240(3), Criminal Code

any kind whatsoever, or an act of penetrating any object into sexual organs of a person of either the same sex or different sexes by violence, coercion, threat or surprise”.<sup>51</sup> According to the Ministry of Justice’s Explanatory Notes for the Law on Suppression of Human Trafficking and Sexual Exploitation, “sexual intercourse” includes penetration by any “tool”, which includes “a finger or any other part of the body”.<sup>52</sup> Yet in three cases in which perpetrators committed rape using a body part other than a sexual organ, charges of indecent assault were instead applied.

In two cases, judges applied charges of indecent assault instead of rape seemingly because medical examinations did not demonstrate internal injuries or evidence of deep penetration. All acts of sexual penetration, regardless of the extent of penetration, should be prosecuted as rape. Furthermore, this attitude reflects a wider misconception

that a medical examination is the most important piece of evidence in determining whether rape has occurred. In reality, many people who experience rape do not receive physical injuries. Others, out of feelings of shame or fear, often delay reporting their assault, and a medical examination is not conducted until the physical injuries have already healed.

Under Cambodian law, an attempt to commit a felony – such as rape – is punishable with the same penalties in circumstances where the person had started to commit the offence and only stopped due to being interrupted by circumstances outside their control. In the sixth case, the perpetrator should have been convicted of attempted rape with aggravating circumstances, yet it seems because the girl’s mother was able to intervene in time, charges were lessened to indecent assault with aggravating circumstances.



A girl reports a rape case to a LICADHO monitor

## Lesser charges, shorter sentences

Ary, a 7-year-old girl, was raped in her home by her 17-year-old cousin. He threatened to beat her if she told anyone. When Ary’s mother returned home, she found her crying and immediately took her for medical care, with Ary requiring hospitalisation. The family filed a complaint to the police and village chief.

The perpetrator was charged with rape with aggravating circumstances – which is punishable with at least three-and-a-half years in prison if the perpetrator is younger than 18. While the medical examination documented injuries, the defence argued that it did not demonstrate severe internal injuries. As a result, the trial judge changed the charges to indecent assault with aggravating circumstances, and the perpetrator was sentenced to 14 months in prison and to pay 2 million riel in compensation (approximately US\$500).

Ary’s family did not feel the judgement was fair and appealed the decision. The appeal court upheld the decision and increased the compensation to 3 million riel (approximately US\$750), yet the family has still not received it. The perpetrator has since finished the sentence and been released.

<sup>51</sup> Article 239, Criminal Code

<sup>52</sup> “Explanatory Notes for the Law on Suppression of Human Trafficking and Sexual Exploitation”, Ministry of Justice and UNICEF, p. 98, 2013

## Sexual Intercourse with a Minor Under 15 Years Old

In seven of the cases which reached a conviction, a perpetrator was convicted of sexual intercourse with a minor under 15 years old, which is punishable with five to 10 years in prison.<sup>53</sup> The Ministry of Justice's Explanatory Notes for this law outlines that if a perpetrator "has engaged in sexual intercourse with a minor under the age of 15 years by means of force, violence, coercion, threat or surprise, then the offender should be charged and punished for aggravated rape", rather than sexual intercourse with a minor.<sup>54</sup>

Based on the facts documented by LICADHO, aggravated rape would likely have been more appropriate convictions in these cases, however judges may have applied reasoning that LICADHO is unaware of. LICADHO's investigations found that four of the seven cases involved threats, including two that involved death threats. Another case involved the use of force. It is likely that all seven cases involved a level of coercion, considering that in each case the perpetrator was an adult relative who was at least ten years older than the child.

While in two of these cases the sentences were of eight and nine years – which is a suitable sentence for aggravated rape – sentences were lower in the other five cases. Two of these further resulted in largely suspended sentences, with perpetrators serving just two and three years each. Yet in all of these cases, the misuse of this article risks failing to fully acknowledge the nature of the harms inflicted.



A young girl sits in her house

### Erasing rape with other charges

Chanthy, a 13-year-old girl, was raped twice in one night by her 35-year-old cousin. Earlier in the evening, the perpetrator had offered to give her a ride back to her home on his motorbike. But when he told her that it had broken down, she could not get home. Chanthy's family were worried when she did not return home, and upon learning what had happened, they filed a complaint to the police the following day.

The perpetrator was later charged with aggravated rape based on Chanthy's young age. However, the charges were changed to sexual intercourse with a minor during the trial - despite the fact that when Chanthy had tried to call for help the perpetrator had threatened her - and he was given a sentence of just two years.

### Short Sentences

In addition to the light and suspended sentences already outlined above, two sentences were unduly short with seemingly no legal grounds for being below the mandated minimum. In both these cases, the perpetrator was convicted of aggravated rape, but the sentence was below seven years.

### Acquittals

The suspect was found innocent at trial in three cases. While acquittals are a product of a functioning and fair legal system, it appears likely that other factors beyond the innocence of the suspect may have influenced the decisions. Despite reasonable evidence to suggest that a child was abused, nobody has been held to account in these cases.

<sup>53</sup> Article 42, Law on Suppression of Human Trafficking and Sexual Exploitation

<sup>54</sup> "Explanatory Notes for the Law on Suppression of Human Trafficking and Sexual Exploitation", Ministry of Justice and UNICEF, p. 97, 2013





The home of a young girl who was raped

## No one held to account

Two sisters – 6-year-old Veata and 10-year-old Sothy – lived with their 61-year-old grandfather while their parents were working in Phnom Penh, but their parents would visit every few weeks. During one visit, their mother noticed that both the girls were injured and Veata was not eating. Both girls confided that their grandfather had raped them almost every day for several years and that he threatened to cut their hands and legs off and send them to beg if they told anyone.

Their mother told her husband, but he told her not to file a complaint because the girls' grandfather was too old to go to prison. Their mother initially agreed, but when she learned the abuse had continued, she went to the police. The girls' grandfather was arrested the following day, admitted to having abused his granddaughters, and sent to pre-trial detention. Family members repeatedly approached Veata and Sothy's mother, pressuring her to withdraw the complaint. She started to fear that they would kick her off the family land where she was living with her children. She withdrew the complaint.

The case proceeded to trial, however their grandfather was found innocent and released. There was strong evidence - including medical evidence - to support the fact that the two girls had been raped, yet no one has been held to account.



## Inaccessible Court-Ordered Compensation

In many cases, women, girls or their family members either did not file for civil compensation or later withdrew their civil complaint. Family pressure was often a factor in this decision. Seeking financial compensation also made no sense in some cases, when complainants already had joint finances with the perpetrator. In other cases, women and girls cited that they did not file for compensation because the perpetrator was too poor. Despite the fact that some complainants see compensation as a practical necessity to reimburse the expenses to attend court proceedings and cover medical expenses, it remains inaccessible, particularly in cases involving relatives.

LICADHO documented 21 cases in which civil compensation was included in the judgement. While the law is silent about the amount of compensation that should be ordered, in these cases compensation ranged from 3 million to 20 million riel (approximately US\$750 to US\$5,000), with an average amount of 10 million riel (approximately US\$2,500). Despite this, many families reported not yet receiving the compensation ordered by the court, and felt hopeless about receiving it due to the burdensome process.

In some cases, compensation was inaccessible because complainants were not aware of court judgements or the outcome of cases. Not only does this impede access to compensation, but it obstructs complainants from appealing decisions and undermines a sense of justice and

## Seeking and receiving compensation under Cambodian law

Women and girls who have been raped, or their guardians, may file a civil action to seek compensation for the harms suffered.<sup>55</sup> Upon finding a perpetrator guilty, a judge may include payment of compensation in the judgement.<sup>56</sup> If a perpetrator does not pay the compensation owed, the complainant is responsible for initiating its enforcement.<sup>57</sup> Upon travelling to the court, they can make a request to the prosecutor for an adult perpetrator's imprisonment in lieu of payment for a period of up to two years. They must first provide evidence that they have used all means of enforcement, such as seizing the perpetrator's property. The prosecutor may also ask the complainant to take additional measures to try to obtain the compensation owed.<sup>58</sup> Not only is this an excessively burdensome task, but the perpetrator must also finish serving the majority of any existing prison sentence before additional imprisonment becomes a realistic incentive to pay, often deterring payment by years.

safety. Complainants did not always receive information about when the judgement would be announced or were unable to travel to the court again. While a civil party should be notified about the judgement and receive a copy if they or their representative are not present,<sup>59</sup> in reality the information often does not reach them.

## Invisible judgements, unclaimed compensation

Two-year-old Sophea was at her uncle's home when her mother returned from collecting crabs to find her crying in a hammock. Her mother quickly noticed that Sophea was injured and took her to a clinic. The clinic transferred Sophea to hospital immediately, and her uncle returned home to complain to the village chief. Sophea's 36-year-old brother-in-law was arrested that evening, accused of raping her and sent to pre-trial detention with the case later proceeding to trial.

Sophea's family had already been summoned to the provincial court for questioning three times, and following the trial, the family was unable to attend the judgement's announcement. While the perpetrator was sentenced to eight years in prison and to pay 8 million riel in compensation, it was not until over two years later that the family learnt about the outcome, and they still have not received the compensation.

<sup>55</sup> Articles 2, 13 and 15, Code of Criminal Procedure

<sup>56</sup> Article 23, Code of Criminal Procedure

<sup>57</sup> Article 496, Code of Criminal Procedure

<sup>58</sup> Article 533, Code of Criminal Procedure

<sup>59</sup> Articles 363 and 483, Code of Criminal Procedure

## Unprotected from Perpetrators

The high number of children who have been raped by relatives demonstrates the continuing need for a legal system which meets the specific needs of children.<sup>60</sup> Children and “vulnerable victims” are entitled to protections to reduce the number of interviews and their exposure to the suspect throughout court proceedings. Protections can include the use of court screens, television-linked testimony, separate waiting rooms, minimal time spent in courtrooms and accompaniment by a support person.<sup>61</sup> In reality, these protections are rarely properly implemented. Some courts do not have adequate facilities or equipment, meaning women and girls may come into close contact with suspects during proceedings. Protections are also often not implemented automatically, but only made available upon request. Considering the inadequate access to legal aid, many women and girls do not even know they are entitled to request such protections.

Many women and girls who have been raped fear retribution by the perpetrator for filing a complaint. This threat is often very real for women and girls who have been raped by a relative, as they often continue to live in close proximity with them. Some women and children who are raped by relatives are entitled to an administrative decision or protection order under the Law on the Prevention of Domestic Violence and the Protection of Victims. An administrative decision may be issued by authorities to temporarily protect a complainant’s security, through measures such as prohibiting the suspect from approaching the complainant’s residence or place of work.<sup>62</sup> A request for a protection order, which can offer protections to a complainant until a final judgement is declared, must be made at the court. Among other things, protection orders can prohibit the suspect from approaching the complainant’s residence or place of work; prohibit a suspect from contacting the complainant; impose a decision about the custody and visitation rights



The door to a home of a young girl who was raped

regarding children; halt any duties of financial support the complainant has towards the suspect; and instruct the suspect to provide financial assistance to the complainant based on their available resources. Each protection order has a maximum duration of six-months, which is shorter than the average length of legal proceedings, after which time the person or their representative must again travel to the court to apply for a new protection order.<sup>63</sup>

## Children pushed from homes

Two 9-year-old cousins – Chanmony and Dara – often went to visit their grandparents at their nearby farm. When Chanmony’s mother realised something was wrong, she went to the police. Chanmony and Dara both reported that their 68-year-old grandfather had raped them over the course of several months. He was summoned for questioning, arrested and sent to pre-trial detention.

Chanmony and Dara’s mothers were repeatedly approached by the suspect’s wife, their mother-in-law, who called for them to withdraw the complaint. The mothers began to worry about problems arising in the family. Four days after Chanmony and Dara’s grandfather had been arrested, the complaint was withdrawn. The investigating judge soon dropped the charges, citing a lack of evidence. With their grandfather returning home, Chanmony and Dara both moved away to live with other family members.

<sup>60</sup> For a detailed analysis see J.K. Reimer, “A System Just For Children: Voices of child victims and witnesses about their experiences in the Cambodian Criminal Justice System”, Hagar, 2015, available at: <https://hagarinternational.org/wp-content/uploads/2018/04/Hagar-Research-A-System-Just-for-Children.pdf>

<sup>61</sup> Prakas No. 62/08 on the Use of Court Screen and Courtroom TV-Linked Testimony from Child/Vulnerable Victims or Witnesses (2008)

<sup>62</sup> Article 14, Law on the Prevention of Domestic Violence and the Protection of Victims (2005)

<sup>63</sup> See Articles 16, 20, 21, 23, 24 and 25, Law on the Prevention of Domestic Violence and the Protection of Victims

However, the Law on the Prevention of Domestic Violence and the Protection of Victims only offers protections to wives, husbands, dependent children and other dependants living under the same roof, which excludes many other people who have been raped by relatives. These protections also do not continue after a court has reached a judgement. Administrative decisions and protective orders are severely underused, and many people do not know they are entitled to them. In a recent survey of women who experienced domestic violence, 78% reported not knowing what a protection order or an administrative decision were, while the remainder were unclear about their purpose, how to access them, or who issues them.<sup>64</sup> From 2014 to 2016, the Cambodian government reported that only 19 protection orders had been issued across the country.<sup>65</sup> These protections should be made easily available to all people who have been raped and properly enforced to allow people to file complaints without fear and to minimise economic pressures resulting from changed family dynamics following rape.

While other protections exist, they are similarly rarely used and not comprehensive. For example, a charged person may be placed under judicial supervision rather than sent to pre-trial detention, which can restrict where they go or who they meet with.<sup>66</sup> Similarly, a person who has been convicted of rape may face additional penalties such as an exclusion from particular locations.<sup>67</sup> People who receive a suspended sentence may be prohibited from going to particular locations and from associating with certain people, as well as obliged to contribute to their family's expenses.<sup>68</sup> However these protections are not comprehensive, they do not offer protections at all stages

of legal proceedings, and are not used frequently enough to ensure complainants' and witnesses' safety.

When faced with limited protections and other pressures to withdraw complaints, some families found it easier to uproot themselves or their children rather than to continue with legal proceedings. While not a feasible or affordable option for all families, at times entire households moved to avoid living in continued proximity with the perpetrator. In other cases, children were sent to live elsewhere. While this is a practical response to protect their safety, it is the product of impunity and fails to prevent potential abuse of others.

Protections are similarly rarely made available following a perpetrator's release, with many women and girls fearful of them concluding their sentence. In the cases documented by LICADHO since 2017, some perpetrators have already been convicted, completed their sentence and been released. Little, if anything, is available to prepare women, children, families or perpetrators for this. Complainants are not always informed about when a perpetrator will be released, with some perpetrators known to unexpectedly return home. Rehabilitation services in Cambodia's prisons such as access to vocational training and education are severely lacking and largely provided by non-governmental organisations. Detainees instead experience severe overcrowding and limited access to basic necessities such as food, water, ventilation, medical care or mental health services,<sup>69</sup> as well as limited support upon leaving prison. While information about recidivism rates in Cambodia regarding rape are not available, more needs to be done to help people return to communities to lead lives without violence.

## Returning home after a short sentence

Over the course of four consecutive nights, 9-year-old Reaksmey was raped by her 31-year-old father. He threatened to beat her if she told anyone, and given his history of physical violence towards her, she believed him. When Reaksmey's grandmother learnt what had happened, she went to the police.

The father was arrested, yet Reaksmey's grandmother later decided to withdraw the complaint because she felt that she was getting too old to continue with court proceedings. The perpetrator was charged with aggravated rape, but the charges were lessened to indecent assault with aggravating circumstances during the trial, so he was sentenced to spend just two-and-a-half-years in prison. He has since completed his sentence and returned home to live with Reaksmey, who is still a child.

<sup>64</sup> Suyheang Kry, et al, "Preserving Harmony, or Preventing Justice? A study of local dispute resolution practices in cases of domestic and intimate partner violence in Cambodia", Women Peace Makers, Cambodia Center for Mediation in collaboration with Klahaan Organization, p. 32, October 2020, available at:

<https://wpmcambodia.org/project/preserving-harmony-or-preventing-justice/>

<sup>65</sup> "Sixth periodic report submitted by Cambodia under article 18 of the Convention, due in 2017", Committee on the Elimination of Discrimination against Women, p. 15, June 2018, available at: [https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/KHM/CEDAW\\_C\\_KHM\\_6\\_7162\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/KHM/CEDAW_C_KHM_6_7162_E.pdf)

<sup>66</sup> Article 223, Code of Criminal Procedure

<sup>67</sup> Article 245(3), Criminal Code

<sup>68</sup> Article 120, Criminal Code

<sup>69</sup> See "Rights at a Price: Life Inside Cambodia's Prison", LICADHO, January 2015, available at: [https://www.licadhocambodia.org/collection/25/life\\_inside\\_cambodia\\_prison](https://www.licadhocambodia.org/collection/25/life_inside_cambodia_prison); "Substance Abuses: The Human Cost of Cambodia's Anti-Drug Campaign", Amnesty International, p. 43-45, 2020





A LICADHO monitor meets with police about a rape case

## Cases Moving through the Legal System

Of the 135 cases in which LICADHO obtained up-to-date information, 20 cases are still moving through legal processes (15%) as of August 2020. These include six cases which are under appeal, seven cases in which the suspect is in pre-trial detention, and seven cases in which a suspect has been charged and released on bail. Release on bail is a positive and proper use of the law which upholds the principle of the presumption of innocence, however rape cases in which a suspect is released on bail often involve payments and then stall indefinitely.

### Indefinite bail

Thida, a 68-year-old woman, lived in the same house as her grandchildren and 46-year-old son-in-law. When her son-in-law began to regularly rape her, she was first too scared to tell anyone. She feared that due to her age she would not be able to defend herself against him and that he would kill her if she told anyone. But after he raped her for the fifth time, the injuries he inflicted pushed her to seek help.

After Thida went to the police, her son-in-law was arrested, charged with rape and transferred to pre-trial detention. However, Thida's daughter had recently passed away and Thida's three grandchildren relied on the suspect to support them. He had been detained for four months, but as Thida's situation was increasingly difficult, she decided to withdraw the complaint.

The suspect was released on bail and returned to live with Thida. The suspect informed LICADHO's monitor that his family had paid US\$3,000 to secure his release on bail. Over two years have since passed, with no indication of when the case will proceed to trial.





The hands of a woman who has supported her granddaughter through-out legal proceedings

## Stalled Cases

Of the 135 cases, 13 cases seem to have stalled or show little hope of moving towards justice (10%). In nine cases the perpetrator escaped and the case has not proceeded to trial. Police often lack the resources, skills, equipment and will to conduct the thorough investigations necessary to arrest perpetrators who have fled or gather comprehensive evidence. While it is possible that these suspects will be located and held to account, some of these cases have been open for over three years. In another case, the suspect has not escaped but no criminal action was taken after the complaint was withdrawn. In the final three cases, the suspect was initially charged and sent to pre-trial detention, but charges were later dropped by the investigating judge when the families withdrew their complaints.

## Settling Out-of-Court

The use of out-of-court compensation is less common in cases involving rape by relatives than in other cases documented by LICADHO. This is most often for the same reasons that women, girls or their families do not seek court-ordered compensation in cases involving relatives – they face family pressure or have joint finances with the perpetrator, making out-of-court compensation impractical. Instead, families are likely to agree to simply withdraw complaints. Of the 135 cases, one case was settled out-of-court before trial with no further criminal action taken as a result. As outlined above, an out-of-court settlement should not end criminal proceedings.

## The Long Journey to Justice

LICADHO has noted that rape cases involving children generally move through the legal system more quickly than other rape cases, but the path to justice is still slow for many. In the findings below, LICADHO assessed the length of time from which the organisation opened a case.<sup>70</sup> In some cases, women and girls had already filed complaints to authorities before approaching LICADHO, meaning that the estimates below may be shorter than the realities faced. Many women and girls also experienced rape for years prior to filing a complaint, potentially making their journey to justice far longer than reflected here.

The 13 cases that seem to have stalled have been open the longest on average, from at least 11 months up to three-and-a-half years as of August 2020, with an average length of almost two-and-a-half years. The 20 cases that are still proceeding have been opened from 10 months up to almost three years as of August 2020, with an average duration of a year-and-a-half.

The cases that resulted in a final judgement were open for almost two months up to more than two-and-a-half years before a judgement was reached, taking an average of 10 months.<sup>71</sup> While quick judgements should not come at the expense of quality investigations and legal proceedings, it should be ensured that slow judicial processes do not deter people from pursuing justice.

<sup>70</sup> The date that LICADHO opened a case was selected because it is a consistent and conservative way to estimate the time a case took to reach a given outcome. Upon opening a case, the organisation generally assists clients to begin legal proceedings.

<sup>71</sup> Six of the 100 cases which resulted in a final judgement are excluded from this analysis because LICADHO could not confirm the date of the trial or verdict.

# Moving Forward



The eradication of rape and sexual violence in families is possible and Cambodia must move towards this goal with urgency. Strengthening access to justice is an essential pillar in achieving this. It is far too common that the needs, voices and rights of women and girls who are raped are further undermined and ignored. Harmful gender norms, corruption and a failure to fully and properly apply the law remain at the heart of impunity for perpetrators of rape.

This report touches on a handful of issues surrounding rape in Cambodia, limited only to those connected to rape by relatives and access to justice. Continual conversations and actions to prevent, respond to and eliminate rape in all its forms are essential. The recommendations below outline some steps towards promoting justice for women and girls who have been raped by those they should be able to trust most.



A woman sits at her home



## Recommendations to the Cambodian Government

- ▶▶▶ Systematically document and periodically release comprehensive data about the number of rape cases that are reported and their outcomes, disaggregated by gender, age, disability, ethnicity, sexual orientation, location, relationship between the parties, and other status as relevant.
- ▶▶▶ Create an enabling environment for people to report rape and remove pressures for them to withdraw complaints
  - Work at all levels of society and institutions to dismantle gender norms and stereotypes about the roles and responsibilities of women, men, girls and boys.
  - Publically condemn rape and end victim-blaming rhetoric including by the highest levels of government, the judiciary and police.
  - Raise awareness about the illegality, unacceptability and harms of rape within families through traditional and social media campaigns and education.
  - Raise awareness about how families and communities can support a person who has been raped, such as by believing them and assisting them to access services.
  - Provide comprehensive sexual education in schools and via traditional and social media which includes open discussions about sexual health and consent.
  - Provide accessible financial support for people who have been raped to compensate for loss of family income due to the perpetrator's imprisonment as well as costs associated with legal proceedings, such as travel expenses and time away from work.
  - Provide accessible, free and quality services to meet the diverse needs of people who have been raped, including legal aid and medical care.
  - Remove the statute of limitations for rape cases involving children, to allow them to report abuse as adults if they later choose to do so.
- ▶▶▶ Strengthen protections for people who have been raped and their families during and following legal proceedings
  - Provide comprehensive sensitivity training to local authorities, police, judges, prosecutors and lawyers to ensure that people who have been raped are not re-traumatised during legal proceedings.
  - Guarantee the full and consistent application of Prakas No. 62/08 on the Use of Court Screen and Courtroom TV-Linked Testimony from Child/Vulnerable Victims or Witnesses.
  - Enact a dedicated legal or regulatory framework to provide all people who have been raped with access to administrative decisions and protection orders and ensure that they are accessible and consistently enforced.
  - Increase the number of women among judges, lawyers, prosecutors, police and other public servants.
  - Improve conditions in prisons and provide meaningful rehabilitation services for perpetrators.
- ▶▶▶ Guarantee the proper and consistent implementation of the law when prosecuting rape cases
  - Provide training and sufficient resources for police to conduct comprehensive, sensitive and timely investigations and evidence collection.
  - Provide training for local authorities, police, judges and prosecutors about the relevant legal framework regarding rape, as well as indecent assault, sexual intercourse with a minor under 15 years old and aggravating circumstances.
  - Clearly define "vulnerable by reason of his or her age" under Article 241(1) of the Criminal Code to include all children under the age of 18 years.
  - Enforce provisions in the Criminal Code and Anti-Corruption Law to end corruption by judges and public officials.
  - Enforce provisions in the Criminal Procedure Code to ensure that criminal proceedings do not wrongly end because a complaint is withdrawn.
  - Simplify and expedite procedures to ensure the payment of civil compensation when it has been ordered by a court.
  - Expedite justice for rape cases to ensure that people who have been raped can move forward with their lives.

