



# **RAPE AND INDECENT ASSAULT**

**REPORT**  
March 2004



សម្ព័ន្ធនៃលើក្រឹតនិចតិការពារសិទ្ធិមនុស្ស លីកាដូ

**LICADHO**

CAMBODIAN LEAGUE FOR THE  
PROMOTION AND DEFENSE OF HUMAN RIGHTS

# RAPE AND INDECENT ASSAULTS CASES, AND THE CAMBODIAN JUSTICE SYSTEM

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A LICADHO Report  
March 2004



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**LICADHO**

CAMBODIAN LEAGUE FOR THE PROMOTION  
AND DEFENCE 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 the rights in Cambodia and to promote respect for civil and political rights by the Cambodian government and institutions. Building on its past achievements, LICADHO continues to be an advocate for the people and a monitor of the government through wide ranging human rights programs from its main office in Phnom Penh and 12 provincial offices.

LICADHO pursues its activities through its six program offices:

- The Human Rights Education Office provides training courses to target groups such as government officials, students, monks and provides dissemination sessions to the general public.
- The Monitoring Office investigates human rights violations and assists victims in the legal process. Specially trained staff also monitors 18 prisons to assess prison conditions and ensure that pre-trial detainees have access to legal representation.
- The Medical Office provides medical assistance to prisoners and prison officials in 18 prisons and provides medical care and referrals to hospitals for victims of human rights violations.
- Project Against Torture provides comprehensive rehabilitation services to victims of torture and conducts advocacy against torture.
- The Children's Rights Office educates the public on children's rights, creates child protection networks at the grassroots level, and investigates children's rights violations.
- The Women's Rights Office educates the public about women's rights, investigates women's rights violations and advocates for social and legal changes.

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## Executive Summary

Cambodia faces a crisis of sex crimes against its women and children. Reported rape and indecent assault cases have increased in recent years, and many victims are children – some as young as 4 or 5-years-old.

Sex crimes have huge consequences for individual victims and Cambodian society. Victims may suffer physical injuries, as well as sexually-transmitted diseases including HIV-AIDS. The psychological consequences are also devastating for victims, many of whom suffer severe symptoms – such as anxiety, shame, depression, guilt and helplessness – for years, if not forever. Child victims are most vulnerable to physical and psychological damage. The large number of young Cambodians raped or indecently assaulted raises grave concerns about the future health, stability and development of Cambodia.

The true extent of rape and indecent assault in Cambodian society is not known. Undoubtedly, not all cases are reported to the authorities or non-government organizations or in the news media. The reasons why some victims may not report rape include: shame and embarrassment; fear of revenge by the perpetrator; distrust of the justice system; and the unofficial costs of filing a complaint.

Rape and indecent assault are serious crimes under Cambodian law, and victims have a right to justice. The police and courts have the duty to investigate and prosecute crimes in strict accordance with the law. Although the police and courts face many limitations, including lack of resources, there is still much that they can do to prosecute rapists and protect women and children.

Some perpetrators are arrested, prosecuted and punished according to the law. Some strong sentences of up to 20 years imprisonment have been handed down, particularly, for example, in cases of rape of children by their fathers or step-fathers. Unfortunately, however, many other rapists are not investigated and prosecuted properly. The reasons for this include corruption, the failure of some police and court officials to fulfill their lawful duties, and misunderstandings about the laws on rape and indecent assault.

One major problem is unlawful ‘compensation’ settlements, outside of the court system, of criminal complaints. Perpetrators (or their families) provide money to victims (or families) in return for the criminal complaint being dropped. Some police and court officials help negotiate such deals and even coerce victims to accept them; the officials usually take some of the compensation money for themselves. Such settlements to stop the criminal prosecutions of perpetrators are unlawful, and even more so if police or court officials arrange them. By law, police officers cannot settle criminal cases themselves, but must report them to the court prosecutor. Similarly, prosecutors and judges must process criminal cases according to the law, and cannot mediate or tolerate out-of-court settlements.

Such compensation deals send the message to rapists that, if caught, their only punishment will be to pay money. This contributes to Cambodia’s widespread impunity, in which criminals escape lawful punishment such as prison sentences. Most worryingly, this also leaves the rapist free to commit other rapes – one rapist may claim many victims.

Even if rape cases are prosecuted and sent to trial, a variety of problems can lead to perpetrators escaping proper punishment according to the law. Common attitudes in society

about rape, and misinterpretation of the law by court officials, seem to influence the way that the courts rule on some cases. Among the biggest issues are:

- **Penetration:** Prosecutors, judges and court clerks frequently consider whether “full” or “deep” penetration occurred in a rape. Whether or not the rapist “completed” the rape or ejaculated may also be considered. If penetration was not “deep” or the rape not “completed”, the criminal charge may be dropped or reduced from rape to indecent assault (which carries a much lighter sentence). This is despite the fact that the law is clear that rape is any act of penetration or *attempted* penetration. The only issue for the courts to decide is whether penetration was attempted, not how deep it was.
- **Virginity:** There is also a mistaken belief by some officials that rape did not occur, particularly when the victim is a child or young woman, unless virginity is taken (the hymen is broken). This is inconsistent with the wording of the law, which makes no reference to virginity.
- **Injuries:** Some prosecutors and judges seem to believe that injuries to a rape complainant (to the genital area or other parts of the body) are necessary to prove that the sex was against the victim’s will. If a victim did not suffer bruises, lacerations or other injuries, the courts may believe the sex was consensual. This ignores the fact that many rapes are committed without serious injury. Most rapes are accompanied by threats of violence or death, which may prevent the victim from struggling with the rapist, for fear of being further injured or killed. The mistaken belief that all rapes *must* involve serious violence or injuries – which is not what the law states – means judges may convict only the most violent of rapes.

A contributing factor in such misinterpretations of the law is that it is sometimes court clerks, rather than prosecutors or judges, who interview victims and suspects, assess the evidence and make recommendations on the case. Although this is not permitted by the law, prosecutors and judges often delegate such tasks to their clerks. This increases the chances of errors in law being made, as clerks do not have the same legal training or responsibilities under the law as judges and prosecutors.

An additional issue is the importance placed by the courts on victims’ medical certificates, which are considered one of the most important pieces of evidence in rape cases. This reliance on medical evidence can serve to reinforce court officials’ misinterpretation of the law, as they look to see whether the certificate refers to injuries, lost virginity, and “deep” penetration.

In reality, rape victims may not seek medical examinations or delay doing so. Embarrassment or fear (because of threats by the rapist) may deter them, as may distance from their homes to hospitals or medical clinics. Research indicates that a raped woman only goes to hospital if she is badly hurt and needs treatment. Even if victims do immediately seek medical examinations, the number of qualified, experienced doctors able to properly do such examinations is very limited, especially in remote areas. The cost of medical examinations and certificates, which victims nearly always have to pay for themselves, is another problem.

Aside from issues of law and evidence such as medical certificates, LICADHO is also concerned that the fear, trauma and shame of sex crime victims should not be worsened by their contact with the justice system. Any unsympathetic, rude or threatening behavior by officials – doctors, police, court staff – will further traumatize victims. Cambodia’s high

number of sex crimes, and the fact that many victims are young children, makes it even more important that officials strive to treat victims fairly and professionally.

Although there are many obstacles to be overcome, Cambodian police and courts – along with other government and non-government institutions – can do much to combat the growing problem of sex crimes. This must begin with strict adherence to the law: officials must interpret the law honestly and correctly, and unlawful settlements must be eliminated. There is a need for greater training of police, court, health and other officials on issues of law and on how to deal appropriately with sexual abuse victims, and for punishment of those officials who violate the law.

Strong action against Cambodia's epidemic of sex crimes will help to enhance the reputation of the justice system, encourage victims to have the confidence to report crimes, punish perpetrators and prevent them from committing other rapes, and protect Cambodian women and children.



## Introduction

The Cambodian League for the Promotion and Defense of Human Rights (LICADHO)<sup>1</sup> is pleased to provide the Cambodian judiciary and law enforcement officials with this briefing paper on the treatment of rape and indecent assault cases by the justice system. The objective of this paper is to assist the courts and police in addressing the legal complexities of rape and indecent assault cases.

Cambodia's justice system operates under considerable constraints, particularly lack of resources. Nevertheless, the treatment of sexual assault cases can be significantly improved to the benefit of rape victims and the Cambodian public at large. Through prompt and effective investigation and prosecution, the courts and police can play an important role in preventing rape and indecent assault, as well as improve public trust in the justice system.

LICADHO welcomes the prosecutions and convictions that have occurred for rape and indecent assault, but remains concerned at the number of offenders who escape punishment according to the law. This briefing paper focuses on the interpretation of relevant laws by the courts, the investigative weaknesses that affect prosecutions, and the unlawful "compensation" settlements which are often brokered by officials. These problems affect the rights of victims to seek justice under the law, and may deter them from reporting sexual assaults to the authorities.

This paper focuses covers only one part of rape and indecent assault in Cambodia: the legal issues and how the justice system deals with these cases. It does not examine the wider issues of rape and why it is so prevalent. Nevertheless, LICADHO strongly encourages government and non-governmental organizations to urgently conduct further research in order to better understand what is already a crisis in Cambodian society.

### Methodology

This paper is based on previous LICADHO research on sexual assault<sup>2</sup>, statistics of cases reported to LICADHO in 2002-2003, additional research, and interviews with court officials, lawyers and non-government organization (NGO) staff.<sup>3</sup> Statistics and case studies in this paper come from LICADHO's Monitoring, Children's Rights and Women's Rights Offices.

Information was also obtained from reports of local NGOs, such as the Cambodian Human Rights and Development Association (ADHOC), the Cambodian Women's Crisis Center (CWCC), Legal Aid of Cambodia (LAC), Gender and Development for Cambodia (GAD).

In this paper, the term "sexual assault" or "sex crimes" refer to cases of rape, attempted rape or indecent assault. (The paper does not cover the further areas of human trafficking and sexual exploitation.) The word "victim" refers to the person who has been sexually assaulted, and the words "perpetrator", "suspect" or "accused" refer to the person who allegedly committed a sexual assault.

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<sup>1</sup> Founded in 1991, LICADHO is a non-governmental, non-political organization. It monitors human rights violations, conducts human rights education, and works on a range of issues including women's rights and children's rights. It has offices in 12 provinces and one office in Phnom Penh.

<sup>2</sup> See Diane O'Connell, *Rape and Indecent Assault: Crimes in the Community*, LICADHO, February 2001.

<sup>3</sup> Interviews were conducted in May and June 2003.

# I. Rape and Indecent Assault: A Growing Problem

## Reported Cases are Increasing

LICADHO investigated 179 cases of rape and indecent assault (involving a total of 202 victims, as some cases have multiple victims) in 2002, and 177 cases (with 185 victims) in 2003. This compares to 146 cases in 2001.

ADHOC, another human rights NGO, has also seen a rise reported rape cases in recent years: 356 cases were reported to ADHOC in 2003, compared to 297 in 2002 and 182 in 2001.<sup>4</sup>

Local newspapers reported on 221 cases of rape in 2002, and 266 cases in 2003, according to LICADHO's monitoring of the press.

## The Victims: The Young and Most Vulnerable

Of the 202 victims in LICADHO cases in 2002, 177 (87.6%) were aged under 18. They included 82 children (40.6%) aged 12 years or younger, and 13 (6.4%) aged five or younger. The average age of victims was 13. In 2003, of the 185 victims in cases investigated by LICADHO, 144 (77.8%) were aged under 18. They included 76 children (41.1%) aged 12 or younger, and 16 (8.7%) aged five or under.

Eleven cases of rape in 2002 ended with the killing of the victim, including nine minors aged under 18. There were six cases of rape & murder in 2003, including three children.

Of rape cases reported to ADHOC in 2002, 75% of the victims were under 18 years.<sup>5</sup>

Although it is possible that child rape is more likely to be reported to NGOs – parents' concern for the child and outrage encourages reporting, while adult women, especially married ones, may be less likely to report rape because of shame – it is clear that large numbers of children are sexually assaulted every year.

For a victim of any age, sexual assault can cause physical consequences and nearly always leads to severe psychological consequences.<sup>6</sup> The psychological effects may be doubly traumatic due to cultural and social attitudes about sexual assault, and discrimination against the victim. Physical and psychological effects are more severe in child victims, and will affect their long-term social and moral development.

## Criminal Convictions

There were prosecutions in 71 of the 179 cases of rape and indecent assault investigated by LICADHO in 2002, leading to 63 convictions<sup>7</sup> and eight acquittals. Of the 177 cases in 2003, there had been four prosecutions at time of writing, resulting in four convictions and one acquittal. It must be noted that cases can take a long time to get to trial, and the majority of the 2003 cases are still unresolved; some but by no means all of them may yet result in convictions.

<sup>4</sup> ADHOC, *Rape: Attitudes and Solutions in Cambodia* (draft), January 2004, page12. Note that cases reported to ADHOC may overlap with those reported to LICADHO in the same time frame.

<sup>5</sup> ADHOC, *Human Rights Situation Report 2002*, page 25.

<sup>6</sup> For details of the physical and psychological issues, see Annex I, Effects of Sexual Assault.

<sup>7</sup> However, of the 63 convictions, in 11 cases the perpetrator has not been arrested yet, and in two cases involving multiple perpetrators only one out of all the total perpetrators is in prison.

In 2002, the most common method of cases being “resolved” without going to trial was through unlawful out-of-court settlements.<sup>8</sup>

### **Unreported Cases**

Reported cases may represent only a small fraction of the sexual assaults actually perpetrated in Cambodia. It is impossible for LICADHO, or any organization, to reliably estimate the number of cases that go unreported every day.

Various factors may deter victims from reporting a sexual assault and pursuing legal action:

- Distrust of the justice system and skepticism that a victim’s complaint will be properly considered. Corruption, in particular, affects public opinions about the justice system.
- The costs of pursuing a prosecution – obtaining medical certificates, paying bribes to the police, court clerks, etc. By law, there are no court costs involved in a criminal case, but the reality is different due to corruption at various levels. Victims also usually have to pay for medical certificates.
- Fear of reprisal from the perpetrator – most rapists threaten their victims not to tell anyone about the crime. Such threats may be particularly effective when the perpetrator is in a position of authority over the victim (family member, police, military, or a powerful or wealthy person).
- Social and cultural myths – the mistaken belief that the victim is somehow at fault for what happened (perhaps by knowing the perpetrator) – can cause shame in the victim or the victim’s family and discourage the filing of a complaint.
- The unlawful practice of officials brokering “compensation” settlements between perpetrators and victims. Fueled by corruption and greed of the officials involved, this encourages victims to drop the case or not to file a complaint in the first place.
- Loss of virginity – when virginity is lost during rape, shame (rather than punishment of the accused) often becomes the focal point for the victim and her family. Monetary compensation may be more important or *easier to achieve* than court action and imprisonment of the perpetrator.

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<sup>8</sup> See Part VI, Unlawful Brokering of Compensation Settlements for more data on case outcomes.

## II. Legal Framework

Cambodian law prohibits rape and indecent assault. A victim's rights to access to justice and redress are guaranteed by the Constitution, Cambodian criminal law, and international law. The courts must adjudicate criminal cases in accordance with the law. Any private settlement of criminal offences, including rape and indecent assault, is unlawful.

### A. Rape and Indecent Assault: Cambodian Criminal Law

Rape and indecent assault are illegal under the UNTAC Criminal Code and the Law on Aggravating Circumstances of the Felonies.<sup>9</sup>

Rape is a crime (felony). It is defined as "any sexual act involving penetration carried out through cruelty, coercion or surprise".<sup>10</sup>

The law explicitly says that committing rape, or attempting to commit it, are the same crime.<sup>11</sup>

Rape (or attempted rape) is punishable by 10 to 20 years imprisonment. A sentence of 15-20 years with labor must be applied if the rape is accompanied by threats with a weapon, or if the victim is pregnant, is physically or mentally disabled, or is a child aged under 14, or if the perpetrator held a position of authority over the victim. In other cases, a sentence of 10-15 years imprisonment applies.<sup>12</sup>

Indecent assault is a misdemeanor. It is defined as a sexual assault on another person carried out "by touching, caressing, or any other sexual act not involving penetration".<sup>13</sup> Indecent assault, therefore, does not involve penetration or attempted penetration.

Indecent assault is punishable by one to three years imprisonment. These sentences shall be doubled if the assault is accompanied by fraud, threats or violence, or if victim is aged under 16, or if the perpetrator held authority over the victim.<sup>14</sup>

### B. The Judiciary shall Apply the Law Strictly and Impartially

All decisions by judges must comply with the Constitution of Cambodia, which states: "Laws and decisions of the State institutions shall be in strict conformity with the Constitution." The role and duty of the judiciary is to uphold the law impartially and protect the rights and freedoms of the citizens. "Trials shall be conducted in the name of Cambodian people in accordance with the legal procedures and laws in force."<sup>15</sup>

Only judge shall have the right to adjudicate. The judge shall fulfill this duty with strict respect for the laws, wholeheartedly, and conscientiously.<sup>16</sup>

<sup>9</sup> United Nations Transitional Authority in Cambodia - Provisions Relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia During the Transitional Period ("UNTAC Criminal Code"), adopted by the Supreme National Council of Cambodia, 1992; and the Law on Aggravating Circumstances of the Felonies, 2001. The rape provisions of the latter law take precedence over those in the UNTAC law.

<sup>10</sup> UNTAC Criminal Code, Article 33, Law on Aggravating Circumstances of the Felonies, Article 5. The definition of rape is the same in both laws, except the latter law specifies "any other means" with regard to penetration (apparently intended to cover penetration by objects or fingers, not only the penis.) Note that there are varying English translations of the Khmer language rape definition, and the word for "cruelty" is often translated as "violence". LICADHO believes "cruelty" is more accurate.

<sup>11</sup> Law on Aggravating Circumstances of the Felonies, Article 5: "Anyone who rapes or attempts to rape another person, of either sex, shall be guilty of rape..."

<sup>12</sup> Law on Aggravating Circumstances of the Felonies, Article 5 (2).

<sup>13</sup> UNTAC Criminal Code, Article 42.

<sup>14</sup> UNTAC Criminal Code, Article 42 (2).

<sup>15</sup> Constitution of the Kingdom of Cambodia, 1993, as amended 1999, Articles 150, 129 & 128.

<sup>16</sup> Constitution, Article 129.

The UNTAC Criminal Code (Article 1) requires judges to decide on cases “in complete impartiality, on the basis of facts which are presented to them, and in accordance with law, refusing any pressure, threat or intimidation, direct or indirect from any of the parties to a proceeding or any other person”.

### **C. Brokering of Settlements by Officials Is Unlawful**

The Law on Criminal Procedure specifies that a criminal offense can lead to two separate legal actions: a public action (the criminal prosecution) and a civil action (a victim’s claim for damages from the perpetrator). Public action is initiated by the prosecutor, and civil action by the victim of the crime.<sup>17</sup>

Article 7 of the same law specifies that “public action may not settled by any arrangement”, and that criminal offenses must be ruled upon by the court which has jurisdiction. Failure to observe this principle is a miscarriage of justice, punishable by disciplinary measures or imprisonment of six days to one month.

Article 33 provides “The renunciation of a civil action may neither stop nor suspend the prosecution”.

Article 48 specifies that the judicial police have no right to close a file on a criminal case, even if a settlement has been made, but must always forward their report to the prosecutor.

Article 55 further requires that “Once the perpetration of any crime or any misdemeanor is known, the prosecutor shall proceed immediately to the investigation measures which are provided to him/her by the law and which are necessary to find the truth”.

The law is therefore explicit that private settlements of a public action are unlawful. Suspects cannot pay to have criminal charges against them dropped. At most, any compromise or reconciliation outside of court may be a settlement for civil action – which victims can withdraw from the court at any time – but this does not stop the public action.

In addition, it is unlawful for police, court or other officials to seek payment for arranging a settlement. Article 38 of the UNTAC Criminal Code makes it a crime for any civil servant to solicit or receive money while performing official duties. It is punishable by three to seven years in prison.

### **D. International Law Enshrined within Cambodian Law**

#### *International Human Rights Law*

Cambodia’s Constitution provides for the recognition and respect for human rights as enshrined in various international instruments, including the Universal Declaration of Human Rights, and the conventions related to human rights, women’s rights and children’s rights.<sup>18</sup>

The UNTAC Criminal Code also requires adherence to several UN instruments, including The Basic Principles on the Independence of the Judiciary<sup>19</sup>.

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<sup>17</sup> See Law on Criminal Procedure, Articles 2, 4, 5, 9 & 14.

<sup>18</sup> Constitution, Article 31.

<sup>19</sup> UNTAC Code, Art. 1 & 74.

*Effective Remedy*

Everyone has the right to an effective remedy by the national courts for acts violating the fundamental rights granted her or him by the Constitution or by law.<sup>20</sup>

*Equal Protection of the Law*

All Cambodians are equal before the law. This fundamental principle, enshrined in the Constitution and in international law,<sup>21</sup> guarantees all persons the full protection of the law, irrespective of race, sex, language, religious belief, political tendency, birth origin, social status, wealth, or other status.

*Special Protection of Women and Children*

Women and girls, who are the primary victims of rape and indecent assault, are afforded special protections by the Constitution<sup>22</sup>, and by international law. The Convention on the Rights of the Child, ratified by Cambodia in 1992, requires that children be protected from all forms of sexual exploitation and sexual abuse.<sup>23</sup> The Convention on the Elimination of All Forms of Discrimination Against Women, also ratified by Cambodia in 1992, which provides for equality before the law for women and men.<sup>24</sup>

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<sup>20</sup> Universal Declaration of Human Rights, Article 8.

<sup>21</sup> Constitution, Article 31; Universal Declaration of Human Rights, Article 7; International Covenant on Civil and Political Rights, Article 26.

<sup>22</sup> Constitution, Articles 48 & 45.

<sup>23</sup> Article 34.

<sup>24</sup> Articles 5 & 15.

### III. The Justice System & Sexual Assault Cases

Despite various measures taken by the Royal Government of Cambodia to address the problem,<sup>25</sup> sexual assault continues to be a serious problem. The Constitution and laws are meaningless without enforcement by the courts. Strict application of the law by judges, court staff and police is vital to prevent such crimes.

This part of the briefing paper will examine the general challenges faced by Cambodia's courts, and the particular problems which arise in the handling of rape and indecent assault cases. These issues contribute to why some victims do not report sexual assaults to the authorities, and to the difficulties faced by victims and the justice system in those cases that do go to court. (The issue of unlawful out-of-court settlements is covered in Part IV of this paper.)

#### A. Challenges Faced by Cambodia's Judiciary

The many problems faced by Cambodia's courts are well known. As Amnesty International has reported:

*"The combination of poor facilities, low salaries, executive interference, lack of education and training, and weak and poorly enforced legislation has created a judicial system in which people have no confidence and which daily fails in its duties and responsibilities."*<sup>26</sup>

In a recent report, the UN human rights representative to Cambodia also noted that the lack of a properly functioning court system meant that "the human rights of individuals suffer first" and that "poor people are often not treated equally before the law".<sup>27</sup>

#### *Lack of Resources and Training*

Lack of money reduces the morale and motivation of law enforcement officers, and encourages corruption. Salaries of judges and prosecutors were only recently increased, and those of court clerks and police officers remain very low. Furthermore, there is lack of money to conduct investigations to the high standard necessary for such serious crimes. Finally, there is a lack of trained staff to cope with the high caseload and long backlog of criminal cases.

#### *Lack of Disciplinary Supervision*

The Supreme Council of Magistracy has the duty to assist the King in guaranteeing the independence of the judiciary, and disciplining delinquent judges.<sup>28</sup> However, the Council has been criticized for being ineffective and an inadequate safeguard against corruption and lawlessness within the courts. Urgent action to reform the Council is needed to ensure it can do its job properly.

#### *Impunity & Lack of Public Trust*

Cambodia's culture of impunity extends to many crimes and human rights violations, including sexual assault. Interviews with NGO workers suggest that many rapists believe they are above the law and that, if caught, their only punishment will be to pay money. This sense of impunity is particularly acute if the perpetrator is in a position of authority

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<sup>25</sup> See Annex II, Government Initiatives.

<sup>26</sup> Amnesty International, *Report 2003*, page 65.

<sup>27</sup> Report of the Special Representative of the Secretary-General for human rights in Cambodia, United Nations, September 2002, page 2.

<sup>28</sup> Constitution, Articles 133, 134.

such as a police, military or government employee, or is simply wealthy or powerful in any way.

Research conducted by local NGO Gender and Development for Cambodia (GAD) found that “young people demonstrated little confidence in the capacity for justice within the police and judicial system.” Over half the young people surveyed expressed the view that if they had a dispute with a wealthy youth gang member, for example, they would have little faith in the fairness of the police or the courts.<sup>29</sup>

LICADHO’s experience is that the authorities are particularly weak at prosecuting human rights violations, including sexual assault, if the perpetrators are state employees. For example, in 2002, LICADHO investigated 20 state employees for committing rapes or indecent assaults, of which only three of the perpetrators (16%) were convicted. (Furthermore, two of them were convicted *in absentia*.) This conviction rate was much lower than that of convictions of civilian perpetrators, indicating that state employees do benefit from their positions, which in turn contribute to public distrust of the justice system.

#### *Corruption*

Corruption can occur in various forms in the justice system, most blatantly by perpetrators paying police in order not to be arrested, or paying the courts for the charges to be dismissed or reduced, or to receive a lower sentence. Although not all police and court officials are corrupt, the unlawful behavior of some tarnishes the reputation of the system as a whole.

Corruption and unofficial costs affect victims. Criminal prosecutions are undertaken by the State on behalf of all Cambodians, and a complainant should bear no expense in reporting a crime. In reality, however, victims often will pay various officials in order for their cases to be heard, beginning with the police for evidence-gathering and ending with court staff.

According to NGOs, judges and prosecutors may request money from the victim or their lawyer for “expenses” such as for transportation in order to conduct investigations. In other cases, court clerks have demanded bribes in order to forward complaints to prosecutors. Such practices are illegal.<sup>30</sup>

Salaries of judges and prosecutors were recently raised to between \$300 and \$600 a month. Court clerks’ salaries remain low, at about \$25 a month, as do police salaries. The wages of police and court clerks should be improved to help prevent corruption, and strict measures are also needed to effectively investigate and punish corruption.

#### *Court Clerks – Misallocation Of Duties*

A problem cited by NGOs, which impacts on cases of sexual assault as well as other crimes, is the use of court clerks to perform duties which are the responsibility of judges or prosecutors.

Court clerks have defined duties and responsibilities, as do the prosecutors and judges they serve.<sup>31</sup> A prosecutor’s clerk’s duties include recording the complaints received, orders and arrests, warrants and summons issued, and recording and managing evidence received. An investigating judge’s clerk shall be present with the investigating judge during

<sup>29</sup> GAD, *Paupers and Princelings: Youth Attitudes Toward Gangs, Violence, Rape, Drugs and Theft*, 2003, pages 9 & 43. GAD surveyed 580 youths aged 13-28 in Phnom Penh.

<sup>30</sup> UNTAC Criminal Code, Article 38.

<sup>31</sup> See Cambodian Criminal Justice Assistance Project, *Courts Handbook*, July 1999, for powers and duties of the Prosecutor, Investigating Judge, Trial Judge, and their respective Clerks.



investigations, but not may not conduct them in the place of the judge. A trial judge's clerk records court orders, manages court documents, calls and swears in parties and witnesses during trials, and writes a summary record of the hearing's events. Only a judge can adjudicate a criminal offense, not a clerk or anyone else.<sup>32</sup>

A Phnom Penh Municipal Court clerk interviewed by LICADHO in May 2003 said he had conducted interviews of victims, accused and witnesses; made investigations at crime scenes in the place of the investigating judge; and made recommendations on the outcome of the case to the judge.

The delegation of judges' responsibilities to their clerks may reflect the high caseload of the courts and the limited number of judges and prosecutors. Nevertheless, it is dangerous because clerks often have no investigative or legal training, and the risk of them making errors in law is serious – both for victims and accused. It also offers increased opportunities for corruption, as clerks may demand bribes from victims or perpetrators.

## **B. Sexual Assault Cases -- Difficulties**

### *Legislative Inadequacies*

The courts face the additional challenge of working with legislation that is inconsistent and incomplete. The legal framework against rape and indecent assault (outlined in Part II of this paper) contains some gaps. In particular, there is no definition in the criminal law of "consent" to a sexual act, and no guidance for judges on how to decide if consent was genuinely given.

In such circumstances, it is important that judges apply their full consideration to what consent by a victim really means. The definition of rape in the law refers to sexual acts taking place through "cruelty, coercion *or* surprise" – only one, not all, of these factors are required for judges to determine that the victim did not consent to the sexual act. Coercion can take many forms, including threats to the victim, who may not struggle strongly with the rapist because of her fear of being injured or killed. In such circumstances, the victim cannot be said to have consented. Similarly, if the victim does not have the mental capacity to consent (because of unconsciousness or mental disability), then she cannot have given consent.

Other absences in Cambodian criminal law are inconsistent provisions on the age of minors (and the age of consent to sexual intercourse)<sup>33</sup>, and lack of explicit provisions against marital rape and incest.

### *Evidence-Gathering*

According to one judge,<sup>34</sup> the three main types of evidence procured for sex crimes trials are the victim interview, the suspect interview, and the medical certificate. Other evidence may include ripped clothing, testimonies of witnesses who saw semen or blood, etc.

Rape and indecent assault are typically carried out in isolated places with no witnesses. Evidence-gathering becomes particularly difficult when a rape is not immediately reported, which is common. Victims may be initially reluctant to tell anyone about the assault. Due to feelings of shame or fear, victims or parents may instinctively want to wash the clothing and hide the wounds. They may also not know a medical certificate is needed, and they may be

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<sup>32</sup> Constitution, Article 129.

<sup>33</sup> Cambodian laws vary considerably on the age of minors. For example: The Law on Aggravating Circumstances of the Felonies provides for stronger sentences for rape if the victim is aged under 14; the UNTAC Criminal Code indecent assault provisions require a stronger sentence if the victim is aged under 16; the Human Trafficking Law increases penalties if victims are aged under 15.

<sup>34</sup> LICADHO interview May 2003

too embarrassed or have no money to get one. A report by Population Services International Cambodia found that if a woman is raped, she goes to the hospital only if she is badly hurt and needs medical assistance.<sup>35</sup> As time progresses, witnesses to the crime, if there are any, may be intimidated into not talking to the authorities.

Lack of other evidence leaves only the testimony of the victim set against the testimony of the accused, which a judge may consider inadequate to give a conviction.

Investigating judges commonly explain that they do not have money or time to conduct evidence-gathering missions, so they must rely heavily on police reports. An additional problem is that it is usually only the victim, her family and the accused who are present at the trial. Ensuring that all relevant people, including police officers, attend trials would likely improve the quality of evidence and provide a more complete picture to the court.

#### *Proof of Injury & Reliance on Medical Certificates*

As previously noted, judges rely heavily on medical certificates in deciding rape cases. The certificates are based upon examinations of victims by a health worker in state-run hospitals or clinics. The courts regard medical certificates as the primary method of establishing the lack of consent of the victim, and/or the extent of penetration. Courts will often require evidence of struggle or resistance, such as injuries to the genitals or other body parts (bruises, tears or bleeding, etc).

According to one Phnom Penh Municipal Court Judge, the absence of visible signs of violence will typically lead a judge to declare the intercourse was consensual and not rape. An Appeals Court Prosecutor also stated the need for proof of force in order for a rape charge to be sustained (except, he said, if the victim was drugged and could not fight back).

However, not all rapes are carried out violently. Most of the cases investigated by LICADHO were accompanied by threats of violence to the victim. Such threats often have the purpose and effect of preventing the victim from struggling. Also, as mentioned previously, a victim may not resist for fear of sustaining greater injury.

The mistaken belief that all rapes will leave visible injuries means judges are likely to convict only the most violent of cases. This is despite the fact that the law clearly specifies "coercion" as an element in rape, but does not require that serious injury must have been inflicted. In LICADHO's experience, the main form of coercion used by rapists is threats, often with a weapon.

Another problem with regard to judges' reliance on medical certificates is the cost of obtaining one, which the victim nearly always has to pay. The basic examination fee is around 22,000 riels (US\$5.50), with an additional 50,000 riels (\$12.50) for the certificate or doctor's letter. There is also the cost of transport to hospitals or health clinics, especially in remote areas with limited medical services. In rape cases reported to LICADHO, it is not unusual that victims do not have medical certificates.

The expense associated with medical certificates penalizes crime victims who have already suffered greatly, and endangers the rights of poor people to obtain justice. The responsibility to pay the costs of the investigation and prosecution of criminal offences, including medical certificates and expert witnesses, should rest with the State.

<sup>35</sup> PSI Cambodia, *Love, sex and condoms in the time of HIV* (draft report, September 2002), page 42.

### **C. The Courts Can Overcome These Challenges**

The complexity of sexual assault cases poses significant, but not insurmountable, challenges to Cambodia's courts. It is clear that the courts can prosecute perpetrators of rape and indecent assault vigorously. This is vividly shown by the courts' treatment of familial abuse.

In 2002, LICADHO documented 25 cases of familial rape or indecent assault – perpetrated by fathers, stepfathers, cousins or other relatives.<sup>36</sup> Seventeen of the 25 accused were convicted in court, receiving sentences ranging from two months to 20 years. The 68% rate of conviction for familial rape cases is more than double the conviction rate for other sexual assault cases reported to LICADHO, which was only 30%. The most severe sentences were handed down in cases where the accused was the father or stepfather of the victim. In 2003, LICADHO documented 13 cases of rape or indecent assault involving the father or stepfather of the victim. One case was tried and convicted, with a sentence of 15 years imprisonment. One case was settled out of court, the remaining ones are pending.

These numbers suggest that incest is viewed with particular disdain by the judiciary and the general public. LICADHO hopes that judges and other law enforcement officials will recognize that all cases of rape and indecent assault, irrespective of who the victims or perpetrators are, require equally serious treatment in the courts.

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<sup>36</sup> Familial sexual assault constituted 14% of the cases reported to LICADHO for 2002.

## IV. Unlawful Brokering of Compensation Settlements

The biggest obstacle to the prosecution of rapists is the long-standing practice of compensation settlements, outside of the court system, between victims or perpetrators (or their families). Perpetrators pay money in return for the criminal case against them being dropped.

In some cases, a sexual assault victim may voluntarily choose not to make a complaint to authorities, and may directly seek compensation from the perpetrator. But in the experience of LICADHO and NGOs, it is more common that a victim – after reporting the crime to the police or courts – is encouraged or misled, or even threatened, into accepting compensation settlements.<sup>37</sup>

Some police or court officials are involved in imposing such a forced “compromise” on victims. In addition, although the settlements are private, outside of the official court process, the courts accept such settlements by agreeing to cease their investigation into the crime and drop the charges against the suspect.

As covered in Part II of this paper, a criminal offense can lead to two legal actions: the public action (criminal prosecution) initiated by the prosecutor, and a civil action filed by the victim to seek court-ordered compensation to be paid by the perpetrator.

Once a public action has been commenced, any reconciliation or out-of-court settlement of that action is illegal.<sup>38</sup> At most, any compromise or reconciliation out of court may be a settlement for the civil action – which a victim can withdraw from the court at any time – but should have no impact upon the public action.

The purpose of a public action is clearly stated in the law – to condemn criminal acts and “to prevent these offenses from re-occurring by imposing on offenders punishments provided by the law”.<sup>39</sup> Compensation settlements which lead to the withdrawal of public action are in fact encouraging rapists to believe they can commit crimes with impunity, and placing the security of Cambodian women and children at risk.

In reality, compensation settlements are a vicious circle. The practice undermines victims’ trust in the justice system, and makes them more likely to be persuaded that money is the only ‘justice’ they will get. At the same time, the more likely a victim is to accept such a settlement, the more a perpetrator may be emboldened to commit a crime.

### A. Settlements - A Common Practice

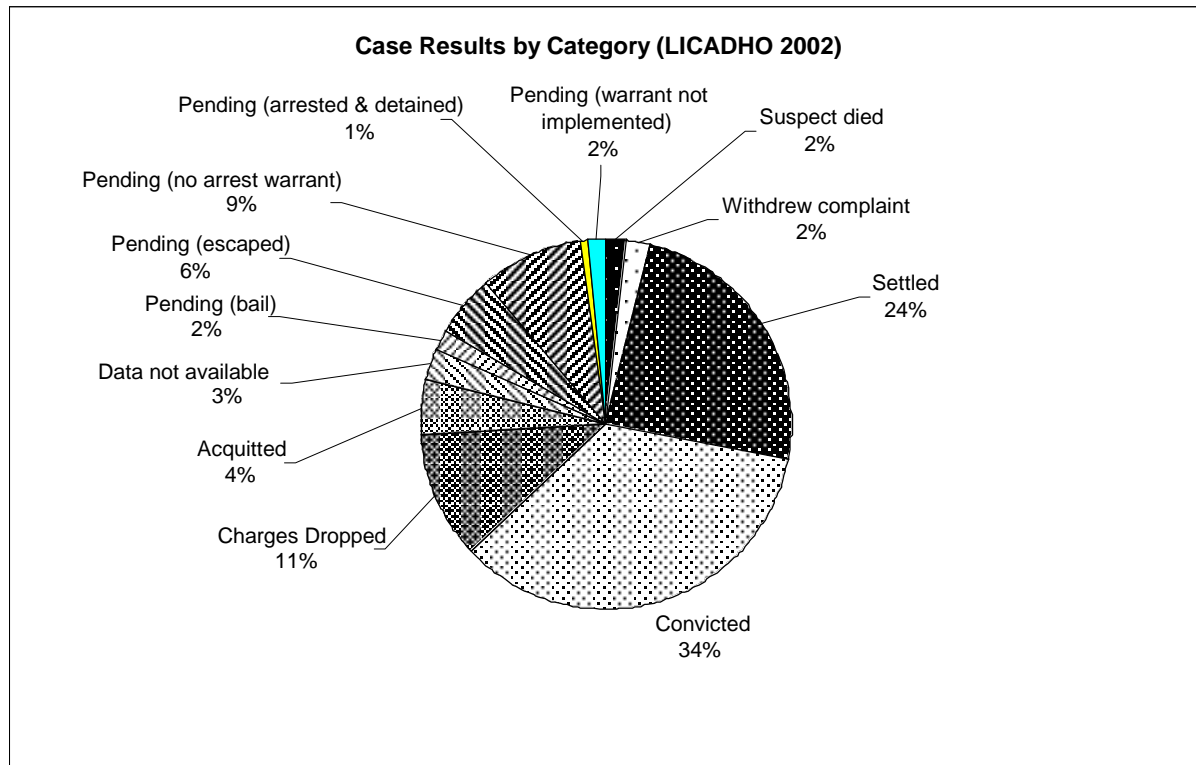
Of the 179 sexual assault cases reported to LICADHO in 2002, 43 (24%) were settled unlawfully. In at least 27 out of those 43 cases, the settlements were arranged with the active involvement of police or court officials.

<sup>37</sup> For background on the issue, see Legal Aid of Cambodia, *Quarterly Newsletter*, Issue 5 (June 2003), page 2.

<sup>38</sup> Law on Criminal Procedure, Articles 7 & 33. See Part II, Legal Framework for details.

<sup>39</sup> Law on Criminal Procedure, Article 3.

One representative of LAC, which provides lawyers for victims, estimated that 60-70% of sexual assault cases are settled out of court.



The graph shows 2002 case outcomes. “Settled” means a settlement which in nearly all cases involved the payment of money (four settlements involved the marriage of the victim to the perpetrator); the courts agreed to stop their investigation and/or drop the charges because of the settlement. “Charges dropped” means the court dropped the case for any reason (such as lack of evidence) *without* any settlement having been made. Similarly, “Withdrew complaint” means the victim dropped the complaint without any settlement. “Pending” (with various sub-categories) means the case is not yet resolved, and officially is still under police or court investigation.

In 2003, of the 177 cases reported to LICADHO, 14 (8%) had been settled unlawfully by time of writing. Four other cases had resulted in convictions, one case in acquittal, and the remaining 158 cases were still pending.<sup>40</sup>

Of most concern is when the law enforcement officials who are bound to uphold the law and protect the public are the same people who broker these “settlements”. One judge admitted to LICADHO that police and court clerks settle cases, although this is unlawful. Victims are encouraged by officials to settle privately, either by accepting money or, in some cases, by marriage to the perpetrator.

The officials who broker such deals will typically take a percentage of the compensation. Without doubt, their motivation of such officials is to make money. This potential for profit will even lead officials, according to LAC, to tell the victim or her family to wash the clothes, thus destroying evidence needed to secure a conviction. According to the Cambodian

<sup>40</sup> Criminal cases can take a long time to get to trial or to be otherwise resolved; some of the pending 158 cases may yet go to trial and others may yet be resolved through unlawful settlements.

Women's Crisis Center, victims are sometimes coerced by the judicial police to settle a case and even threatened with violence if they refuse.

### Case Study 1: Unlawful Settlement

In June 2002 a 15 year-old girl was ambushed by a 21 year-old male in a papaya farm. The perpetrator choked and raped her. The owner of a nearby house heard the struggle and ran to the farm with a knife. The perpetrator stopped and the victim was taken home.

That night, the victim's father reported the crime to the village chief, who instructed the family to wait until the morning. In the morning, police invited the victim's family to come to the police station to settle the problem through compensation. The victim's father asked for \$400. The perpetrator refused, offering \$200. The police kept \$100 as a fee for their services and three witnesses demanded \$30 each. The victim was left with \$10 in "compensation."

### B. Brokering Compensation Settlements is Against the Law

As documented in Part II (C) of this paper, Cambodian law is explicit that:

- The judicial police must report all criminal cases to the prosecutor; they may not close the file on a criminal case, even if a settlement has been made.
- The prosecutor must commence an investigation whenever he/she is aware of a crime or misdemeanor having occurred.
- Public action and civil action are entirely distinct. Any settlement made out of court can only effect the civil action that a victim may have filed with the court. The public action, initiated by the prosecutor and independent of any civil action, is unaffected.
- Only judges can adjudicate criminal cases; violation of this is a miscarriage of justice.
- Officials who solicit or receive payment (such as a percentage of a settlement) are committing corruption, punishable by three to seven years imprisonment.

### C. Victims have a Right to Compensation Under the Law

Through the court system, crime victims are fully entitled to receive financial compensation from the perpetrator *and* to have the perpetrator punished according to the law (such as by imprisonment). This fact is frequently not told to victims when they are offered, or coerced to accept, compensation settlements outside of court – they are led to believe that they have the choice of receiving compensation *or* having the perpetrator imprisoned.

By allowing victims to make civil action claims to the courts, the law explicitly recognizes the right of victims to compensation from perpetrators for damage caused by the crime. At the same time, public action is pursued by the prosecutor on behalf of the State and all Cambodians. When a case does go to trial, judges can rule on the public and civil actions at the same time.

In 2002, in 31 of the 71 cases investigated by LICADHO that resulted in convictions, the perpetrators who were sentenced to imprisonment were also ordered by the court to pay victims compensation. In 2003, in three of the four cases that resulted in convictions, the perpetrators were also ordered to pay compensation.

However, there are still problems with such civil actions because the compensation is often not paid (and the court order not enforced by authorities), especially when a perpetrator is in

prison. Strengthening the enforcement of civil action decisions by the courts would help to encourage victims to realize that, by going through the courts, they can get both compensation and imprisonment of the offender.

## V. Case Studies of Legislative Misinterpretation

The Constitution (Article 128) requires the judiciary to protect the rights of Cambodians. In the context of criminal cases, this obligation requires the thorough investigation of the facts of the incident, proper analysis of the elements of the crime, appropriate interpretation of the relevant laws, and the unbiased and correct application of the law to the facts.<sup>41</sup>

Judges should apply a strict interpretation of the law. "The court must not use any procedure or interpretation of the law that is not provided for by the law. Any such use in a decision may result in the nullification of such decision by the Supreme Court."<sup>42</sup>

However, in some cases judges, as well as police officers, have displayed a tendency to misunderstand or misinterpret the law when dealing with sexual assault cases. The following examples illustrate this problem. The examples are followed by LICADHO comments on the appropriate interpretation of the law in each case.

### A. Extent of Penetration & Loss of Virginity

#### Case Study 2: Attempted Penetration

Eng Sokha was charged with the rape of a six-year-old girl and brought to trial before Judge Kong Kouy. The court heard evidence from a midwife, who had examined the victim, that the girl had been raped. In her January 2001 ruling, Judge Kong Kouy reduced the rape charge to indecent assault, and sentenced Eng Sokha to six months imprisonment, plus another six months suspended. Judge Kong Kouy reportedly told the *Phnom Penh Post* newspaper that she reduced the charge to indecent assault because the rape "was not deep" and the girl's virginity was not lost.<sup>43</sup>

The victim's family complained and the case was referred to the provincial police. The accused was arrested and then ordered by a police inspect to pay 1,050,000 riels to the victim's family, of which the police took 450,000 for themselves. The inspector of Criminal Police explained that the perpetrator was released because he was old and the victim's rape was not serious since there was not full penetration.

#### Case Study 3: Loss of Virginity

Eng Sokha was charged with the rape of a six-year-old girl and brought to trial before Judge Kong Kouy. The court heard evidence from a midwife, who had examined the victim, that the girl had been raped. In her January 2001 ruling, Judge Kong Kouy reduced the rape charge to indecent assault, and sentenced Eng Sokha to six months imprisonment, plus another six months suspended. Judge Kong Kouy reportedly told the *Phnom Penh Post* newspaper that she reduced the charge to indecent assault because the rape "was not deep" and the girl's virginity was not lost.<sup>44</sup>

In May 2002, Eng Sokha was again charged with rape, this time of an eight-year-old. Judge Kong Kouy was again involved, this time as investigating judge in the case. Judge Kouy again reduced the charges to indecent assault, telling the *Phnom Penh Post* "[he] did not do anything [to the girl], just touching her on the outside and not deep."<sup>45</sup> However, the trial

<sup>41</sup> Cambodian Criminal Justice Assistance Project, *Courts Handbook*, July 1999, pages 118-119.

<sup>42</sup> Cambodian Criminal Justice Assistance Project, *Courts Handbook*, July 1999, page 119.

<sup>43</sup> Stephen O'Connell & Lon Nara, "Virginity ruling lets rapist off the hook", *Phnom Penh Post*, January 5-18, 2001.

<sup>44</sup> Stephen O'Connell & Lon Nara, "Virginity ruling lets rapist off the hook", *Phnom Penh Post*, January 5-18, 2001.

<sup>45</sup> Bill Bainbridge & Lon Nara, "Serial offender back in court on charge of attempted rape", *Phnom Penh Post*, May 24-June 6, 2002.



judge Cloth Pich accepted the prosecutor's request to reinstate the rape charge, convicted Eng Sokha of rape and sentenced him to 12 years imprisonment.

In 2003, Eng Sokha was again convicted of rape, which he had committed of another young girl in 1998, and received a further eight year prison sentence.

Police officers are obliged to report all criminal cases to the prosecutor<sup>46</sup>, and the Constitution obliges judges to adjudicate cases in strict accordance with the law.<sup>47</sup>

The law defines rape as a "sexual act involving penetration", and further specifies that "anyone who rapes or attempts to rape" is guilty of rape.<sup>48</sup> It does not specify the extent of penetration which must occur, so even partial penetration constitutes rape. Furthermore, it is possible for someone to be guilty of rape even if they do not penetrate the victim at all, if there is evidence that the perpetrator attempted to penetrate the victim and/or had the intention to do so.

Indecent assault, on the other hand, is defined as a sexual act "not involving penetration".<sup>49</sup>

Therefore, the law is clear that lack of full penetration does not automatically mean that the crime is reduced to indecent assault – it depends on any evidence of attempted penetration.

Regrettably, it is not uncommon for some judges to use the issue of "depth of penetration" to reduce charges of rape (a crime) to indecent assault (a misdemeanor), which carries a much lighter penalty. One Phnom Penh Municipal Court Clerk estimated that about 50% of all rape charges that come before the court are reduced to indecent assault.

#### *Analysis of Case Study 2*

The police inspector violated Articles 7 and 48 of the Law on Criminal Procedure by failing to forward the case to the prosecutor and by brokering (and profiting from) a private settlement. The inspector failed to understand the seriousness of the crime, and that the suspect should have been charged with rape (for attempted penetration) or indecent assault.

#### *Analysis of Case Study 3*

Judge Kouy's reasons for reducing the original rape charge to indecent assault were incorrect. The extent of penetration is not an element of the crime of rape – any penetration is sufficient for the offence to be committed. There was witness evidence, including from a midwife, that penetration had occurred (regardless of whether the penetration was "deep" or not).

These cases are especially disturbing because they highlight – as Eng Sokha clearly showed – that rapists who are treated leniently by the police or courts may go on to rape other children.

#### *Loss of Virginity*

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<sup>46</sup> Law on Criminal Procedure, Article 48.

<sup>47</sup> Constitution, Article 129.

<sup>48</sup> UNTAC Criminal Code Article 33, and Law on Aggravating Circumstances of the Felonies, Article 5.

<sup>49</sup> UNTAC Criminal Code, Article 42.

Case Study 3 also illustrates the mistaken belief among some judges that rape is not serious unless virginity is taken (the hymen is broken), even if there is penetration and even if the victim is very young.

Virginity may also affect the willingness of victims to report rape. In Cambodian society, women are expected to preserve their virginity until marriage. When virginity is lost by rape, shame (rather than punishment of the rapist) often becomes the focal point for the victim and her family. A victim may be less likely to tell anyone about the rape, or she and her family may not want to complain to the authorities for fear of damage to their reputations.

This attitude may also influence the remedies sought by a victim or her family. Monetary compensation for the loss of their daughter's value, or marriage with the suspect, may be more important or at least *easier to achieve* than criminal prosecution of the perpetrator.

The new Penal Code, which is yet to be debated and approved by the National Assembly, should reiterate that any extent and kind of penetration constitutes rape.<sup>50</sup> In the meantime, judges are urged to apply a strict reading of current law, which is clear in its wording relating to penetration and attempted rape.

## B. Relationship between Victim and Perpetrator

### Case Study 4: Relationship

A Phnom Penh Municipal Court Clerk interviewed by LICADHO expressed the view that if a woman and man are in a relationship, and she is raped by him (even if the rape was violent), this would not constitute the crime of rape. Given the practical importance of the court clerks in the judicial process, this comment reveals a worrying misconception which could lead to serious negative consequences for the victims of sexual assault.

Rape is defined in the law as acts of sexual penetration by cruelty, coercion or surprise. It makes no requirement that the victim and perpetrator must be strangers, or not in a relationship with each other.

A woman does not lose the right to consent to sexual acts by the simple fact of being in a relationship with a man. A man does not have the right to use violence or coercion to have sex with a woman against her will, even if, for example, he is married to the woman. The law applies equally to all persons, regardless of their marital status.<sup>51</sup>

One survey in Cambodia found that 4% of married women reported that their husbands had used sexual violence against them.<sup>52</sup> In another study, interviews with 50 domestic violence victims found that half of them said that their husbands threatened, coerced or physically forced them to have sex.<sup>53</sup>

Although current law does not specifically mention rape within marriages or relationships, there is nothing in the law which precludes prosecution in such cases. It is hoped that the Draft Law on Domestic Violence will explicitly state that rape within a marriage or relationship is a crime.

<sup>50</sup> Article 229 of the Draft Penal Code (September 2000) defines rape as "All acts of sexual penetration, of any kind whatsoever, committed on any person by violence, coercion, threat or surprise constitutes a rape."

<sup>51</sup> Constitution, Article 31.

<sup>52</sup> Ministry of Planning & Ministry of Health, *Cambodia Demographic and Health Survey*, 2000, page 237.

<sup>53</sup> Cathy Zimmerman, Sar Samen, Men Savorn, *Plates in a Basket Will Rattle: Domestic Violence in Cambodia*, 1994, page 68.

## C. Ejaculation

### Case Study 5: Ejaculation

The same court clerk as in Case Study 4 said that it would be acceptable to hand down a shorter sentence in a case of rape where there is no ejaculation, even if the rape was violent. The clerk laughed while telling LICADHO about a case where a 60-year-old man tried to rape a young girl but could not maintain an erection and could not ejaculate. According to the clerk, this therefore was not rape.

Rape and attempted rape are the same crime under the law. Ejaculation is not mentioned in the law and is irrelevant, if it is established that the suspect (1) raped or attempted to rape the victim, and/or (2) intended to rape the victim.

Case studies 4 and 5 illustrate the danger of permitting court clerks to influence the decision-making process that belongs exclusively to judges. The clerk demonstrates a willingness to incorrectly interpret the law in cases of violent rape.

## VI. Gang Rape

Gang rape is a particularly disturbing form of sexual assault which should be strongly investigated and prosecuted by the police and courts. Such rapes are often committed with high levels of violence, causing severe physical and psychological effects on the victim.

Victims of gang rape have included young children, and in some cases the perpetrators themselves have been children as young as eight. Some perpetrators have stated that they were copying sexual acts they had seen in pornographic videos.

LICADHO investigated eight complaints of gang rape<sup>54</sup> in 2002. Only one case went to trial, with three perpetrators (one present at trial, the other two *in absentia*) convicted, sentenced to 18 years, and ordered to compensate the victim. In two cases the suspects were acquitted. Two other complaints were unlawfully settled. The remaining cases are pending, or the charges were dropped. In 2003, LICADHO investigated 11 cases of gang rape. At time of writing, four cases had been sent for trial, three of which were yet to be held. In the other case, two perpetrators were convicted and sentenced to 12 years. Of the remaining cases, two were unlawfully settled and five are pending.

An apparently new form of gang rape – although one not included in these LICADHO statistics – is the rape (known as *bauk*) of sex workers by groups of young men. Research by Gender and Development for Cambodia (GAD) indicates this phenomenon is increasing in Phnom Penh, and that most victims do not make complaints to authorities.

A GAD survey of young Cambodians in Phnom Penh found that many did not believe that *bauk* is a crime. It found that only 13% of male and females “recognized forceful sexual relations between one prostitute and numerous men as being rape, or wrong because the prostitute did not give permission”.<sup>55</sup>

Many sex workers also hold the mistaken belief that they do not enjoy the same legal protection as other citizens. One sex worker, who had been subjected to *bauk* “more times than she can remember” told a *Cambodia Daily* reporter that “if a group of boys did the same thing to a high school student, then it would be rape;” but, she added, the same rules do not apply to her: “We are sex workers; we have a price.”<sup>56</sup>

All human beings, irrespective of their profession, ethnicity, or status, have the same right to equality of protection under the law, according to Cambodia’s Constitution. The judiciary has the duty to ensure that everyone – whether or not sex workers – benefit, without discrimination, from the full protection of the law.

<sup>54</sup> For the purposes of this paper, “gang rape” involves two or more perpetrators.

<sup>55</sup> GAD, *Paupers and Princes: Youth Attitudes Toward Gangs, Violence, Rape, Drugs and Theft*, 2003, page 8.

<sup>56</sup> Kevin Doyle and Yun Samaen, “Youth of Today: gang rape has become the sport of the young generation,” *Cambodia Daily*, April 19-20, 2003.

## VII. Victim Trauma & the Justice System

Sexual assault causes huge fear and psychological symptoms for victims, especially children.<sup>57</sup> The psychological consequences – including severe fear, anxiety, depression and shame – lasts for many years, if not forever. Sexual abuse can lead victims to self-destructive actions such as alcohol or drug abuse, and even suicide.

Sex crime victims may be discriminated against by members of society, suffering taunts from their neighbors for example, which worsens their psychological conditions.

In addition, most rapes are accompanied by threats, often with a weapon, by the rapist. Victims are often warned they will be killed if they tell anyone about the rape or complain. Victims who do file complaints may receive further threats, from the rapist or his family, or even police or court officials who try to coerce the victim to settle the case outside of court.

A sexual assault victim who goes through the justice system – reporting the crime to the police and filing a complaint with the court – is most likely to be suffering from great fear and psychological trauma. The victim's trauma, fear and shame can be increased or decreased by the words and actions of the various officials – judges, prosecutors, court clerks, police, medical workers, etc – who deal with the victim. Unsympathetic, rude or threatening behavior by officials will further traumatize the victim.

Given the high number of rapes and indecent assaults in Cambodia, and that many victims are young children, it is even more important that the police and courts strive to treat victims fairly and professionally. Victims have already suffered a great deal from the crime committed against them, and should have not to suffer more by exercising their right to justice under the law.

Interviewing victims of sex crimes requires special care and expertise, and there is an urgent need for training of police, court and other officials in this. Victims may be afraid or embarrassed to talk about what happened to them, and be further traumatized by rude or insistent questioning.

LICADHO is aware of cases where police or court staff, and also doctors or nurses during medical examinations, have threatened victims or made rude comments to them.

Going through the justice system is a frightening experience for victims, who may be repeatedly questioned in detail about what happened to them – by the police, prosecutor, investigating judge – and have to testify at trial.

The sight of the perpetrator who abused them is in itself a frightening and traumatic experience for victims, particularly children who may understand nothing about the courts and the investigation and trial process. It is not uncommon, for example, for investigating judges to summons accused perpetrators and their victims to be interviewed at court at the same time on the same day; a victim arriving to be questioned may immediately see the face of the perpetrator who raped them.

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<sup>57</sup> See Appendix I, Effects of Sexual Assault

The trial is also particularly traumatic. The victim may be made to stand alone directly next to the person accused of raping her, which is deeply frightening. In one case observed by LICADHO, a 6-year-old rape victim was told by a judge to go and stand directly in front of the accused, who denied the rape, and ask him whether he had raped her.

Victims will have to recount details of the sexual assault to the court during the trial, sometimes in front of people present who are unconnected to the case. Although rape trials should occur in closed trials, this is not always done. Even if a judge orders unconnected people to leave the room, they may listen through open doors or windows.

While the duty of prosecutors is to try and persuade the trial judge that the accused should be convicted, LICADHO has observed cases where they conduct themselves more like defense lawyers, cross examining the victim and trying to discredit other supporting evidence.

All child victims have the right to a lawyer to represent them during all stages of the court process, and some progress has been made by courts to try to ensure this in recent years. At times, however, a trial may still be held without a lawyer to represent the victim, which is grossly unfair to a young child who cannot be expected to understand her rights or legal issues.

LICADHO urges police, court and other officials to strive to treat victims appropriately at all times. The Ministries of Interior, Justice and Health, as well as NGOs, should also urgently develop training and other projects to assist officials to do this.

## Conclusion

The crisis of sex crimes against Cambodian women and children poses huge challenges to the police, courts, other government institutions, and NGOs. Urgent action is demanded: the number of reported cases is rising, although some victims may still be too afraid, ashamed or disheartened with the justice system to report these crimes, and some victims are very young.

The police and courts must strictly follow the law, and recognize that rape and indecent assault are serious crimes which require serious treatment regardless of who the victim or the perpetrator may be.

Most important is the elimination of the practice of encouraging or forcing victims to accept private compensation, in return for agreeing not to object to the criminal case against the perpetrator being dropped by the courts. One of the primary purposes of criminal prosecutions, as the Law on Criminal Procedure states, is to prevent the re-occurrence of offences. Rapists who are allowed to escape prosecution and imprisonment may well go on to commit other rapes. By vigorously investigating and prosecuting rape and indecent assault, the police and courts can protect Cambodian women and children.

In addition, the police and courts are urged to strictly interpret the existing laws, and to prosecute any attempt at penetration (however deep and whether or not virginity is taken) as rape (or attempted rape) according to the law. It is clear that many rape charges are reduced to indecent assault for reasons inconsistent with the law. In some cases, judges appear to have allowed common attitudes and misunderstandings in society about the nature of rape to affect their courtroom decisions, and in other cases corruption is to blame. The duty of judges to the victim and the public is to hear the facts, examine the evidence and apply the relevant law, regardless of personal, cultural, financial or other considerations.

By tackling sex crimes in a determined way, the Cambodian justice system will enhance its reputation and public trust, as well as strengthen Cambodian society and protect future generations of Cambodians from becoming victims of sexual assault. Senior levels of the government, and NGOs, should assist and encourage the justice system to do this.

Most alarming is that so many victims are aged under 10 years old. But whatever the age of the victim, it is vital to stamp out sexual assault and remove all encouragements to offenders – they must not believe that they can escape criminal prosecution.

## Recommendations

The following are recommended to government institutions, especially the Ministries of Justice, Interior and Health, as well as NGOs and other members of civil society:

### GENERAL

- Reforms to the Supreme Council of the Magistracy to ensure that it disciplines judges and prosecutors for unlawful practices and unjustified blatant misinterpretation of the law.
- Instructions issued to officials at all levels, along with training of them, to stop the brokering of unlawful compensation settlements.
- Disciplinary action and criminal prosecution of officials at all levels who participate in the brokering of unlawful compensation settlements.
- Training for police, prosecutors and judges on legal interpretation.
- Training and development of procedures for police, prosecutors, judges and medical staff on how to appropriately deal with victims of sexual assault, especially child victims being interviewed or testifying in police stations or courts.
- Increased salaries of police officers and court clerks, to prevent corruption.

### INVESTIGATION

- Increased resources for police and courts to improve investigative practices and tools.
- Training and pilot programs to improve the quality of evidence-gathering medical examinations of sexual assault victims.
- Medical examinations and certificates for the purposes of a sexual assault investigation must be free of charge.

### ADJUDICATION

- Strict compliance with the Constitution and the laws of Cambodia in adjudication of all rape and sexual offense charges.
- Improved monitoring by civil society of court cases involving rape, and public distribution of case outcomes (particularly in the provinces).
- Sensitivity to the needs of the victims in the courtroom. For example, ensuring that trials are closed to the public, and allowing victims to testify without the accused being present.

### LEGISLATION

- New criminal law should stipulate the legal age of consent and establish a crime of statutory rape.
- New criminal law should stipulate guidelines for determining consent in cases involving victims over the age of consent.
- Definition of rape should clearly establish that depth of penetration is not an element of the crime, emphasizing that any penetration at all or any attempted penetration is rape.
- Definition of rape should clearly establish that injuries are not essential to establish coercion/lack of consent.



- Definition of rape should clearly establish that marriage or relationship with the perpetrator does not mean that consent is automatic, and that sexual intercourse through coercion is rape.
- Legislation should be explicit that private settlements do not impact on criminal prosecutions, which should continue.
- Legislation should be explicit that any official (including village and commune chiefs) who becomes aware of a sexual assault has a duty to inform the police in order to begin the criminal process.
- Legislation should be reformed to standardize the various different provisions relating to the age of minors and children.

#### EDUCATION

- Education for young boys and girls on rape: what it is, why it is wrong, and what to do if it happens to you or someone you know (victim's legal rights, preservation of evidence, counseling).
- Education of the general public regarding the rights of rape victims and what should be done in sexual assault cases.

## ANNEX I: Effects of Sexual Assault<sup>58</sup>

Physical Effects may include:

- Physical injury inflicted by the assailant
- Possible infection of HIV/AIDS and/or other sexually-transmitted diseases (gonorrhoea, syphilis, herpes simplex, urinary tract infections and polyps)
- Pregnancy
- Recurring nausea, loss of appetite, fatigue, sleep disturbances, tension, headaches, difficulty to concentrate, abdominal and vaginal pain

Psychological Effects may include:

- Severe anxiety, fear, depression, guilt, self-blame, loneliness
- Humiliation, shame, lack of self-confidence, helplessness
- Decrease in appetite
- Anger, aggressiveness
- Self-destructive behaviors (such as alcohol or drug abuse, self-mutilation, suicide or attempted suicide)
- Post-traumatic stress disorder (PTSD) - A serious disorder, often lasting many months or years, with symptoms including: reliving the assault through recurrent flashbacks or nightmares, avoidance of reminders of the event (places, people, activities), loss of interest in daily activities, panic attacks, insomnia.

### Effects on Child-Victims

Physical and psychological effects are more severe in child victims and will negatively affect their long-term social and moral development. Child victims typically suffer from PTSD and other symptoms such as:

- In children under six, feelings of defenselessness, difficulty sleeping, loss of appetite, chronic bed-wetting.
- In children six to 12, difficulty concentrating, feelings of guilt or helplessness, aggressiveness, physical symptoms like headaches and stomach aches.
- Children 12 to 18, who have the capacity to understand the effects of sexual abuse on their lives, will often experience feelings of severe guilt and pessimism about the future, can become rebellious, and are prone to antisocial behaviour.

Long-term effects can include:

- Personality changes
- Lack of trust
- Pessimism about the future
- Stunting of moral development
- Anxiety
- Hyperactivity
- Loss of confidence
- Distrust of adults.

<sup>58</sup> Information from publications including: LICADHO, *Rape and Indecent Assault: Crimes in the Community*, 2001; United Nations, *Situation of Sexually Abused and Sexually Exploited Children and Youth in Cambodia: A Qualitative Assessment of Their Health Needs and Available Services in Selected Provinces*, 2000. *Working with Rape Survivors: A Handbook*, Working Group of the Women's Crisis Center Network, Malaysia, 1990; *UNAIDS Report on the Global HIV/AIDS Epidemic*; Saba Raghda, *Case Presentation of Sexual Abuse*, Transcultural Psychological Organization, December 15, 1998.

Impact on families

The physical and psychological consequences not only affect individual victims but also their families. Parents and other family members may also face psychological symptoms such as anxiety and depression because of what happened to the victim. Victims symptoms may reduce their ability to study or work, which may impose hardships on the family in the short and long term, and contribute to stress and conflicts within the family. If child victims develop anti-social behavior, it is their family who will most likely to be affected by this.

## ANNEX II: GOVERNMENT INITIATIVES

### National Organizations

**Cambodian National Council for Women (CNCW)** – Established in March 2001, the council comprises the Secretaries of State from 14 ministries and its mandate is to deal with advocacy, monitoring and evaluation of laws, regulations and policies of the Royal Government of Cambodia from a gender perspective.

**Cambodian National Council on Children (CNCC)** – Created in November 1995 by a sub-decree and chaired by the Minister of Social Affairs, CNCC is the main government body responsible for children's issues. Its role is to promote, monitor, report and coordinate activities on children.

**Department of Anti-Human Trafficking and Juvenile Protection (Ministry of the Interior)** – Under the guidance of the co-Ministers of Interior, His Excellency You Hockry and His Excellency Sar Kheng, the department investigates trafficking and other sex crimes against children. It is supported by the Law Enforcement Against Sexual Exploitation and Trafficking of Children Project (LEASEC), established in 2000 and funded by the Netherlands government, which provides training and other resources for police.

**Cambodia Criminal Justice Assistance Project (Ministry of Justice and Ministry of Interior)** – Funded by the Australian government, the CCJAP was commenced in 1996 and aims to strengthen the capacity of the Cambodian justice system through training, development of procedures and other initiatives.

**Royal School of Magistracy** – Directed by Her Excellency Kim Sathavy, the RSM was established by a sub-decree in 2002 and opened in 2003. It provides training to new judge and prosecutors, and also current ones.

### Draft Laws

A number of draft laws, yet to be debated and approved by the National Assembly and Senate, will provide an opportunity for clarification and improvement to Cambodia's rape and indecent laws:

**2000 Draft Criminal Code (Ministry of Justice)**

**2002 Draft Law on Domestic Violence Law (Ministry of Women's and Veteran's Affairs)**

**2002 Draft Law on Suppression of Human Trafficking and Sexual Exploitation**