



VIOLENCE AGAINST WOMEN IN CAMBODIA

REPORT
January 2006



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LICADHO

CAMBODIAN LEAGUE FOR THE
PROMOTION AND DEFENSE OF HUMAN RIGHTS

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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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Abbreviations

CAMBOW	Cambodian Committee of Women
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CNCW	Cambodian National Council for Women
CWCC	Cambodian Women's Crisis Centre
MOWA	Ministry of Women's Affairs
NGO	Non-governmental organizations
RGC	Royal Government of Cambodia
State Report	Initial, Second and Third Periodic Report on the implementation of the CEDAW
UN CEDAW Committee	United Nations Committee on the Elimination of All Forms of Discrimination Against Women
UNTAC Criminal Code	United Nations Transitional Authority in Cambodia - Provisions Relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia During the Transitional Period

Executive Summary

Whilst violence against women in Cambodia is a difficult issue to accurately quantify, it is clear that it is a serious problem and there are an increasing number of reports of domestic violence, rape and trafficking. Although Cambodia is beginning to recognize the significance of these issues the extent of the government's willingness to educate the judiciary, the police and the public on these issues is still very limited.

Cambodia ratified the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) in 1992 and since then there has been insufficient action undertaken by the government to implement the principles contained in the convention. Most notably the Royal Government of Cambodia (RGC) passed the *Law on the Prevention of Domestic Violence and the Protection of Victims* in September 2005 and a draft *Law on Human Trafficking and Sexual Exploitation* is currently being reviewed by law-makers. However the RGC's progress in reducing/eliminating violence against women since 1992 has been slow and often inadequate.

The RGC has only recently recognized the severity of Cambodia's domestic violence problem with the passing of the new law. However deeply embedded cultural and social beliefs continue to shroud the occurrence, recognition and reporting of domestic violence, making it difficult for it to be recognized as a serious problem that police and judicial officials can and must intervene against to assist victims of domestic violence.

The RGC treats rape with similarly legal uncertainty, as obstacles including legal interpretation, impunity, corruption and unofficial compensation payments dilute the serious nature of the crime, leave victims unassisted and allow perpetrators to go routinely unpunished. In a culture where rape is often considered to be justified or even the fault of the victim, the need for education promoting respect for all women and the correct interpretation of rape legislation is sorely needed.

Human trafficking has become a major problem in Cambodia to the extent that the crime's widespread severity is now internationally recognized. The RGC has acknowledged the serious nature of the issue and is beginning to take measures to combat the problem. Nevertheless, delays in passing the draft *Law on Human Trafficking and Sexual Exploitation* and the inability of the police and judiciary to enforce any of the existing laws only highlights the inadequacies of RGC measures to adequately address the problem.

The RGC urgently needs to pass laws that recognize that violence against women is a serious crime in Cambodia and to implement these laws and measures, to ensure that Cambodia fulfils its obligations under the CEDAW. Furthermore education and awareness campaigns promoting the rights of women in society, the workplace, the home and the family must be undertaken if violence against women is ever to be recognized as more than just a cultural norm.

I. Introduction

Violence against women in Cambodia is a serious and insidious problem. No comprehensive statistics can determine exactly how many women in Cambodia suffer from violence. However, it is clear that some of the worst forms of violence committed against women (such as domestic violence, rape and trafficking of women) occur regularly in Cambodia.

Increasing numbers of violent acts against women are being reported and whilst there is currently sufficient legislation to protect women from these crimes, there is insufficient action by the RGC in combating the practical problems of violence against women. Cultural and social attitudes towards violence against women, a culture of impunity, unfair legal and judicial processes and lack of governmental assistance to victims of this violence all contribute to women in Cambodia suffering from violence.

Scope of this Report

This report aims to provide a specific analysis of 3 forms of violence against women: domestic violence, rape and trafficking of women. In particular the report explores the situation in Cambodia of each form of violence and provides an analysis of the government's response to it. The analysis will focus on the laws protecting women and the major obstacles that exist in implementing the laws and/or reform.

Acknowledgements

This report was completed with the assistance of members of the Cambodian Committee of Women (CAMBOW)¹ who provided statistical and questionnaire information to LICADHO. CAMBOW is a coalition of thirty-five local NGOs who are working to advance the cause of women in Cambodia. The coalition is primarily engaged in women's issues and seeks to eliminate discriminatory laws and practices against women, particularly those relating to domestic violence and trafficking.

An abbreviated version of this report was also submitted as part of the Cambodian NGO Shadow Report to the CEDAW, for the United Nations Committee on the Elimination of All Forms of Discrimination Against Women (UN CEDAW Committee). The Cambodian NGO Shadow Report was submitted as a parallel report to the RGC report on the Initial, Second and Third Periodic Report on the implementation of the CEDAW (State Report) prepared by the RGC in October 2005 for examination in January 2006. Cambodia ratified CEDAW in 1992 with no reservations; however, this will be the first official State Report that the RGC has presented to the UN CEDAW Committee.

The Cambodian NGO Shadow Report to the CEDAW, was jointly submitted by CAMBOW and the Cambodian NGO Committee on CEDAW in November, 2005.

¹ CAMBOW was established in 2000 with initial support and funding from the Asia Foundation

II. Domestic Violence

Situation

As in many countries, domestic violence in Cambodia is an insidious problem that physically, mentally and emotionally scars its victims. Unlike other countries however, Cambodia has a traditional moral code of behaviour², the *Chbab Srey*, that states that women must serve and respect their husbands at all times. Advice includes 'never tattle anything to your parents about your husband or this will cause the village to erupt'; 'never turn your back to your husband when he sleeps and never touch his head without first bowing in honour'; and 'have patience, prove your patience, never respond to his excessive anger.' Culture and tradition dictates that women striving to attain this behaviour will be rewarded. As a consequence of this moral code, Cambodian women suffering from domestic violence will not discuss their problems with outside parties, believing that problems within the marriage should stay private.

In keeping with the traditions of Cambodia's silence on domestic violence, the State Report³ contains limited information on violence against women, in particular on the issue of domestic violence.

Domestic violence is one of the major factors contributing to gender inequality in Cambodia. Whilst there are no accurate figures on victims of domestic violence, the *Cambodian Demographic and Health Survey 2000* found that 23 % of women aged 15 to 49 who had ever been married had experienced violence in their families. The forthcoming domestic violence report, prepared by the Ministry of Women's Affairs (MOWA) surveyed 3000 people in 13 provinces on attitudes relating to domestic violence.⁴ Of all respondents surveyed, 80% of women said they knew a husband who used physical violence with his wife,⁵ and 25% of women said their husbands had been physically violent toward them.

There are many factors contributing to this growing problem. Some studies have shown that rising poverty leads to increasing cases of domestic violence.⁶ A connection can also be made between Cambodians suffering from three decades of civil war in Cambodia to a shift to overt violence entering into the domestic sphere.⁷

² The *Chbab Srey* is a traditional moral code of conduct for Cambodian women that has been passed down from each generation to the next.

³ State Report: *Initial, Second and Third Report on the Implementation of the International Convention on Elimination of All Forms of Discrimination Against Women in Cambodia* October 2003.

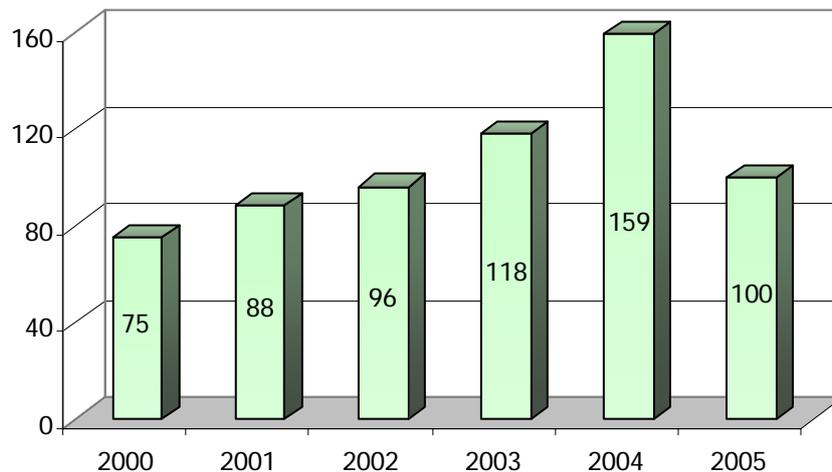
⁴ *Violence against women: a baseline survey*, (MOWA, Phnom Penh, 2005).

⁵ *Ibid* p.27.

⁶ *The Cambodian Women's Crisis Centre - Helping Women to Help Themselves* (The Cambodian Women's Crisis Centre, Annual Report, January - December 2002).

⁷ *Cambodia Women's Rights Report 2004: A Brief on the Situation of Women in Cambodia* (LICADHO, July 2004), p.8.

DOMESTIC VIOLENCE CASES REPORTED BY LICADHO



The 2005 figure covers only January to July

Legislation

Until recently, a major obstacle to eradicating domestic violence was the absence of laws advocating specifically for the protection of victims of domestic violence in Cambodia. On 16 September 2005 and 29 September 2005, the National Assembly and the Senate, respectively, passed the *Law on the Prevention of Domestic Violence and the Protection of Victims*, with King Sihamoni signing the Law on 24 October 2005. However, at the date of this report, this law has yet to be implemented within Cambodia.

The passing of this law is a symbol of the RGC's commitment to protect domestic violence victims. However, the fact remains, that since ratification of the CEDAW in 1992, the government has taken 13 years to pass a basic human rights law crucial to protect the rights of women.

Definition of domestic violence

Article 2 of the newly passed *Law on the Prevention of Domestic Violence and the Protection of Victims* defines domestic violence as 'violence that happens and could happen towards:

1. Husband or wife
2. Dependant children
3. Persons living under the roof of the house and who are dependants on the household.'

This definition broadens the scope of domestic violence to include all persons living in the same house. The law brings domestic violence into a public arena and out of the privacy of the home and family, thus enabling Cambodian women to specifically protect themselves from domestic violence.

Other relevant laws

The *Constitution* also provides some protection for victims of domestic violence, with provisions such as the 'right to life, personal freedom and security'⁸ and the 'right to life, honor and dignity.'⁹

The *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) sets out rape¹⁰, indecent assault¹¹ and battery as crimes.

The *Law on Aggravating Circumstances of the Felonies* also classifies rape as a crime.¹² These laws combined are more than sufficient in providing protection to domestic violence victims and in preventing domestic violence from occurring. The reality is that the strength of these laws is undermined by the lack of implementation within the domestic context. It will take time to assess the benefits of the passing of the new domestic violence law.

Government Policy

Neary Rattanak II, the second five-year strategy for the Ministry of Women's Affairs (MOWA), addresses domestic violence¹³ and highlights the need for 'further legal and policy efforts to reduce domestic violence.'¹⁴

The State report notes the creation of the Cambodian National Council for Women (CNCW)¹⁵ in 2001. A coordination and advisory mechanism for the RGC on issues relating to promoting the status, role and social welfare of Cambodian women for the purpose of reducing and abolishing all forms of discrimination and violence against women.

Thus far, these policy efforts by the RGC have been insufficient in assisting and protecting victims of domestic violence.

Under Reporting of Domestic Violence

An unfortunate product of Cambodian culture is that women are reluctant to report domestic violence abuse. From the period 2000-2005, there have been thousands of reported cases of domestic violence abuse¹⁶. However, these reported figures do not accurately convey the reality of domestic violence in Cambodia, due to under-

⁸ *Constitution*, Article 32.

⁹ *Constitution*, Article 38.

¹⁰ UNTAC Criminal Code, Article 33.

¹¹ UNTAC Criminal Code, Article 42.

¹² *Law on Aggravating Circumstances of the Felonies*, Article 5.

¹³ *Neary Rattanak II*, p.10.

¹⁴ Op Cit 4, p.20.

¹⁵ Established in 2001, comprising the Secretary of State from 14 ministries - mandated to deal with advocacy, monitoring and evaluation of laws, regulations and policies of the RGC from a gender perspective.

¹⁶ LICADHO statistics 2000-2005; ADHOC statistics 2000-2005; and CWCC statistics 1997-2005.

reporting by victims¹⁷. Women face shame and dishonour, in seeking outside help for domestic problems and they may be seen to betray their family. Domestic violence victims often suffer in silence rather than expose their family to such shame. Perpetrators of domestic violence rely on this silence to continue committing abuse.

Lack of Awareness and Education on Domestic Violence

The RGC has failed to educate society in general on the problems of domestic violence. To date, civil society has largely remained responsible for education and advocacy on the subject.¹⁸

Domestic violence victims often feel like they have nowhere to turn to for assistance. Non-governmental organizations (NGOs) are often a victim's only access for support¹⁹. However, it should be the responsibility of the RGC and not civil society to provide assistance, protection and education to domestic violence victims.

Major Obstacles

Implementation of Legislation

Police and officials are reluctant to interfere with what is seen as a 'domestic' problem and often will refuse to investigate domestic violence claims,²⁰ effectively rendering domestic violence legislation ineffective.

Lack of government attempts in combating domestic violence

The RGC has not made any substantial efforts to educate and train police, lawyers, judges and the general public to raise awareness regarding the serious problem of domestic violence. It is unclear whether the government is serious about combating domestic violence, considering the report was silent on the topic.

Cultural inferiority

Cambodian proverbs, traditions and moral codes often make it difficult for women to speak out against domestic violence and to ask for help.²¹ Women are often warned not to share domestic problems outside their homes and proverbs warn women to be careful about talking to outsiders. "Do not bring the outside fire into your home; leave it to smoulder."²² Women are warned that talking to others will lead to further conflict. "If you are not careful, you will use the fire inside to fan the flames of the fire outside..."²³

¹⁷ Op Cit 2, p.15.

¹⁸ For example, the program *Community Sentinels Against Domestic Violence: Women's Resource Centre Progress Report* (Cambodian Defenders Project (CDP), 1 September 2005; or the CAMBOW Radio Awareness Program on Domestic Violence 2005.

¹⁹ Information supplied from Project Against Domestic Violence September 2005. This NGO has provided counselling services to 531 clients from 1996-2005.

²⁰ *Cambodia Women's Rights Report 2004: A Brief on the Situation of Women in Cambodia*, (LICADHO, July 2004), p.8.

²¹ Op Cit 4, p.15.

²² Ibid, p.12, citing Luco, Fabienne, *Between a Tiger and a Lion* (Phnom Penh: UNESCO, 2002), p.22, footnote 50.

²³ Ibid.

In Cambodia, the male hierarchy is dominant and evident in families and in general society. “Men are viewed as the final decision-makers in their households, and other family members are expected to give them deference, respect and obedience”.²⁴

Cambodian women’s inherent cultural inferiority makes it especially difficult for them to reach out for assistance when dealing with domestic violence.

Recommendations

The RGC should immediately implement the following recommendations:

- With the passing of the Law on the Prevention of Domestic Violence and the Protection of Victims, immediately embark on a nation-wide educational and awareness campaign targeting police, lawyers, judges and in particular, the general public on domestic violence. Particular emphasis should be focused on Cambodian males and those living in rural areas.
- Provide training aimed at police, lawyers and the judiciary in recognising and combating domestic violence in Cambodia.
- Conduct educational campaigns, particularly in rural areas, to counter traditional thinking that women are inferior to men and to inform them of their rights within a domestic context.
- Increase the number of trained female law enforcement officers and legal officials in dealing with domestic violence victims.

Provide counseling services and rehabilitation for victims of domestic violence.

²⁴ Ibid, citing Derks, Annuska, *Khmer Women on the Move: Migration and Urban Experiences in Cambodia* (Amsterdam: Dutch University Press, 2005), p.60.

III. Rape

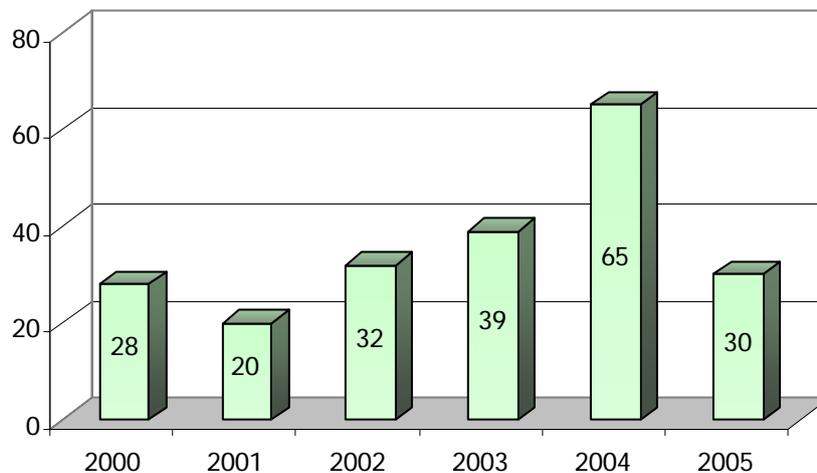
Situation

Rape is one of the most serious crimes committed against Cambodian women. It is also one of the least recognized crimes due to Cambodian social and cultural attitudes towards women and sexuality. There are no clear statistics on the number of women who are raped every year in Cambodia. However in recent years, the *reporting* of rape crimes has significantly increased.²⁵ In recent years, cases of violent rapes²⁶, gang rapes²⁷ and rape crimes of children²⁸ and younger women²⁹ have also been reported to several NGOs.

This increase in reporting may be attributed to greater awareness of women's rights due to significant efforts by civil society to advocate and educate and also by increased reporting in the media of rape crimes³⁰.

Rape is not mentioned within the State Report thereby failing to acknowledge rape as a serious crime affecting Cambodian women.

RAPE CASE REPORTED TO LICADHO



The 2005 figure covers only January to July

Legislation

Rape is a crime (felony) under the UNTAC Criminal Code³¹ and also under the *Law on Aggravating Circumstances of the Felonies*.³²

²⁵ LICADHO statistics 2000-2005; ADHOC statistics 2000-2005; and CWCC statistics 1997-2005.

²⁶ LICADHO case report, Kampot May 2003 (questionnaire answers).

²⁷ LICADHO case report, Kompong Chhnang May 2004 (pg 65 translation).

²⁸ CWCC case report, Kandal January 2005 (pg 49 translation).

²⁹ ADHOC case report, June 2003 (pg 7 ADHOC [cedaw]1).

³⁰ *Rape and Indecent Assault*, (LICADHO Report, March 2004), p.5.

³¹ UNTAC Criminal Code, Article 33.

Definition of rape

The definition of rape is “any sexual act involving penetration carried out through cruelty, coercion or surprise.”³³

Committing the act of rape or *attempting* to commit rape is considered the same crime under Cambodian law.³⁴

Policy

The CNCW aims to promote the status, role and social welfare of Cambodian women for the purpose of reducing and abolishing all forms of discrimination and violence against women. However, there is no specific governmental policy on rape in Cambodia.

Under Reporting

‘Reported cases may represent only a small fraction of the sexual assaults actually perpetrated in Cambodia. It is impossible for any organization, to reliably estimate the number of rape cases that go unreported every day.’³⁵

From 1997-2005, over one thousand rape cases have been reported to investigating NGOs.³⁶ This figure however, grossly underestimates the true extent of rape crimes perpetrated in Cambodian society. There are many factors that may contribute to victims refusing to report rape crimes and in pursuing legal action:³⁷

- Distrust of the justice system (the victim may be wary of corruption within the judicial system).
- The costs of pursuing a prosecution (there are no legal court fees for proceeding with a criminal case, however, in practice, hidden fees are demanded at various levels due to corrupt officials).
- Victims may fear retaliation from their perpetrator (especially when the perpetrator is in a position of authority over the victim).
- Social and cultural myths (the victim may sometimes believe they are at fault for the rape).
- Unofficial “compensation” settlements between perpetrators and victims (many cases are settled out of court).

³² *Law on Aggravating Circumstances of the Felonies*, Article 5.

³³ UNTAC Criminal Code, Article 33 and *Law on Aggravating Circumstances of the Felonies*, Article 5.

³⁴ *Law on Aggravating Circumstances of the Felonies*, Article 5.

³⁵ Op Cit 30, p.6.

³⁶ LICADHO statistics 2000-2005; ADHOC statistics 2000-2005; and CWCC statistics 1997-2005.

³⁷ Op Cit 30, p.6.

- Loss of virginity (victims may be overcome with shame if they lose their virginity during a rape). This loss of virginity may seem more important than punishment of the perpetrator.

Cambodian Cultural and Social Attitudes

Rape in Cambodia must be viewed within the context of Cambodian cultural and social attitudes towards male and female sexuality. Men are perceived to have more value in Cambodian society than women.³⁸ A common saying in Cambodia explains that “men are gold, and women are cloth.” This saying expresses the double standards in Cambodia where men can be promiscuous and not tarnished, as gold still shines when clean. But women, once they lose their virginity, like white cloth that is dirtied, can never be clean again.³⁹ “The saying makes it clear that a Cambodian woman must be careful to ensure her purity and her compliance with codes of behaviour ... in Cambodian society, a girl who loses her virginity [even if she is raped] before marriage brings shame to her family’s honour and status.”⁴⁰

Pre-marital sex is therefore unacceptable for Cambodian women, ‘who are expected to remain virgins until marriage, otherwise they are deemed unfit for marriage, even if they have been raped.’⁴¹

Many rape victims remain silent through feelings of shame or fear or they may even blame themselves for the attack. It is also difficult for people to understand certain kinds of rape. For example people may often report the rape of a child,⁴² however rape within a marriage or a relationship may not always be considered rape, as a woman should always accede to her partner’s wishes. There is strong support for prison terms for rapists, but less support for prison terms when the perpetrators are boyfriends or sweethearts⁴³.

Rape of sex workers is also not widely recognised. One survey found that many young Cambodians in Phnom Penh did not believe that gang rape of a prostitute (known as *bauk*) was a crime. It found that only 13% of males and females “recognized forceful sexual relations between one prostitute and numerous men as being rape, or wrong because the prostitute did not give permission.”⁴⁴

³⁸ *Rape and Indecent Assault: Crimes in the Community Report*, (Diane O’Connell, LICADHO Special Report, February 2001), p.10 citing *Cambodia NGO Report on the Implementation of the Beijing Platform for action* (Prepared by Beijing 5 working group of Gender and Development Network and NGO Forum’s Women’s Working Group, February 2000), p.21.

³⁹ *Ibid*, p.10, citing Physicians for Human Rights, 1996, *Commercial Sexual Exploitation of Women and Children in Cambodia*, (Personal Narrative: A Psychological Perspective, Boston, 1997).

⁴⁰ *Ibid* p.12 citing *A Good Wife: Discussions with Married Women about Life, Health, Marriage and Sexuality* (CARE International Cambodia, Phnom Penh, 2001).

⁴¹ *Op Cit* 38, p.10 citing *Sexually Abused and Sexually exploited Children and Youth in Cambodia, a qualitative assessment of their health needs and available services in selected provinces* (United Nations, Economic and Social Commission for Asia and the Pacific, New York, 2000).

⁴² LICADHO statistics 2000-2005; ADHOC statistics 2000-2005; and CWCC statistics 1997-2005.

⁴³ *Op Cit* 4, p.9 explains: “ In Cambodia, the term “boyfriend” is used to describe a relationship that takes place before marriage, and the term “sweetheart” is used to denote a range of relationships outside an existing marriage (for example, to describe a “second marriage”) that are not one-time, commercial sex acts.”

⁴⁴ *Op Cit* 30, p.23 citing *Paupers and Princes: Youth Attitudes Towards Gangs, Violence, Rape, Drugs and Theft* (GAD, 2003), p.8.

“Survivors of rape often face discriminatory attitudes from a society that considers them as “fallen women” (*srey khoic*). Social scorn and family shame resulting from loss of virginity when raped are powerful factors that result in some victims feeling that the only profession they are now fit for is prostitution. Some parents even encourage their daughters into prostitution if they are no longer virgins. In other cases, the victim is forced to marry the man who raped her, in a bid to preserve her family’s reputation.”⁴⁵

Major Obstacles

Inadequate rape provisions in current legislation

There are several gaps in current rape legislation. For example, the laws do not explicitly define consent to a sexual act, and legal officials may have difficulty in deciding whether or not consent was genuinely given during a sexual act. Legislation also currently lacks explicit provisions against marital rape and incest. However, the newly passed *Law on the Prevention of Domestic Violence and the Protection of Victims* makes violent rape within a domestic context, illegal.⁴⁶ Rape within a marriage is now unlawful.

Misinterpretation of the law by judges, prosecutors and defence lawyers

Judges must apply a strict interpretation of the law in Cambodia. “The courts must not use any procedure or interpretation of the law that is 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.”⁴⁷ However, misinterpretation of the rape provisions occurs in many cases in Cambodian courts.

Misinterpretation of the law can occur when judges use a test of penetration and loss of virginity to determine whether rape has occurred. Judges have actually stated that rape has not occurred if ‘touching was on the outside’⁴⁸ or ‘rape was not deep and virginity has not been lost.’⁴⁹ However the rape provisions are very clear in saying that anyone who attempts to commit rape will also be guilty of rape.⁵⁰ Therefore, judges should have no reason to use these tests to determine whether or not a victim was raped.

Lack of physical and medical evidence may also lead judges to consider that consent was given during a sexual act. In many rape cases, medical certificates stating that the victim was raped are used to convict perpetrators. ‘The courts regard medical certificates as the primary method of establishing the lack of consent of the victim.’⁵¹

⁴⁵ Op Cit 38, p.i.

⁴⁶ *Law on the Prevention of Domestic Violence and the Protection of Victims*, Article 7.

⁴⁷ Op Cit 30, p.19 citing *Courts Handbook*, (Cambodian Criminal Justice Assistance Project, July 1999), p. 119.

⁴⁸ Op Cit 30, p.19 citing Bill Bainbridge & Lon Nara , “Serial offender back in court on charge of attempted rape”, *Phnom Penh Post*, May 24-June 6 2002.

⁴⁹ Op Cit 30, page 19 citing Stephen O’Connell & Lon Nara, “Virginity ruling lets rapist off the hook”, *Phnom Penh Post*, January 5-18, 2001.

⁵⁰ UNTAC Criminal Code, Article 33 and *Law on Aggravating Circumstances of the Felonies*, Article 5.

⁵¹ Op Cit 30, p.13.

If there is no physical evidence of rape and no medical certificate confirming this fact, then judges may declare the intercourse was consensual and not rape.⁵²

Impunity

A culture of impunity currently exists towards perpetrators of rape crimes in Cambodia. Many rapists may believe that they are above the law and that if they are caught their only punishment will be to pay money.⁵³ However, impunity is more likely to occur when the perpetrator is wealthy or holds a position of authority such as police, military or government officers.⁵⁴ Rape victims may also feel that their perpetrators will not be punished and this may deter them from reporting rape crimes or pursuing legal proceedings.

Corruption

Corruption is evident in the judicial system in Cambodia. For example, perpetrators can pay police not to be arrested, pay the courts for the charges to be reduced or dismissed or to receive a lower sentence.⁵⁵ At different stages of the legal proceedings, rape victims face financial charges for court action such as paying transportation expenses to judges or paying bribes to court clerks in order to forward rape complaints. Under Article 38 of the UNTAC Criminal Code, these charges and practices are illegal.

Unlawful compensation payments

The most serious obstacle to the prosecution of rapists is the unlawful practice of compensation payments. These payments are effectively out-of-court settlements between the rape victim and the perpetrator. In effect, rapists pay their victims not to pursue legal proceedings against them. Rapist are able to buy their way out of being punished.

This practice has been entrenched in Cambodia for many years. Rape victims may choose not to report the rape to the police, but instead directly broker a compensation payment with the perpetrator. In some cases police may force victims to settle with their perpetrators so that they may receive a fee for assisting with compensation. Often the families of the victim feel they have no alternative because they are in a weak position, poor and without connections, and they are threatened or intimidated by the authorities or the accused person's family.⁵⁶

Under Cambodian law, rape victims are entitled to pursue both a criminal and a civil action. This civil action may lead to compensation being paid by the perpetrator. However, the payment of compensation resulting from the outcome of a civil action does not end the victim's right to proceed with criminal charges against the perpetrator.

⁵² Ibid.

⁵³ Op Cit 30, p.10, this observation is based on interviews with NGO workers.

⁵⁴ Op Cit 38, p.51.

⁵⁵ Op Cit 30, p.11.

⁵⁶ Op Cit 38, p.51.

However, since the practice of unlawful settlements are increasingly common in Cambodia, and in many cases are actually initiated by police and other authorities⁵⁷, victims may not understand that these settlements do not preclude the State from prosecuting perpetrators.

Recommendations

The RGC should immediately implement the following recommendations:

- Embark on a sustained advocacy campaign to educate Cambodians (focussing on women) on the subject of rape. E.g. What is rape? What to do if someone has been raped?
- Embark on a sustained advocacy campaign to educate Cambodians (focussing on women) on the rights of rape victims, the rape laws and the criminal process.
- Educate legal and judicial officials on the correct interpretation of rape legislation. Prosecute those officials that misinterpret and abuse the law, including those who participate in or facilitate the brokering of compensation settlements.
- Enact rape legislation that clarifies the definition of 'consent' as well as elements of the crime (e.g. any penetration or attempted penetration is considered rape).
- Provide counselling and rehabilitative shelters for victims of rape crimes.

⁵⁷ Op Cit 38, p.36.

IV. Trafficking of Women

Situation

Since the early 1990's, increasing numbers of Cambodian women have been trafficked⁵⁸, many for the purpose of sexual exploitation. This rise in trafficking can be traced "to the economic and social changes associated with the transition from a closed socialist to a capitalist enterprise system."⁵⁹ The presence of UNTAC (1991-1993) after decades of civil war also created a huge demand for the sex industry and was seen as contributing to the expansion of trafficking business.⁶⁰

In 2005, Cambodia became officially recognized as one of the worst countries for trafficking of women⁶¹ and was subsequently placed in a Tier 3 category by the United States of America, for the RGC's lack of progression in preventing trafficking and providing protection to victims of trafficking.

As with all forms of violence against women, it is impossible to account for specific numbers of Cambodian women who have been trafficked. However, recent reports show that growing numbers of women are being trafficked to Malaysia⁶², Singapore,⁶³ Thailand⁶⁴ and Vietnam⁶⁵ for the purposes of sexual exploitation, forced domestic labor and factory work.

The State Report notes that 'trafficking of women is the worst form of violence against women'⁶⁶ and provides information on measures taken to identify, prevent and combat trafficking of women and girls both into and out of Cambodia.⁶⁷ However, to date there has been no evaluation on the effectiveness of each of these measures and programs in decreasing trafficking of women.

⁵⁸ Research and Action (RA) Project on Trafficking in Women in the Mekong Region (Cambodia and Vietnam), (Global Alliance Against Traffic on Women (GAATW) Report 2001), p.2.

⁵⁹ Ibid, p.14 citing CWDA (Report, 1999), p.7.

⁶⁰ Ibid, p.14.

⁶¹ UNIFEM update report to CAMBOW, September 2005.

⁶² *Trafficking of Cambodian Women and Children: Report of the Fact-Finding in Malaysia*, (CWCC, August 2005).

⁶³ Ibid.

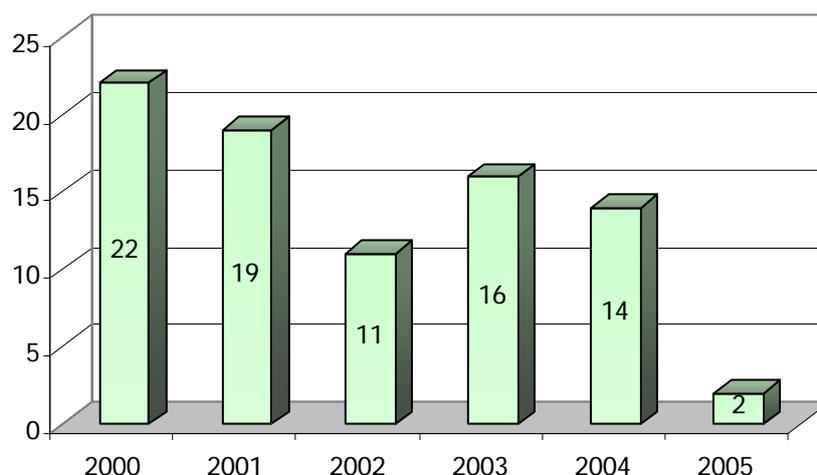
⁶⁴ The Return and Reintegration of victims of Trafficking from Cambodia to Thailand 01 July 2004 - 30 March 2005 AND Repatriation from Cambodia to Vietnam of Vietnamese Victims of Trafficking from 15 May 1999 - 30 March 2005, (Ministry of Social Affairs, Veterans and Youth Rehabilitation (MoSVY) Report, 2005).

⁶⁵ Ibid.

⁶⁶ *Initial, Second and Third periodic report* prepared by the Royal Government of Cambodia (RGC) to the Committee on the Elimination of the All Forms of Discrimination Against Women, paragraph 156, p.29.

⁶⁷ Ibid, paragraphs 179-185, pp. 32-33.

HUMAN TRAFFICKING CASES REPORTED TO LICADHO



The 2005 figure covers only January to July

Legislation

Trafficking of women is illegal under the *Law on Suppression of Kidnapping, Trafficking, Exploitation of Human Persons*⁶⁸ and the *Constitution*.⁶⁹

Definition of trafficking

There is no specific definition of trafficking in any domestic legislation. However, it is widely accepted that the distinguishing feature of trafficking is the presence of force, coercion or deception for the purposes of exploitation.⁷⁰

Draft anti-trafficking law

The National Assembly is currently reviewing the draft *Law on Human Trafficking and Sexual Exploitation*. This draft anti-trafficking bill will provide law enforcement and judicial officials with more powers to arrest and prosecute traffickers, and provide protection to victims of trafficking.

Policy

The CNCW aims to promote the status, role and social welfare of Cambodian women for the purpose of reducing and abolishing all forms of discrimination and violence against women. In addition, the MOWA signed an agreement to fight all forms of trafficking of women and children in Cambodia for three years (2000-2003) with the Finnish government.⁷¹ This program was aimed at implementing officials situated at border areas to respond to trafficking of women and children.

⁶⁸ *Law on Suppression of Kidnapping, Trafficking, Exploitation of Human Persons*, Article 2.

⁶⁹ *Constitution*, Article 46.

⁷⁰ *Gender Analysis of the Patterns of Human Trafficking into and through Koh Kong Province*, (Legal Support for Children and Women (LSCW), January 2005), p.13 citing Huntington D., 2002.

⁷¹ This agreement was signed in March 2000.

The Phnom Penh Municipal Authority has also established a Joint Committee for the Implementation of the Policy Guideline on the Prevention of Sexual Exploitation of Women and Children. The Committee's objective is to find and prosecute traffickers.

Effects of a Post Conflict Society

The problem of trafficking of Cambodian women can be linked to its recent history. Three decades of civil war and political and economic upheaval has had a major impact on the lives, status and roles of both women and men within the household as well as society as a whole.⁷² Significant and widespread loss of human life during the Khmer Rouge regime seriously eroded the material, cultural and emotional foundations of both families and communities.⁷³ There are now fewer support systems than exist in traditional extended families or in the community, to help poor families or those with problems. This can be seen as one of the contributing factors to the development of trafficking of women in the country⁷⁴.

Poverty and Migration

Two fundamental factors facilitating the trafficking of women are poverty and migration. Women from poor, uneducated families become vulnerable to exploitation and trafficking during the migration process as they travel to different areas such as Phnom Penh and across the border to Thailand⁷⁵ to find work. In particular, women living in border areas such as Koh Kong, Banteay Meanchey and Svay Rieng are susceptible to trafficking. During the migration process, women are often deceived into procuring work through a trafficker, who also promises assistance to a destination in exchange for a fee. This process is known as 'recruitment.'

During the migration process, women often become completely reliant on the trafficker. After arriving in a new city or country, where they cannot speak the language, where there is no support system or assistance provided, it is at this point that women become susceptible to manipulation⁷⁶ and trafficking. Debt bondage may also occur at this stage – a situation where a woman is told that she is now indebted to the person who facilitated her travel and that she must pay back the debt by working in prostitution or other forms of work.⁷⁷ Situations also arise where the deduction of the debt is not done in a reasonable manner and the victim may owe a debt much higher than the costs of travel incurred (this may occur where a trafficker wishes to keep a victim in debt for as long as possible).⁷⁸

⁷² Op Cit 58, p.14 citing, *Gender Issues in Contemporary Cambodia*, (Center for Advanced Study Cambodia Report, v.II, no.3, Nov-Dec. 1996).

⁷³ Op Cit 58 citing Sean and Barr, 1998, p.16.

⁷⁴ Ibid.

⁷⁵ Op Cit 70, p.36.

⁷⁶ Ibid.

⁷⁷ Op Cit 58, p.6.

⁷⁸ Ibid.

Prostitution

Many women are trafficked in and out of Cambodia to work in the sex industry but the largest number are trafficked within Cambodia itself.⁷⁹ Research indicates that 64.45% of prostitutes have been forced into prostitution, 52.9% were tricked by the prospect of a job, 11.04% were sold by family members and 0.58% of women were raped.⁸⁰ In the case of women who have been trafficked for sexual purposes, the percentage of those claiming they were duped by offers of improved employment has increased.⁸¹ Victims trafficked outside Cambodia, who are forced into prostitution, may also face arrest and criminal charges for their involvement in the sex trade⁸² as well as suffering from health problems and disease such as HIV/AIDS.⁸³

The Asia Regional Cooperation to Prevent People Trafficking 'Gender, Human Trafficking, and the Criminal Justice System in Cambodia' report notes that one problem facing trafficking victims is the crackdown on the sex trade in general, rather than on what are widely agreed to be its worst forms - child and forced prostitution, much of which involves trafficking. This pushes the industry further underground and tends to make the situation worse rather than better. By failing to distinguish between forced and non-forced sex work, the system is also providing a 'business incentive' to the brothel owners to use forced labor on the basis of cheaper costs.⁸⁴

Major Obstacles

Violation of Immigration Laws

There are indications that 'trafficked women and girls are dealt with as criminals who have violated immigrations laws and not as victims whose rights were violated'⁸⁵. Victims of trafficking are often prosecuted on illegal immigration charges⁸⁶. To date, the RGC has not drafted any legislation protecting trafficking victims from prosecution on illegal immigration charges. Reports of countries where women have been charged with illegal immigration⁸⁷ show that Memorandums of Understanding between the governments of Cambodia and the receiving country would benefit victims of trafficking in this area.

For example, the Cambodian Women's Crisis Centre's (CWCC) fact-finding mission in Malaysia⁸⁸, found that Cambodian woman who are trafficked and found guilty of illegal immigration, will usually be detained in detention centres. Often, victims will not have access to a translator or lawyer and are at the 'mercy and compassion of their wardens.'⁸⁹ The mission also found that those victims who had finished their

⁷⁹ Op Cit 7, p.18.

⁸⁰ *Annual Report, January - December 2002* (CWCC, 2002), p.17.

⁸¹ Op Cit 7, p.19.

⁸² *Gender, Human Trafficking, and the Criminal Justice System in Cambodia*, (Asia Regional Cooperation to Prevent People Trafficking (ARCPPT), December 2003), p.14.

⁸³ Op Cit 70, p.54.

⁸⁴ Page 14.

⁸⁵ *List of Issues and questions with regard to the consideration of reports - Cambodia*, (Committee on the Elimination of Discrimination against Women Pre-session working group for the thirty-fourth session 16 January - 3 February 2006), paragraph 13, p.6.

⁸⁶ Op Cit 82, p.14.

⁸⁷ Op Cit 62, p.27.

⁸⁸ Op Cit 62 p.28.

⁸⁹ Op Cit 62

sentence were kept in the detention camp, since no authorities came to assist their return to Cambodia.⁹⁰

The CWCC fact-finding mission also noted the possibility of re-victimization or re-trafficking of trafficked women⁹¹. This often occurs when members of the trafficking network visit women in detention centres and 'rescue' them. Victims are then forced to work in prostitution or are sold to another buyer.

Insufficient protective legislation

The current laws are insufficient in the protection of trafficking victims, the punishment of traffickers and in the prevention of trafficking. The draft *Law on Human Trafficking and Sexual Exploitation* has yet to be passed RGC and political will is needed to overcome the inadequacies in current anti-trafficking legislation.

Lack of law enforcement and impunity

There are problems with ineffective anti-trafficking legislation and some provincial judges have even complained about the lack of clear instruction in prosecuting traffickers and have used this as an excuse for obstacles in law enforcement.⁹² However, the more serious problem with regards to prosecution of traffickers is connected to issues of corruption, impunity, and collusion in a context of generally lax law-enforcement and limited sensitivity of law enforcement personnel to the harmful impact of human trafficking.⁹³

In Cambodia, laws are not strenuously enforced and punishments are weak. Authorities have been known to accept bribes, especially in western currency, and some are even part-owners of brothels and prostitution enterprises.⁹⁴ Cases are sometimes solved through police intervention,, where the perpetrator pays monetary compensation to the victim⁹⁵, with police earning a fee from this unlawful settlement. Perpetrators can also expect to receive assistance from immigration officials in the major trafficking towns on Cambodia's border, such as Poipet (on the Thai border).⁹⁶

Few traffickers have ever been prosecuted and convicted. Essentially "trafficking cases are sad examples where impunity has become the rule to the extent that a sentence of guilt will be regarded as an abnormality."⁹⁷

Insufficient repatriation, reintegration and rehabilitation measures

Whilst there have been attempts at repatriating trafficking victims from countries such as Thailand⁹⁸ and Vietnam⁹⁹, current efforts by the RGC to assist victims of

⁹⁰ At page 27.

⁹¹ At page 28.

⁹² *Research and Action Project on Traffic in Women in the Mekong Region - The Cambodia Case*, (Cambodian Women's Development Agency (CWDA) Preliminary Report, 1998).

⁹³ Op Cit 82, p.32.

⁹⁴ Ibid.

⁹⁵ Op Cit 70, p.77.

⁹⁶ Op Cit 7, p.19.

⁹⁷ Ibid citing *Human Rights Situation*, (The Cambodian Human Rights and Development Association, Report, January 2004), p.40.

⁹⁸ State Report, paragraph 186, p.40.

trafficking are still insufficient. Cambodia also lacks extensive reintegration and rehabilitation measures for victims. In order to help these women reintegrate successfully back into their homes and villages, the RGC must make a concerted effort to devise and implement specific programs for the assistance of victims of trafficking.

Recommendations

The Royal Government of Cambodia should immediately implement the following recommendations:

- Pass the draft *Law on Human Trafficking and Sexual Exploitation* and implement the provisions accordingly.
- Evaluate the effectiveness of the Government's measures and programs in decreasing trafficking of women.
- Educate legal and judicial officials in implementing the current anti-trafficking laws.
- Provide training and education for police and border officials working in proximity to trafficking and sex trade centers.
- Increase the number of trained female law enforcement officers and legal officials in dealing with victims of trafficking and sexual exploitation.
- Increase efforts to repatriate victims of trafficking and assist those NGOs actively engaged in repatriation efforts.
- Provide counselling services and rehabilitation and reintegration for victims of trafficking.

⁹⁹ Op Cit 64.

V. Conclusion

This report has explored the issue of violence against women in Cambodia in the context of domestic violence, rape and human trafficking. The aim of the report has been to highlight the current situation of each form of violence and to explore the obstacles that are faced in trying to combat such violence. Underlying these obstacles is the inadequacy of the RGC's response and political will in addressing the issues and embarking on reform. Reform in legislation, education and in the social and cultural beliefs that all help to breed and perpetuate such violence.

Legislation

Implementing the newly enacted *Law on the Prevention of Domestic Violence and the Protection of Victims*, must be a priority for the RGC. Likewise the draft *Law on Human Trafficking and Sexual Exploitation* must be enacted. These are major steps in implementing the principles of the CEDAW and educating the public that violence against is a crime. However laws can only be as powerful and effective as the people that enforce them. Both the police and the judiciary must fully recognize the validity of such laws, even though long held social attitudes may differ from what is written in the law.

Furthermore the RGC must utilize mechanisms that evaluate the effectiveness of these laws. The RGC will only know if these laws are fulfilling their purpose and potential through monitoring the application of such laws.

Education and Social Attitudes

Education is the key to evolving social attitudes that may condone violence against women. Regardless of laws that may offer protection to victims of violence, education can be a more powerful tool in preventing such violence. Only when women understand their rights will they be able to stand up for them and only when people understand the rights of women can they respect them.

Educating the police and the judiciary on how to apply and interpret the law is also an essential part of the process. Without clear instructions and an appreciation of what the laws represent, the issue of violence against women may continue to be disregarded as it has been for the last decade.

Violence against women is a serious problem in Cambodia. The roots of discrimination in society that deny women the protection of the law and that continue to justify the cycle of violence must be addressed by the RGC. It must be recognized that violence against women is a problem affecting everyone in Cambodian society.