



**RAPE AND
INDECENT
ASSAULT :
CRIMES IN
THE COMMUNITY**

**A LICADHO SPECIAL REPORT
FEBRUARY 2001**

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EXECUTIVE SUMMARY

Every day, an increasing number of women and children in Cambodia become victims of sexual abuse (rape or indecent assault). They are victims not only of the sex crimes committed against them, but also of the violence, humiliation and physical injury associated with these crimes. They are also victims of the psychological implications of rape and indecent assault, a legacy that victims silently suffer for many years, if not their lifetime, without any help or understanding.

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.

No one deserves to be raped and no one has the right to rape. Rape and indecent assault are atrocious acts of violence and a severe form of injustice against women and children, who are often blamed for being victims. Victims are often left traumatized and ashamed, so are reluctant to come forward and lay complaints against their rapists.

There are many myths in society with respect to rape. Some Khmer men believe that “men can’t control their feelings” and thus cannot be blamed for acting on their passion. However, rape is not about passion or sex; it is about violence and power. Rape is primarily an expression of violence, anger and power meant to hurt, control and humiliate the victim. The primary motive for rape is to discharge feelings of anger, contempt, vulnerability or inadequacy. Rape is closer to torture than sex. The myths about rape and indecent assault must be addressed and abolished through education and dissemination of information throughout Cambodia.

Rape can have grave physical consequences for the victim, including sexually-transmitted diseases and HIV/AIDS, as well as immense psychological consequences. Because many victims do not report rape, they may get no medical treatment or STD screening. Even for those who do seek treatment, the existing medical and psychological services for sex abuse victims are inadequate.

Most human rights advocates believe rape in the community is increasing, and that victims are getting younger, although there is no sound statistical evidence to support this. Reasons put forward to support the belief of an increase in rape include the climate of impunity in Cambodia, the growth in and easy access to violent and explicit pornography, the availability of drugs that can be used to dope a victim, and belief among many Asian men that sex with young virgin girls has health benefits. Furthermore, the spread of HIV/AIDS in Cambodia has resulted in some men seeking out younger and

younger girls to have sex with because they believe they will be safe from disease. Some wives also help their husbands rape young girls because they are concerned of catching HIV/AIDS if their husbands visit brothels or have girlfriends who are not virgins.

There is an urgent need for statistical studies to determine the true extent of sexual abuse in Cambodia, and verify whether it is increasing or not. However, in any event, it appears clear that rape and indecent assault are prevalent in the community, and very little is being done to address the problem, either in terms of prevention or rehabilitation of victims.

The sexually abused are victimized repeatedly – first by the abuser or rapist, and then by society. Traditional beliefs about women’s role in society and the importance placed on virgin brides increases the shame felt by the victim and her family and can result in suicides, domestic beatings of the victim, taunts from village members, continual harassment from the perpetrator or his family, severe physical deterioration, and psychological problems. These legacies of rape will scar the victim’s life forever, while most rapists are never brought to justice, and of those who are, many do not receive adequate punishment according to the law.

The highly prized commodity of virginity in Cambodia shapes attitudes to sexual violence on many levels. The shame associated with loss of virginity often becomes the focal point of rape, shifting the focus from the perpetrator and his unlawful violent act, to the victim and the “problem” of the loss of her virtue. These social attitudes and myths about rape and the traditional role of women influence judges in rape trials, especially in the way they interpret medical evidence, often to the detriment of the victims.

The most common type of evidence relied on in rape cases which go to trial are medical certificates based upon an examination of the victim by a health worker, who often has little expertise in the field. The certificates are also often based on medical examinations of the victim conducted some time after the rape, given that victims often do not immediately tell someone or seek medical help. The information on the certificates is frequently inadequate.

When reviewing such medical certificates, judges frequently look for evidence of severe physical injury to the genital area of the victim as proof that sex was non-consensual. In the minds of some judges, an absence of virginal tears would suggest that the sex was consensual, and not rape. But research in the United States has shown that most rapes, including vigorously resisted ones, leave no cuts or bruises on the body or in the vagina. Many rapes in Cambodia are accompanied by weapons or threats of violence or death, so many victims do not struggle or fight back, so are even less likely to sustain physical injury, so judges would be less likely to hold the sex was not consensual.

Many rapes do not get end up in court at all. Many cases are settled by a payment of money by the perpetrator to the victim and/or the victim’s family instead of being prosecuted according to the law. The police and/or court staff are often involved in

helping to broker, for a fee, monetary settlement instead of carrying out their legal obligations to investigate and prosecute these serious criminal offences.

Of the rape and indecent assault cases investigated between January 1999 and March 2000 by LICADHO, only 51% have been resolved in some way (legally or otherwise) and are now closed. Of the cases closed, 41% were settled by a payment of money. Of the cases that are still unresolved and open, 26% of the perpetrators have escaped, while the rest of the cases are still being investigated or are awaiting trial – one to two years after the offences took place.

Both international and domestic law prohibits sexual abuse, but this means little for victims of rape and indecent assault. The rape and indecent assault laws applicable in Cambodia are inadequate, especially with respect to minors, and poorly enforced. Children are not protected because the law fails to define a minor with respect to crimes; it fails to define a legal age for sex, and it fails to provide a statutory rape law.

A new criminal code is planned, and two different drafts have reportedly been written. The first, drafted in Khmer language, not only fails to address the many shortcomings of the existing criminal law relating to rape and indecent assault, but also creates many more. The second draft criminal code, written in French, has around 800 articles and has yet to be translated into Khmer or English. It is vital that the opportunity to advance the criminal law in the area of sexual offending by the creation of a new penal code is not squandered. The new code must address the many deficiencies in the current law, and be openly drafted and subjected to public debate. The Khmer draft code currently circulating is totally inadequate and should not be accepted.

The gulf between the law and its implementation in Cambodia is well known and documented. In the cases investigated by LICADHO, there is plenty of evidence of the failure of the police and the judiciary to follow the law, prosecute the accused and provide justice to victims. This results primarily from corruption, as “easy money” can be made out of the misery of someone being raped. A contributing factor is that the authorities do not view rape as a serious crime.

The way judges apply the law is often incorrect and inconsistent. Judges frequently apply the law in the way most expedient to meet their interests, which is often a payment of money by the accused to receive a not guilty verdict or a suspended sentence. This leads to the entrenchment of judicial decisions incorrect in law, and results in serious sexual offenders receiving very little punishment, if any at all. An example of the kind of reasoning which has gained a strong hold in judges’ minds is that if the victim does not sustain serious enough injuries to her genitals, then she was not penetrated “deeply enough” for it to be rape; thus the judge decides to change the charge against the perpetrator from rape, a crime, to indecent assault, a misdemeanor. This is incorrect, as any penetration (however “deep”) is defined as rape in the law. A lesser conviction for the misdemeanor of indecent assault does, however, allow the judge to give a suspended sentence, meaning the perpetrator may spend little or no time in prison; in such cases, it is

often suspected that money paid by the perpetrator is the real reason for the judges' decision to reduce the charge. Such corruption and disregard of the law perpetuates the myth that violence against women is not a serious crime.

The authorities often fail to meet their legal obligations to investigate and prosecute sexual abuse cases. Permitting these crimes to go unpunished perpetuates the climate of impunity in Cambodia, and contributes to the cycle of violence that has hindered the development of Cambodia for decades.

Rape and indecent assault are serious crimes, and to treat them in any other way dismisses the seriousness of sex offending and the impact these crimes have on victims, and on all levels of society. Society's sanction of a payment of money as an acceptable form of justice for criminal offences must stop. The only way that this can happen is by the implementation of a rule of law in Cambodia that people trust, which they currently do not. To build trust, corruption in the police and judiciary must be addressed, and abusers must receive adequate punishment according to the law.

The police and judiciary are poorly trained and are given little financial support to run their departments. Corruption is tolerated by the government and even encouraged, as salaries paid to government employees leave them little option but to find alternative ways to make a reasonable living. Lack of law enforcement and corruption are at the heart of the perpetuation of sexual abuse (and all crimes) in Cambodia. It is up to the government to strengthen the legal system, but to date it has shown little will to do so.

While sexual abuse affects all ages and gender in Cambodia, it is Cambodia's youth who are most vulnerable, and who are increasingly affected as victims, and as offenders. Of sexual abuse cases investigated by LICADHO between January 1999 and March 2000, 7% of the suspected perpetrators were aged under 16, an alarming figure, especially given the lack of rehabilitative facilities for sex offenders in Cambodia. It is recognized throughout the world that sexual abuse has devastating psychological implications for those who suffer it, and to a lesser extent those who witness it. Often a cycle of abuse pattern is established where the abused may in turn become abusers, or continue to be victims of abuse throughout their lives. Given the number of young Cambodians affected by sex crimes, a grave concern arises for the future social health of the country.

Cambodia is poorly placed to deal with the many grave consequences of sexual abuse, both on individual victims, and society as a whole. Inadequate treatment for both the physical and psychological effects on the sexual abuse victims is a large problem that needs to be addressed.

Physical consequences of rape can include injuries suffered during the crime, abdominal pains, vaginal complaints, and sexually-transmitted diseases including the life-threatening HIV virus. Because many victims do not report rape, many do not receive adequate medical care or screening, especially tests for HIV/AIDS or other STDs. Furthermore,

many victims do not have access to adequate medical care due to financial or location constraints.

The psychological problems of rape and indecent assault can have a more devastating effect on the victim, especially over time. Symptoms typically suffered by victims include severe anxiety, guilt, loneliness, depression, lack of confidence, chronic bed-wetting, aggressiveness, self-mutilation, suicide, fear, humiliation, shame, embarrassment, self-blame, helpless, decrease in appetite, nausea, tension headaches and fatigue.

While there are some effective counseling programs, mainly in Phnom Penh, most victims do not received any counseling, especially in provincial areas. For very young child victims, and victims over 18, very little counseling options are available. There is a severe lacking of qualified people available to help victims recover from these life-crippling implications of rape.

While privately acknowledged, sexual abuse is publicly ignored. Breaking the silence is vital if the problems associated with sexual abuse are to be addressed. Changing social attitudes towards sexual abuse and its victims will take a very long time, and can only come through education. Prevention programs are vital, and more that target sexual abuse specifically are needed. Rape in the community is a unique problem requiring unique initiatives.

While limited educational training on sexual abuse investigations is directed to police and local authorities, almost no judicial training is provided in this area. Similarly, there is an urgent need for training of health professionals to provide adequate services to sexual abuse victims. It is imperative that a strengthening in the collaboration between international organizations, non-government organizations, local authorities and the Royal Government of Cambodia begin immediately if the epidemic of rape and indecent assault in Cambodia is to be addressed.

**FOREWORD BY H.E. MU SOCHUA, MINISTER OF
WOMEN'S & VETERANS' AFFAIRS**

As Minister of Women's and Veteran's Affairs, I wish to contribute a few words to LICADHO's detailed and deeply disturbing report into the prevalence and effects of sex abuse in Cambodia. *Rape and Indecent Assault: Crimes in the Community* is an indispensable document outlining the challenges Cambodia faces in extending lasting and meaningful human rights to the most vulnerable of its people – women and children.

The case studies in the report are appalling to anyone concerned about human rights and in particular the rights of women and children in Cambodia. As a post-conflict society still struggling to come to terms with the murder and terror of the 1975-1979 Khmer Rouge regime, the revelation that a significant number of Cambodian women and children are victims to sexual violence in their communities is a sobering reminder of the limitations of Cambodia's still-fragile peace, social stability and future development.

Rape and indecent assault are serious crimes under Cambodian law, and should be properly investigated and prosecuted by police and judicial authorities in strict adherence to the law. The current prevailing lack of implementation of existing laws, lack of prosecution and punishment for sex offenders is deeply disturbing, and affects the future health and stability of Cambodian society.

The blame for sexual abuse is all too often placed on the shoulders of the victims, rather than where it should be – on the perpetrators. It is time that sex crimes are seen for what they are – gross injustices committed against innocent members of society. Sex crimes should attract respect and acceptance for the victims, and demands for prosecutions according to the law for the perpetrators. Sex crimes are often settled out of court; these negotiations are initiated and settled either by the local authorities or the police. According to the law, the prosecutor must file criminal charge which can serve a five to ten year sentence.

In my capacity as Minister of Women's Affairs, I intend to ensure that the Ministry prioritizes the drafting of comprehensive legislation to penalize sex offenders and protect Cambodian women and children from sexual crimes. Furthermore, it will be essential that police and court officials be trained in the proper procedures to be followed in incidences of sex crimes, and become sensitized to the pain and suffering of rape victims. The creation of rehabilitation services for victims of sex crimes must also occur along with long-term initiatives designed to educate wider Cambodian society of the crime of rape and the fallacy of traditional attitudes and stereotypes that foster a culture of impunity for sex offenders while increasing the pain and suffering of victims.

The information in LICADHO's report *Rape and Indecent Assault: Crimes in the Community* is both a warning and a challenge to improve the lives of Cambodian women and children of all ages. By revealing the extent of sexual abuse in Cambodia and the devastating impact it has on its victims, this document empowers both my Ministry and civil society to redouble their efforts to effect meaningful positive change in the lives of Cambodian women and children. Now both government and civil society in Cambodia must work together to eliminate sexual violence and the silent suffering of its victims.

PREFACE

There have been a number of publications about commercial sexual exploitation and domestic violence in Cambodia, but little has been published about rape and indecent assault (sexual abuse) outside those other contexts. While many human rights advocates agree that rape and indecent assault in the community is a large and growing problem in Cambodia, they acknowledge that these issues have taken a back seat to trafficking, prostitution and domestic violence, with less time and resources having been devoted to this area of sexual offending. It is now time to tackle the problem of sexual abuse.

This report analyzes the information obtained by LICADHO¹ through its investigations of rape and indecent assault cases, and discusses rape-related issues. However, this is not a countrywide statistical study, as throughout the world rape is one of the most under-reported crimes. Currently, there is insufficient data to accurately estimate the number of rapes and indecent assaults committed in Cambodia.

Rape and indecent assault cases accounted for 20.22% of the total cases investigated by LICADHO during 1999, and 26.30% during 2000. Many of the victims were children; these offences accounted for 60.75% of the cases investigated by LICADHO's Children's Rights Department during 1999, and 61.74% during 2000. Of the cases involving children, 23% were committed on children 10 years of age and under. Because of the significant number of these cases investigated by LICADHO, it was deemed timely to take a closer look at some of the issues involved to gain a better understanding of the problems, and thus better meet the needs of victims.

This report focuses only on rape and indecent cases investigated by LICADHO. Under LICADHO's mandate, rape and indecent assault cases are investigated by its staff if one or more of the following took place:

- the suspected perpetrator is a member of the government authorities
- the police have failed to investigate or acted improperly, for example threatened the victim
- a member of a government authority has acted, or is trying to act, as an intermediary between the victim and the accused in order to reach an out-of-court financial settlement
- the victim is a minor (aged 18 or under)

¹ LICADHO, the Cambodian League for the Promotion and Defense of Human Rights, is a non-governmental and non-political organization that was founded in 1991 and officially set up office in Phnom Penh in July 1992. Initially LICADHO cooperated with UNTAC by informing people on the voting process and monitoring election related abuses before and during the 1993 elections. It subsequently expanded and now has the following programs and activities: monitoring human rights violations, human rights education, medical assistance, project against torture, children's rights, women's rights and advocacy. It also monitors child labor in conjunction with the ILO. LICADHO has 15 offices in 14 provinces and one office in Phnom Penh.

Because of the limited mandate of LICADHO, the majority of rape and indecent assault cases investigated were committed against females aged 18 or under.

This report highlights some of the inherent problems and issues associated with sexual abuse in Cambodia. It is not intended to be the definitive analysis of all the issues involved or critique all current initiatives against sexual abuse, but focuses on issues apparent from the case investigations of LICADHO. It is hoped that this report raises awareness of the situation of sexual abuse and encourages more action to address the problems.

LIST OF ACRONYMS

ADHOC	–	Cambodian Human Rights and Development Association
CCPCR	–	Cambodian Committee for the Protection of Children’s Rights
CDP	–	Cambodian Defenders Project
CEDAW	–	Convention on the Elimination of all forms of Discrimination Against Women
CNCC	–	Cambodian National Council on Children
CRC	–	Convention on the Rights of the Child
CWCC	–	Cambodian Women’s Crisis Center
ECPAT	–	End Child Prostitution, Abuse and Trafficking
IOM	–	International Organization for Migration
LAC	–	Legal Aid of Cambodia
LICADHO	–	Cambodian League for the Promotion and Defense of Human Rights
NGOCRC	–	NGO Committee on the Rights of the Child
SSC	–	Social Services of Cambodia
TPO	–	Transcultural Psychosocial Organisation
UNICEF	–	United Nations Children’s Fund

METHODOLOGY

The initial focus of the author was to arrange the updating of information on all of the rape and indecent assault cases investigated by the Children's Rights and Investigation Departments of LICADHO from January 1999 until March 2000 (a 15-month period). These cases were first identified, the information analyzed and follow-up investigations undertaken.

The 15-month time period was chosen for several reasons:

- 1) While the investigative capacity of LICADHO has increased since it first opened its doors, only the last few years have produced reliable data in respect of rape and indecent assault cases.
- 2) A new casework database was introduced in the later part of 1999, allowing easier identification and tracking of sexual abuse cases (although not all cases have been entered into this system).
- 3) A longer period than 15 months was not considered viable, because undertaking follow-up investigations is time-consuming and difficult. This extra work had to be absorbed by LICADHO staff into their workday along with their normal workload.
- 4) There is a lag time between a case being reported to LICADHO and it reached some kind of a resolution, so March 2000 was deemed appropriate as a cut-off date for follow up investigations.

The main purpose of the follow-up investigations was to find out if there had been an outcome to the case and if so what the outcome was. A detailed questionnaire was provided to all the LICADHO coordinators in the different provinces that had cases to be followed-up, and it was their responsibility to provide the feedback to the questionnaire for each case that fell between the above dates. Unfortunately, much of this information was incomplete, due to a number of problems. This project relied on existing LICADHO staff to absorb what was asked of them into their normal duties. Also, gaining information from the courts proved to be very difficult. In the end, the information obtained was not uniform in detail or questions answered, so only uniform information was used. Some of the uniform information collected also remains incomplete and is so noted by the word "unknown" in the data presented. While there were problems associated with data collection, enough uniform information was obtained to highlight sexual abuse issues. The information collected shows:

- The type of violation(s). For example: rape, attempted rape, indecent assault, rape and murder.
- The gender and age of the victims and accused.
- The occupation of the accused.
- If the accused was known to the victim.

- If the victim was raped more than once, or on more than one occasion by the same accused.
- If the perpetrator was arrested and/or detained.
- The number of cases that went to court and the outcomes.
- Other case outcomes.

Due to the distribution throughout Cambodia of victims and perpetrators and the limited resources, in-depth research into each case was not realistic. It was recognized that qualitative interviews of victims and their families required well-trained interviewers who could apply consistent techniques to interviews if any meaningful results were to be obtained. Without funding it was impossible to train the people needed to undertake such sensitive interviews. In particular, it was decided not to pursue questions of psychological problems, health problems or STD transmission because of the further anxiety these types of questions may cause, and the lack of resources to help people who may have problems. As many people do not understand STD transmission, it was agreed that to bring up this topic without being able to provide free tests and medical treatment and/or psychological counseling might cause further problems for victims.

Instead, the focus of the interviews was on gaining quantitative data as to the biographical background of victims and offenders, case outcomes and whether medical treatment or advice was sought after the rape or indecent assault took place or became apparent to the victims' families.

As well as the 15-month time period, further information about the extent of sexual abuse cases dealt with by LICADHO is included in Annex 2 and 3. Annex 2 includes statistics on child rape, including over the period July 1999-September 2000. This annex is intended to follow on from a report on child rape prepared by LICADHO's Children's Rights Department in October 1999.² Annex 3 presents tables of sexual abuse statistics from cases reported to LICADHO from April 1, 2000 until November 31, 2000, the period immediately following the 15-month period which forms the basis of this report. December 2000 statistics had not been processed into the database and therefore were unavailable at time of writing. The April-November 2000 tables do not include outcomes of cases or other follow-up data, as this was not available at time of writing, due mostly to the time lag between when a case is first investigated until there is a resolution.

This report also includes information from the author's interviews with staff from organizations that support victims and/or provide legal assistance to people accused of sex offences. Some of these NGOs also provide health care, protection, training and/or rehabilitation and reintegration programs. While resources and time limited the number of people interviewed, the comments obtained go a long way in helping to identify problems associated with the way rape and indecent assault cases are dealt with in Cambodia. Since this qualitative data represents the opinions of the people interviewed,

² This report is titled *Report on Child Rape in Cambodia, prepared for UN Committee on the Rights of the Child*, October 1999.

the views expressed in this report are not necessarily the views of the author or LICADHO.

With regard to the statistical data in this report, it should be noted that the cases referred to do not represent a cross section of rape occurring in Cambodian society. The analysis is limited to the cases LICADHO has investigated and classified as rape or indecent assault. Because LICADHO deals with mostly child rape cases, few adult women victims are represented in the data. Because only a few rape cases involving foreigners and boys had been investigated in the time period analyzed, this report does not focus on those issues. Further, forced prostitution, sexual trafficking and marital rape and other domestic sexual abuse are not included in this report.³

The report's focus on child rape does not in any way portray an attitude that rapes against other sections of society are in any way less deserving of advocacy, rather that the analysis is limited to the data available. In spite of the narrow focus of this report, the problems identified are common for all victims of rape and indecent assault. However, it is acknowledged there may be different problems associated with categories of victims not specifically covered in this report.⁴

Throughout this report, the term sexual abuse is used to mean both rape and indecent assault, the word victim is used for people who have suffered sexual abuse, and the word accused is used to refer to the person who allegedly committed the sexual abuse.

³ For information on Marital Rape and Domestic sexual abuse, see Cathy Zimmerman, Sar Samen & Men Savorn, *Plates in a Basket will Rattle: Domestic Violence in Cambodia*; December 1994. See also Jason Barber, *Less Than Human, Torture in Cambodia; A LICADHO Project Against Torture Report*, June 2000.

⁴ Street children and women, foster children, domestic servants, "adopted" children, women and children in prison or police custody and people with disabilities are all high risk groups vulnerable to sexual abuse.

WHAT IS RAPE?

While the legal definition of rape in Cambodia is a “sexual act involving penetration against a non-consenting person”,⁵ rape is much more than this. This legal definition gives no indication of what sexual abuse really is, or its effect on the victim. The wording focuses on a sexual act, and since sex is associated with pleasure, rape is often treated in Cambodia as a crime of passion committed by men who cannot control their natural desires⁶. Rape is not about sex, it is about violence.⁷

A handbook, *Working with Rape Survivors*⁸, provided by the Women’s Crisis Center Network (which has members in many Asian and Pacific countries) defines rape and explores common myths about sexual offending. The handbook states:

“Rape with or without use of a weapon and other forms of physical assault is a brutal and atrocious act of violence against another person’s body, senses and emotions. It is primarily an expression of violence, anger and power meant to hurt, control and humiliate the victim. Rape is not sex. It is violence...the primary motive for rape is to discharge feelings of anger, contempt, vulnerability or inadequacy... This is the most powerful myth about rape. It leads to the belief that rape does not hurt the survivor any more than sex does, that women even enjoy rape and ask for it. In fact rape is closer to torture than sex.”

The following are other commonly-believed myths about rape which are discussed in the same publication:

Myth: Men are unable to control their sexual desires, so rape is a spontaneous assault.

Rapists are often mistakenly seen as lustful men who are sexually starved, but studies in the United States and England show that many offenders are married or involved in consenting relationships with other women, and that most rapes are premeditated or partly planned, with around 15% being spontaneous. Given the large number of prostitutes in Cambodia, the low price for their services (especially in rural areas), the high percentage of Cambodian men who use them, and societal acceptance of men’s use of prostitutes, there are ample opportunities for men to have sex without raping.

⁵ UNTAC Criminal Code, Article 43.

⁶ See “Cultural Perspectives” section, which discusses how this view seems prevalent in Cambodian society and the judiciary.

⁷ Working group of the Women’s Crisis Center Network; *Working with rape survivors*, Penang 1990.

⁸ Ibid 7

Myth: Women provoke rape.

Because of the mistaken belief that rapists are motivated by lust, victims are often blamed for enticing their rapist, by suggestive dress, provocative behavior, being alone at night, etc. However, victims of rape range from young to very old and come from all walks of life. No woman's behavior gives a man the right or excuse to rape her. This myth takes the responsibility for the attack away from the rapist and places it the victim. It is an excuse used by rapists to rationalize their violent criminal behavior, and has no validity.

Myth: Most rapists are strangers to their victims.

People known to the victim in some capacity commit the majority of rapes. A study in the Philippines found that 91% of rapes were committed by casual acquaintances, relatives, other household members, boyfriends or friends, neighbors or doctors. A stranger committed only 9%. Of the rapes investigated by LICADHO, 68.5% were committed by someone known to the victim and 6.5% of cases had no recorded information on this issue. The remaining 25% were committed by either complete strangers, or very casual acquaintances. It was not always possible from the information provided to ascertain precisely the relationships between victims and accused in all cases. 5.6% of rapes were committed by family members.

Myth: Women falsely accuse men of rape.

Rape is one of the most under-reported of all major crimes because of the shame and stigma associated with it, and the difficulty of prosecuting offenders. Studies done in the USA indicate that only 2% of reported rapes are false claims, which is no more than for other crimes.

Because of views on sexuality and virgin brides in Cambodia, an allegation of rape from a former girlfriend or acquaintance is often not taken seriously. One judge believed that as many as 85% of allegations were false. The cultural shame and stigma associated with rape in Cambodia, combined with the way victims are treated by authorities, and fear and mistrust of the legal system, makes it unlikely that many women would make false allegations. Many judges believe that lack of physical injuries is evidence of consent by the victim, therefore she made a false complaint. For more discussion on this issue, see the section "Evidence" below.

CULTURAL PERSPECTIVE OF SEXUAL ABUSE

Sexual violence against women and children is a complex issue, and there is no one reason why people commit this type of abuse. Recent worldwide research on violence against women has increasingly focused on the inter-relatedness of various social and cultural factors to help improve understanding of the problem within different cultural contexts. The common ground to this research is that the factors that make women vulnerable to violence are manifestations of historically unequal power relations between men and women.⁹ Factors which contribute to unequal power relations include: “socio-economic forces, the family institution where power relations are enforced, fear of and control over female sexuality, belief in the inherent superiority of males, legislation and cultural sanctions that have traditionally denied women and children an independent legal and social status”.¹⁰

Cambodian Social Attitudes

Sexual offending in Cambodia should be viewed in the context of Cambodian social attitudes towards women and sexuality.¹¹ Men are perceived to have more value in Cambodian society than women.¹² There is a common saying in Cambodia, “men are gold, women are cloth”. This saying expresses the double standard in many societies that a man can have many sexual encounters and is not tarnished, as gold still shines when cleaned. But once a woman loses her virginity, like white cloth that is dirtied, she can never be clean again.¹³ Thus, pre-marital sex for men is accepted in Cambodian society, but the opposite is true for women who are expected to remain virgins until marriage, otherwise they are deemed unfit for marriage, even if they have been raped.¹⁴

The fulfillment of the Khmer moral code of conduct with respect to women reinforces gender inequality. Under this code of conduct, women should defer to their husbands. If he is angry, she is not to talk back. If he beats her, she should not defend herself.¹⁵ Both men and women perpetuate gender inequality by demanding and accepting the women’s

⁹ UNICEF, Innocenti Digest, *Domestic Violence against Women and Girls*, No. 6 – June, 2000, p7.

¹⁰ Ibid 9

¹¹ For an overview on young Cambodians’ sexual behavior, see Chou Meng Tarr, *People in Cambodia don’t Talk About Sex, They Simply do It! A Study of the Social and Contextual Factors Affecting Risk-Related Sexual Behavior among Young Cambodians*. UNAIDS, Phnom Penh, November 1996.

¹² *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, p21.

¹³ Physicians for Human Rights, 1996, *Commercial Sexual Exploitation of Women and Children in Cambodia. Personal Narrative: A Psychological Perspective*. Boston, 1997.

¹⁴ United Nations, Economic and Social Commission for Asia and the Pacific; *Sexually Abused and Sexually exploited Children and Youth in Cambodia, a qualitative assessment of their health needs and available services in selected provinces*; New York, 2000.

¹⁵ Klaassen, Hanneke. 1995. *Cambodian Women in Socio-Economic Transition*. Cambodian Researchers for Development, Phnom Penh.

role to cook good food, clean the home, speak sweetly and obey their husbands to avoid being beaten.¹⁶

Some women tend to accept (or have no choice but to accept) the fact that their husbands visit brothels and have girlfriends. Because of the spread of HIV/AIDS, some women may even help their husbands obtain young girls for sex.¹⁷

It has been argued that in Theravada Buddhism, the dominant religion in Cambodia, women are placed lower than men in that only men can become Buddhist monks and have a chance to be released from the cycle of rebirth.¹⁸

The highly prized commodity of virginity in Cambodia shapes attitudes to sexual violence on many levels. The shame associated with loss of virginity often becomes the focal point of rape. Victims may take several months to tell anyone and the victim's parents may not want to go to authorities because of potential damage to the family's reputation.¹⁹ This attitude also gives insights into why parents would agree or encourage their daughter to marry a man that raped her. Alternatively, some parents even encourage their daughters into prostitution because of the money that can be made, especially if they are no longer virgins.

My mother said that I am spoiled already, so I should continue to do that [sex] work in order to get money to buy a house.²⁰

The value placed upon virginity shifts the focus in a rape case from the perpetrator and his unlawful violent act, to the victim and the "problem" of the loss of her virtue. This attitude may also influence the remedies families seek, as monetary compensation for the loss of their daughter's value may be more important to pursue (and/or easier to achieve) than any punitive action against the accused.

At home, friends, neighbors and even family reflect these social attitudes in the way victims are treated. The victim's family sees her as less valuable. Many victims stated to LICADHO investigators that they were teased by fellow village members and looked down upon because they had been raped. Victims often blame themselves, or are blamed by their family for allowing the rape to occur.

K blames herself for this event [being raped by her stepfather after he drugged her], because she thinks she was not careful while she slept and should not have been in such a deep sleep. She feels that she lost her spirit, that her soul was taken away when she heard her stepfather say he would rape her. She hates him.

¹⁶ Ibid 15, p7.

¹⁷ See the section titled "Accomplices" for case examples of wives who help their husband rape young girls.

¹⁸ Larsson, Katarina. *Country Gender Profile, Cambodia, 1996, SIDA Asia Department, Phnom Penh, p12.*

¹⁹ Personal interview with Lean Chinda, LAC, July 2000.

²⁰ Annuska Derks, *Reintegration of Victims of Trafficking In Cambodia*; IOM and the Center for Advanced Study, 1988.

It bothers her that he is still married to her stepmother. K feels that if she had stayed at home she would have been raped again. She felt that because she had been raped, no one would want to marry her. She had tremendous shame and felt her future had been taken away.

K's stepmother also regarded the rape as her fault, "because she did not keep herself safe". How the decision was made is unclear, but K agreed to let her stepmother sell her to a brothel.²¹

Social scorn and family shame resulting from loss of virginity when raped are powerful factors that result in some girls and women feeling the only profession they are now fit for is prostitution.²² The overwhelming sense of shame felt by victims reflects an internalization of very negative societal attitudes.²³

A startling belief among some Asian men, which is not necessarily culturally-based but appears to be gaining momentum, is that having sex with young virgin girls will increase their sexual virility and "make them look younger and feel more energetic".²⁴ The demand for young virgin girls in Cambodia to satisfy mostly regional Asian male customers,²⁵ but also a growing number of westerners, has been well documented in both the media and reports on prostitution and sexual trafficking.²⁶ The price for a young virgin girl can be as high as \$800 for a week; the price then decreases in a sliding scale depending on how many previous customers there have been. Often girls are forced to undergo medical procedures to "restore" their virginity because of the high price men will pay for a virgin.

Because of the spread of HIV/AIDS in Cambodia, many believe that men are seeking out younger and younger girls to have sex with, as they believe that they will not have this virus. However, sex with a child has a greater risk of transmitting HIV/AIDS and other STDs due to the fragility of the mucus membranes of a young girl's vagina and a young boy's anus.²⁷

The myth that sex with a young virgin girl is good for health and fears about HIV infection, together with the prohibitive cost for most men for a virgin, and the growing

²¹ Physicians for Human Rights; *Commercial Sexual Exploitation of Women and Children in Cambodia, Personal Narratives - A Psychological Perspective*. Boston, 1997.

²² Ibid 15

²³ Ibid 21

²⁴ Chanthol Oung, director of CWCC, in Cambodia Daily, Thursday August 17, 2000, p2.

²⁵ Many businessmen and tourists from the region are provided with a girl prostitute by the hotel they are staying at. Some hotels provide minibus trips to brothel villages near Phnom Penh so these men can select the girl they want for the night.

²⁶ See for example; Larsson, 1996, p22; NGOCRC, 1999, p19; Cambodian NGO Report on the Implementation of The Beijing Platform for Action, 2000, p21; Commercial Sexual Exploitation of Women and Children in Cambodia, 1997,p1.

²⁷ Larsson, Katarina, p22.

sense of impunity in society, certainly appear to be valid explanations as to why so many young, sexually immature Cambodian girls are raped.

Breakdown in the rule of law and rise of impunity

The extent to which the incidence of rape in Cambodian society can be said to be increasing is, however, far from certain. While many believe that there has been a significant increase in rape in Cambodia over the last few years because the number of case reported has increased,²⁸ this may be an over-simplification. As there are no reliable statistics for incidences of rape and indecent assault, there is no statistical basis on which to claim an increase of these crimes in recent years.

It is, however, generally acknowledged through many reports and studies that sexual exploitation (prostitution and trafficking) of women and children in Cambodia has been on the rise since the early 1990s. All human rights workers interviewed expressed the view that there was a similar increase in the incidence of rape in the community, and many pointed to a breakdown in social values and morals and an epidemic of cruelty as one reason. Regardless of whether or not rape is on the rise, it appears clear that there are very many rapes occurring in the community and this has to be addressed.

Cambodia's recent history has left a legacy of fragmented families, social disruption and an extremely weak civil infrastructure. Couple this with the severe poverty of many of the population and the traumas suffered during the 25-year civil war, the community spirit and traditional values of Cambodian society have taken a severe beating. This breakdown in social and civil infrastructure has many spin-off problems. A culture of impunity has developed in Cambodia, and the lack of accountability by state authorities for human rights violations has had the effect that people throughout the spectrum of society believe they are above the law.²⁹

The Director of the Women's Department of ADHOC, a human rights organization, cited impunity as one of the main reasons for what she believed was an increase in rape.³⁰ The Director cited as an example a case involving a commune chief who raped several married women in the village. As the villagers felt he was above the law because of his position of authority, he was not prosecuted so there was no deterrent to stop him continuing his criminal offending. The husbands felt shame so divorced their wives who had been raped, thus the victims were punished for the crime instead of the rapist.

²⁸See for example *Cambodia Daily, Reported Rapes Triple in 1999; AIDS Fear Cited as Motivator*, Phnom Penh, April 20, 2000.

²⁹ Adhoc, Licadho & Human Rights Watch; *Impunity in Cambodia. How Human Rights Offenders Escape Justice*, June 1999, P. 7

³⁰ Personal Interview with Lim Mony, Director of the Women's Department, ADHOC (The Cambodian Human Rights and Development Association, or Association Droits de l'Homme Cambodgienne), December 12, 2000.

Many of the cases investigated by LICADHO indicate that many rapists believe they are above the law, and their only punishment if caught will be to pay some compensation in the form of money. This sense of impunity is increased when the perpetrators are police, military or government employees, people in positions of power in their community or people with large sums of money and/or connections.

Judicial Attitudes

Rape is perpetuated by society's unjust attitudes towards women, who have been traditionally viewed as subordinate members of society and as sexual objects. Men however, are seen as superior and having uncontrollable sexual desires. It appears likely that these social attitudes influence the decisions of the male-dominated judiciary in Cambodia, when dealing with sexual offending cases. While there is no published literature on how cultural attitudes towards women and sexuality in Cambodia may affect the way judges perceive and deal with rape cases, a law student from the University of Michigan Law School recently undertook qualitative research on Cambodian judicial attitudes toward rape and sex trafficking of minors. The researcher, Christina Brandt, has given approval for the following paraphrasing of some of her unpublished draft, which gives some insights into judge's attitudes.³¹

Most judges delineated between two types of rape, using words that loosely translated to "serious", "violent" or "inhuman" rapes, compared to "simple", "traditional" or "common" rapes. "Serious" rape was defined as including a young victim, multiple perpetrators, choking, hurting the victim until she is unable to put up any resistance or a loss of consciousness, as opposed to one in which the victim does not manifest any obvious physical injuries [*"simple" rape*]. An "inhuman" rape was described as: involving a young victim or a rape committed in conjunction with another crime, such as theft against the victim; one involving beating with fists or sticks, or tearing of clothes; one involving multiple perpetrators, "gangsters", or perpetrators "acting like animals". The most serious form of rape is where the victim is killed afterward. A "simple" rape is one that might include no beating, "mere slapping", placing the hand over the victim's mouth to keep her quiet, and/or a single perpetrator.

Two judges struggled with cases in which the victims may have had what seemed to the judge to be an unacceptably free or intimate relationship with the accused. In these cases the judges seemed to be wary of jilted-false-accusation suits, but were convinced by the physical evidence (or the very young age of the victim) that the sex was not consensual. What ties these cases together is the impatience judges expressed with the poor judgment of the victim in choosing to spend too

³¹ The research, conducted in conjunction with CWCC, involved the interviews of nine judges. Comments from these interviews have been made available to selected human rights organizations for the purpose of comment only, and not for dissemination. It must be noted that the draft forms only the initial stages of Christina Brandt's intended research and does not reflect the opinions or positions of her or the CWCC.

much time with the accused, or to spend time alone with the accused. In one case a 13-year-old girl had agreed to a long drive with the accused to a farm where he claimed to need help in gathering herbs for his pregnant wife, and she was raped at the farm. The judge felt that the victim should have known better than to go anywhere with the husband of pregnant women since he was likely to be “sex-starved”; the victim should have known better than to go to a secluded place with a man, since he was unlikely to let such an opportunity to have unpunished illicit sex go by, and the young girl should have heeded a Khmer proverb which states that “men can’t control their feelings”.

The attitudes expressed here were not that the victims had brought the rapes on themselves by not guarding their virtue more carefully, rather that the events of the cases seemed to exemplify an unfortunate string of facts well-known to the judges and presumably to all Cambodians, that men really like to have sex, that some men will disregard the lack of the consent of the victim to have sex if they think they can get away with it, that there are some men who will take this opportunity whenever it presents itself, and that there is a smaller number of men who will actually try to create such opportunities. This analysis of male Khmer sexuality seems to underlie the “simple”, “traditional” or “common” rape scenario.

SEXUAL ABUSE LAWS IN CAMBODIA

For a more in-depth analysis of sexual abuse legislation, see Annex 1 of this report. The following is a summary of the discussion contained in that annex.

1. Source of Sexual Abuse Laws

The Criminal Code

The main source of rape and sexual abuse law applicable in Cambodia is the Provisions Relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia During the Transitional Period (“the Criminal Code”).

The Criminal Code classifies rape as a crime and indecent assault as a misdemeanor. The importance of this distinction becomes apparent in respect to punishment and sentencing. The statute of limitations for a crime is 10 years, for a misdemeanor 3 years. The Criminal Code states:³²

Article 33: Rape

1. Anyone who rapes or attempts to rape another person of either sex is guilty of rape and shall be liable to imprisonment for a term of five to ten years.
2. Rape is any sexual act involving penetration against a non-consenting person. If rape is accompanied by fraud, violence or threats, or if it is committed by anyone in a position of authority over the victim, the punishment shall be a term of imprisonment of ten to fifteen years.

Article 42: Indecent Assault

1. Anyone who sexually offends another, unconsenting, person of either sex by touching, caressing, or any other sexual act not involving penetration, is guilty of the misdemeanor of indecent assault and shall be liable to a term of imprisonment of one to three years.
2. If the indecent assault is accompanied by fraud, violence or threat, or if it is committed by any person with authority over the victim, or if the victim is under 16 years of age, the duration of these sentences shall be doubled.

³² The version of the criminal code used is from *The Compendium of Cambodian Laws, First Edition*; December 1995, The Council For the Development of Cambodia.

3. Any person who procures, entices or leads away, for purposes of prostitution, or exploits the prostitution of a minor, even with the consent of that minor, shall be liable to a term of imprisonment of two to six years.

Other Possible Sources of Law

The Royal Government of Cambodia ratified the UN Convention of the Rights of the Child (CRC) in October 1992, and incorporated it into the Constitution of the Kingdom of Cambodia. By ratifying the CRC, the government has agreed to be bound by it, that is, they agreed to ensure that children enjoy the rights described in the treaty³³. This requires the development of a national legal framework in which to implement the treaty standards, usually by incorporating the principles into domestic law.³⁴

Whether or not the CRC can be invoked to protect the rights under it in a Cambodian court is unclear, as the exact legal implications of incorporating the CRC into the Constitution have not been determined. Some have argued that the CRC can be treated as domestic law enforceable in the Cambodians courts, but in reality the CRC has not been used to protect children from sexual abuse. It is of concern that eight years after ratifying the CRC, no practical advances have resulted with respect to adopting its principles into Cambodian domestic law so it can be used effectively to protect children.³⁵

The 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which Cambodia acceded to in 1992, also contains provisions relevant to sexual abuse of women, but the same problem arises as to its practical effect and use in Cambodian courts.

The Cambodian Constitution contains a number of articles that could be used to protect women and children against sexual abuse, but it is uncertain how judges would respond to legal argument based on the Constitution. It is hoped that legal proceedings under the Constitution will become more common if the rule of law in Cambodia strengthens and matures.

Khmer customs and traditional expectations of behavior are also sources of law that can be used to suggest appropriate resolution when statute law is silent.³⁶ Because the Criminal Code covers rape and indecent assault, this takes precedence over customs and traditions as a source of law. However, customs and traditions still impact greatly when it comes to interpretation and implementation of the criminal code, as previously discussed above under the heading “Cultural Perspectives and Sexual Abuse”.

³³ *Cambodian Law and the Convention of the Rights of the child; A Comparative Study*. Legal Aid of Cambodia Juvenile Unit, Phnom Penh, 1998 p 12.

³⁴ *Ibid* 33

³⁵ Initiatives have been taken to address implementation of the CRC (see under “Initiatives” below), but in respect of children and sex, sexual exploitation and trafficking of children have been targeted and not sex abuse.

³⁶ *Ibid* 33, p190.

2. Problems With The Current Law

There are some anomalies and shortcomings in the law that, together with incorrect sentencing practices, leave society inadequately protected against sexual crimes.

Minors and the Law

Nowhere in the Criminal Code is the word ‘minor’ defined. Under the CRC, anyone under the age of 18 is a minor. While the age of consent to sexual intercourse is not defined in Cambodian law, there are several other Cambodian laws that support the age of majority to be 18. Labor law confuses the matter by providing three different ages of majority (12, 15, 18) depending on the labor situation.

The matter is further confused by section 2 of article 42 of the Criminal Code that provides double the penalty for anyone who sexually assaults a person under the age of 16, and a human trafficking law provides another age benchmark by doubling the penalties for trafficking victims under the age of 15.

Article 33 of the Criminal Code does not specifically recognize statutory rape (consensual sex with a minor under a specified age). Many countries recognize that children below a certain age (usually 15 or 16) are unable to make a mature and informed decision about sexual activity, and make it illegal for anyone to engage in sexual activity with them, even if the children go along with it. Because there is no protection for the young and vulnerable, some young teenage girls become mistresses to rich and powerful men. Children are forced into prostitution and their services openly sold, often to regional businessmen, foreign sex tourists and government officials.³⁷ Cambodia is unlikely to have a law stating the legal age for sex while government officials and rich and influential men in Cambodia continue to have sex with young girls and virgins.³⁸

While article 42 of the Criminal Code provides for longer penalties for offenders who are found guilty of indecent assault against someone less than 16 years of age, this does not apply to the rape article, which specifically excludes indecent assault (sexual activity which does not involve penetration). This is a glaring inconsistency, as rape is a more serious violation than indecent assault.

³⁷ Personal Interview with Yim Po, Executive Director of The Cambodian Center for the Protection of Children’s Rights, January 2000. See also *Workshop on Strategy of Elimination of Children and Women Sexual Trafficking and Exploitation in Kien Svay, Kandal Province*, held on January 17-18, 2001; organized by Healthcare Center for Children and ECPAT Cambodia, funded by UNICEF. This document states that high-ranking officers of the Royal Government of Cambodia are one category of customers who often want to buy very young under-aged girls for sex, preferably virgins. It further states that this should be considered the biggest problem in Kien Svay because of the seriousness of the crime due to the young age of the girls, and because lower-ranking local authorities can not stop high-ranking government officials from committing these sex crimes.

³⁸ Ibid 37

Only section 3 of article 42 mentions consent. It imposes double the penalty of indecent assault on the person found guilty of procuring, enticing or leading away for the purposes of prostitution, or who exploits the prostitution of a minor with or without consent. This section has been interpreted and used against the trafficking of minors in the past, until the National Assembly passed the Law on the Suppression of the Kidnapping and Trafficking/Sale of Human Persons and Exploitation of Human Persons in January 1996 (“the trafficking law”). While it is arguable that the trafficking law has repealed section 3 of article 42, this section is still used in respect of sexual offending by the Cambodian. This results in several problems, which are discussed at length in Annex 1 of this report.

Article 8 of the trafficking law, which states that regardless of consent, acts of “*anacha*” with a person under the age of 15 are punishable by 10 - 20 years in prison, is more akin to a statutory rape law. However, using article 8 for that purpose is not legally sound. The word “*anacha*” has been translated in the English version of the law as “debauchery”, but it is not defined in any Cambodian law. Its meaning in Khmer is too broad to have a precise legal definition.

Other Legal Problems

Both articles 33 and 42 of the Criminal Code increase the penalty if committed by someone with ‘authority’ over the victim. Although the term ‘authority’ is not defined, it implies that any rape or indecent assault committed by authorities such as police or military personnel should receive heavier penalties. Arguably, the term ‘authority’ could also cover parents and grandparents (including step-parents and step-grandparents) or other people whom a victim sees as an authority figure, for example teachers and doctors. Without the term ‘authority’ being defined, it is open to the interpretation of judges.

Rape is defined as “any sexual act involving penetration against a non-consenting person”. The words “any person” suggests that it is a crime to rape a male or female, however “consent” and “penetration” are not defined. This can cause many problems and inconsistency between the way judges interpret and use these words.

Because indecent assault excludes sexual acts involving penetration, if “penetration” under the rape article was limited to penetration by a penis only, then there would be no law punishing penetration by other objects, which is an absurdity.

A prevailing view among some judges and legal advocates is that if a victim offers no resistance, then she “consented” to the sexual act.³⁹ This is akin to saying that someone who is threatened and then lies passively while she is raped has “consented”. This attitude also perpetuates the myth that sex without violence cannot be rape, or a crime to be taken seriously. Without the definition of these vital terms such as “consent”, they are not applied consistently, and many rapists evade conviction or adequate punishment.⁴⁰

³⁹ See under the headings “Cultural Perspective of Sexual Abuse” and “Evidence” for discussion of judges’ interpretation and application of sexual abuse laws.

⁴⁰ See discussion of a recent rape case that went to trial under “Sentencing”, below.

Conclusions

Because of the anomalies in existing rape and indecent assault laws, especially in respect of minors, there are many loopholes available to offenders to avoid convictions. Because the law is not clear, it is left to the interpretation of judges, which results in an uncertain legal outcome and an unfair process for both victims and accused.

The confusion created by the representation in the law of many different age groups could be overcome by clearly defining the age of a minor with respect to rape and indecent assault and an age for consensual sex. Further, a clear statutory rape clause is needed to protect children.

Vulnerable and poor children are at risk because of the deficiencies of sexual abuse laws. Newsletters circulated by pedophilia rings advertise Cambodia as a haven for their activities involving child sex and pornography. This is a sad indictment of the ability of the Cambodian legal system and the Royal Government of Cambodia to protect Cambodian children, the most vulnerable members of society.

Because of the high number of child prostitutes in Cambodia and the high number of child rape cases investigated by LICADHO, the above problems and omissions in the law are alarming. A very large portion of Cambodian society fails to get any protection under current law. Until an adequate and clear law is drafted, Cambodian children have no adequate protection and will continue to be exploited for sexual purposes.

Draft Criminal Code

Cambodia's criminal law is currently being rewritten. There are two draft criminal codes, one drafted in Khmer and translated into English by the University of San Francisco, and the other drafted in French and not yet available for analysis. Commentators have expressed grave concerns about the contents of the English version of the Khmer draft code currently in circulation. The draft code generally is extremely convoluted, full of inconsistencies and unnecessarily complicated, and fails to address the criticisms of the current law expressed above. See Annex 1 for more discussion on the draft code.

FINDINGS OF LICADHO CASE INVESTIGATIONS

Below are tables, graphs and comments regarding the information collected with respect to a total of 108 sexual abuse cases investigated by LICADHO during the 15-month period January 1999-March 2000. For a summary of all cases, see Annex 5.

1. Cases By Province January 1999 - March 2000

Cases by province and three-monthly time periods

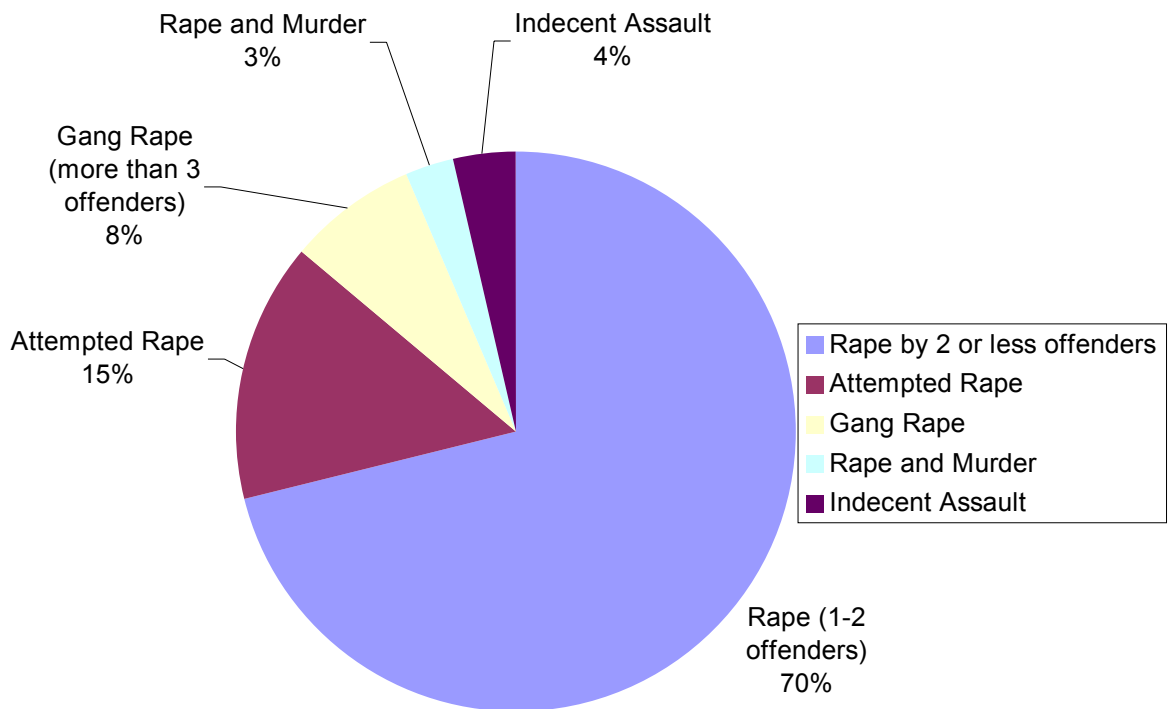
Province	Jan - Mar-99	April - Jun-99	July - Sep-99	Oct - Dec-99	Jan - Mar-00	Total Cases
Phnom Penh	2	1	1	1	4	9
Kandal	3	4	5	6	9	27
Bantey Meanchey	0	2	2	2	2	8
Battambang	1	0	0	0	0	1
Kampong Chhang	1	1	2	2	1	7
Kampong Cham	2	2	4	10	2	20
Kampot	0	0	1	0	0	1
Kampong Speu	3	1	0	1	3	8
Kampong Thom	0	0	2	1	1	4
Koh Kong	0	0	0	2	0	2
Prey Veng	0	1	0	0	1	2
Pursat	1	0	1	0	1	3
Siem Reap	1	0	0	0	0	1
Svay Rieng	1	0	0	2	1	4
Sihanoukville	0	1	1	2	1	5
Takeo	2	1	0	2	1	6
Total Rape Cases	17	14	19	31	27	108
Total all Cases Reported to LICADHO	32	90	90	138	163	513
% Rape Cases per Time period	50%	15.50%	21.10%	22.46%	16.56%	21.05%

Rape and indecent assault cases accounted for 21.05% of all the cases investigated by LICADHO in the period January 1999 to March 2000. Rape and indecent assault is one of many different categories of human rights violations that LICADHO investigates. Throughout the world, rape is one of the most underreported crimes. If the same is accepted for Cambodia (and there is no evidence to suggest otherwise) then the high percentage of the total LICADHO caseload taken up by sexual abuse cases is just a drop in the bucket.

Cases come to the attention of LICADHO from many sources including victims or their families, and newspapers, community networks, police or other authorities, moto-drivers and LICADHO investigators' local contacts. The number of cases reported and investigated in any given area will be influenced by many factors, including the strength of local community networks, proximity to Phnom Penh, and the number of NGOs working in the area.

The majority of cases investigated in the 15-month period came from Kandal and Kampong Cham, but it would be too simplistic to draw a conclusion that many more rapes are occurring in these two provinces than the rest of the country. Many provinces are more isolated and have not had the same exposure to human rights education, and therefore there may be less reporting of sexual abuse. The more isolated the communities, the more likely the matter will be dealt with at the village level. Kampong Cham province has two LICADHO offices, and Kandal is serviced by the office in Phnom Penh that had an investigator who worked in that area and had many contacts who informed him of these types of cases. These reasons may account for the larger number of cases investigated in these two provinces.

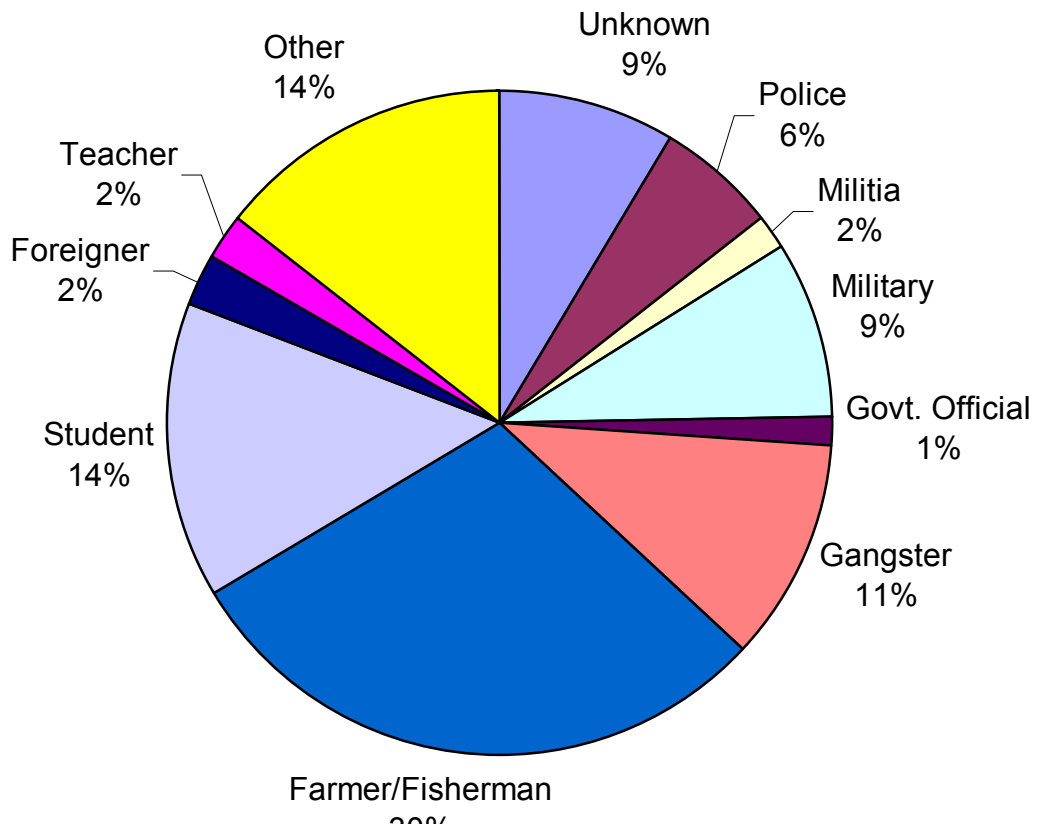
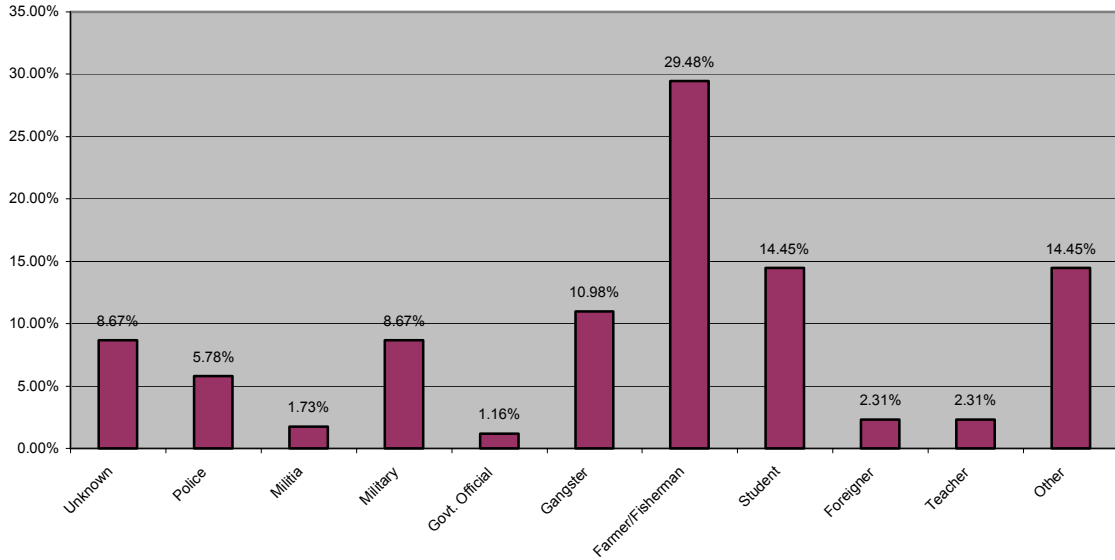
2. Types of Violations January 1999 - March 2000



The majority of sexual abuse cases investigated were rape or attempted rape. Indecent assault is less reported because many people do not view it as an offence unless the victim loses her virginity. Some parents commented that they did not take the matter further because their daughters “virginity had not been lost”. Indecent assault is even more hidden than rape, and difficult to detect and intervene.

Of all the 108 sexual abuse cases investigated between January 1999 and March 2000, 54.6% involved threats of violence to the victim or her family, and 7% were known to involve a weapon. The Criminal Code specifies stiffer penalties for cases involving threats or use of weapons. On a few occasions the threats occurred after the crime, and were from the police to stop the complaint, or intimidation from the family of the accused. Threats and harassment are serious human rights violations and cause further trauma to victims.

3. Occupation of Accused January 1999 - March 2000



An examination of the occupations of the accused shows that many are farmers or fishermen, indicating that they are local people and possibly known to the victim.

Some 17% of accused rapists were government employees, most of them police, soldiers or militiamen, while a small number were described as government officials. The 17% figure may not be representative of reality when it comes to rape by government employees; because of threats, intimidation and impunity, such rapes are likely to have a very high under-reporting rate.

Another occupation category of accused that accounted for a relatively large percentage was young men identified as “students”. It is not clear from the information collected exactly what type of students these young men typically are. However, the word “student” is likely to be more telling of their age than what they actually do. There are a number of reasons which may account for the relatively high number of “students” or young men who are raping. They are young men who have reached physical sexual maturity. Sex education in Cambodia is very limited, it is still a subject very difficult to talk about, and more high school children are estimated to engage in sexual activity as old traditions and modern influences collide.⁴¹ Not all young men have girlfriends, and the risks and costs associated with going to a brothel may put some men off that idea, or they want to try sex with a female who is not a prostitute.

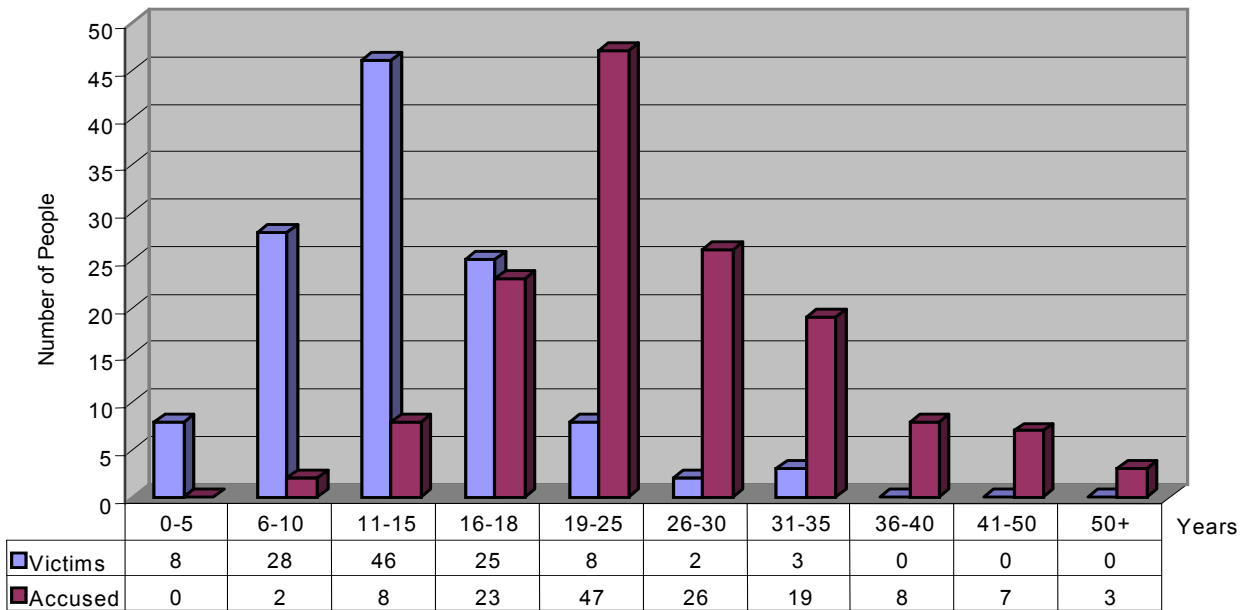
The “other” category included an array of occupations from moto-drivers, hairdressers, doctor, truck driver, mason, gold smith, ex-monk, landlord, retired and/or unemployed people.

As well as government employees, other people in authority may take advantage of females, for example landlords who demand sexual services from tenants, and if they refuse evict them immediately.⁴² Under the Criminal Code, a stiffer penalty is specified for people in positions of authority.

⁴¹ See Cambodia Daily article *Adolescent Sex – And its Risks – On the Rise*, February 12, 2001, p 1.

⁴² Comments from Sharon Wilkins from the Municipal Health Department’s Urban Health Project. An organization called Options has the contract for this project that concentrates on the squatter community in Phnom Penh. While they do not have a program targeting rape victims, they hear about rapes through their interaction with women in that community. They provide pregnancy screening and safe terminations, and they also refer people to appropriate clinics for HIV tests.

4. Ages of Victims and Accused, January 1999 - March 2000



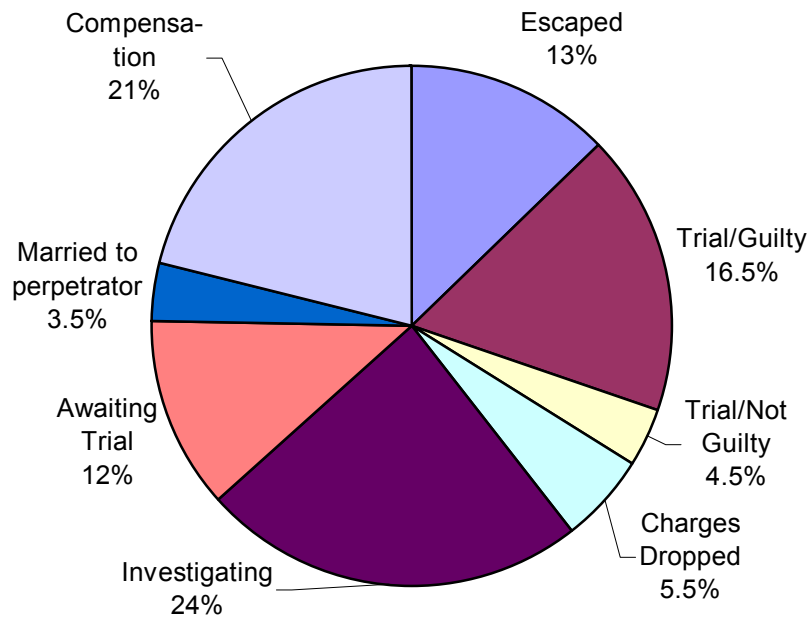
As can be seen from the graph, victims aged 11-15 accounted for the highest portion of all victims (38.3%). Because the data is focused on rape of people aged 18 and under, the data available on older victims is not representative of that age group. If only the data on victims 18-years-old and younger is used, the average age of victims is 12-years-old, therefore, the average victim has not yet reached sexual maturity, so is still a child in anyone's definition.

Males between the age of 19 and 25 made up 32.9% of accused people, and 80.4% were between the ages of 16 and 35. The average age of an accused was 25.7-years-old. Males aged under 16 accounted for 7%. Male accused over 35 accounted for 12.6%.

5. Case Outcomes January 1999 - March 2000

	Escaped	Trial: Guilty	Trial: Not Guilty or Unknown Result*	Charges dropped	Still Investigating	Awaiting Trial	Married to perpetrator	Compensation	Total
Phnom Penh	1	2	1	1	0	1	1	1	8
Kandal	5	5	0	1	7	1	1	7	27
Bantey Meanchey	0	0	0	0	1	7	0	0	8
Battambang	0	0	0	0	0	0	1	0	1
Kampong Chhang	2	0	0	0	2	1	0	2	7
Kampong Cham	1	1	2	0	8	2	0	6	20
Kampot	0	0	0	0	1	0	0	0	1
Kampong Speu	1	2	0	2	2	0	0	1	8
Kampong Thom	0	0	0	1	2	0	0	1	4
Koh Kong	0	0	0	0	1	0	0	1	2
Prey Veng	1	0	1	0	0	0	0	0	2
Pursat	1	2	0	0	0	0	0	0	3
Siem Reap	1	0	0	0	0	0	0	0	1
Svay Rieng	0	3	1	0	0	1	1	0	6
Sihanoukville	1	2	0	0	0	0	0	2	5
Takeo	0	1	0	1	2	0	0	2	6
Total	14	18	5	6	26	13	4	23	109
% (rounded)	13%	16.5%	4.5%	5.5%	24%	12%	3.5%	21%	

* The reference to “unknown verdict” in this category reflects the fact that in a few cases, court staff were unable or unwilling to provide LICADHO staff with information about the result of the trial.



The data highlights the lack of law enforcement action in rape cases. A total of 49% of cases have not had an outcome, because they are still being investigated by the courts, are awaiting trial or the accused has escaped. While the term “investigating” implies some action is being taken by the courts, this is not necessarily the case. Rather than state that they are not taking action on a case, the courts frequently tell human rights workers that the case is “under investigation”. Regardless of whether the courts are taking real action or not, the reality is that many of these recorded cases are still under investigation or awaiting trial one to two years after the crime occurred.

Of the cases that have been resolved in some way and are considered closed, 41% were settled by compensation payments by the perpetrator to the victim or her family. This highlights the common practice of rapists avoiding criminal penalties in exchange for a payment of money. The average compensation payment paid per accused was 730,000 riel, (US\$190). Many rapes that are not reported are most likely settled by money as well.

The fact that 21.7% of the cases went to trial, and another 12% are awaiting trial, should be seen as a victory. Of all the total cases, 16.5% went to trial and resulted in a guilty verdict. However, in 28% of these cases, suspended sentences were given so the accused spent little time in prison. This means either the charge was reduced to the misdemeanor offence of indecent assault (for which judges can give suspended sentences), or the judge made an error on sentencing (as a rape conviction does not permit a suspended sentence).

For the guilty verdicts which did not lead to suspended sentences, the average prison term handed down was eight years. Some of these cases were high profile ones in the media, and this probably resulted in longer sentences being given than would probably otherwise occur. For an example, a highly publicized gang rape case in Phnom Penh, see Case 20 below.

SETTLEMENT BY COMPENSATION

This study shows that many cases of rape and indecent assault are settled early on by compensation. From a western point of view, it may seem unbelievable to settle a serious and violent criminal matter by a payment of money. The idea that people accused of sexual offences do not get tried in a court of law and are free to re-offend with no real deterrent appears abhorrent. However, many Cambodians view a payment of money as the only justice they are likely to receive.

Comments regarding compensation payments as a way of settling criminal disputes should be put into context with respect to Cambodians' (and especially those in rural areas) attitudes concerning the just resolution of disputes. There is a tradition of proverbs and folktales that carries ancestral wisdom and Khmer identity from generation to generation by word of mouth, and everyone acknowledges the framework of customs (*tomniemtomloap*) which guides acceptable behavior.⁴³

Official Complicity

At the village level, the mode of settling conflicts is often by prolonged talking together, with the help of the village leader, to reach a compromise both parties can live with.⁴⁴ While the official series of steps from the village to the court seem well known, people associated with village justice believe it is best if possible to keep a problem from traveling up the hierarchy.⁴⁵ Village and commune leaders are therefore reluctant to refer a local issue to a higher authority because of the expense and uncertainty involved in dealing with the courts, although they acknowledge that criminal law is a police matter.⁴⁶ It is unclear however, what is considered a criminal matter by village and commune leaders. One commune leader when discussing pre-marital sex said:

I try to get both sides to agree on compensation and a [wedding] because otherwise the girl will think it will be hard for her to interact with the public and that people will look down on her and she might not be able to get married [in the future]. The man can also marry the girl he raped/seduced [it was unclear in the translation whether the word rape and seduce were used interchangeably]. After the marriage, if the husband does not support the girl, the girl can still make a legal case of it and get a divorce, but that has to be in the court.⁴⁷

⁴³ William A. Collins, Ph.D, *Dynamics of Dispute Resolution and Administration of Justice for Cambodian Villagers*, USAid, 1997 p6.

⁴⁴ Collins, p 6

⁴⁵ Collins, p 15

⁴⁶ Collins, p 16

⁴⁷ Collins, p 31

It would appear that depending on the circumstances of pre-marital sex, a leader may not consider it a police matter. As stated earlier under the heading of “Cultural Perspectives and Sex Abuse”, because of the importance of virgin brides in Khmer culture, pre-marital sex, whether rape or not, is often viewed as requiring some form of punishment by way of compensation for the victim. Some believe that if a female agrees to have sex with a man because she believes they will marry but they don’t, then the man should be charged with rape.⁴⁸ This is a concept at odds with the penal codes of many countries, where that situation would be considered consensual sex, and not rape unless the woman was below the age of consent.

Lack Of Trust In The Judiciary

In rural areas, many people either do not know or understand court procedures or do not trust courts, judges, and prosecutors because they perceive the court system as a tool for the powerful and wealthy.⁴⁹ They also think the case will take too long to go to trial and will not succeed.⁵⁰ These attitudes are steeped in cultural beliefs about the legal system as the following passage shows:

This perception of the ruinous expenses associated with the court was repeated time and time again by informants, often in the form of proverbial wisdom. “Go to court, become poor” is one expression, or “At court the rich wins, the poor loses” is another. Every schoolchild knows the fable of the fox judge. Two animals in the forest both claim to have caught the same fish. They bring the disputed catch to the fox-judge to ask his ruling. The judge proceeds to divide the fish, placing each half in one pan of his scales. But the scales tip to one side, so to make the division even and just, the fox slices off a little of the heavy portion and puts it aside for himself. But now the scales tip to the opposite side, so the fox again slices off a little for himself in an effort to make the pans of the scale even. The process continues until all that is left in the pans is a few bones for the disputing parties.⁵¹

While no money is required from a victim to prosecute a criminal case according to the law, in reality the family of the complainant will have to pay at every step in the process if the case is ever to be heard.⁵² Typically, money has to be paid to police to gather evidence, prosecutors to investigate and court staff to undertake their procedural responsibilities.⁵³ Given that many families of complainants are extremely poor, finding enough money to travel to the nearest court is often beyond their means, let alone paying for the police and court staff to undertake their duties.

⁴⁸ Personal Interview with Sophea Ung, Program Officer, CWCC, December, 2000.

⁴⁹ Lim Mony, ADHOC, December 2000.

⁵⁰ Ibid 49

⁵¹ Collins, p 15

⁵² From interviews with Lim Mony (ADHOC), Lean Chinda (LAC) and Sophea Ung, Program Officer CWCC, December, 2000.

⁵³ Lim Mony, ADHOC, December 2000.

Social Stigma

Another reason why many families do not wish to involve authorities is because of the social shame and stigma associated with rape and sexual assault. By settling quickly and quietly by way of a compensation payment, the families protect their reputation. If the matter went to court, then other people would know what happened, and the families' concern to avoid this overrides their concern for justice, or the feelings of the victim.⁵⁴ One human rights worker stated that in her experience, many young women from middle class families are raped, but these cases do not get reported to police or human rights organizations, rather the families will force the rapist to marry their daughter or pay compensation, or both, so as to avoid tarnishing the family's reputation.

It appears that many Cambodians believe there are more deterrents than benefits from pursuing a rape case through the legal system. While these beliefs may be well grounded because of lack of money, education, cultural beliefs and traditional dispute resolution methods, they provide an opportunity for exploitation and corruption. People from all levels of authority exploit people's fear of the legal system to gain money for themselves.

In many of the cases investigated by LICADHO, and some of these are detailed below, the police played a major role in brokering a compensation agreement between the families of the accused and the victim with the understanding that they got to keep a portion of the compensation paid. Court staff also often try to broker a compensation deal for a fee, and judges have even adjourned trials to enable the parties to settle by compensation. The potential for making money from rape allegations is compounded by the low salaries paid to police, court staff and judges, and their attitudes that sexual abuse offending is not serious.

Violation Of The Law

Article 38 of the Criminal Code makes it a crime for any civil servant, official agent, or political official to solicit money, etc, in the course of their official duties. This crime of corruption carries a penalty of three to seven years' imprisonment and a fine.

Article 7 of the Law on Criminal Procedure states a public action may not be settled by a private arrangement, and that non-compliance is a miscarriage of justice and punishable by a disciplinary measure or imprisonment of one to six months. Article 4 of the same text state that the police and judiciary have no right to close a file on a criminal case they have received. They must forward the case to a prosecutor.

Article 129 of the Constitution states: "Only a judge shall have the right to adjudicate. A judge shall fulfill this duty with strict respect for the law, whole heartedly and conscientiously".

⁵⁴ Lim Mony, ADHOC, December 2000.

Police and court staff are in breach of these articles by helping, and sometimes forcing, parties to settle a serious criminal matter by compensation. Police, judges and other court staff typically rely, to support their lifestyles, on money from people trying to use the legal system, so it is unlikely that they will take action to stop or punish such practices. Many do not seem to think that brokering an out-of-court settlement for a criminal matter is wrong, and often refer to it as a “compromise” or “reconciliation”.

Lack Of Deterrence

Because of the potential to make money, police, court staff and other officials sometimes put pressure on the complainant’s family to accept money not to pursue a sexual abuse case through the legal system. Often the families feel they have no alternative because they are in a weak position, usually poor and without connections, and often they are threatened or intimidated by the authorities or the accused person’s family, as some of the cases below demonstrate. These out-of-court settlements perpetuate impunity by undermining the deterrence factor of the criminal legal system. A strong deterrence is vital for social order, but private monetary settlements are so common and accepted, that the seriousness of all crimes is being diminished in Cambodian society.

Case Examples: Settlement by Compensation

Case 1: One evening in December 1999, a 5-year-old girl was late coming home. The girl had been playing at a neighbor’s house for quite some time. The mother called out to her daughter from her house. When the girl returned to her own home, she told her mother that their 19-year-old neighbor had just raped her at his house. The mother immediately sent her daughter to the nearby hospital for an examination and then promptly notified the commune leader.

The next day, the commune police chief began an investigation by questioning the victim in the presence of the alleged perpetrator. The 19-year-old neighbor eventually confessed in front of the police chief, the village leader, and the commune nurse that he had raped the girl. That afternoon, the district police inspector negotiated an out-of-court settlement between the victim’s parents and the perpetrator’s mother. In exchange for the withdrawal of a formal police complaint, the perpetrator paid the victim’s family 400,000 riel (approximately US\$105). The perpetrator also paid 400,000 riel to the district police inspector. The perpetrator was never formally charged with the rape of the 5-year-old girl to which he had confessed.

Case 2: One evening in August 1999, an 8-year-old girl and her family went to sell candy at her grandmother’s housewarming ceremony. At 11:00 p.m., the family stopped selling candy and went home, but the girl stayed back with her grandmother so she could finish eating dinner. The girl finished her dinner after half an hour and ran after her parents. On her way back home, she saw a 20-year-old man who lives in her village,

standing by the gate of his house. The girl did not speak with the man and ran past his house. The man chased her, put one hand over her mouth, and dragged her into a grove of banana trees by the roadside. In the darkness of the trees, he pushed the girl onto the ground and raped her. The girl struggled and cried out in fear and pain. A couple was walking along the road near the trees and heard the girl cry out and came to investigate, causing the rapist to flee. Before fleeing, the rapist told the victim that if she told anyone what happened, he would kill her.

Disregarding the threat, the girl ran home and told her parents what happened. Her parents made complaints to both the village and commune chiefs. At 12:30 a.m., just an hour and a half after the rape, the police arrested the alleged perpetrator. The police called the victim's family to the police station to discuss a settlement, but none was made at that time. A few days later, the police officers again had the perpetrator and the victim's family meet at the police station. This time, the rapist agreed to pay the victim's family 150,000 riel (US\$40). The victim's family accepted the compensation. As a fee for his arbitration, the police chief received 50,000 riel. After the settlement, the perpetrator fled the village.

When asked by the LICADHO investigator why they accepted the compensation, the victim's family replied they felt pressure from the police. However, it is unclear whether the pressure was to accept compensation instead of pursuing a prosecution, or whether the pressure was to accept the amount offered instead of a greater sum.

Case 3: In January 2000, a 35-year-old man raped a 17-year-old girl in the grounds of a pagoda. The girl worked planting rice and lived with her relatives. Later the rapist gave the victim gold to the value of \$100. Police did not make any investigation because they said the victim had accepted the gold as compensation. When follow-up of this case was under taken in June 2000, the police inspector of the district said that both sides agreed to the compensation, that the victim had retracted her complaint so the case was closed.

Case 4: In January 2000 a 16-year-old boy lured a 9-year-old girl to a lakeside by promising her 2,000 riel. Once there, he raped the girl then threatened he would kill her if she told anyone. He also said he would pay her 2,000 riel the next day. The victim told her brother that she was owed 2,000 riel by the boy, and once her brother found out why, he told their mother. The next day, the mother took the victim to the hospital where she stayed for five days because her injuries were serious. The mother complained to the police and asked for compensation of 150,000 riel. She received this amount and on 5/4/2000 the file was sent to the prosecutor. The case was sent to an investigating judge, but as of 24/8/2000 no action had been taken.

Case 5: In February 2000, four boys aged between 8 and 16 attempted to rape an 11-year-old girl who lived in the same building complex and sometimes played with them. Only the 16-year-old boy raped the girl by penetration, but the other boys all tried as well. The victim was threatened not to tell otherwise they would beat her.

The victim's father found out what had happened and complained to the police, who detained the perpetrators for questioning. The victim was sent to the hospital for examination. The doctor said her "virginity was not broken, only wounded".

Both sides agreed to settle the case by compensation of \$450, paid to the victim's family.⁵⁵

Case 6: In October 1999 a 16-year-old female was raped by a 38-year-old male who was a policeman in the serious crimes department. The victim's father agreed to settle the matter for \$250. On 22/6/2000 LICADHO staff were told by a court clerk that the victim's family received \$200 and the case was therefore closed. It appears the court staff kept \$50 as their fee.

Case 7: in January 2000, a 30-year-old man raped a 9-year-old girl from his village. The victim's brother saw the rape and told their grandmother who made a complaint to the chief of the village. The rapist confessed his guilt and paid 40,000 riel compensation.

The victim was taken to hospital where she spent 12 days. The victim's mother, who was living elsewhere at the time, made a new complaint to the commune chief and received \$350 compensation from the rapist. The victim's family refused to take the complaint further.

Inquires from LICADHO staff were made up to eight months after the event and the court said each time that they were still awaiting the police to create and forward the case to the court.

Case 8: In September 1998, 15-year-old girl was gang raped by 15 men and seriously hurt. A 30-year-old man witnessed the event throughout and identified the perpetrators.

The perpetrators paid 2,200,000 riel in compensation, but the victim only got 700,000 riel, the rest of the money went to the authorities (1,000,000 riel), the witness (200,000 riel), and other people who helped in the handling of the case (300,000 riel).

This case was brought to the attention of LICADHO in early 1999. As of September 1999 the authorities had done nothing even though LICADHO had filed an intervention letter and made follow-up enquiries.

Case 9: In December 1999, a 10-year-old girl was watching a video near her house when she was asked by a man to go and buy him a cake and he gave her 5 Thai Baht. On her way to buy the cake, she was surprised by the same man, who grabbed her from behind and threatened to beat her if she made any sound. The perpetrator then raped the girl and again threatened to beat her if she told anyone.

⁵⁵ See Cambodia Daily articles: *Four Boys Held After Rape of Young Girl*, and *Family Drops Rape Charge Against 4 Boys*,

The victim was bleeding badly and tried to wash herself, but continued to bleed. She went home and her mother saw blood on her clothing and took her to the local clinic. The police were informed and the man apprehended. He agreed to pay 4,000 Baht compensation.

A few days later a human rights groups became aware of this case and following pressure on the police the man was rearrested, but at his trial all charges were dropped.

Case 10: In September 1999, a 7-year-old girl was raped by three boys, two aged 12 and the other 13.

The boys tied the girl with her arms and legs spread and tied cloth around her face. They all raped her two times each. They then untied her and took her to the pond where they tied her again and all three raped her again.

The girl was seriously hurt, the boys arrested, but soon released because they were minors. The matter was settled by compensation of \$2,300 from the boys' families.

Case 11: In October 1999 an 18-year-old female went to visit relatives in a neighboring village. On the way, she passed three policemen guarding their office. About 100 meters past the police office, one of the policemen came after the female and threatened her with a gun to follow him. The three policemen and the female went by motorcycle to a stall, where they threatened to handcuff her if she wouldn't sleep with them. While they were discussing the matter, the female tried to run away, but was caught 100 meters away. The three policemen then raped her. One of the policemen tried to give her 10,000 riel, but she refused to accept the money, they then threatened to harm her if she told anyone.

When they arrived back at the village, the victim jumped from the motorbike and ran into a villager's house. Once the villager found out what had happened, he went to inform the police, but when he arrived at the station, he saw the three policemen changing their clothes. The victim complained to LICADHO who went to meet with the police chief in order to get him to investigate the matter. The police chief called the parties together and helped them settle the case for 2,000,000 riel compensation and took the matter no further.

Case 12: In January 1999, a 10-year-old girl was sleeping in a pagoda with her grandmother (a nun) and several other nuns and children when a 27-year-old male carried her to a nearby field. The girl woke and started to cry so the man hit her several times then raped her. He then took her back to the pagoda and left her there crying. When the caretaker noticed she was crying, he alerted the other occupants who then found out what had happened. The girl's parents were contacted. The girl knew who the rapist was and where he lived, so the next morning the police took him into custody. However the police helped the man to make a compromise with the parents of the victim by forcing them to agree to withdraw the complaint in exchange for payment of one million riel.

Case 13: In May 1999, while returning from a neighbor's religious ceremony, a 16-year-old girl was raped by a 38-year-old man, who lived next door to the girl. The man dragged the victim into his house and raped her brutally, threatening to kill her if she told anyone. The victim went home and told her parents who complained to the commune leader. The commune leader tried to settle the matter by a compensation payment of 100,000 riel, but the victim's family refused.

In June 1999, the victim's father was murdered. His family believes the rapist murdered him because he would not agree to accept the compensation offer.

In July 1999, the case was sent to the prosecutor. In December 1999, LICADHO staff met with the court clerk who said the matter was still with the investigating judge. To date, no further action has been undertaken on this matter.

Case 14: In December 1999, a 6-year-old girl was playing with her sister under the house of a neighbor. She was asked by the 18-year-old grandson of the house owner to take beer cans from the house to be sold. When she went into the house, the man grabbed her and took her into a room where he raped her. She went home and told her mother, who made a complaint to the police. The police tried to get the parties to settle by compensation of 50,000 riel, but the victim's parents refused. The rapist's family allegedly paid the police to stop the investigation. The police also threatened the victim not to talk about the rape, otherwise they would kill her. Despite harassment by the police and the family of the accused, the young girl's parents continued their complaint to the criminal police headquarters and eventually the provincial court.

The rape seriously affected the young girl, who suffered nightmares, panic attacks and mood swings. With the assistance of LICADHO staff, she is still undergoing psychiatric treatment more than a year after being raped.

The case went to court recently, and LICADHO staff attended the hearing along with a journalist from the Phnom Penh Post who believed the prosecutor acted more like a defense lawyer, trying to discredit the medical evidence. Also the judge was gruff with the young complainant, who had to give evidence while the accused stood near her. The court staff were not happy that the media came to the trial and the judge decided not to give a verdict that day, instead she said she wanted to undertake further investigation.⁵⁶ Three weeks later the verdict was given. While the judge acknowledged there was penetration, she said it was "not deep" and the girl was still a virgin. The charge was reduced to indecent assault, which is a misdemeanor and allowed the judge to suspend the sentence, which is what happened. Although the medical and witness evidence showed

⁵⁶ During a personal interview with Koing Pisey, Lawyer with Cambodian Defenders Project, 12 December, 2000, he stated that it was his opinion that when a judge does not give a verdict that day and wants to "undertake further investigation", instead of further investigation, the court staff will negotiate with the accused person's family for a favorable verdict.

that the young girl had been penetrated and there was semen on her leg, and another medical examination done 20 days later showed her hymen had been torn⁵⁷, the rapist received a sentence of one year imprisonment suspended for six months and probation for five years. The end result was six months in prison, which the rapist had already served in pre-trial detention by the time the sentence was given.

RAPE AND MURDER

It is not uncommon for rapists to murder their victims so that they cannot be later identified, or to hide the evidence. In one case reported in the media,⁵⁸ a young girl was raped and then the rapist tried to gouge out her eyes so she couldn't identify him. With lack of police resources, rape and murder cases are often unsolved, but generally the police and courts will treat a rape and murder crime seriously, although not always consistently.

LICADHO has investigated only a few cases of rape and murder. In two cases, the accused rapist had previously quarreled with or had bad feelings against the victim's family. However, given the small number of cases, one cannot conclude that rape and killing of young girls is often revenge-motivated.

Case Examples: Rape and Murder

Case 15: In March 1999 a 7-year-old girl was walking home when she was invited to go to the forest to pick fruit by a 33-year-old mute male from the same village. While picking fruit the man grabbed the girl, forced her onto the ground and raped her, then strangled her. Hiding her body under a sugar-palm tree about 300m from the village, he returned home about 5.30pm. When the young girl did not return home, her parents began to worry and looked for her. Her body was found by relatives about 7pm that night after the rapist indicated where they should look. He was arrested the following day, but released two days later on bail. The case got wide coverage in the Khmer press, including lurid photographs of the naked body of the girl, yet the accused man is still not in detention and the case has not yet gone to trial. The investigating judge said the case is difficult to investigate because the accused is a deaf-mute.

Case 16: There was bad feeling between the families of the victim and the accused man in this case because the accused had seriously wounded a dog belonging to the victim's family by slashing its neck. In September 1999, the victim, a girl of 12, went to

⁵⁷ See Phnom Penh Post, January 5-18, 2001, p1.

⁵⁸ See Cambodia Daily, *8-Year-Old Rape Victim Returns Home*, October 12, 2000.

watch TV as usual at a neighbor's house. At 7pm the victim's mother heard her daughter cry out, but could not find her and spent the night looking for her. The next day she contacted the police. Later that day she found her daughter's corpse in a brook behind her house. A physician examined the body and issued a certificate stating the girl was first raped then killed.

A few days later the accused was interrogated by police and confessed he raped the girl, along with an accomplice, then killed her. The other named person was arrested, and the two men sent to prison. At trial, they were both found guilty of the rape and murder and sentenced to 18 years imprisonment.

Case 17: In April 1999 a grandmother left her 4-year-old granddaughter alone at home and went out to watch a football match. When she returned, the young girl was nowhere to be found. The girl's family and neighbors searched for the girl until late in the evening.

Her cousin found the girl's body the following day 150 meters from the house. The police investigation found the girl was brutally raped then her neck broken. A week later the police arrested a man whom they believe did the crime because he had conflict with the victim's family. The case is still being investigated.

GANG RAPE

LICADHO has investigated many cases where a group of young men have committed rape, usually on a single victim but sometimes more than one victim. The media has also reported many gang rapes. For the purposes of this report, a gang rape is a rape involving three or more perpetrators. Human rights workers believe these types of cases are on the increase. Some point to the increasing availability of pornography throughout Cambodia as one factor in the increase of not only gang rape, but in rape generally.⁵⁹ One case LICADHO investigated involved the rape of a girl of 7 by three youths, two aged 12 and one 13 (see case 10). It transpired that the boys had been watching sex videos prior to the rape and then copied the actions they had seen on the video. Another explanation for gang rapes is that young men are increasingly forming gangs, "like gangsters", and have a sense of impunity about their actions.⁶⁰ These gangs are often made up of students who hang out at schools, taking money from children and harassing female students.

Many gang rapists are youths or soldiers. One problem is identifying all of the rapists, as often a victim will become unconscious and seriously hurt during the rape. Even if they are identified, often not all of the men who took part in the rape will go to trial or be convicted, either because they escape or because they are well-connected and/or wealthy. Case 18 below illustrates the problems associated with gang rapes. While some of the

⁵⁹ Lim Mony, ADHOC, December 2000.

⁶⁰ Sophea Ung, CWCC, December 2000.

rapists were convicted, more than half of them escaped convictions for reasons unknown. Another problem is sentencing. While the law sanctions a 10-15 year sentence for this type of offending, often a convicted gang rapist will not receive such a sentence (see case 21 below where three gang rapists received a sentence of 2 months each).

While in law gang rape is treated more seriously by the provision of a longer prison sentence, the majority of cases investigated by LICAHDO were settled by compensation, or the perpetrators escaped, or one of them married the victim, or were found not guilty. These outcomes increase the already growing sense of impunity with respect to sexual abuse, and increase acceptance of the myth that sexual violation of a female is not that serious.

Because gang rape cases involve more accused men, the potential for the police and other authorities to make money from bribes or compensation settlements increases, resulting in even less motivation to bring the offenders to trial.

Case Examples: Gang Rape

Case 18: In a case which was highly publicized in the press, a 32-year-old mother of three was on her way home late one night after selling fruit shakes when she was surrounded by a group of men. The group, consisting of 17 youths ranging from mid-teens to early twenties, took her to an old building and raped her. “For five hours they took turns raping her, beating and cutting her arms, legs, breasts and buttocks with a knife. When she lost consciousness, they urinated on her, apparently to revive her so they could rape her again.”⁶¹ They also took her platinum necklace and bracelet and about \$50 cash and threatened to kill her if she told anyone of the attack. All men were subsequently arrested for questioning, 10 men confessed to raping the women, but 7 were released. The reasons for the release given by Sim Hong, deputy municipal military police commander, was that one was a minor, the others did not take part in the rape or “their parents came to assure us that they would educate them to be good boys.”⁶² The trial was held on November 28, 2000 and resulted in nine convictions, 1 for 15 years, 5 for 14 years, 2 for 11 years and 1 for 6 years.

Case 19: (see case 8) In September 1998, 15-year-old girl went with two friends to see dancing, but on the way the two friends made a signal and six men appeared and caught the victim and dragged her to a cottage. They held her arms, gagged her, and threatened to kill her if she struggled. Other men were at the cottage, and they raped the victim one after the other until she was unconscious. When she regained consciousness, more men raped her.

In all, 15 men raped the victim, who was seriously hurt. The perpetrators paid 2,200,000 riel in compensation, but the victim only got 700,000 riel, the rest of the money went to

⁶¹ *Gang Rape Victim Seeking More Convictions*, Cambodian Daily, Friday, March 17, 2000, p1.

⁶² *Ibid* 61, p2.

the authorities (1,000,000 riel), a witness who had seen the rape (200,000 riel), and other people involved in the handling of the case (300,000 riel).

This case was brought to the attention of LICAHDO in early 1999. As of September 1999 the authorities had done nothing even though LICAHDO had filed an intervention letter and made follow-up enquiries.

Case 20: In February 2000, two women aged 24 and 32 were walking home from a ceremony when they were set upon by seven males. Four men raped one woman, beating her into submission first. The three remaining men raped the other woman. The two women were threatened with death if they told anyone about the incident. This case was settled by compensation.

Case 21: In March 2000, a 20-year-old female was walking in her village, on the way to watch TV, when she met three men from the same village. The men, aged 16, 17 and 18, grabbed the women and dragged her off the road into a clump of banana trees. They each raped her, and then threatened to kill her if she told anyone.

Two days later, the women went to watch TV at the house next to hers. Climbing the stairs to the house, she was attacked by the same three men, who held her mouth shut and dragged her to a nearby pig-house. All three men violently raped her, causing her to lose consciousness. When she woke, all three men raped her again. As they finished, another woman from the village walked past the scene, so the men ran off. The following day the three men were arrested and detained in prison. At trial, the men received two months imprisonment each and the victim received 1,000,000 riel.

Case 22: In February 2000, two girls aged 13 and 17 took two cows to a house about 70 meters away, by reason of a prior arrangement between their parents and the house owner. When they arrived there, the owner of the house was not at home, but his younger brother-in-law was. Once the girls had taken care of the cows, they were asked to help cook some food while the man went to buy sour palm juice. While he was away, the girls' younger brother aged 11 came to the house. The man came back with four of his friends. The five men, all aged 19 or 20, tied up the boy and then took turns raping the girls, using small knives to threaten them. They then let the girls go home, but later that night the five men went to the girls' house and, when they were sure their parents were not at home, each one raped both the girls again.

The following day the girls' parents returned home and the brother told them what happened. They complained to the police; four of the men were arrested, while the fifth escaped.

The perpetrator who instigated the rape (the house owner's brother-in-law) was released six weeks later because he agreed to marry the 17-year-old victim. The three other arrested perpetrators were found not guilty and released. Meanwhile the perpetrator who

had escaped was apprehended, found guilty, sentenced to four years in prison and ordered to pay compensation of 4,000,000 riel to the 13-year-old victim.

Case 23: In March 2000, four girls all aged 16 were walking home after school when they were surrounded by 12 men who tried to catch them. Three of the girls managed to get away, but the other girl was caught and dragged to the ground and her underwear torn off. All the men stood around the girl and one was attempting to rape her when two men from the village came and persuaded the men to release the girl. All four girls then ran and told their parents. Five men were arrested for attempted rape and initially detained in prison, but two weeks later four of the men were released. The case is still under investigation.

RAPE BY MINORS

Rape by minors is a particularly alarming facet of sexual abuse in Cambodia, especially because most of them do not receive any punishment or any type of counseling. They are not held responsible for their actions and learn that they can get away with it. This reinforces the prevailing culture of impunity and provides no deterrent for future violent offending. Easy access to pornography, an upbringing where men are thought of as better than women, and next to no sex education results in many boys and young men having a very limited and misguided view of sex and an unhealthy attitude towards females. Some blame this state of affairs on the legacy of the civil war because many of the children of people who lived through the trauma of the war do not have the social base for mental and emotional development.⁶³

Monitoring access to pornography is problematic as there is no adequate legislation or intervention by the authorities to prevent public showing of these types of videos,⁶⁴ so many children and young men have access to violent and explicit sex videos. A worrisome by-product of pornography is the view of some judges that since pornography is so widely available and utilized, it would be unfair to punish Khmer men too harshly because the pornography causes a spontaneous desire, which men then need to satisfy. This attitude has its root in the cultural belief that men can't help their feelings.⁶⁵ It takes the responsibility away from the rapist and lays the blame on the pornography. If judges also hold this view, then it may be used to reduce a rape conviction to indecent assault, or

⁶³ Chea Vannath, president of the Center for Social Development, *Gang Rape Victim Seeking More Convictions*, Cambodia Daily, Friday, March 17, 2000, p2.

⁶⁴ A sub-degree was issued in 1989 on organizing and controlling movie and video, and a further one in 1996 on the Creation of the Inter-Ministerial Commission for Suppression on the Exploitation on Performing and Selling of Pornographic Video Cassettes in Phnom Penh, Decision No 14, 9 May 1996. This does not however, address the issue of children buying, selling, performing in or watching pornographic videos.

⁶⁵ One of the judges that Christina Bradnt interviewed said that the prevalence of pornography in Cambodia makes it unfair to sentence harshly for 'traditional' rapes since no one thinks about these kind of assaults very much before committing them.

to reduce the sentence beyond the minimum required by law. While this fear may seem in the realm of mere possibility, the myths about “deepness” and “virginity” (see under “Evidence”) as factors relevant to whether the penetration was rape have had this result.

Because of the legacy of trauma suffered by many people because of the civil war, the impact pornography has on them may be different from people who have not suffered such trauma. The blame put on pornography hides a much greater and wider social health problem of Cambodian people.

There is no juvenile justice system in Cambodia. The current law does not specifically address the minimum age of criminal responsibility,⁶⁶ but commentary from the Ministry of Justice states that children under 13 do not have the ability to recognize their behavior is wrong under the criminal code, while children between 13 and 18 do.⁶⁷ Article 14 of the Criminal Code states that children under the age of 13 are not be held in pre-trial detention, and those between 13-18 may only be held for a one month maximum.

There is a lack of facilities or programs to rehabilitate child or adult sex offenders in Cambodia. While there is a government-run “Youth Rehabilitation Center” in Phnom Penh, it has no facilities to treat child sex offenders and, in practice, has no rehabilitation services. Parents of children who rape appear not to see the seriousness of their children’s actions and are only too willing to pay money for the problem to go away.

Case Examples: Rape by Minors

Case 24: (See case 10 above) In September 1999 a 7-year-old girl “Thany” was invited to play at her neighbor’s house by another young girl, “Dara”. She was reluctant to go, and later it transpired that Dara’s 13-year-old brother had raped Thany on at least three occasions prior to this incident. With urging from her mother, Thany went with Dara to play. After playing for a while, Dara suggested they go to the pond to wash, and when they finished washing, Thany rushed to go home, but Dara called to her brother that Thany was getting away. The brother came and caught Thany, covered her mouth and dragged her to some nearby palm trees, then he told Dara to go get a mat and three *kramas* (scarves). Then the boy called over two of his friends, aged 12 and 13. Once Dara laid out a mat, the three boys forced Thany to lie down on it and tied a scarf around her mouth, then tied her hands to the end of a piece of wood which they laid across her chest. They tied her legs apart, then each boy proceeded to rape her, two times each. While this was going on, Dara was sitting a short distance away watching and keeping look out.

The boys then took Thany to the pond and again tied her and raped her two times each. Thany was traumatized by the ordeal and suffered injuries to her genital area. She was

⁶⁶ However, the draft criminal code currently in circulation does not recognize any criminal liability for an offender 13 or less, and if the offender is 14-15, it is up to the discretion of the judge.

⁶⁷ Ministry of Justice, *Penal Code Commentary*, undated.

referred for medical and psychiatric treatment by LICADHO, who also intervened to get the police to arrest the boys, who up until then were still living freely in the village near to the victim. On investigation it was discovered the three boys had been watching pornography at a local video bar, and it appears they copied actions they had seen on video.

The outcome to this case is that the three boys were returned home with no punishment. The victim's family accepted \$2,300 in compensation. While Thany had tried to tell her mother of the previous rapes, her mother did not understand or do anything to intervene.

Case 25: (See case 5 above) Four boys aged between eight and 16 attempted to rape an 11-year-old girl. Only the eldest boy penetrated her, however they all tried to rape her. This matter was settled by compensation of \$450, and the boys were not punished or provided with any rehabilitative services.

Case 26: In September 1999 an eight-year-old girl was playing with her friends, when her 14-year-old male neighbor "sweet talked" the girls to come and play behind his house in a field of banana trees and he gave them candy. He told the girls to cut banana leaves to make a sheet on the ground then told two of the girls to go home. He then told the other two to lie on the sheet and close their eyes. One of the girls opened her eyes to see the boy raping the girl of eight who cried out in pain. When he was finished he told her to dress and go bath in front of his house and then to help him wash potatoes.

When the girl got back home she told her mother what had happened. The mother went to talk to the boy but he denied doing anything. The girl had pain in her genital area and the next day her mother took her to the medical team of the commune where she stayed for one week, and after that to a doctor in a nearby town who confirmed she was no longer a virgin. Once the mother was satisfied her daughter was no longer a virgin she filed a complaint to the chief of the village demanding compensation of 2,500 Baht, but she did not receive this so she went to the police. The boy was arrested four months after the incident took place and detained in the provincial prison.

Three weeks later the case was tried, but the judge did not believe the testimony of the witness was clear so sent it back for further investigation. The boy was released because he is a minor. The case is still being investigated.

Case 27: In June 1999, a 12-year-old girl was looking after her young sister at their house while her mother was working behind the house about 50 meters away. A boy from the same village, aged 16, came into the house and raped the girl. She was threatened by him not to shout out or he would shoot her dead. The case was referred to the prosecutor but is still under investigation.

Case 28: In January 2000 a girl of seven and her brother, along with some other children, went to herd cows south of the village where they live. While they were watching cows, a boy of 14 approached the young girl and indecently assaulted her by

fondling her genital area roughly, until she cried out in pain, which alerted her brother who came over and took her home. Her mother took her to see a doctor who examined her and said her genital area was red and irritated. The families settled this matter by way of payment of 7.50 grams of gold.

Case 29: In March 2000, a girl of four was asked by a boy of 13 from the same village to play with him under some trees by the riverside behind his house. When they arrived there, he raped her then threatened to kill her if she told anyone. She ran home crying loudly and told her mother what happened. Her mother saw the blood on her daughter's skirt and went to talk to the boy's mother. The boy was called, and when he arrived, the girl pointed at him and said that he was the one who raped her, but his mother said it wasn't true. The next day the girl was taken to the local hospital, but because the girl was so weak, the nurses told the mother to take her to the provincial hospital for treatment.

The mother made a complaint to the police and the case was referred to the prosecution. The matter is still under investigation and the boy is still living in the same village as the victim.

Case 30: In January 2000, a girl of nine was home alone. Her mother was selling fruit at the market, her two sisters were at school, her father and older brother had gone for medical treatment, and her other brother was helping his grandmother split wood. A boy of 14, who lives in the house in front of the girl's, knew she was home alone and came into her house and took her into the bathroom. At first she did not yell out as she did not know what he wanted, but then he began to undress her. When she tried to protest, he threatened he would kill her by choking her. The boy laid her naked on the bathroom floor and lay on top of her. Just then, the girl's brother came home and saw what the boy was doing to his sister and caught him and beat him, then the boy ran away. The girl was taken to a doctor who said that she was still a virgin. The victim's family wanted to stop their complaint once they were assured that their daughter was still a virgin, and they just wanted an apology from the boy's family. The police however, sent the complaint to court, but the boy has left the district and the police say they cannot find him.

Case 31: In October 1999 a girl of four was walking past a house in her village when she was seized by a boy of 16 and dragged into the house. There was no one else in the house at the time. The boy forced her into his room and raped her. She ran home and her uncle asked why she was crying and she told him. He made a complaint to the police who arrested the boy. He was detained in prison for some time. In February, there was a trial and the boy was found guilty of rape, sentenced to three years imprisonment and ordered to pay compensation of 2,000,000 riel.

ACCOMPLICES

Article 64, which comes under Part IV Punishment of the Criminal Code, stipulates that the same punishment should be given to an accomplice to a crime as to the principle perpetrator. The article states:

He or she who supplies the modalities of an offence, orders that the offence be committed or facilitates commission of the offence shall be considered an accomplice and punished with the same punishment applicable to the principal instigator.

However, there is no stated felony crime or misdemeanor in the criminal law for being an accomplice, under which someone can be charged. Only a punishment is provided. In reality, an accomplice would have to be charged under article 64, even though it stipulates it is a punishment and not an actual offence. At least this article does define what an accomplice is and therefore provides punishment for anyone who orders or facilitates the commission of rape and other sexual offending.

In several cases investigated by LICADHO, accomplices who helped with the rape received no punishment (see cases highlighted below). One legal issue with regard to accomplices is whether a wife responding to the demands of her husband has the requisite criminal intent to be charged as an accomplice. Some may argue that a woman must defer to her husband; however, there appears a growing number of women who actively help their husbands, friends or boyfriends rape a young girl.⁶⁸

One case cited above (24) involved a young girl helping her brother to rape another young girl of the village by luring her to the house, alerting her brother when the girl was leaving, bringing a mat and scarves to tie the girl, and then keeping look out. There is no doubt in this writer's mind that the young girl lacked the requisite criminal intent to be punished as an accomplice. That case does, however, highlight the lack of facilities available to deal with children involved in violence and sexual offending whether it is as witness, offender, or victim.

One reason given for women helping their husbands to rape is the common practice of husbands seeking out prostitutes or girlfriends. Because of the spread of HIV/AIDS, some women want to control who their husbands have sex with, and providing a young girl to satisfy him is one way of ensuring he will not get this virus and pass it on to his wife.

⁶⁸ One expatriate health professional blamed misinformation of HIV for this. She thought some people believed that they could cure themselves of the virus by passing it on to someone who didn't have it.

Case Examples: Accomplices

Case 32: In February 2000, a girl of 14 went to buy ice in front of the house of a 28-year-old man in her village. The man's wife pulled the girl behind the house, gagged her and covered her head with a cloth, and then took her into the house and called her husband. The husband and wife forced the girl onto a bed, and then the wife left the room. The man raped the girl, and then pushed her against the wall until she lost consciousness. At 1am in the morning, the girl's uncle found her in a banana tree grove behind the rapist's house. Two days later she told her parents what had happened, and the rapist was detained. At trial, the man was found guilty of rape, sentenced to five years in prison and ordered to pay 3,500,000 riel. His wife was not charged with any crime.

Case 33: (See cases 8 and 19). A girl of 15 was set up by two female friends aged 17 and 19 to be gang raped by asking her to accompany them to fetch clothes at the house of another girl and then continue to see dancing in a nearby commune. One the way, the two friends made a strange sound as a sign, and that is when the girl was surrounded by men, dragged away to a cottage, threatened with death and raped by 15 men. Three of the men were not identified; the other 12 paid compensation to settle the matter. The two girls who helped facilitate the commission of the offence did not receive any punishment.

Case 34: A widow and mother of four young children rented a house from her brother-in-law aged 47. In January 2000, it came to light that he had raped two of her daughters aged nine and 11. The girl of nine remembers being raped three times on different days during the previous November, but there may have been other occasions that she has wiped from her memory. Each time he threatened to kill her if she told her mother. He also raped the girl of 11 at least once. The man's wife knew of his actions, and on some occasions helped him by enticing the girls into their house. In January, the mother of the girls noticed they looked ill and after questioning them they told her what happened. The mother took the girls to see a doctor and was told the girls had been raped.

The mother complained to the authorities. The man and his wife paid 300,000 riel to a boy of 18 to take the blame and say he was willing to marry the 11-year-old girl. However, the man and wife were temporarily detained while the matter was investigated.

On 19 April 2000, the court president confirmed to LICADHO staff that he had scheduled a hearing on 4 April but delayed it so that the perpetrator could try to settle the case by compensation. The case did finally go to trial but the man was acquitted, drawing harsh criticism from human rights groups and the investigating judge, who stated: "I investigated and found enough evidence to prove the accused really raped the two girls. But I don't know what evidence the judge took as proof that the man was innocent ... my

investigation found the suspect's wife acted as an accomplice. His wife tried to hire a young boy to take responsibility for the rapes."⁶⁹

RAPE CASES SETTLED BY MARRIAGE

It is unclear from LICADHO's investigations how common marriage is as a way to settle a rape attack. Between January 1999 and March 2000, LICADHO investigated three rape cases that resulted in marriage, and prior to that period there were four cases.

While this appears to be a more common in rural areas, one human rights worker believed that it happens often as a way to save family reputation among middle class families in Phnom Penh,⁷⁰ but these cases are never reported so statistics are not available on how often this may occur.

Marriage is seen as a way of saving family honor, as the girl raped is no longer seen as being fit to marry. It is also a way for a perpetrator to escape a prison term. Often it is the threat of a lengthy prison term that makes a rapist agree to the marriage. The impact of this on the victim is unimaginable. Not only does she have to relive the nightmare of the initial attack, but a man forced into marriage this way will likely be a very abusive husband and will not stay with the girl for long.⁷¹

Because of the cultural belief that virginity until marriage is so important, the victim in such marriages is the one who is punished instead of the rapist. This reinforces the sense of impunity, as marriage and then a quick get-away are maybe the only consequence of a violent attack on a woman. It also reinforces the belief that a daughter's only worth is her virginity. It further trivializes the crime and shows a complete lack of understanding and compassion towards the victim's suffering.

Another way a victim may be punished is to be sent away from her family and village to live with relatives. There she will have a chance of marriage in an area where it is not known that she was raped and is no longer a virgin, as happened in one case investigated by LICADHO. At a time when the victim needs family support the most, she is isolated and left to suffer in silence.

Case Examples: Settlement by Marriage

Case 35: In November 1999, two girls aged 14 and 15 were walking to an art performance when two men who they didn't know very well, but who live in the same

⁶⁹ See Cambodian Daily article; *Acquittal in Child Rape Case Draws Criticism*, Thursday, August 17, 2000 p.1.

⁷⁰ Lean Chinda, LAC, July 2000.

⁷¹ Lim Mony, ADHOC, December 2000.

village, stopped and asked the girls to take a moto-ride with them to the pagoda. The girls refused. One of men slapped the girl of 14 on the shoulder, and the girls became afraid so agreed to go with the men. The men took the girls to a guesthouse and kept them there for the night. One man aged 28 raped the girl of 14 twice; the other man aged 21 raped the other girl once. The following day, the men left the girls at a military camp where the brother of one of the girls found them and made a complaint to the police. The man of 21 was arrested, but the other man escaped. The matter was settled by marriage between the arrested man and the girl of 15.

Case 36: See gang rape case 22 where two girls aged 13 and 17 were raped by five men. The man who instigated the rape escaped any criminal punishment by agreeing to marry the 17-year-old victim of the gang rape.

SENTENCING

Rape is classified as a crime and indecent assault as a misdemeanor. Article 70 of the Criminal Code reads:

Suspended Sentence

Prison sentences, with the exception for those for crimes, may be suspended totally or in part. In this case, the condemned persons shall not serve out the sentence provided that he or she does not commit one of the offences covered by the preceding articles for a period of five years after the judgment.

It is clear therefore that anyone convicted under article 33 for rape cannot receive a suspended sentence. But under article 42, for indecent assault, they can. Often, rape cases may result in a reduced charge to indecent assault (due to “lack of evidence”) and then a suspended sentence imposed

Article 68 allows the punishment for an accused person aged under 18 to be reduced by half. This article further sets out circumstances for the judge to weigh when considering what punishment to hand down. This allows a judge to reduce a sentence to below even the minimum punishment prescribed in the law. These circumstances are:

- the age of the convicted person
- the personal background of the convicted person which might reduce responsibility
- the psychological or psychiatric state of an accused which is certified by a psychologist or psychiatrist
- circumstances of the crime or misdemeanor that rendered absolutely necessary the actions of the convicted person.

When deciding on the appropriate sentence, a judge should first apply article 68 and decide on the sentence in respect of the crime by taking into account the circumstances of that case. The judge should then apply article 70 only if the offence is a misdemeanor *and* if the judge believes a suspended sentence is appropriate. Problems can arise because there are no guidelines on how or when to apply a suspended sentence, or what to take into account when deciding the appropriate length of imprisonment. This allows judicial license with respect to applying suspended sentences and sentencing generally. Generally, in developed countries, it is unlikely someone found guilty of rape would receive a suspended sentence unless there were some extraordinary mitigating circumstances – for example, a very young offender. Even a minor would not escape some form of corrective training.

Trial outcomes have shown that judges often apply the law incorrectly and inconsistently, giving convicted rapists suspended sentences when the law prohibits it. Furthermore, there are no apparent guidelines on interpreting article 68, especially the psychological or psychiatric state of an accused. One can imagine this article being abused with any certificate from a psychiatrist being accepted if the particular case deems it expedient. Case 37 below illustrates this problem.

One recent trial (Case 14 described in detail above) illustrates the problem with a lack of principles and directions to guide judges on sentencing. While the evidence was clear that the six-year-old victim had been penetrated and this was accepted by the court, the judge reasoned that the rape was not “deep enough” for the accused to be convicted of rape under article 33 of the Criminal Code. The judge also did not convict him of attempted rape under the same article, but rather reduced the charge to indecent assault under article 42. However, indecent assault is defined sexual assault against a person “by touching, caressing, or any other sexual act not involving penetration”. Clearly the judge was wrong in law to reduce the charge to indecent assault. The only conclusion one can draw was that she wanted to suspend the sentence (which in fact she did), as this can only be done for misdemeanor charges.

While there are also ample illustrations where judges have applied the sentencing provisions correctly, the problem is that there is no consistency, and it seems the people who get an adequate or long prison sentence are offenders who have little money. A lawyer who sometimes defends accused rapists believes that some of the sentences given were greater than the judge could legally give.⁷² He said that his clients were all very poor, with no connections and little family support. He also believed that if a case was tried before a female judge, then the accused would always be convicted. Even if the sentences were legally correct, he believed they were not fair sentences given that many others receive suspended sentences for similar offending. He believed it came down to money. If the court staff knew the accused couldn’t pay them for a lighter sentence, then they would get a harsh sentence. There is also the practice of judges of reducing a prison sentence if the accused can pay a large sum of compensation to the victim.⁷³ This

⁷² Koing Pisey, CDP, December 2000.

⁷³ Sophea Ung, CWCC, December, 2000.

highlights the problem of combining criminal trials with civil proceedings for compensation.

Case Examples: Sentencing

Case 37: In a case that went to trial in 1999, a 27-year-old man admitted raping a 14-year-old girl. The rape was violent. A scythe was held to her neck as she was raped and she was told not to move or else he would kill her. She screamed and pleaded with him to stop and was in great pain; she later received medical treatment including stitches in her genital area. At his trial, the judge was given a medical certificate written by a government psychiatrist who had examined the accused, at the proposal of the defense lawyer. The certificate stated that the perpetrator becomes unconscious when he has a high temperature, when he drinks he is very mean, and that he has had a mental problem since he was young which became more serious as he became older.

The judge held that the certificate verified that the accused had a mental problem that was sufficient to satisfy article 68 of the Criminal Code. The rapist's sentence could therefore be reduced to below the minimum rape sentence of five years imprisonment contained in the law. The judge sentenced the man to three years imprisonment, but suspended two of those years (leaving an effective sentence of one year in prison). The man was also placed on probation for five years (as required by all suspended sentences), but no order was made for psychiatric treatment or any monitoring of the man when he was released.

Case 38: (See gang rape case 21) Three males aged 16, 17 and 18 raped a female aged 20 on two separate occasions. They were found guilty, but only received a sentence of two months imprisonment each and ordered to pay compensation of 1,000,000 riel.

Case 39: In February 1999, during a period of a few weeks, a 43-year-old man raped his step-daughter, 16, on several occasions and each time threatened to kill her and her mother if she told anyone. The last time he tried to rape her, she fought back and yelled out loudly. Afraid the neighbors would hear, he stopped. He talked with his wife that evening and complained about the girl always going away for walks and persuaded his wife to send her to live with her grandmother. The girl went to stay with her grandmother and after some time told an aunt what had happened. She was taken to hospital, where they found out she was 6 ½ months pregnant. A complaint was made to the police and the matter ended up at trial where the man was found guilty and sentenced to only six months imprisonment.

Case 40: In September 1999, a man of 19 bought some cakes from a girl aged 12 was selling them to support her family. The man then knocked her to the ground and tried to rape her. It is unclear from the report whether he penetrated her or whether this was an attempted rape case. The report states "fortunately he was not able to rape her deeply". The girl yelled out and managed to run away. A few days later she saw him drinking coffee and told her aunt that he was the man and they made a complaint to the police. The

man was arrested. At trial, he was sentenced to six months imprisonment, but this was suspended.

IMPUNITY

Until recently the law regulating the civil service had a clause that reinforced impunity by requiring permission from the government before any civil servant could be charged with a crime. This law was finally amended, but still allows for three days notice to be given to the relevant government department prior to arrest. This allows ample time for the accused to escape. Police and military often “escape” if they are the accused, or use their authority to have the complaint stopped.

Although the law has been amended, it will take time before there will be much change to the climate of impunity that state employees function under. While many of the cases already cited in this report illustrate impunity at work, the ones below also highlight the problem of impunity which plagues Cambodia today.

Case Examples: Impunity

Case 41: A 35-year-old militiaman raped a number of girls in the district where he lived from April 1999 until he was finally arrested on 24 February 2000. LICADHO investigated five separate rapes by this man of young girls aged seven to 13. He would approach the girls and offer them money, usually 10 or 20 Baht, to go with him to his base. If they refused he would drag them to some quiet place and rape them. He would also threaten to kill all the members of their families if they told anyone. He also tried to give the girls money after he raped them, or said he would come back the next day with the money. In one of the cases, he raped the same girl on two separate occasions.

The girls in these cases only came forward once they overheard their parents saying the man was in prison. Thus there were other incidences of this man raping young girls that sparked the initial complaints against him. It appears that his predatory activities had been going on for a while with the knowledge of many members of the community and presumably his colleagues.

LICADHO first became involved in December 1999 when they heard about a serial rapist in this area and went to see the deputy police chief, who said he had asked permission from the Division 12 military commander to arrest this man, but the commander refused, saying they could interview him only. On 17 January 2000, LICADHO staff went to see the deputy police chief again. He said he had received a warrant from the court and was investigating the case. The perpetrator was finally arrested on 24 February 2000. When contacted recently, court staff said the case was awaiting trial.

Case 42: Over a period of time in 1999, the 56-year-old deputy police inspector of the area where she lived indecently assaulted a 12-year-old girl repeatedly. The police inspector was seen sexually assaulting the girl by her cousin, but he was too afraid to do anything about it. On another occasion, the police chief was seen sexually assaulting the girl by a family member who yelled at him to stop. The girl said he had committed sexual acts on her on many occasions and each time had given her 400 riel. The perpetrator threatened to strangle the girl if she ever told anyone.

The district police inspector, the perpetrator's boss, helped to settle the case. Both parties accepted a settlement by way of compensation 100,000 riel. The victims' family accepted this partly because the abuser is a friend of the victim's grandfather, and also because the victim's family is afraid of him.

Case 43: In March 1999, a civilian man was playing cards with three military men. The civilian won 65,000 riel, but when he tried to leave the military men arrested him, took him to their base and beat him until he was unconscious. Meanwhile, the civilian's wife (aged 25) found out he had been arrested, and she went with her sister-in-law (aged 15) to beg the military to release her husband. They said they would only release him if the 15-year-old stayed with them. As she was worried her husband would die because he was beaten so badly, the wife agreed and took her husband home. When she arrived at her village, she asked the villagers to help her husband. A man from her village offered to go with her to help get her sister-in-law from the military men. When she arrived back at the military camp she heard the girl crying out for help. Then the man who had offered to help her, dragged the wife into the bushes and raped her. The 15-year-old girl, meanwhile, was raped all night by the military men, and was finally told to go home at 6am the following morning. Some of the villagers helped the family to make a complaint and took them to the hospital.

The deputy police inspector said that the military commander went to visit the victims in hospital one time, and after that the victims went missing and nobody knew where they were. The civilian perpetrator was arrested and detained in prison, but the military men "escaped away". On 18 August 1999 the court issued a final decision to suspend the case.

EVIDENCE

A major obstacle to convictions of alleged rapists at trial is evidence.⁷⁴ This problem is by no means limited to Cambodia, but occurs around the world; often, there are no witnesses to rape and also little or no forensic evidence (because victims' fear and trauma mean that they frequently do not immediately report the rape).

While the victim's testimony sets out her version of what took place, a Cambodian judge will usually look for evidence to back up her claim if the accused is to be convicted. The

⁷⁴ All human rights workers interview referred to problems with evidence gathering and usage of evidence in gaining convictions in sexual abuse cases.

trial judge must be convinced that penetration took place, without the consent of the complainant, and that it was the accused that committed the rape. The common consensus among human rights workers is that a victim needs a lawyer to help with evidence gathering, because the police do not investigate the case well, and prosecutors do not gather evidence, just receive it.⁷⁵

1. Evidence Types and Problems

Types of Evidence

The most useful evidence to support the victim's testimony is a medical certificate detailing the findings of a medical examination of the victim. A judge will place the most evidential weight on a medical certificate, unless there is some other compelling evidence. Without an adequate medical certificate to back up the victim's claims of rape, the case is very difficult to prove.

Other evidence that may be important to back up the complainant's testimony includes any witness to the rape, torn and/or bloody clothing, physical evidence at the scene of the crime and confessions by the accused. The weight judges place on the different types of evidence presented will depend on the circumstances of each particular case.

Problems with Evidence Gathering

The main problem for accurate evidence gathering is the time lag usually associated between a victim being raped and telling someone about it. Because of the shame and psychological trauma associated with rape, victims typically take a long time to tell anyone what happened.⁷⁶ Often they are too frightened because the person who raped them has threatened them, and it is often someone they know in their village, which further adds to their anxiety.

By the time families and/or authorities find out about the crime, most if not all physical evidence has been lost. Usually the first thing a victim will do is wash her bloodied skirt or trousers and herself. Torn clothing is often thrown away. Even if the rape is apparent early on, ignorance of the importance of keeping this evidence results in it being destroyed. Also, adequate medical attention is frequently not received by victims because their families are too poor or live too far away from hospitals or medical clinics.

Because of the nature of the crime, eyewitness testimony is not common as often the only other people present are accomplices of the rapist. When there is an eyewitness, they are commonly young people, perhaps the brother, sister or friend of the complainant. Given their age they are easily intimidated, especially by police and judges, resulting in them

⁷⁵ Personal interview with Yung Phanit, lawyer for Cambodian Defenders Project, December 2000. Under the Criminal Procedure Code, prosecutors do not actively investigate the case, which is the job of the investigating judge.

⁷⁶ Lean Chinda, LAC, July 2000.

being frightened and their testimony being of little value. People interested in the accused being acquitted may also intimidate other people that may have witnessed all or part of the crime from giving evidence. Further, witnesses may not want to become involved in a process they fear and do not understand, especially when they perceive it will result in trouble for them with no benefit.

While confessions are not uncommon, inconsistent weight appears to be placed upon them. In several cases LICADHO investigated, the accused confessed to the rape, although initially they may have denied it, but even these cases were mostly settled out of court. One lawyer who defends accused rapists stated most of his clients had “confessed” to the rape while in police custody, and this was used to convict them, even though in most cases the medical evidence was not conclusive.⁷⁷

2. Medical Evidence

Problems

Lean Chinda, the first vice-director of Legal Aid of Cambodia, described in a July 2000 interview the many inherent problems associated with obtaining medical evidence and using the results as evidence in court:

- There are not enough doctors with the experience to undertake an effective examination of victims and issue a sufficient medical certificate. Often the certificates do not provide enough evidence. They may detail cuts and bruising on the body and genital area, but do not provide evidence of penetration.
- Because of lack of knowledge and equipment, unless victims go to a doctor within a day or two of the alleged crime then an adequate certificate cannot be obtained.
- Only certificates issued by specific hospitals or doctors (public ones recognized by the courts) will be accepted as evidence.⁷⁸
- For many victims, a medical certificate is prohibitively expensive, especially from a good and recognized doctor.
- Some doctors will not issue a medical certificate for fear of retribution. In one case in Kampong Speu, a convicted rapist shot the doctor who

⁷⁷ Koing Pisey, CDP, December 2000.

⁷⁸ Another lawyer, Yung Phanit, said during the interview that victims have to obtain a medical certificate from the doctor of the prosecutor’s or investigating judge’s choice. If they obtain one from another doctor, the court may not accept it.

provided the medical certificate that helped to convict him, once the rapist was released from prison.

Other issues with respect to medical certificates include that a doctor can only state if the victim is still a virgin or not (whether the hymen is intact) and other injuries sustained. A doctor cannot state if someone has been raped. It is therefore up to the trial judge to interpret the medical certificate to determine if it supports the allegation of rape.

Judges and Medical Evidence

While there is no published literature about how Cambodian judges interpret medical evidence, researcher Christina Brandt's recent interviews with some judges provide some insights into this. Christina Brandt has again given her permission for use of the following paraphrasing from her interview findings:

The three things that are generally identified in a Cambodian post-rape medical examination are bruises or cuts on the body, semen or sores in the vagina and tears in or sores on the hymen. Bruises or cuts on the body of the victim are considered evidence of a struggle, and are especially important in identifying an "inhuman" rape.

Judges varied on what they believed to be conclusive evidence of rape from a medical certificate. Judges agreed that the presence of both vaginal tears and semen is the most conclusive evidence of all. Tears in the hymen were critical in the minds of many of the judges interviewed. At least one judge indicated that if a victim was a virgin before the alleged rape, the presence of semen in the vagina without tears in the hymen would be problematic for supporting a rape conviction on its own. Three judges said that in a "virginal" victim case, the absence of tears to the hymen would outweigh even an eyewitness to the rape (one judge said that an actual penetration without tears in the hymen was a physical impossibility). Another judge said that the eyewitness would outweigh the medical exam, especially if the exam were completed long after the incident. Several judges expressed awareness that long time delays reduce the usefulness of medical examinations.

While for some judges in Cambodia, tears to the hymen and other injuries to the genital area were crucial to indicate whether sex was consensual or not, studies of rape in the United States have indicated that most rapes, including vigorously resisted ones, leave no cuts or bruises on the body or in the vagina. The issue of whether and how to interpret the hymen itself is hotly contested.

Because it is very common in Cambodia for a rape to be accompanied by threats of violence and death, in many cases the victim does not struggle while she is raped. Therefore, chances of sustaining physical injury are even less in many cases. Thus, the attitudes expressed above from some Cambodian judges to the way they interpret

evidence results in many allegations of rape not being believed because the complainant hasn't suffered enough injuries in the minds of some judges.

One human rights worker told of a case that went to trial where the issue was how many stitches the complaint received to her genital area. Because of the popular view of some judges that physical injury should be present to prove a rape, prosecutors and defense lawyers were used to arguing the severity of injuries to show the rape was more violent, and therefore should be taken seriously.

The uncertainty and diverging use of medical evidence amongst Cambodian judges is clear in some of their comments. In one case, officials said a girl who became pregnant after an allegation of rape was not raped because they reasoned the girl must have had sex many times with her attacker to have become pregnant.⁷⁹ This attitude is similar to another judge who reasoned that because a girl did not come forward to the authorities after the first time she was allegedly raped, then all subsequent times the man forced her to have sex with him was not rape because she led the man to believe she didn't mind.

A very concerning body of reasoning, which has gained a strong hold in the minds of judges, is that if the girl does not sustain serious enough injuries to her genitals, then she was not penetrated "deeply enough" for it to be a rape that can be prosecuted under article 33 of the code.⁸⁰ Under the Criminal Code, rape only requires penetration of the victim and does not make "deepness" or virginity an issue.

There is a severe misunderstanding of the medical evidence in connection with rape by Cambodian judges and this is extremely worrisome. When you combine this with the lack of suitably qualified medical or forensic professionals to gather this evidence, virginity has become the benchmark used by most judges. It is little wonder that many rape allegation cases do not result in a conviction.

THE PROCESS FROM ALLEGATION TO TRIAL

How Organizations Become Involved

According to organizations that investigate sexual abuse and provide assistance to victims, cases come to their attention through a variety of means: from the media, other organizations, victims or their families, community networks, police and other authorities, taxi drivers, or during human rights education sessions in the provinces.

⁷⁹ Chanthol Oung, CWCC reported in Cambodia Daily, Thursday August 17, 2000, p2.

⁸⁰ See case 14, in which Kandal Court Judge Krong Kouy acknowledged there was penetration but ruled it "was not deep" so the charge was changed to one of indecent assault. See also Phnom Penh Post, January 5-18, 2001, p1.

Typically, once a case comes to the attention of a human rights organization, it is allocated to an investigator who conducts a field investigation. This involves talking to the victim and her family, witnesses and the police. They are careful to explain their role and the legal procedure available, and then leave it up to the complainant's family how they wish to proceed. Sometimes the family has already agreed to settle by compensation and have already thumb-printed an agreement. In these cases it must be explained to them they can still try to have the matter prosecuted.

Some organizations provide shelter, and this is important, as many victims are scared because of threats they have received, or the accused lives nearby and they have to see him most days, or it was a member of their family that violated them.

If the family decides not to pursue the matter under the legal system, then organizations view their role as finished unless the victim wishes to receive shelter, medical care or other assistance. Organizations do not get involved with settling the case outside of the judicial process, although some investigators may fall victim to the easy money to be made by helping to settle a matter by payment of money. Most organizations do try to monitor and document case outcomes.

As already discussed above under the heading "Settlement by Compensation", many Cambodians are fearful and disillusioned about the legal process. Persuasion by court staff and police to settle by cash, and an already existing traditional dispute resolution method, are reasons why victims may not proceed through the courts.

This section will focus on the situation where the victims initially decide to pursue the matter through the legal system.

Investigation Process

Under the Law on Criminal Procedure, public prosecutors cannot investigate cases, only the investigating judge can. This has several effects:⁸¹

- Prosecutors only do what the investigation judge shows him or her in the dossier.
- Police don't do their job properly because they depend on the investigating judge to find enough evidence, otherwise the accused will be acquitted.
- The Minister of Justice can interfere with the public prosecutor's affairs easily.

Without the help of a lawyer or human rights worker, the complainant will find the process very difficult, unless they are familiar with court procedure, or have relatives who

⁸¹ *Asian Legal Resource Center*. Seminar on Cambodian Judiciary – Statement and Recommendations, 14-20 March 1998, Hong Kong, p 7

can assist them. Not all organizations have lawyers, but they try to find one to help the victim, and if they cannot, a human rights worker will support the victim in court and help with evidence gathering. This is a crucial task, as prosecutors do not gather evidence, so a victim needs an advocate to do this.⁸²

Because cases often take a very long time to get to court, victims and their families become disillusioned and vulnerable to persuasion to accept a compensation settlement. Other problems they may have to deal with are threats or intimidation from the accused or his family and from people in authority who see it as expedient to have the matter concluded.

The cost involved can also be a large burden. While organizations have some funds available to pay for such things as medical examinations and travel expenses to attend court, they will not pay the bribe money required in reality for the police and court staff to do their jobs.

Most people interviewed stated they had problems dealing with the court staff and police. Sometimes a case may be delayed because the court staff failed to issue a summons, or the police say they never received an arrest warrant, but the court staff say they have sent it to the police already.⁸³ Sometimes the police do not want to help in the case for various reasons. Police are paid very low salaries and are under-funded, so they often demand money from the victims before they will undertake any enquires, or they may be paid to block the case, or they may be friends or relatives of the accused.⁸⁴

Many police do not fully understand the seriousness of rape and indecent assault, so will not react seriously to allegations.⁸⁵ Even when the police have received an arrest warrant, they may let the accused escape, for example, by letting him go into the bushes unaccompanied to relieve himself, thus providing the opportunity for him to run away.⁸⁶ Of the cases LICADHO investigated, 13% have not been resolved because accused rapists have “escaped”, and the police lack the resources and/or desire to apprehend them. In one case investigated by LICADHO, a military commander said the accused had escaped, yet it was reported by local villages that he was still working in the same unit under that commander.

The Court Process

If an accused rapist is arrested and detained, the question of bail arises. One lawyer believed that if an accused had enough money then he would be let out on bail, and often

⁸²Yung Phanit, CDP, December 2000. For further discussion on the problems associated with evidence, see under “Evidence” above.

⁸³ Sopheha Ung, CWCC, December 2000.

⁸⁴ Ibid 83.

⁸⁵ Lim Mony, ADHOC, December 2000.

⁸⁶ Sopheha Ung, CWCC, December 2000.

would then leave the area. However if the accused were poor, he would stay in prison no matter what the circumstances detailed on the motion for bail.⁸⁷

An investigating judge is appointed to the case to investigate and decide whether the matter should go to trial. Some view some court clerks as very powerful, and that sometimes they will undertake the investigation and tell the judge what they think the outcome should be, even without talking to all the parties.⁸⁸ This is a violation of law.

The actual trial process can be fraught with problems for the complainant, who is often made to stand next to the person accused of raping her. Often they will have to recount the details of the rape incident with people unconnected to the case in the courtroom. Even when the judge orders unconnected people to leave the courtroom, they will often look and listen through open windows, including witnesses yet to testify.⁸⁹ There have been cases, however, where a judge has ruled that a victim in such a sensitive and distressing case should not be asked questions publicly in open court and ordered windows and doors closed, but these practices are inconsistent and depend on the whim of the trial judge.

While the prosecutor's job is to try and persuade the trial judge that the accused should be convicted, they sometimes conduct themselves more like defense lawyers, cross examining the complainant and trying to discredit other supporting evidence.⁹⁰

If the victim does not have a lawyer to represent her at the trial, then she has no one to look out for her interests (although in theory this is the prosecutor's job). This was the case for a girl of 14 who was raped while her assailant held a machete to her throat. Although an attempt had been made to find the victim a lawyer, this attempt was rebuffed by a legal NGO. During the trial, the lawyer representing the accused argued that the girl was still a virgin and his client was mentally ill. The young victim had no lawyer to represent her interests, and these arguments went unchallenged by the prosecutor even though rape laws state equal punishment for attempted rape. As a weapon was used in the rape, the convicted man should have received a sentence of 10-20 years imprisonment, however he received three years with two years suspended. He also received five years probation, which is a meaningless in Cambodia where there are no probation officers or other means of following up on a person released from prison. However, this case was hailed in the media as a small victory⁹¹ in view of the small percentage of cases that reach trial, and the even smaller number that result in a conviction and prison time.

⁸⁷ Koing Pisey, CDP, December 2000.

⁸⁸ Ibid 87.

⁸⁹ Ibid 87.

⁹⁰ Lean Chinda, LAC, July 2000.

⁹¹ See Phnom Penh Post, July 23-August 5, 1999 *A child rape victim's small court victory*.

Other Problems with Law & the Courts

A major problem with court proceedings is lack of independence of the judiciary, as guaranteed by the Constitution.⁹² In practice there is no separation of powers, thus the judiciary is not independent. The judiciary is dominated by judges who were appointed prior to the introduction of the current Criminal Code, so in reality a socialist system of justice prevails in practice. Many judges lack professional training. They are under the control of the Minister of Justice,⁹³ which is unconstitutional, as any interference by the executive in the administration of justice is at odds with the Constitution.

Investigations, in reality, rest on getting a confession from the accused, even though there are criminal procedure laws in place stating how investigations are to be undertaken.⁹⁴ This practice was used during the period of 1979-1992 under the socialist model, and is still pervasive amongst police and the judiciary, and is at odds with the practice of liberal democracy enshrined by the Constitution.⁹⁵ The law in respect of confessions does not help the matter because several articles contradict one another:

Article 38 of the Constitution states, “confessions obtained by physical or mental duress shall not be considered proof of guilt”.

Article 24.3 of the Criminal Code states, “Confessions by accused persons re never grounds for conviction unless corroborated by other evidence. A confession obtained under duress, of whatever form, shall be considered null and void”.

Article 125 of the Law on Criminal Procedure states, “Evidence of a criminal offence may be produced by any means in order to convince the judge, for example by confessions, by witnesses appropriate and convincing testimony, by examination ...”.

While these articles makes the admissibility of confessions unclear, in reality the judiciary still accepts and relies upon confessions as evidence of guilt. It will take years before the police and the judiciary change their current practice and embrace the ideals enshrined in the Constitution. Old habits die hard.

Another stumbling block to adequate justice is the blending of the criminal prosecution with the civil suit for damages filed by the victim or her family. Criminal and civil disputes are very different in nature and many problems arise in dealing with them at the same time during the criminal trial. If the parties settle their civil dispute by the accused paying money prior to trial, the criminal proceedings will in practice come to an end as

⁹² See article 51 to the Constitution of the Kingdom of Cambodia that stipulates, among other things, that the legislative, executive and judiciary powers shall be separate. Also article 109 where judicial power has been recognized as an independent power.

⁹³ *Asian Legal Resource Center*, March 1998, p3.

⁹⁴ See The Criminal Law and Procedure Act of 1992 and the Law of Procedure Act of 1993.

⁹⁵ *Ibid*, 93, p 8.

well. If the case does go to trial and it becomes apparent that the accused has money, then he will get a much shorter prison sentence if found guilty. This can happen for both reasons of corruption by a payment to the judge, or because a payment of money for the civil aspect of the case is deemed punishment for the criminal aspect. This means poor men typically receive longer prison sentences than wealthy men who committed the same crime under similar circumstances.

EFFECTS OF SEXUAL ABUSE ON VICTIMS

Given the way rape complaints are treated by both authorities and the community at large, there appears to be a lack of understanding of the effects of rape and indecent assault. Problems typically suffered by victims include severe anxiety, guilt, loneliness, depression, lack of confidence, chronic bed-wetting, aggressiveness, self-mutilation, suicide,⁹⁶ fear, humiliation, shame, embarrassment, self-blame, helplessness, decrease in appetite, nausea, tension headaches, fatigue, abdominal pains and vaginal complaints.⁹⁷ Another health risk for victims is sexually transmitted diseases. Common forms found in Cambodia include gonorrhoea, syphilis, herpes simplex, urinary tract infections and polyps,⁹⁸ and of course the most worrisome one, HIV-AIDS.⁹⁹

The physical and psychological effects of sexual abuse are even more severe in children, as it impacts on their social and moral development. Children who are sexually abused by an adult may suffer anxiety and/or hyperactivity, lose confidence in themselves and become mistrustful of adults.¹⁰⁰ They suffer symptoms of post-traumatic stress disorder with short-term effects as follows:¹⁰¹

- Children aged up to six typically have feelings of defenselessness, experience sleeping difficulties, appear as mute and withdrawn, unable to eat, lose recently acquired developmental skills (ie may start bedwetting).

⁹⁶ *The 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*; United Nations, New York, 2000. This report was initiated and prepared by the United Nations Economic and Social Commission for Asia and the Pacific in conjunction with the Swedish International Development Cooperation Agency, Section for International Maternal and Child Health Uppsala University, Sweden and the Cambodian Center for the Protection of Children's Rights.

⁹⁷ *Working with Rape Survivors, A handbook*, Working Group of the Women's Crisis Center Network, Penang, 1990.

⁹⁸ *Ibid* 97, p 5.

⁹⁹ The 1998 UNAIDS Report on the Global HIV/AIDS epidemic revealed that 39.3 per cent of female sex workers in major urban areas in Cambodia tested HIV positive. The same report showed that Cambodia has the highest per cent of the adult population living with HIV/AIDS in Asia. (*Ibid* p4).

¹⁰⁰ Raghda, Saba; *Case Presentation of Sexual Abuse*; Transculture psychosocial organization (TPO), Phnom Penh, December 15, 1998, p4.

¹⁰¹ *Ibid* 96, p5.

- Children aged between six and 12 typically have difficulties concentrating, feel helpless and guilty, become more aggressive and demanding and suffer psychosomatic complaints such as head and stomachaches.
- Children aged 12-18 have the capacity to understand the affect of the sexual abuse on their lives and suffer strong feelings of guilt and pessimism about the future, become more rebellious and are more prone to partake in antisocial acts.

Long-term effects include personality changes, lack of trust, pessimism about the future, and being stalled at a lower stage of moral development.¹⁰² Because of the importance in Cambodia of female virginity until marriage, the emotional problems for the victims are magnified and research has shown that rape and sexual abuse is a contributing factor to young women becoming prostitutes.¹⁰³

FACILITIES AVAILABLE TO HELP VICTIMS

A recent report detailing findings of qualitative research conducted in Cambodia to determine the situation of sexually abused and sexually exploited children¹⁰⁴ concluded that “while victims suffer from serious physical and psychosocial health conditions, the available health and social services are grossly inadequate”. Sexual abuse in the report included rape, incest and other unwanted sexual activities, while sexual exploitation included trafficking, pornography and prostitution. While the report focused on children only, and predominately sexually exploited children,¹⁰⁵ the same physical and psychosocial problems apply to all victims of sexual violation no matter age or gender. In respect to the facilities available, the report found the following:

- Non-governmental organizations and private organizations provided the most effective medical, educational and training services for sexually abused and sexually exploited children. However, these services were predominantly concentrated in Phnom Penh, and many organizations lacked the capacity to provide services to all children who needed them.
- Government services to address the psychosocial needs of sexually abused and sexually exploited children were severely lacking, with limited or poorly trained counselors.

¹⁰² Ibid 96, p6.

¹⁰³ Ibid 96. The report found that one third to one half of the sexually exploited children interviewed had suffered sexual abuse prior to entering the sex trade. Three quarters of these children said they entered prostitution because of the sexual abuse. They were ashamed of losing their virginity, they wanted to leave home and they felt there was nothing else they could do.

¹⁰⁴ Ibid 96

¹⁰⁵ Fifty-four sexually exploited children were interviewed, and only three sexually abused children were interviewed.

- Some provinces had no health and social services for sexually exploited children.
- Poipet had no services for children. Koh Kong and Kampong Chhnang had only a poorly serviced government orphanage that provided shelter for children but lacked adequate facilities and resources. None of the staff were trained to deal with sexually abused or exploited children.¹⁰⁶
- Sihanoukville, Svay Rieng and Battambang had NGOs with services to meet the basic needs of sexually abused and exploited children, as well as to provide them with skills training, medical care and counseling services. The organizations also had reintegration programs.
- In Siem Riep, only street children were targeted, however they are vulnerable to both sexual abuse and sexual exploitation.
- The majority of services that exist in Cambodia are located in Phnom Penh.

There are many organizations in Phnom Penh (including NGOs, IOs and government organizations) that provide a combination of medical, legal, protection, rehabilitation and reintegration services of varying degrees to women and children. Some have counselors, although not necessarily professionally trained. Some organizations provide emergency accommodation and food while room at an appropriate shelter is secured.

Typically, people can stay at a shelter/recovery center for several months where they receive literacy and vocational skills training, health care and some form of counseling. Many organizations also have reintegration programs that help facilitate victims to return to their family and/or help them find meaningful employment.¹⁰⁷ The main organizations that provide recovery centers for victims of sexual exploitation and abuse are CCPCR, CWCC, YWCC, World Vision, Krousar Thmey and AFESIP. LICADHO has a counselor attached to its torture victims program who provides counseling to young children who exhibit trauma after being raped. There are many more organizations that provide shelters for street children and provide literacy and vocational training, as well as basic health care.

There are some organizations that provide safe and free abortions¹⁰⁸ and/or support for young women who are HIV-positive.

A common feature among shelters in Phnom Penh is that they were initially provided for sex workers, victims of domestic violence, street children, or poor and vulnerable women

¹⁰⁶ Poipet and Koh Kong are both sex trafficking and prostitution centers.

¹⁰⁷ For a summary of organizations and the services they provide, see p 36-38 of the report (ibid 111), although this is not an exhaustive summary.

¹⁰⁸ Ibid 42

and children. While many now accept sexual abuse victims, they do not target them (although many street children have been, and are particularly vulnerable to being, sexually abused). Sexual abuse is often hidden, which makes helping victims more difficult. Rape victims fall easily into prostitution, as they believe that it is all they are good for, so they may be particularly vulnerable to this if they share shelters with rescued prostitutes.

There is a lack of qualified and experienced mental health care providers in Cambodia. Many counselors have limited training and expertise in dealing with the psychological affects of sex crimes, and do not have the time or resources to provide services to all who may need it. For people in the provinces, gaining any kind of counseling is very difficult without the help of an NGO or IO to provide financial support for traveling and other related expenses.

In Phnom Penh, World Vision runs the Neavea Thmey Center (Trauma Recovery Project, World Vision's Children in Extremely Distressing Circumstances department). This center has been going for three years and works with young women between 11 and 18 years old who have experienced sexual exploitation or abuse. It provides, among other things, psychosocial resources in their counseling approaches to facilitate recovery. They also provide support for young women who are HIV positive as a result of their sexual exploitation or abuse. During the past three years 211 young women have enrolled at this center, and of these, 30.81% had been raped¹⁰⁹, 17% were HIV-positive (1.9% have since died from HIV), and 46.45% had other STDs.

The lack of qualified people to counsel victims of sexual exploitation and abuse, and trauma generally, is a major stumbling block to helping people recover from the psychological problems associated with sex crimes. The services available for children 10 and under and women over 20 are particularly lacking. There is no center specifically for victims of rape.

Several organizations are involved with the training of mental health professionals. IOM has a program to train current doctors to be psychiatrists, with 10 graduating in 1998 and a further 10 expected to graduate in 2002. SSC also is involved in training people in mental health issues. TPO has mental health professionals working in some areas of the country. However, it will take many years before the number of trained and experienced people can meet the demand.

¹⁰⁹ Of the remainder, 6.64% were victims of domestic violence, 8.06% sold by a relative into prostitution, 47.39% had been cheated into prostitution, and 7.11% came to the center as a result of prevention measures undertaken by World Vision.

INITIATIVES TO ADDRESS THE PROBLEM OF SEXUAL ABUSE

Many organizations have been actively involved for the past several years in areas of trafficking, sexual exploitation, domestic violence, as well as children's and women's rights. Many victims of trafficking, prostitution and domestic violence suffer rape and other forms of sexual abuse, so sexual abuse has been a peripheral aspect of many organizations' work. However, it is most often studied in terms of domestic violence, trafficking and sexual exploitation and not sexual abuse carried out in Cambodian society outside those other contexts. Recent research acknowledges the lack of written material available on sexual abuse in Cambodia,¹¹⁰ and some human rights workers have acknowledged a lack of networking, co-ordination and focus on sexual abuse issues.

Many of the initiatives to combat sexual exploitation are also relevant to sexual abuse, such as prevention, intervention, law enforcement and rehabilitation of victims. The same social and cultural attitudes are relevant to both, specifically the role of women in society, men's attitudes towards women and sex, and the value placed on girlhood virginity.

Below is a partial but not exhaustive list of initiatives, mostly with respect to sexual exploitation, but also ones specifically targeting sexual abuse. It is not intended to offer an analysis on the effectiveness of these programs, simply that they are in existence.

Government Initiatives and Sexual Abuse

The government has undertaken some initiatives with respect to the implementation of the CRC and CEDAW, however, these have focused predominately on sexual exploitation of women and children and not sexual abuse, although there is some overlap in these areas.

The Cambodian National Council on Children (CNCC) was created in November 1995 by sub-decree, and is the main government body responsible for children's issues. Its role is to promote, monitor, report and coordinate activities on children. While the CNCC is supposed to be a separate government entity, the Minister of Social Affairs is the chairperson, the CNCC office is in that ministry's compound and the budget for CNCC is also under that ministry's control. Although there is supposed to be an advisory board to the CNCC made up of members from NGOs and IOs, this has never been formed. UNICEF funded the CNCC building, and continues to fund the operational costs and salary supplements of the CNCC staff. Both UNICEF and Redd Bana fund the activities of CNCC.

Although CNCC, in conjunction with UNICEF, organized meetings that resulted in a plan of action from Cambodia to present at the World Congress against sexual

¹¹⁰ Ibid 96.

exploitation of children held in Stockholm in 1996, it did not become operational until 1997. At the World Congress, the Cambodian government endorsed the Agenda for Action adopted at the Congress, and as part of that commitment, the CNCC prepared a five-year plan against the sexual exploitation of children, in conjunction with NGOs, IOs and other relevant government ministries. This plan was completed and adopted by the Council of Ministers on the 17 March 2000, and is now known as the *National Five Year Plan of the Royal Government of Cambodia*. This plan covers prevention, protection, recovery and re-integration with respect to sexual exploitation. For an overview of the ministries involved and implementation to date, see Annex 4.

While the CNCC was established to oversee all children's rights, to date it has concentrated on sexual exploitation. However, many of the initiatives described in the plan could equally be applied to sexual abuse, especially in the areas of prevention, law enforcement and rehabilitation.

The National Assembly's Human Rights Commission undertook research on sexual exploitation and trafficking in 1996-97, and one of their recommendations was the preparation of a five-year plan, which CNCC has completed. Another recommendation from that report was to define clearly who was a child in respect to offenses against children. This however has not been addressed satisfactorily in the draft criminal code.

The Ministry of Women's and Veteran's Affairs started the "Young Women's Crisis Center" in Phnom Penh that takes in young women rescued from the brothels. They work on strategies for rescue and reintegration of these women in conjunction with other NGOs and IOs active in this area. The Ministry also does occasional advocacy about particular rape or sexual exploitation cases, especially when foreigners are involved.

NGO and IO Initiatives in Respect of Sexual Abuse

There are many NGOs and IOs that undertake prevention of sexual exploitation programs, and to a much lesser degree sexual abuse prevention programs. These programs typically include educational and training seminars to targeted groups in respect to women and children's rights and the meaning and implementation of the trafficking laws. Other prevention measures have included disseminated information through the media in respect of sexual exploitation and abuse of women and children.

None of the organizations contacted had any specific ongoing programs with respect to sexual abuse. Many organizations have educational and/or prevention programs aimed at disseminating material on women and children's rights, which does cover topics of sexual abuse. CCPCR has organized some training sessions on child sexual abuse and children's rights for police with the support of ECPAT Bangkok, but does not have an ongoing program targeting sexual abuse.

Although UNICEF does not have a program that targets sexual abuse, it has a Child Protection Network program currently running in Battambang Province. This is a

community-based program that was established 18 months ago. There is one community worker per village trained to identify at risk children and existing victims and what to do about it. The program also includes the training of police and teachers, but not judicial staff. The purpose of the program is prevention, early intervention and community education. This type of model could be used to specifically target rape and sexual abuse in the community.

While there have been several inter-agency groups established with respect to child exploitation, most are not currently active. ECPAT Cambodia, the main NGO advocacy, education and coordination body on trafficking issues, was established in January 1995. It was the catalyst for virtually all the initial NGO activities on the issues, but does not target sexual abuse. This organization has currently finished a one-year plan, however lacks staff and funds to put it into practice.¹¹¹ It recently decided to temporarily suspend operations until new funding can be found.

NGOCRC is another inter-agency organization, but this focuses on the implementation of the CRC and not specific individual issues.

CCPCR, ADHOC, LICADHO and CWCC all have some or all of the following programs: prevention, protection, investigation, rescue, monitoring, rehabilitation and reintegration programs. While the main focus of most organizations is on sexual exploitation, many sexually abused women and children have been provided with assistance by the various programs.

Some of these organizations run training programs to raise awareness among local authorities and relevant agencies to enable them to be more pro-active in the prevention of sexual abuse and exploitation. Training courses typically provide basic skills for investigating sexual abuse and exploitation, focusing on preventing, detecting and protecting people through cooperation by police, governmental and non-governmental organizations.¹¹²

No organization contacted had a current program on training judges and prosecutors. The UN has a judicial mentor program which places experienced expatriate lawyers to provide advice to judges and prosecutors on various legal issues. While it is part of the CNCC five-year plan to run training programs on sexual exploitation for members of the judiciary, it has not yet started.

As many organizations focus on either children or women but not both, information exchange between these organizations is not always satisfactory. One of the services provided by the UN inter-agency project on trafficking of women and children is an email information exchange that currently has 175 subscribers. Again, this project targets trafficked people and not sexual abuse, but a similar information exchange could be

¹¹¹ Personal interview with Yim Po, Executive Director of CCPCR and vice-chairman of ECPAT, January 2000.

¹¹² The Cambodian Center for the Protection of Children's Rights; 5-year report, 1995-1999, p7.

utilized between women and children's organizations. CDP heads a legal committee to facilitate the exchange of information among legal organizations.

Trafficking and sexual exploitation are enormous problems in Cambodia with very far-reaching social implications, however, sexual abuse in the community is a major problem that needs more attention and action than is currently applied in this area. While the organizations mentioned above may work in the area of sexual abuse, this is not the main focus of any organization, and there is no inter-agency group to advocate sexual abuse issues, or coordinate activities and information exchanges between women and children's organizations.

This results in little information being available on sexual abuse, so it continues to be ignored by the government and the public. Many of the current initiatives such as prevention, law enforcement and rehabilitation of sexually exploited victims that are being introduced as a result of the CNCC five-year plan, could be applied to combat sexual abuse. But first a government commitment to address the problem of sexual abuse in the community is needed.

RECOMMENDATIONS

The recommendations below focus on prevention, protection, law enforcement and rehabilitation. The primary focus is on what is realistically achievable in the current climate of Cambodia, however some recommendations are aimed at measures that should be part of long term government plans, but which may not be realizable for several years. They are, however, goals to work towards and achieve in the future.

As discussed in this report, there are a number of agencies active in prevention measures and providing services to victims of sexual abuse. The recommendations suggested below are not intended to diminish the importance of current programs and initiatives, however a more concentrated and cohesive approach is needed if the problems are to be addressed.

For any real change to happen in the area of sexual abuse, commitment from the Royal Government of Cambodia is required, but realistically full support from NGOs and IOs in terms of funding and providing trained staff is essential. Therefore, the recommendations below are aimed at the joint effort and cooperation between the appropriate government ministries and existing organizations working in the area of women and children's rights.

The National Five Year Plan of the Royal Government of Cambodia, which is a plan to combat trafficking and sexual exploitation of children, has some recommendations which should be applied also in the area of rape and indecent assault in the community, and some of these are included below.

PREVENTION:

Education, Training and Awareness- Raising

Civil servants and the public at large have inadequate training and understanding of the law, legal process and human rights principles. There is also a lack of understanding of the consequences of rape and indecent assault on the victims and on society as a whole. Social attitudes towards women and children perpetuate the silence of sexual offenses, and the way victims are blamed and treated. It is important to promote strong community awareness and reaction to sexual abuse.

Recommendations:

* Multi-media dissemination of information to the community at large, on women and children's rights with respect to sexual abuse, focusing on:

- the illegality and seriousness of rape and indecent assault
- importance of criminal punitive punishment for abusers, inappropriateness of compensation and marriage settlements
- psychological implications of sexual abuse
- legal and medical advice for victims
- raising human rights consciousness
- facilities available for victims
- procedures for reporting sexual abuse
- effects on children of pornography
- prevention measures to keep safe
- urging compassion for victims

* RGC to facilitate dissemination of information through access to various media, and provide free airtime on public TV and radio.

* Dissemination of all relevant legislation to local authorities, the police and the judiciary nationwide.

* Sensitization of the issues associated with sexual abuse to the following groups: monks, police, judiciary, lawyers, local authorities, doctors and health workers, high-ranking officials in key ministries and National Assembly, village and commune leaders

* Promote legal literacy among those most at risk, for example street children, stepchildren, "adopted children", women and children in prison, disabled people and domestic workers.

* Introduce a program of gender and human rights into general educational curriculums, and specialist programs for the faculties of medicine, social sciences and law on sexual violence issues. This will involve creation of the material and training of teachers.

* All existing information on sexual abuse in Cambodia to be collected at a central point and made available so that all organizations are fully informed about the current information and the current programs and initiatives. This should include collation and analysis of all court outcomes of rape and indecent assault trials countrywide.

* Awareness raising by exposing sexual abuse committed by people in positions of authority. All information of sexual abuse committed by people in authority should be collected and consolidated in a central database.

PROTECTION:

Legislation, Law Enforcement and Training

Cambodia's criminal laws and procedure are currently being rewritten, so the opportunity exists to build the necessary legal framework that not only addresses the current legal inadequacies, but also provides the necessary structures and legal teeth to punish abusers and corruption.

Recommendations

* Creation of shelters/centers specifically for rape and indecent assault victims. Hotline numbers for immediate assistance to be disseminated. Shelters to provide victims with pick-up/rescue, secure environment, medical advice and assistance in gaining medical evidence, legal advice and assistance, counseling, and advice on appropriate services available. Coordination with local authorities for referrals.

* Protection system to protect victims, their families and NGOs against harassment by perpetrators and/or authorities. Criminalizing the intimidation of, or the offering of any inducement to, victims or their families by any person with the purpose of settling a criminal matter outside the legal system.

* Creation and training of multi-disciplinary provincial protection committees at district, commune and village levels. Use of existing structures and networks a priority.

* Ensuring victims' access to justice by the RGC providing free legal services. The RGC to ensure that there are enough lawyers admitted to the bar to meet the demand of legal services. Information on legal aid and lawyers available in each province to be disseminated countrywide.

* Protocol for medical evidence gathering and reporting for the evidential purposes. This should include training selected medical professionals countrywide in sexual abuse evidence gathering and authorizing them to provide:

- free medical examinations and treatment of victims, including any medicine necessary
- medical reports/certificates made available to the court, victims, NGOs, lawyers and any other organization involved

- Free testing for HIV/AIDS and other STDs made mandatory, and ongoing support and treatment for those diagnosed with HIV/AIDS or other STDs.

* Review and critique of existing law on rape and sexual abuse and criminal procedure. Drafting of new laws and the necessary sub-decrees which address the problems in the current law, specifically:

- definition of a child
- definition of consent and penetration
- age of consent to sexual relations
- protective measures for child victims
- fulfillment of Cambodia's obligations of the CRC and CEDAW
- prosecution of civil servants involved in corruption or settling cases outside the judicial system, including prosecution for failure of police to investigate.
- procedure measures to make complaints against judges and prosecutors, and procedures for investigating complaints and disciplinary action.
- regulations on appropriate minimum qualifications for judges and prosecutors. Measures to ensure that newly appointed judges and prosecutors have the required minimum qualifications.
- procedure to protect the victim and family during the court hearings, including special procedures for questioning child victims and child witnesses.
- protection for victims from having their name and/or photographs published in the newspaper.

* Review and critique of implementation mechanisms of legislation, and recommendations for improving and strengthening the structures to protect victims and prosecute accused. Recommendations in the following areas are needed:

- procedure for making and receiving complaints of sexual abuse
- protocols for interview and information recording established
- training of local authorities and community leaders on their legal obligations and implementation
- training of police and judiciary
- mechanism for monitoring of implementation
- Creation and training of a special police unit to deal with sexual abuse with the emphasis on women police officers.

* Training of the police to include:

- all relevant legislation and their legal obligations and responsibilities, including laws on child pornography
- legal consequences for failing to carry out their duties

- interviewing and investigation techniques
- medical and other evidence gathering
- sensitization to the psychosocial aspects of sexual abuse
- assistance information for victims re: medical examination, NGO referrals, legal advice referrals etc.

* Training of the judiciary to include:

- all relevant legislation and their legal obligations and responsibilities
- legal consequences for failing to carry out their duties
- interviewing and investigation techniques specifically for sexual abuse cases
- interpretation of medical and other evidence
- rules of evidence and cross examination techniques
- sensitization to the psychosocial aspects of sexual abuse
- guidelines on the information given to the media.

* Institute measures regulating pornography in Cambodia, especially child pornography and children's access to pornography. Legislate strong penalties for breaching pornography laws. Training for police and local authorities regarding the problems associated with pornography, especially access by children to pornography.

REHABILITATION

* Victim recovery training to relevant ministry and institutional personnel. This group should include doctors, teachers, social workers, residential center staff, police, NGOs and other organizations working with people who are vulnerable to sexual abuse. Training should focus on the following issues:

- Women and children's rights
- Child physical and psychological development
- Trauma associated with sexual abuse
- Importance of counseling
- Practical social work skills
- Information on government and NGO resources available to victims
- HIV/AIDS and STD awareness

* Training program implemented for training counselors in sexual abuse, including continued on the job training, and the placement of counselors countrywide within existing health services.

* Creation of emergency shelters at the provincial level with referral systems to appropriate government or NGO service providers for long term rehabilitation.

- * Review and critique current training programs of the current service providers in the area of literacy and life skills training and vocational training. Establish standard training protocol and procedures.
- * Active participation with the community for job placement of victims who have undergone vocational training. Monitoring of victims' progress is essential.
- * Active participation in reintegration of victims into their community and families. Follow up support and monitoring is essential.
- * Long-term planning and monitoring of services, focusing on:
 - development of policies for the care and rehabilitation of sexual abuse victims, including criteria for quality control
 - monitoring system to monitor services provided by existing facilities to ascertain quality of service and areas to improve/develop
- * Development of suitable rehabilitation programs for sex offenders, including a special program for child sex offenders. The program should have procedures to identify repeat and dangerous sex offenders including pedophiles.

GENERAL

- * Organize women as a movement and empower them. This would foster strong changes from within society on all levels.
- * Raise civil servant salaries as one measure to combat corruption. At the same time, implement regulations and strong penalties against corruption by civil servants, and against failure to carry out their duties.
- * Raise the budgets of ministries involved in law enforcement and social services to enable real progress to be made in combating sexual abuse in Cambodia.
- * Promote the rule of law and respect for human rights among civil servants, community leaders and the public at large.
- * Research and debate about the causes of, the increase in and practice of sexual abuse in the Cambodian community.
- * Creation of a juvenile justice system to deal with both child victims and child offenders.
- * The role of the Ministry of Women's Affairs needs to be defined and changes made to their focus and responsibilities.

ANNEX 1:

SEXUAL ABUSE LAWS IN CAMBODIA

(1) Source of Sexual Abuse Laws

The Criminal Code

The source of rape and sexual abuse laws applicable in Cambodia today are found in the Provisions Relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia During the Transitional Period (“the Criminal Code”). This code was drafted by the United Nations Transitional Authority in Cambodia (“UNTAC”) and adopted by the Cambodian Supreme National Council in September 1992.¹¹³ Article 73 nullifies any text, provision, written or unwritten rule, which is contrary to the letter or the spirit of the present text.

UNTAC derived its authority to draft the Criminal Code pursuant the Agreement on a Comprehensive Political Settlement of the Cambodian Conflict dated 23 October 1991 (the Paris Peace Agreement).¹¹⁴ UNTAC was given the mandate to help rebuild the governmental institutions of Cambodia and to organize and monitor elections held in May 1993. UNTAC had the responsibility for direct control or supervision in the areas of maintenance of law and order, protection of human rights, law enforcement and judicial processes.

The Criminal Code sets out procedures for the establishment and function of the judicial system, details legal procedures, lists offences as either crimes or misdemeanors and the punishments if found guilty of breaking them.

Pursuant to article 139 of the 1993 Constitution of the Kingdom of Cambodia, the Criminal Code continues to be an effective source of law in Cambodia until “altered or abrogated by new texts, except those provisions that are contrary to the spirit of this constitution”. Although the National Assembly has passed laws repealing or abrogating some sections of the Criminal Code, it is still the source of much of the criminal law of the Cambodian legal system today.¹¹⁵

The Criminal Code classifies rape as a crime and indecent assault as a misdemeanor. The importance of this distinction becomes apparent in respect to punishment and sentencing

¹¹³ *Police and the Courts: Attitudes and Knowledge about Sexual Trafficking and Prostitution in Cambodia – Survey Results and Discussion*; Cambodian Women’s Crisis Center, undated, p2.

¹¹⁴ See articles 2, 6, and 16 and sections B and E of Annex 1 of the Agreement.

¹¹⁵ *Ibid* 113, p2.

options, which is discussed below. Further, the statute of limitations for a crime is ten years, for a misdemeanor 3 years. The Criminal Code states:¹¹⁶

Article 33: Rape

1. Anyone who rapes or attempts to rape another person of either sex is guilty of rape and shall be liable to imprisonment for a term of five to ten years.
2. Rape is any sexual act involving penetration against a non-consenting person. If rape is accompanied by fraud, violence or threats, or if it is committed by anyone in a position of authority over the victim, the punishment shall be a term of imprisonment of ten to fifteen years.

Article 42: Indecent Assault

1. Anyone who sexually offends another, unconsenting, person of either sex by touching, caressing, or any other sexual act not involving penetration, is guilty of the misdemeanor of indecent assault and shall be liable to a term of imprisonment of one to three years.
2. If the indecent assault is accompanied by fraud, violence or threat, or if it is committed by any person with authority over the victim, or if the victim is under 16 years of age, the duration of these sentences shall be doubled.
3. Any person who procures, entices or leads away, for purposes of prostitution, or exploits the prostitution of a minor, even with the consent of that minor, shall be liable to a term of imprisonment of two to six years.

Other Possible Sources of Law

The Royal Government of Cambodia ratified the UN Convention of the Rights of the Child (CRC) in October 1992, and incorporated it into the Constitution of the Kingdom of Cambodia by virtue of article 31¹¹⁷ and article 48. The Constitution is the supreme law of the Kingdom of Cambodia and all laws must be consistent to the principles of the Constitution.¹¹⁸ Article 48 of the Constitution reads:

The State shall protect the rights of the children as stipulated in the Convention of the Rights of the Child, in Particular the right to life, education, and protection during wartime and from economic or sexual exploitation.

¹¹⁶ The version of the criminal code used is from *The Compendium of Cambodian Laws, First Edition*; December 1995, The Council For the Development of Cambodia.

¹¹⁷ Article 31 of the Constitution states that the Kingdom will recognize and respect human rights as stipulated in the United Nations Charter and the Universal Declaration of Human Rights as well as the covenants and conventions related to human rights, women's and children's rights.

¹¹⁸ Article 131 of the Constitution of the Kingdom of Cambodia (1993).

The State shall protect children from acts that are injurious to their educational opportunities, health and welfare.

Articles of the CRC relevant to sexual abuse include article 34 that mandates that State to protect children from all forms of sexual exploitation and sexual abuse; article 39 that mandates that the State assist in the physical and psychological recovery and social reintegration for child victims of exploitation or abuse; article 19 which requires States to protect children from all forms of abuse by parents, caretakers, teachers, etc and sexual abuse is specifically mentioned as a form of violence; article 6 obliging States to ensure to the maximum extent possible the survival and development of the child.

By ratifying the CRC, the government has agreed to be bound by it, that is, they agreed to ensure that children enjoy the rights described in the treaty.¹¹⁹ This requires the development of a national legal framework in which to implement the treaty standards, usually by incorporating the principles into domestic law.¹²⁰

Whether or not the CRC can be invoked to protect the rights under it in a Cambodian court is unclear, as the exact legal implications of incorporating the CRC into the Constitution have not been determined.¹²¹ No legislation has been passed that established the Convention as domestic law, and there is no legal principle that establishes the binding nature of the CRC (or any other international treaty) into the Cambodian judicial system.¹²² One view is that the CRC is incorporated into Cambodian law through the specific reference to it in the Constitution, and until a contrary ruling from the Constitutional Council, it should be considered part of domestic law and enforceable in court.¹²³

In reality, the CRC is not used to protect children from sexual abuse and it is unclear how a judge would deal with legal argument to enforce its provisions. For reasons stated below, the current law in respect of sexual abuse under the criminal code is not adequate to protect children, and it is concerning that 8 years after ratifying the CRC, no practical advances have resulted with respect to adopting its principles into Cambodian domestic law so it can be used to protect children.¹²⁴

The 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which Cambodia acceded to in 1992, also contains provisions relevant to

¹¹⁹ *Cambodian Law and the Convention of the Rights of the child; A Comparative Study*. Legal Aid of Cambodia Juvenile Unit, Phnom Penh, 1998 p 12.

¹²⁰ *Ibid* 119

¹²¹ *Ibid* 119, p14

¹²² *Ibid* 119, p15

¹²³ *Ibid* 119, p15. The Cambodian office of United Nations Center for Human Rights (UNCHR) determined that the Convention be treated as domestic law, and that legal advocates should consider the provisions as enforceable on behalf of children in the Cambodian judicial process.

¹²⁴ Initiatives have been taken to address implementation of the CRC (see under "Initiatives"), but in respect of children and sex, sexual exploitation and trafficking of children have been targeted and not sex abuse.

sexual abuse of women¹²⁵, but the same problem arises as to its practical affect and use in Cambodian courts.

Further articles from the Constitution that could be invoked include article 38 against physical abuse, article 45 on discrimination against women and article 46 that prohibits “the commerce of human beings, exploitation by prostitution and obscenity which affect the reputation of women”. It is uncertain how judges would respond to legal argument based on the Constitution, but it is hoped that legal proceedings under the Constitution will become more common if the rule of law in Cambodia strengths and matures.

Khmer customs and traditional expectations of behavior are sources of law that can be used to suggest appropriate resolution when enforceable law is silent.¹²⁶ Because enforceable law under the Criminal Code covers rape and indecent assault, this takes precedence over customs and traditions as a source of law. However, customs and traditions still impact greatly when it comes to interpretation and implementation of the criminal code. The impact of Khmer cultural on sexual abuse is discussed below under the heading “Cultural Perspectives and Sexual Abuse”.

(2) Problems With The Current Law Under The Criminal Code

While there are relevant laws that deal with rape and indecent assault in Cambodia that, by international standards, stipulate adequate penalties, there are some anomalies and shortcomings in the present law and also inadequate sentencing practices that make the current law inadequate to protect society against these violent crimes.

Minors and the Law

Nowhere in the Criminal Code is the word ‘minor’ defined. Under the CRC, anyone under the age of 18 is a minor. While the age of consent to sexual intercourse is not defined in Cambodian law, the law on marriage states that women of at least 18 and men of at least 20 have the right to marry, but in reality, many girls in Cambodia marry much younger than 18, especially in the countryside.¹²⁷

Other Cambodian laws that support the age of majority to be 18 include the voting age for men and women;¹²⁸ entering into contracts without the consent of a legal guardian;¹²⁹

¹²⁵ See for example article 16(2) in respect of child marriage, and article 3 in respect of the full advancement of women.

¹²⁶ Ibid 119, p190.

¹²⁷ A different age of majority based on gender does not comply with the principles of the Constitution, and does not sit well with article 2 of the CRC. See Ibid 15, p 36.

¹²⁸ Article 34, the Constitution of the Kingdom of Cambodia, 1993.

¹²⁹ Article 14 of Decree No. 38D referring to contract and other liabilities.

serving in the armed forces.¹³⁰ Labor law confuses the matter by providing three different ages of majority (12, 15, 18) depending on the situation.

The matter is further confused by section 2 of article 42 of the Criminal Code that provides double the penalty for anyone who indecently assaults a person under the age of 16. It can be argued that consistency dictates that a ‘minor’ for the purposes of section 42 is anyone under the age of 16. However, human trafficking laws provide another age benchmark by doubling the penalties for trafficking victims under the age of 15.

However there are some hints in the criminal law, which suggest a minor is anyone under 18 years of age. Article 63 of the Criminal Code describes “attenuating circumstances and exculpation of minors”, then goes on to state “for any accused person under 18 years of age, the punishments set out in the preceding articles shall be reduced by half”. Under article 76 of the Law on Criminal Procedure, any victim or offender under the age of 18 has the right to an appointed lawyer at their first appearance before the investigating judge.

The law on rape and indecent assault of minors is inadequate. Article 33 does not provide any heavier penalties for rape of a minor. Further, it does not specifically recognize statutory rape (consensual sex with a minor under a specified age) which provides a loophole for many offenders to escape conviction by saying the sex was consensual when there is no other evidence apart from the victims to support an allegation of rape. Even if the sex was “consensual”, there must be recognition that children under a certain age do lack the maturity to make decisions about sex and therefore should be protected.

Because there is no protection for the young and vulnerable, some young teenage girls become mistresses to rich and powerful men, a common feature of modern day Cambodia. Children are forced into prostitution and their services openly sold to regional businessmen, foreign sex tourists and government officials¹³¹. Developed countries recognize that children below a certain age (usually 15 or 16) are unable to make a mature and informed decision about sexual activity, and it makes it illegal for anyone to engage in sexual activity with them, even if the children go along with it. Cambodia does not have any law that recognizes a legal age for sex, and is unlikely to, while government officials and rich and influential men in Cambodia continue to pay for sex with young girls and virgins¹³².

As the legal situation stands in Cambodia, if a girl of 10, for example, does not refuse to have sex with a man, the law does not prohibit the man having sex with the girl. Vulnerable and poor children are at risk because of the deficiencies of sexual abuse laws. Newsletters circulated by pedophilia rings, tout Cambodia as a haven for their activities involving child sex and pornography. This is a sad indictment of the ability of the

¹³⁰ Article 42, the Law on the General Principle of the Royal Cambodian Armed Forces.

¹³¹ Personal Interview with Yim Po, Executive Director of The Cambodian Center for the Protection of Children’s Rights, January 2000.

¹³² Ibid 131.

Cambodian legal system and the State authorities to protect Cambodian children, the most vulnerable members of society.

Because of the high number of child prostitutes in Cambodia and the high number of child rape cases investigated by LICADHO, the above problems and omissions in the law are alarming. A very large portion of Cambodian society fails to get any protection under current law.

While article 42 provides for longer penalties for offenders who are found guilty of indecent assault against someone less than 16 years of age, this does not apply to the rape law, which specifically excludes indecent assault (sexual activity which does not involve penetration). This is a glaring inconsistency, as rape is a more serious violation than indecent assault.

Only section 3 of article 42 mentions consent. It imposes double the penalty of indecent assault on the person found guilty of procuring, enticing or leading away for the purposes of prostitution, or who exploits the prostitution of a minor with or without consent. This section has been interpreted and used against the trafficking of minors in the past, until the National Assembly passed the Law on the Suppression of the Kidnapping and Trafficking/Sales of Human Persons and Exploitation of Human Persons in January 1996 (“the trafficking law”). While it is arguable that the trafficking law has repealed section 3 of article 42, this section is still used in respect of sexual offending by the Cambodian Courts that presents several problems.

1. One interpretation is that this section only provides a penalty for the person who “exploits the prostitution of a minor”. The wording suggests that “any person” is someone who uses a minor to gain money, and is not the person who has sex with the minor. While the word “exploits” is not defined, the fact that rape and indecent assault are defined suggests that exploits means something different than a sexual act. It suggests the using of a minor for a monetary gain, especially when read together with the preceding words of that section, “procures...for the purposes of prostitution”.

If this interpretation was accepted, then a person who has sex with a minor could only be prosecuted under article 33 rape laws. As stated above, article 33 is inadequate to deal with the situation of sex with a minor. Any minor, including one that is a prostitute or being sexually exploited, would have to prove the sex was non-consensual, and even if found guilty, the offender would not receive any stiffer penalty because the rape was against a minor. This sends a message to the community that having sex with children is all right, and children do not need any special protection.

2. An alternative interpretation is that section 3 is penalizing anyone who has sex with a prostitute who is a minor, regardless of consent, (in effect, a statutory rape law aimed at child prostitution). This would create a penalty for consensual sex

with a minor who is a prostitute, but no penalty for consensual sex with a minor who is not a prostitute.

Sentencing options suggest that section 3 is not to be read as a statutory rape law. The maximum penalty under article 42.3 is six years in prison, but this can be suspended because it is a misdemeanor offence. However, for rape, the maximum penalty is 10 years in prison and it cannot be suspended. Commonsense dictates that if section 3 was intended to be used as a statutory rape law it would have been under article 33 rape law and not article 42 indecent assault law, which is categorized as a misdemeanor only.

While it appears that section 3 of article 42 of the Criminal Code was drafted as a law against trafficking of minors and has now been over taken by new trafficking laws, section 3 is sometimes used as a statutory rape law. For example in the case involving a British doctor in 1995 who was alleged to have paid young boys of 15 and 16 to have sex. The judge interpreted the age of minority to be under 18 and the man was convicted under section 3 of article 42. Because article 42 is a misdemeanor, he received a suspended sentence. While some may applaud a conviction in such cases on moral grounds, such a conviction appears to be legally unsound. On the above analysis, section 3 was not intended to be a statutory rape clause, and is not adequate for that purpose.

Article 8 under the trafficking law, which states that regardless of consent, acts of “*anacha*” with a person under the age of 15 is punishable by 10 – 20 years in prison, is more akin to a statutory rape law. However, using article 8 for that purpose is not legally sound. The word “*anacha*” has been translated in the English version of the law as “debauchery”, but it is not defined in any Cambodian law. It’s meaning in Khmer is too broad to have a precise legal definition, and therefore its meaning in article 8 is unclear.

Statutory interpretation rules would negate the use of article 8 as a statutory rape law because it is an article of trafficking law, which is a very different type of crime. The sentence under article 8 is not consistent with existing rape sentences of 5-10 years, or 10-15 if aggravating circumstances are present. Because of the confusion and uncertainty of article 8, it has not been used very often. However, because its meaning and use is so unclear, it is open to abuse and could conceivably be used to punish someone for a crime that should be punished under a different legal provision, purely for the reason to hand down a long prison sentence.

Other matters

Both articles 33 and 42 increase the penalty if committed by someone with ‘authority’ over the victim. Although the term ‘authority’ is not defined, it implies that any rape or indecent assault committed by authorities such as police or military personnel should receive heavier penalties. Arguably, the term ‘authority’ could also cover parents and grandparents (including step-parents and step-grandparents) or other people whom a

victim sees as an authority figure, for example teachers and doctors. If a wide interpretation was taken it could also mean a husband, as in Khmer culture a woman is expected to defer to her husband. Without the term ‘authority’ being defined, it will depend on the interpretation of the Trial Judge whether a perpetrator is someone in authority.

Rape is defined as “any sexual act involving penetration against a non-consenting person”. The words “any person” suggests that it is a crime to rape a male or female, however “consent” and “penetration” are not defined. This can cause many problems and inconsistencies between the way judges interpret and use these words.

Because indecent assault excludes sexual acts involving penetration, if “penetration” under the rape article was limited to penetration by a penis only, then there would be no law punishing penetration by other objects, which is an absurdity.

A prevailing view among some judges and legal advocates, is, if a victim offers no resistance, then she “consented” to the sexual act.¹³³ This is akin to saying that someone who is threatened and then lies passively while she is raped has “consented”. This attitude also perpetuates the myth that sex without violence cannot be rape, or a crime to be taken seriously. Without the definition of these vital terms such as “consent”, they are not applied consistently, and many rapists evade conviction or adequate punishment.¹³⁴

Because of the anomalies in the existing laws on rape and indecent assault, especially in respect of minors, there are many loopholes available to offenders to avoid convictions. Because the law is not clear, it is left to judges to interpret the law, which results in an uncertain legal outcome and an unfair process for both victims and accused.

The confusion created by the representation in the law of many different age groups could be overcome by clearly defining the age of a minor with respect to rape and indecent assault and an age for consensual sex. Further, a clear statutory rape clause is needed to protect children from being sexually exploited.

Until an adequate and clear law is drafted, Cambodian children have no adequate protection against sexual activity and will continue to be exploited for sexual purposes.

Draft Criminal Code

There are two draft criminal codes, one drafted in Khmer and translated into English by the University of San Francisco, and the other drafted in French and not available yet for analysis. Commentators have expressed grave concerns about the contents of the English version of the draft criminal code currently in circulation.

¹³³ See under the headings “Cultural Perspective of Sexual Abuse” and “Evidence” for discussion of judges’ interpretation and application of sexual abuse laws.

¹³⁴ See discussion of a recent rape case that went to trial under “Sentencing”.

The draft code generally is extremely convoluted, full of inconsistencies and unnecessarily complicated. A lack of definitions of terms and article headings, and inconsistent use of words throughout plague the code. With respect to sexual offending, the current law in force is far superior, and the draft code will only serve to cause more confusion, uncertainty and problems. It appears that most of the draft was lifted from the 1969 Cambodian penal code, which would account to why it contains views that most of the world rejected years ago.

Words such as “force”, “immoral conduct” and “violence” are not defined. Other phrases are vague and ambiguous, such as “have sex” and “lewd conduct”, instead of using clear words to define the specific acts that are prohibited.¹³⁵

The draft lists aggravating factors that enhance punishment such as marital status and virginity, which is an archaic approach, as most modern penal codes abandoned the idea that a defendant can make rape victims sexual history a relevant issue in a trial.¹³⁶ Instead, this draft penal code attempts to turn back the clock so that every rape victims sexual history will be scrutinized, which would be very damaging and traumatic for any victim and reinforces the gender inequality in Cambodia that, theoretically, has been abolished by the Constitution.

The overriding importance of virginity, which has so many adverse implications for Cambodian women, continues to be put in issue. These problems seem to reflect a general desire to return to a long-discredited approach to criminal law as a random collection of legislated morality.¹³⁷ It appears the drafter has little awareness of the advances made world wide in criminal law and procedure, during the past several decades.

The draft criminal code does nothing to clarify the age for sexual consent; rather it clings to the misguided view that children can consent to sex. Different ages are specified as to rendering the penalties more serious such as 13, 15 and 18. Under article 434, it is possible to “consent” to sexual assault accomplished by a threat of force, and further it says that that consent can be given by a child under 13-years-old.

Article 432 defines sexual harassment as being the touching of the genitals, but that is all. If the victim is under 13 and there was no threats or violence, the minimum penalty is one year, with violence or threats, 5 years. If the victim is a minor over 13 and violence and threats were used, the minimum penalty is 1 month. This article further states that a person who touches another persons genital organs out of “passion” without consent can only be criminally liable if violence was used, and would only be liable to between 1 day and one month in prison.

¹³⁵ Interview with Nick Rine, Clinical Professor of Law at the University of Michigan and visiting Professor at Phnom Penh’s Faculty of Law and Economics, December 2000.

¹³⁶ Ibid 135

¹³⁷ Ibid 135

There is still no statutory rape law under the draft criminal code. Rape would only be prosecuted if carried out forcibly or by threats *and* the person refuses. This means that after being threatened, the victim must still put up resistance for it to be prosecuted as rape. The word “forcible” is not defined. If the victim is under 13 years of age, the minimum penalty is 5 years, if over 13, 1 year.

Article 427 makes it an offence to commit “immoral conduct” with a minor less than 15 years, whether or not with consent. “Immoral conduct” is not defined, so the article has all the pitfalls of article 8 of the trafficking law.

The lack of protection for minors is startling given the high incidence of sexual abuse, rape and sexual exploitation of young children in Cambodia that has been highly publicized in the press and reports by various organizations for several years. It appears that the drafters of this code have not heeded any of the advice and warnings contained and clearly documented in many publications.

The treatment of minor victims of crime and the minors who commit crimes is very inconsistent. Offenders under 13 would not have criminal liability under the draft (which is consistent with the CRC), but children under 13 are assumed to be responsible and mature enough to consent to sex. The code reinforces the sexist views towards women and children in Cambodia.

The code focuses on “violence” as a factor to whether a rape has occurred. Violence is a factor to be taken into account as evidence of rape and when sentencing, and should not be part of the legal definition of rape. The idea that rape is not rape because there was no other physical violence shows a complete lack of understanding of the nature of the crime the penal code is trying to legislate on. The idea that a woman who doesn’t fight back, because of fear, threats, or has a knife to her throat has not been raped is preposterous.

The idea that rape without violence (“traditional” rape as some judges refer to it, see above under “Cultural Perspective of Sexual Abuse”) is not serious is further reflected in the sentencing provisions, which proposes to reduce the minimum sentence of rape from the current five years to one year. Because it is classified as a “third degree misdemeanor”, a suspended sentence can be given for rape, which the current law prohibits.

The draft criminal code is inconsistent with the provisions of the Constitution regarding women and children. As the laws in Cambodia must be consistent with the principles of the Constitution, the draft in its current form should not be adopted. All articles relating to sexual exploitation and abuse should be abandoned and new ones drafted to reflect progress made in these areas over the last decade in Cambodia and reinforce the initiatives of many government and non-government committees and organizations. It is important that this opportunity to advance the law is not squandered.

ANNEX 2: CHILD RAPE STATISTICS

This annex provides information on Child Rape and is intended to provide follow up statistics from the Report on Child Rape in Cambodia prepared for UN Committee on the Rights of the Child, October 1999.

Child Rape Cases by Age of Victim

AGE	July - Sep-99	Oct - Dec-99	Jan - Mar-00	April - Jun-00	July - Sep-00	Total Victims	Total Cases	% Victims per age
0-5 years	0	4	2	5	0	11	10	7.85%
6-10 years	4	6	12	7	3	32	32	22.87%
11-15 years	6	14	15	23	8	66	63	47.14%
16-18 years	1	9	8	9	4	31	28	22.14%
Total Victims	11	33	37	44	15	140		
Total Cases	11	31	33	43	15		133	

CHILD RAPE BY MONTH AND AGE FOR THE YEAR 1999

	0-5 years	6-10 years	11-15 years	16-18 years	Total/month
January	0	0	4	3	7
February	0	3	2	1	6
March	0	2	4	2	8
April	0	0	3	1	4
May	0	0	2	3	5
June	0	0	3	0	3
July	0	0	0	0	0
August	0	2	2	0	4
September	0	2	4	1	7
October	1	1	5	4	11
November	2	2	5	3	12
December	1	3	4	2	10
Total/age	4	15	38	20	77
% per age	5.20%	19.48%	49.35%	25.97%	

CHILD RAPE BY MONTH AND AGE FOR THE YEAR 2000

Month/Age	0-5 years	6-10 years	11-15 years	16-18 years	Total/month
January	0	3	2	1	6
February	1	4	5	2	12
March	1	5	7	5	18
April	2	0	8	2	12
May	2	3	6	4	15
June	1	4	9	3	17
July	0	2	6	2	10
August	0	2	5	3	10
September	2	4	8	6	20
October	0	1	1	4	6
November					
Total/age	9	28	57	32	126
% per age					

COMPARISON OF RAPE STATISTICS FROM 1995 TO NOVEMBER 2000

YEAR/ AGE	1995	1996	1997	1998	1999	Jan-Nov 2000	Total Victims	% Victims per age
0-5 years	0	2	2	2	4	9	19	%
6-10 years	2	4	3	7	15	28	51	%
11-15 years	12	4	5	24	38	57	133	%
16-18 years	4	2	2	10	20	32	69	%
Total Cases	18	12	12	43	77	126		

ANNEX 3: ADDITIONAL DATA

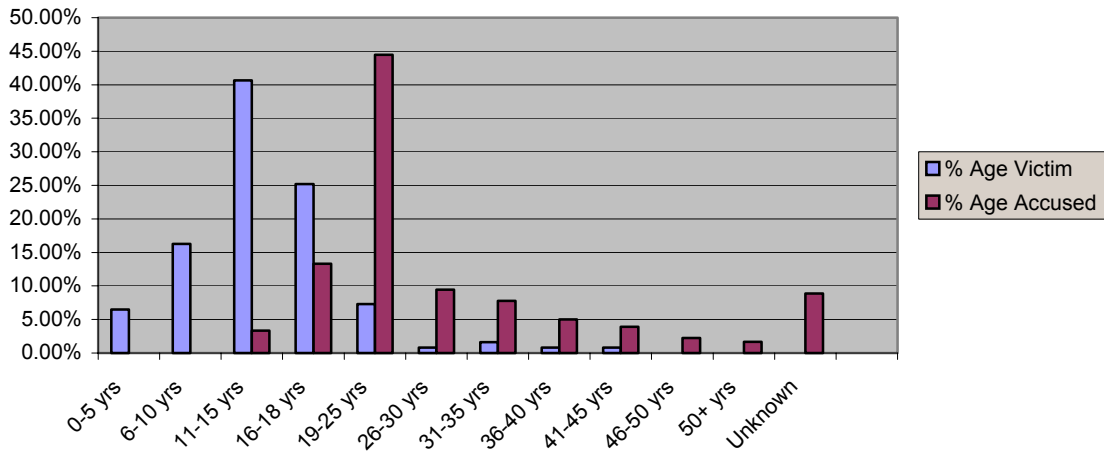
This annex presents data from April – November 2000. Cases from this time period were not included in the follow-up investigations undertaken for this report because of the time lag associated with reporting a sexual abuse case and outcomes of such cases.

Rape Cases by Province and 2 Monthly Time Periods **April - November 2000**

Province	April - May-00	June - Jul-00	August Sep-00	Oct - Nov-00	Jan 2000 - Mar-00	Total Cases	% Rapes per Province
Phnom Penh	2	1	3	0	4	6	5.04%
Kandal	10	9	3	2	9	24	20.17%
Banteay Meanchey	0	1	1	2	2	4	3.36%
Battambang	2	1	3	0	0	6	5.04%
Kompong Chhang	2	1	5	1	1	9	7.56%
Kompong Cham	5	3	5	4	2	17	14.29%
Kampot	3	1	1	1	0	6	5.04%
Kompong Speu	3	2	3	1	3	9	7.56%
Kompong Thom	0	1	1	1	1	3	2.52%
Koh Kong	1	0	1	0	0	2	1.68%
Prey Veng	2	2	0	0	1	4	3.36%
Pursat	0	2	1	0	1	3	2.52%
Siem Reap	3	2	2	2	0	9	7.56%
Svay Rieng	4	0	1	2	1	7	5.90%
Sihanoukville	4	0	1	1	1	6	5.04%
Takeo	1	0	1	2	1	4	3.36%
Total Rape Cases	42	26	32	19	27	119	
Total all Cases Reported to	96	121	104	80	163	401	
% Rape Cases per time period	44%	21.48%	30.76%	23.75%	16.56%	29.67%	

AGES OF VICTIMS AND ACCUSED FROM APRIL - NOVEMBER 2000

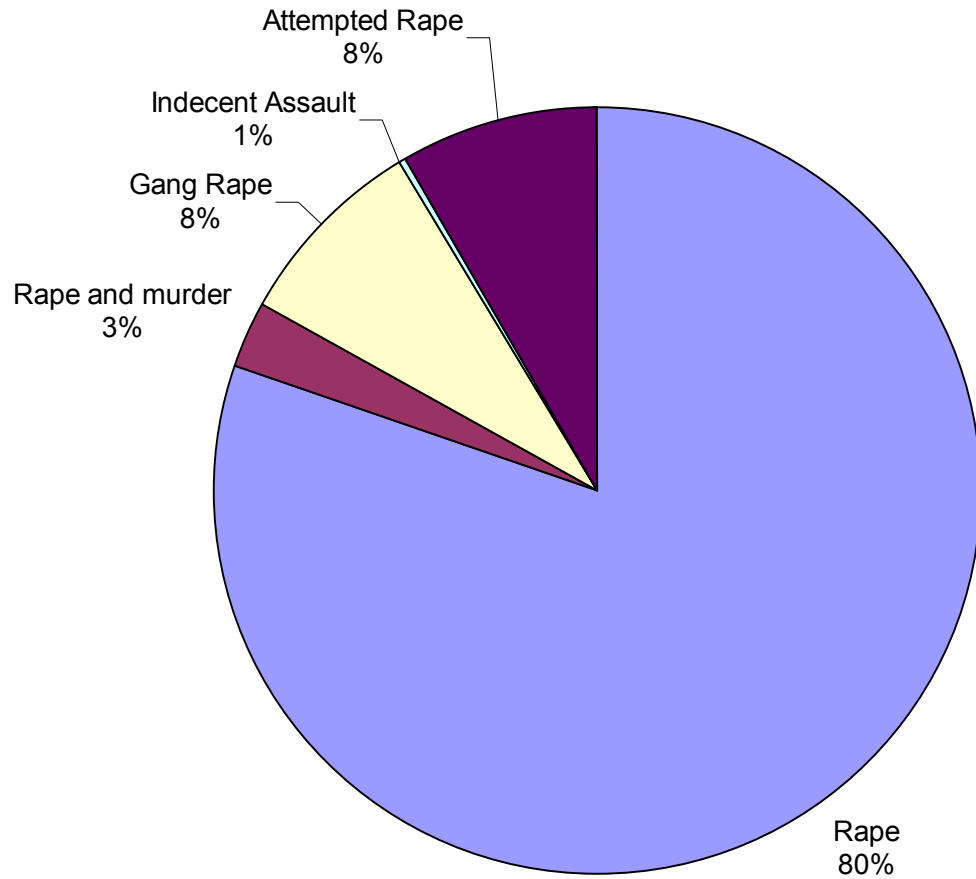
Age	Victims	% Age Victim	Accused	% Age Accused
0-5 yrs	8	6.50%	0	0
6-10 yrs	20	16.26%	0	0
11-15 yrs	50	40.65%	6	3.33%
16-18 yrs	31	25.20%	24	13.33%
19-25 yrs	9	7.32%	80	44.45%
26-30 yrs	1	0.81%	17	9.44%
31-35 yrs	2	1.63%	14	7.78%
36-40 yrs	1	0.81%	9	5%
41-45 yrs	1	0.81%	7	3.89%
46-50 yrs	0	0	4	2.22%
51-55 yrs	0	0	0	0
56-60 yrs	0	0	0	0
60+ yrs	0	0	3	1.67%
Unknown	0	0	16	8.89%
Totals	123		180	



TYPES OF VIOLATIONS AND NUMBER OF CASES FROM APRIL TO NOVEMBER 2000

	RAPE	ATTEMPTED RAPE	GANG RAPE	RAPE AND MURDER	INDECENT ASSAULT
Number of Cases	147	12	15	5	1

TYPES OF VIOLATIONS



ANNEX 4:

CURRENT MEASURES TO IMPLEMENT THE NATIONAL FIVE-YEAR PLAN OF THE ROYAL GOVERNMENT OF CAMBODIA

The CNCC has only just recently formed a sub committee that includes the Ministries of the Interior, Justice, Social and Women's Affairs to oversee the implementation of the 5-year plan. Following are some of the initiatives currently being undertaken.

Ministry of Social, Labor and Veteran Affairs

This Ministry is involved in two projects:

- 1) With IOM: the repatriation of trafficked women and children from Thailand.
- 2) With UNICEF: follow-up on reintegrated people and community education.

Ministry of Women's Affairs

- 1) A project with the support of IOM: prevention project in 6 boarder provinces, includes legal literacy and information for women, community seminars with officials form all departments.
- 2) Lobby with government in respect to a few isolated cases with support form various NGO's.

Ministry of Tourism

A program with the support of World Vision, EPACT, ILO and IPEC: workshops with hotel owners, tourist shop owners etc to sensitize them on the issue and illegality of child sex tourism.

Ministry of Justice

With the support of a Japanese NGO: reviewing existing legislation to see how it can be better implemented, and to propose new legislation.

Intended training programs, but not started yet.

Ministry of Interior

Support from UNICEF, Red Bana, World Vision, IOM, CHR:

- 1) Training and support of an investigation team in Phnom Penh, which covers some provinces. Linked to this program is a victim hotline.
- 2) Police training in 13 provinces on sexual exploitation issues.
- 3) Training of judges and prosecutors in law enforcement, however, this has not started yet.

Ministry of Foreign Affairs

Currently discussing an agreement with Thailand on the repatriation process of trafficked people back to Cambodia form Thailand. To be responsible for the training of judges and prosecutors, but this program has not yet stated. This program is linked to other training programs

ANNEX 5: Summary Of Sexual Abuse Case Investigations

Place	Event Date	Victims Sex/Ag	Perp.'s Sex/Age	Violation Category	Perp.'s job	>1 Time	Knew Perpetrator?	Threat	Perp.'s location	Case Result
BM	16-12-99	F13	M35	Rape	Military	N	Same Village	To kill	Prison	Waiting for a trial date.
BM	26-01-00	F13	M22	Attempted	Farmer	N/A	Unknown	N	Unknown	Waiting for a trial date.
BM	30-09-99	F8	M14	Rape	Student	N	Neighbour	N	At Large	Trial on 25/5/00 but Judge reinvestigating case as of 15/12/00.
BM	15-04-99	F8	M35	Rape	Military	N	Same Village	To kill	Prison	Waiting for a trial date.
BM	28-05-99	F7	M35	Attempted	Military	N/A	Same Village	To kill	Prison	Waiting for a trial date.
BM	13-12-99	F12	M35	Rape	Military	N	Same Village	To Kill	Prison	Waiting for a trial date.
BM	01-03-00	F9	M35	Rape	Military	Y (2)	Same Village	To kill	Prison	Waiting for a trial date.
BM	25-09-99	F15	M33	Rape	Unknown	N	N	To Kill	Unknown	Investigating.
Battambang	02-01-99	F17	M31	Rape	Militia	N	Yes	Yes	N/A	Agreed to Marry. Case dropped.
Kg Cham	29-11-99	F16	M42	Rape	Truck Driver	N	Neighbour	N	Escaped	Awaiting trial, but accused escaped.
Kg Cham	16-11-99	F14	M26/M33	Rape	Farmers	N	Same Village	To Kill	At Large	Investigating.
Kg Cham	19-12-99	F19	M30	Rape	Teacher	N	Y	To kill	Unknown	Awaiting trial.
Kg Cham	27-01-00	F9	M30	Rape	Farmer	N	Same Village	N	N/A	Paid Compensation of \$350. Victim's family drops complaint.
Kg Cham	05-02-00	F11	M20	Rape	Farmer	N	Same Village	To kill	N/A	Agreed to pay Compensation of 1,200,000 riel.
Kg Cham	12-12-99	F14	M46	Rape	Com. Chief	N	Family friend	To kill	At Large	Court awaiting police report for many months.

RAPE AND INDECENT ASSAULT: CRIMES IN THE COMMUNITY

Kg Cham	30-03-99	F10	M18	Rape	Student	N	Same Village	N	At Large	Case being sent to Kg Cham Court.
Kg Cham	20-06-99	F12	M56	In.Assault	Police Insp.	Y (many)	Y	To kill	N/A	Compensation of 100,000 riel.
Kg Cham	23-08-99	F13	M22	Rape	Farmer	Y (4)	N	N	At Large	Investigating.
Kg Cham	11-09-99	F13	M33	Rape	Farmer	N	Y	N	N/A	Compensation of 1,500,000 riel.
Kg Cham	08-10-99	F16	M38	Rape	Police D.C	Y (many)	Y	To kill	At Large	Investigating.
Kg Cham	31-10-99	F6	M38	Rape	Military	N	fathers friend	N	Prison	Guilty at trial, Prison (8 yr).
Kg Cham	19-09-99	F8	M18	Rape	Farmer	N	N	To kill	Prison	Found Guilty, 3years prison, 1,000,000 compensation.
Kg Cham	24-11-99	F15	M38	Attempted	Military	N/A	Y	N	N/A	Compensation of 800,000 riel.
Kg Cham	21-11-99	F14	M21/M26	Attempted	1 Farmer	N/A	Y	N	At Large	Investigating.
Kg Cham	05-10-99	F14	M28	Rape	Farmer	N	Same Village	N	unknown	Trial but outcome unknown. Court Clerk Can't find the case as of 22/1/01.
Kg Cham	03-04-99	F35	M40	Rape	Militia	Y (8)	Y	To kill	At Large	Investigating.
Kg Cham	24-09-99	F17	M53	Rape	Farmer	Y (many)	Y	N	Unknown	Awaiting trial.
Kg Cham	26-10-99	F22	M27	Rape	Doctor	N	Y	N	At Large	Investigating.
Kg Cham	04-09-98	F15	12 men	Gang Rape	Farmers	Y (12)	Y	To kill	N/A	Compensation 1,300,000; Police failed to follow court warrant to investigate.
Koh Kong	25-10-99	F12	M17	Rape	Student	N	Y	To beat	At Large	Investigating.
Koh Kong	18-12-99	F10	M23	Rape	Fisherman	N	Y	To beat	N/A	Compensation 400,000 riel. At Trial on 6/6/00 charges dropped.

RAPE AND INDECENT ASSAULT: CRIMES IN THE COMMUNITY

Place	Event Date	Victims Sex/Ag	Perp.'s Sex/Ag	Category	Perp.'s job	Student	N	Same Village	To kill	At large	Investigating.
Kg Chhang	26-06-99	F12	M16	Rape		Student	N	Same Village		At large	Investigating.
Kg Chhang	08-01-99	F19	M31/M34	Rape/Attem	Police	Police	N	N	Had Gun	Escaped	Accused Escaped.
Kg Chhang	20-08-99	F14	M32/M32	Attempted	Provincial gov't	Provincial gov't	N	Same Village	N	Home	Compensation 300,000 riel. Judge closed case.
Kg Chhang	09-09-99	F9	M29	Rape	Military	Military	N	N	To kill	Escaped	Police not responsive, accused escaped.
Kg Chhang	02-11-99	F13	M27	Rape	Fish Vendor	Fish Vendor	Y(2)	Unknown	Knife	Prison	Awaiting trial.
Kg Chhang	15-11-99	F25	M30	Rape	Gov.Official	Gov.Official	N	Y	Gun	At large	Investigating.
Kg Chhang	20-08-99	F15	M32/M32	Attempted	Unknown	Unknown	N/A	Same Village	N	N/A	Compensation 300,000 riel; Judge dropped case.
Kampot	14-09-99	F16	Unknown	Rape	Unknown	Unknown	Unknown	Unknown	Unknown	At large	Investigating.
Kg. Spue	04-02-00	F7	M20	In.Assault	Farmer	Farmer	N	Same Village	To beat	Escaped	Investigating.
Kg. Spue	02-03-99	F13	M19	Attempted	Farmer	Farmer	N/A	Unknown	N	N/A	Trial on 7/7/99. 1 year suspended sentence. Accused released.
Kg. Spue	24-10-99	F15	M22	Attempted	Farmer	Farmer	N/A	Brother-in-law	N	Prison	Trial on 8/5/2000, sentenced to prison (5yr).
Kg. Spue	27-02-99	F30	M20	Rape	Military	Military	N	N	Y	At large	No action because accused identity unknown.
Kg. Spue	19-03-99	F13	M25	Rape	RCAF	RCAF	N	N	Gun	At large	No action because accused identity unknown.
Kg. Spue	25-03-00	F11	M50	Rape	Military	Military	N	Same Village	N	At large	Investigating.
Kg. Spue	23-06-99	F13	M27	Rape	Farmer	Farmer	N	Same Village	N	At large	Investigating.
Kg. Spue	19-01-00	F7	M14	In.Assault	Student	Student	N	Same Village	N	N/A	Compensation of 7.50 gram gold.

RAPE AND INDECENT ASSAULT: CRIMES IN THE COMMUNITY

Kg Thom	21-01-00	F15	M30	Rape	Farmer		N	N	Granade	At large	Investigating
Kg Thom	04-10-99	F16/F25	M19/21/30	Rape/Att. Rape	1 Farmer		N	Y	N	N/A	Compensation 1 million riel. Courts closed case, victims uncooperative.
Kg Thom	05-09-99	F16	M22	Rape	Farmer		N	Unknown	N	N/A	Dropped charges, reason unknown.
Kg Thom	08-09-99	F26	M45	Rape	Military Com		N	N	To shoot	At large	Investigating.
Kandal	20-02-99	F16	M42	Rape	Farmer		Y	Stepfather	Y	Prison	Stentenced to 6 months imprisonment.
Kandal	16-04-99	F15	M21	Rape	Farmer		N	Same Village	N	At large	Investigating.
Kandal	27-12-99	F5	M19	Rape	Student		N	Neighbour	N	N/A	Compensation 800,000 riel, case closed.
Kandal	31-12-99	F6	M18	Rape	Student		N	Y	By Police	At large	Investigating.
Kandal	14-01-00	F17	M35	Rape	Other		N	Y	N	N/A	Compensaion \$105, case closed.
Kandal	07-03-99	F16	M29	Rape	Student		N	Same Village	To Kill	N/A	Dropped chrgs by Investigating Judge. Victim tried to kill herself.
Kandal	20-03-99	F7	M33	Rape/Kill	Deaf/mute		N	Same Village	n/a	At Large	Investigating. Judge said case difficult because perpetrator deaf mute.
Kandal	24-02-00	F17	M17/22	Attempted	Gangsters		N/A	N	To Kill	Prison	Awaiting trial.
Kandal	16-02-00	F17	M20	Attempted	Other		N/A	Y	N	N/A	Compensation 350,000 riel, case closed.
Kandal	12-05-99	F17	M22	Rape	Farmer		N	Same Village	N	Escaped	Investigating, looking for perpetrator.
Kandal	03-05-99	F17/17	M27/28	Rape	Motodriver		Y(many)	Y	N	1 Prison	1 perpetrator escaped, case investigating.
Kandal	26-02-00	F14	M28	Rape	Other		N	Same Village	N	Prison	Sentenced to 5 years, compensation 3,500,000 riel.
Kandal	01-03-00	F4	M13	Rape	Student		N	Same Village	To Kill	At large	Investigating.

RAPE AND INDECENT ASSAULT: CRIMES IN THE COMMUNITY

Kandal	14-03-00	F8	M18	Rape	Unemployed	N	Neighbour	To Kill	Prison	Investigating.
Kandal	14-01-00	F9	M16	Rape	Student	N	Same Village	To Kill	At large	Investig. Compensation of 150,000 riel paid (300,000 wanted),
Kandal	04-03-00	F20	M16/17/18	Gang Rape	Students	Y(2)	Same Village	To Kill	Prison	Each Perpetrator sentenced 2 months. Compensation 1,000,000.
Kandal	03-03-00	4F/16	5 Males	Attempted	Other	N/A	N	N	At large	Investigating.
Kandal	03-08-99	F11	M20	Rape	Gold Smith	N	Y	N	N/A	Compensation of \$1700, complaint withdrawn,
Kandal	02-09-99	F12	M21/22	Rape/Kill	Unknown	N	Same Village	n/a	Prison	Sentenced to 18 years imprisonment.
Kandal	08-08-99	F8	M20	Rape	Hairdresser	N	Same Village	To Kill	N/A	Compensation 150,000 riel (50,000 to chief officer). Victim not go to court.
Kandal	14-09-99	F7	M12/12/13	Gang Rape	Students	N	Same Village	Y	N/A	Victims family withdrew complaint for compensation of \$2300.
Place	Event Date	Victims Sex/Ag	Perp.'s Sex/Age	Violation Category	Perp.'s job	>1 Time	Knew	Threat	Perp.'s location	Case Result
Kandal	20-08-99	F13	M16	Attempted	Student	N/A	Same Village	N	Escaped	Investigating, accused escaped,
Kandal	08-10-99	F12	M22	Rape	Ex-monk	N	Unknown	N	Escaped	Awaiting trial, accused escaped,
Kandal	22-10-99	F4	M16	Rape	Student	N	Same Village	N	Prison	Sentenced to 3 years, Compensation of 2,000,000 riel,
Kandal	19-11-99	F14/15	M21/28	Rape	Farmer/Vendor	N	Y	N	Escaped	1 accused escaped, other accused married victim.
Kandal	Jun-99	F15	M25	Rape	Farmer	Y(2)	Same Village	To Kill	At large	Investigating; Victim is pregnant.
Kandal	05-12-99	F16	M19	Attempted	Farmer	N/A	Y	Knife	Escaped	Investigating, accused

RAPE AND INDECENT ASSAULT: CRIMES IN THE COMMUNITY

Prey Veng	06-05-99	F20	2 males	Rape	Police	Y(2)	N	To kill	Escaped	Police unresponsive to arrest warrant; said escaped, but still in unit.
Siem Reap	01-03-99	15/25	4 Males	Gang Rape	3 Military/Vendor	Many	N	Unknown	Escaped	One civilian perpetrator arrested, all military escaped, case suspended.
Svay Rieng	28-12-99	F15	M21	Rape	Farmer	N	N	N	Prison	Awaiting trial.
Svay Rieng	24-02-99	F10	M24	Attempted	Farmer	N/A	Same Village	To kill	Prison	Trial 19/8/99; guilty, 2 years imprisonment, 300,000 riel. Under Appeal.
Svay Rieng	25-02-00	F13/F17	5 Males	Gang Rape	Farmers/1 student	Y(many)	Same Village	To kill	N/A	1Prison, 3 not guilty, 1 marriage.
Svay Rieng	05-11-99	F9	M16	Rape	Student	Y(3)	Same Village	To kill	Prison	Sentenced, unclear how long, but treated as misdemeanor.
Sihan.Ville	17-02-00	F5	M16	Rape	Minor	N	Same Village	To beat	N/A	Settled by Compensation 450,000 riel.
Sihan.Ville	19-06-99	F12	Male	Rape	Mason	N	Step-father	To kill	Escaped	Victim's mother withdrew case, her husband has no money to pay her.
Sihan.Ville	03-10-99	F16	M38	Rape	Police	N	Y	To kill	N/A	Compensation of \$250, victim only received \$200. Complaint withdrawn.
Sihan.Ville	23-09-99	F12	M19	Attempted	Fisherman	N/A	Unknown	N	Prison	Sentenced to 3 months, 3 years suspension and 5 years probation.
Sihan.Ville	07-10-99	F16	M21	Attempted	Unemployed	N/A	Same Village	N	Prison	Sentenced to 7 years.
Takeo	23-01-99	F10	M27	Rape	Farmer	N	Same Village	N	N/A	Police forced victims

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Takeo	26-03-00	F5	M47	Rape	Forestry	N	Same Village	Prison	parents to accept 1 million riel compensation.
Takeo	27-05-99	F16	M38	Rape	Unknown	N	Same Village	At large	Trail 15/9/2000; guilty, 5 years imprisonment. Parents refused compensation of 100 000 riel, father killed, investigating.
Takeo	14-10-99	F18	M27/30/37m	Gang Rape	Police	Y(3)	N	N/A	Compensation 2 million riel.
Takeo	19-11-99	F6	M18	Rape	Student	N	Same Village	At large	Arrest warrant issued, but not enforced.
Takeo	08-04-99	F4	M33	Rape/Kill	Farmer	N	Same Village	Prison	Charges dropped at trial. Prosecutor appealed but not heard yet.