



គណៈកម្មាធិការស្ត្រីកម្ពុជា

The Cambodian Committee of Women

Violence Against Women: How Cambodian Laws **Discriminate** Against Women



A CAMBOW REPORT
November 2007



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Established on May 8, 2000 and chaired by LICADHO, The Cambodian Committee of Women (CAMBOW) is a coalition of 34 local organizations working to advance the causes of women in Cambodia. CAMBOW focuses primarily on violence against women issues – domestic violence, rape and human trafficking for the purposes of sexual exploitation.

CAMBOW works to promote the respect for and to protect women's rights through education, training, research, documentation and advocacy.

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Our special thanks go to the numerous women who bravely shared their stories with us for this report. We hope that their stories will encourage other victims of violence to come forward.

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Executive Summary

In 1992, Cambodia ratified the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW). This international bill of rights for women contains provisions to reduce and eliminate violence against women. By ratifying this instrument, Cambodia committed itself to protecting Cambodian women from violence and eliminating discrimination against women.

Cambodia's laws relating to specific forms of exploitation and discrimination against women, such as domestic violence, rape and human trafficking for the purposes of sexual exploitation, are severely lacking in protective measures and guarantees of equality for women in Cambodia. In effect, these laws contravene the CEDAW by discriminating against women.

In 2007, the government has yet to pass new laws to adequately protect women when they suffer from violence. In addition, the existing laws are not being implemented on a nationwide basis and many people including legal and judicial officials, local authorities and the general public – including, most importantly, women – do not understand these laws and their attempt to protect women's rights in Cambodia.

Domestic Violence

The *Law on the Prevention of Domestic Violence and the Protection of Victims* affords some measure of protection to victims of domestic violence and reflects the Government's attempt to introduce legislation to address this problem. However, significant changes are needed to this law in order for it to adequately eradicate domestic violence. In its current form, the law contains ambiguous meanings in key provisions such as the definition of domestic violence, marital rape and the authorities responsible for protecting victims of domestic violence.

Marriage

The *Law on Marriage and Family* is very comprehensive and one of its stated aims is to ensure the equality of partners in a marriage. However, its complicated and drawn out procedures for divorce – which require that the courts attempt to “reconcile” husband and wife to remain together – are extremely problematic for women who are victims of domestic violence.

Rape

Existing rape legislation fails to adequately define the offence of rape, most significantly by not referring in any way to the issue of consent. Rape is defined in the law as sexual penetration committed through “cruelty, coercion or surprise” – which in practice leads the courts to consider that rape *must* involve serious violence and injuries. This ignores the fact that many rapes are committed without major injury; rapists in Cambodia are often armed with a weapon, and make threats of violence or death, which may prevent victims from struggling with their attackers, for fear of being further injured or killed. The deficiencies in the legal provisions against rape in some ways reinforce societal attitudes which tend to blame or shame women who are raped.

Human Trafficking

Cambodia is a source, transit and destination country for the trafficking of women. Although there are no clear statistics on the numbers of women being trafficked within Cambodia and out of the country, it is clear that this is a problem which affects a large number of women. Existing trafficking legislation fails to adequately define the offence of trafficking by not taking into account the multitude of complex acts that can be considered trafficking. Furthermore trafficking legislation does not provide for the protection or rehabilitation of domestic and international trafficking victims.

Conclusion

Cambodia's law relating to violence against women are failing to protect Cambodian women from violence, exploitation in any form, and discrimination. The laws need to be amended, drafted and implemented in accordance with the principles of the CEDAW.

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1. Introduction

PURPOSE OF REPORT

Discrimination in legislation can occur in a number of forms, such as through gender-specific legal terms which have a greater negative impact on women than men, or through onerous obligations on women or through omissions which make legal definitions and prosecutions difficult or which may result in the lack of protective measures.

This report was designed to analyze whether Cambodian laws related to violence against women contravene the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)¹ and, if so, to examine the affects that these contraventions have on women in Cambodia.

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

The CEDAW is an international bill of rights for women that was adopted in 1979 by the UN General Assembly. It is a comprehensive document establishing what equality for women means and outlining an agenda for State Parties to follow in order to achieve such a goal. In 1992 Cambodia ratified the CEDAW and committed itself to undertake a series of measures to end discrimination against women in all forms. The CEDAW requires State Parties to take “all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men”².

CEDAW defines discrimination against women as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”³.

In addition to the CEDAW, the UN Committee on the Elimination of Discrimination against Women regularly makes comments and recommendations on specific articles of the CEDAW. The General Recommendations (as they are known) offer State parties clear guidance on how to apply the CEDAW in certain situations. One in particular is General Recommendation 19⁴ which comments on specific articles within the CEDAW related to violence against women. For the purposes of this report General Recommendation 19 is referred to along with articles in the CEDAW as a benchmark for the elimination of discrimination against women.

¹ The Convention on the Elimination of all Forms of Discrimination Against Women will hereby be referred to as the CEDAW

² CEDAW, Article 3

³ CEDAW, Article 1

⁴ General Recommendation No. 19 (11th session, 1992)

<http://www.un.org/womenwatch/daw/cedaw/recommendations/index.html>

METHODOLOGY: HOW THIS REPORT WAS COMPILED

This report was researched through various methods in order to produce a more complete examination of whether Cambodian laws regarding violence against women are discriminatory and how they actually affect the reality of Cambodian women's lives. The following methods were utilized:

Literature Review

A literature review was conducted of existing documents that discuss the relevant Cambodian laws. This literature review aimed to compile existing legal analysis of these laws and any discriminatory provisions in them, although the authors discovered that previous work in this area was fairly limited.

Analysis of current Cambodian legislation in regards to violence against women

The following laws were analyzed:

- *Law on the Prevention of Domestic Violence and the Protection of Victims* 2005
- *Law on Aggravating Circumstances of the Felonies* 2001
- *Constitution of the Kingdom of Cambodia* 1993, amended 1999
- *Provisions relating to the Judiciary and Criminal Law and Procedure Act Applicable in Cambodia during the Transitional Period (UNTAC)* 1992 (with regards to rape and trafficking)
- *Law on Suppression of Kidnapping, Trafficking and Exploitation of Human Persons* 1996
- *Law on Marriage and Family* 1989
- *Law on Immigration* 1994 (with regards to trafficking)
- *Labor Law* 1997

These laws were selected for analysis as they each legislate women's rights in the areas of trafficking, domestic violence, rape and marriage. The analysis was conducted in order to determine whether the laws contravened the CEDAW by discriminating against Cambodian women on violence against women issues.

Semi-structured interviews with CAMBOW members

Interview questionnaires were designed and used in interviews with relevant CAMBOW members in order to assess their understanding of relevant laws, ascertain their experience and views on any contraventions of the CEDAW, as well as to identify clients for case study purposes.

Semi-structured interviews with clients

Interview questionnaires were designed and used in interviews with 63 clients of CAMBOW members who had experienced violence, exploitation or discrimination under Cambodian laws. Several of these stories have been used as case studies in this report and additional case studies will form the basis of an advocacy campaign. The case studies in this report are for illustration purposes only, they do not form the basis of the findings of the report.

Note on Case Studies:

All names and identifying features have been changed to protect the confidentiality of our clients. Whilst all stories are based on clients' actual experiences, some additional fictional details have been added to the stories in order to present a more complete story.

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2. Domestic Violence

CEDAW

“State parties shall take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women..”⁵

“States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.”⁶

“States parties should ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity.”⁷

“Family violence is one of the most insidious forms of violence against women. It is prevalent in all societies. Within family relationships women of all ages are subjected to violence of all kinds, including battering, rape, other forms of sexual assault, mental and other forms of violence, which are perpetuated by traditional attitudes. Lack of economic independence forces many women to stay in violent relationships. The abrogation of their family responsibilities by men can be a form of violence, and coercion. These forms of violence put women's health at risk and impair their ability to participate in family life and public life on a basis of equality.”⁸

CASE STUDY 1: DOMESTIC VIOLENCE SOPHANNA’S STORY

My name is Sophanna and I am 35 years old.

I have been married to my husband, Boeun, for 7 years. We live with my parents and my brother. For the first two years of our marriage my husband and I were very happy. However, after around two years, my husband started to become violent with me. He started beating me and insulting me. He would keep a big knife near him at all times and he would constantly threaten that one day he was going to kill me. I believed him. Some days he beat me so badly I could not stand up.

I left him on two occasions but he always managed to find me and bring me back. I was too scared of him not to follow his orders.

One day, he came inside the house in a very bad mood. He started throwing things around the house and then he came towards me and all of a sudden he started strangling me. I could not

⁵ CEDAW Article 5

⁶ CEDAW Article 16(1)(h)

⁷ General Recommendation 19 Comments on specific articles within the CEDAW (Paragraph 24 (b))

⁸ General Recommendation 19 Comments on specific articles within the CEDAW (Paragraph 23)

breathe – I actually thought I was going to die. My mother came running inside the house. She told my husband to stop hurting me, but this made him even angrier. He screamed at my mother and told her “not to interfere as this is the internal problem of MY family!” My husband then let go of me and reached out and tried to beat my mother.

My brother then came into the house because he had heard all the screaming. He managed to get hold of my husband and stop him from beating my mother. My husband then grabbed his knife and tried to stab my brother – luckily, he missed. My brother then ran outside and rode away on his motorbike. He went to the village chief and asked him to help our family. The village chief refused to help, he told my brother to stop fighting, but did not want to come back to our house. When my brother returned to the house, he and my husband started fighting again – my brother was trying to protect my mother and I – and he beat my husband until he was unconscious. My mother and I had locked ourselves in the room and we were both screaming and crying.

One of the neighbors came in and saw my brother beating my husband. He broke up the fight and rushed my husband to the hospital. The next day, the police summonsed my mother and brother to their office – they said that my husband had lodged a complaint against them and they ordered them to pay compensation in the amount of \$1,000. My brother did not want to pay this money – he told the police that my husband had been trying to kill me and trying to beat our mother and all he had done was protect us, however the police told him if he did not pay this money, he would be sent to jail.

My husband no longer lives with my family and I am currently trying to get divorced. What I learned from all of this is that I hate my husband, I am scared of all men and I hate all policemen, as they do not help women at all.

DOMESTIC VIOLENCE IN CAMBODIA

The problem of domestic violence is extremely complex and in Cambodia is further compounded by cultural traditions of inferiority and subservience of women. Many men do not accept that women have the right to be free from violence of any form, and many women themselves do not understand this or do not feel they have any way to make it a reality. With the passing of the *Law on the Prevention of Domestic Violence and the Protection of Victims* in 2005, there is some recognition of a woman's inherent right to be free from violence, however many law enforcement officials and the general public (including women themselves) are not aware of the existence of this law.

In Cambodia, women have traditionally been seen as being inferior to their male counterparts. This is reflected in traditional codes of conduct such as the *Chbab Srey* (Women's Law) that teach women to be subservient to men. Despite some attempts by the Cambodian Government to combat domestic violence, many changes still need to be made, particularly in the area of legislation. Most importantly, perpetrators of domestic violence need to be made aware that they are responsible for their actions and that they may be subject to punishment.

There is still a tendency for society to believe that domestic violence is an internal family problem, which leads to reluctance on the part of the victim to seek help or even to admit that there is a problem. This damaging perception needs to be changed so that victims, perpetrators, authorities and the general public can work together to eradicate domestic violence.

LAW ON THE PREVENTION OF DOMESTIC VIOLENCE AND THE PROTECTION OF VICTIMS (DV LAW)

The DV Law is a civil or administrative law, complementing other existing legislation as the penal code, which makes the act of domestic violence unlawful. Domestic violence is defined as violence that occurs between people living in the same house and who are dependant of the household.⁹

Domestic violence is defined to include:

- Acts affecting life;
- Acts affecting physical integrity;
- Torture or cruel acts;
- Harassment causing mental/psychological, intellectual harm;
- Mental/psychological and physical harm exceeding morality and the boundaries of the law;
- Sexual aggression (including violent sex, sexual harassment and indecent exposure);
- Threats aiming at frightening, shocking; and
- Acts affecting individuality and property.

DOMESTIC VIOLENCE IN CAMBODIA IS GOVERNED BY:

- LAW ON THE PREVENTION OF DOMESTIC VIOLENCE AND THE PROTECTION OF VICTIMS
- UNTAC LAW
- LAW ON AGGRAVATING CIRCUMSTANCES OF THE FELONIES
- THE CONSTITUTION

INSUFFICIENT DEFINITIONS OF DOMESTIC VIOLENCE IN THE DV LAW

Living in the same house

Article 2 defines a victim to include “Persons living under the roof of the house and who are dependent of the households” however, domestic violence within relationships between people who do not live in the same house are not included. For example common relationships in Cambodia such as between a man and his mistress, sweetheart relationships or ex-wives are not covered under the definitions of protected persons. Women living in these situations may be particularly at risk of domestic violence from their partner.

Anecdotal evidence indicates that at the time the draft DV Law was being debated by law makers there was discussion to include a wider definition of DV, one that would include mistresses, sweethearts, ex-wives etc. However some law makers felt that to do so would acknowledge and condone promiscuity and sex and romantic relationships outside of marriage, which goes against Khmer culture. Therefore the definition was narrowed.

Dependants

The definition of protected persons under the DV Law extends to persons “dependant of the households”, however there is no further clarification of this term. Discrimination could occur when situations arise where a female adult relative such as an aunt or mother is being abused, however are not considered “dependant of the household” due to economic or other reasons.

⁹ Article 2, DV Law

Economic violence

Economic violence is a woman's deprivation of job opportunities and her ability to increase her income and her standard of living. It normally involves men forcing women to be economically dependent on them. Economic violence is not defined in the DV Law as a form of domestic violence and therefore contravenes the CEDAW.

DOMESTIC VIOLENCE PENALTY PROVISIONS

The DV Law does not contain specific crimes or penalty provisions, which means that the law itself cannot punish perpetrators of domestic violence. However, Article 35 states that any acts of domestic violence that can be considered criminal offenses are punishable under the penal code. This means that acts of domestic violence described in the DV Law should be punishable under the equivalent articles in the penal code. Currently, the penal law in force is the UNTAC Law and the *Law on Aggravating Circumstances of the Felonies* (LACF).

The criminal offences contained in the UNTAC Law and the LACF that correspond with the DV Law are involuntary and voluntary manslaughter, murder, rape, indecent assault, illegal confinement and battery with injury. In theory this means that domestic violence which involves any of these offences can be prosecuted under UNTAC Law and the LACF. Unfortunately not all the elements of domestic violence (as prescribed by the DV Law) are compatible with the battery with injury offence as described in the UNTAC Law. The DV Law introduces the elements of mental/psychological violence which are not covered by the UNTAC Law, which only considers physical acts of violence. Therefore while the DV Law may consider mental/psychological violence a criminal offense there is currently no penal law in effect that prescribes a punishment.

SELF DEFENSE

It should be noted that there is no provision for the element of self-defense in any Cambodian legislation with regards to women protecting themselves from domestic violence. There have been many Cambodian women imprisoned for killing their husbands as a result of domestic violence and, in most cases, self-defense has not been considered by the courts. This missing defense from all legislation discriminates against Cambodian women who may commit violence in order to protect themselves from further abuse.

MARITAL RAPE

Until 2005 when the DV Law was passed there was no specific criminal offence of marital rape contained within Cambodian legislation. While rape is a criminal offence under the UNTAC Law, the courts and authorities in practice, would not consider rape in the context of a marriage.

Article 3 and 7 of DV Law effectively recognizes marital rape by including "sexual aggression" as a form of domestic violence and incorporating "violent sex" as an element of "sexual aggression". Unfortunately there is no definition of the term "violent sex" contained within the law. The act of rape is in itself a violent act, regardless of whether or not additional violence accompanies the rape. Given that many Cambodian wives may not struggle against their husbands and remain silent whilst being raped, the DV Law fails to adequately protect women from marital rape. The law's reference to "violent sex" and its failure to mention the

issue of consent – which should be the key distinguishing factor of marital rape (or any case of rape) – means that victims must effectively prove that violence was used during the rape. (And this problem is further compounded by a similarly inadequate definition of rape contained in the UNTAC Law; see Chapter 4, Rape of this report.)

DISCIPLINING IN ACCORDANCE WITH KHMER CULTURE

Article 8 of the DV Law states that disciplining persons (including spouses) in accordance with Khmer culture is allowed, so long as it is accordance with “the United Nations Conventions on Human Rights and Child Rights”. It is unclear whether this is also meant to include the protection of women’s rights covered by the CEDAW. If not, then the implication is that there is some form of disciplining allowed against women that may involve violence. There is potential for Cambodian men (who are much more likely to be disciplining their wives than vice-versa) to seek to use this article to protect themselves from criminal prosecution or other sanctions for committing domestic violence.

“Men go out to drink and beat their wives but society does not blame them or criticise them. I feel that women are subjected to unjust acts”

*-25 year old victim of domestic violence,
Kompong Thom Province*

DEFINITION OF AUTHORITIES IN CHARGE

Throughout the DV Law, reference is made to “authorities in charge” or “nearest authorities in charge.” For example, Article 9 states that “the nearest authorities in charge have the duty to urgently intervene in case domestic violence occurs or is likely to occur in order to prevent and protect the victims.” The DV Law does not clarify which authorities are referred to. The practical consequence of this could mean that various authorities all fail to act and women in situations of domestic violence are not protected.

MOVEMENT OF VICTIMS AND PROTECTION ORDERS

Articles 13(2) and 25(5) allows for authorities to remove victims from the scene of violence in special cases “without a request if there is a necessary reason to do so.” There is no definition of “special cases” or “necessary reason to do so.” By removing the victim, this may imply that the victim has done something wrong. If the aim of the law is to prioritize the protection of victims and not to cause further difficulties for them, then in all cases the perpetrator should be the person who is removed from a scene of violence and the victim should not be removed without her consent.

Chapter 5 of the DV Law describes the authority of the courts, including the power to grant protection orders. However in cases of immediate temporary protection orders, there should be provisions that allow police or local authorities temporary powers to grant these orders. Article 14 appears to allow this, however as referred to above the lack of definition for the term “nearest authorities in charge” makes it unclear if this is meant to include police and local authorities.

RECONCILIATION AND MEDIATION

Article 26 provides that when both parties agree reconciliation or mediation can be pursued in cases of minor misdemeanors or petty crimes or for violent acts which cause mental or economic harm. “Minor misdemeanors” and “petty crimes” are not defined, opening up the possibility that acts which are and should be prosecuted as criminal offenses may be dealt with through reconciliation. (In the UNTAC law, misdemeanors include battery with injury and indecent assault.)

“My experiences have left me feeling hopeless about the law”

- 23 year old victim of domestic violence,
Siem Reap Province

Although the article requires that both parties must agree, the reality of Cambodian culture is that female victims would most likely be coerced into choosing mediation or reconciliation over criminal charges. They may do so out of fear of the perpetrator, or face pressure to do this from other family members in order to save face and not draw attention to the family’s problems.

To effectively protect victims of domestic violence, the DV Law’s provisions for reconciliation/mediation should be tightly defined and it should be clear what types of specific acts can and cannot be included in this.

Article 26 also provides that “household members” are able to choose the arbitrators where there is an agreement to reconciliation or mediation (citing examples of arbitrators that include parents, relatives and elders). This provision appears extremely unfair – it should be the victim in an abusive relationship who has the right to choose the arbitrator. “Household members” who can currently choose the arbitrators might include parents or siblings who would most likely be biased and would focus on preserving the relationship rather than assisting the victim and respecting her wishes. Similarly, the suggestion that arbitrators be persons known to the parties (i.e. parents and relatives) may be problematic. Victims may be pressured by their families into agreeing to an arbitrator who is already involved in the conflict, is not objective, and who may support the perpetrator’s interests and not the victim’s.

REHABILITATION MEASURES

There are no provisions concerning rehabilitation contained within the DV Law. General Recommendation 19 of the CEDAW says that states should implement “protective measures, including refuges, counseling, rehabilitation and support services for women who are the victims of violence or who are at risk of violence.”¹⁰

CONCLUSION

The passing of Cambodia’s DV Law in 2005, whilst representing a step forward in protecting women’s rights and eliminating discrimination against women, still falls short of the ideals contained in the CEDAW. Its lack of adequate definitions relating to what is domestic violence, its reconciliation and mediation procedures and its lack of harmonization with the criminal code, all add up to substantial contraventions of the CEDAW. As such, the DV Law further discriminates against victims by not providing them with all the protection the law should give them.

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¹⁰ General Recommendation 19 Comments on specific articles within the CEDAW (Paragraph 24 (t)(iii))

3. Marriage

CEDAW

“1. State Parties shall take all responsibility to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure on a basis of equality of men and women:

- (a) The same right to enter into marriage;*
- (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;*
- (c) The same rights and responsibilities during marriage and at its dissolution;*
- (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;*
- (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;*
- (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;*
- (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;*
- (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.*

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory. ¹¹”

CASE STUDY 2: NAREN'S STORY

My name is Naren, I am 39 years old. My problems with my husband Vuthy started from the very beginning of our marriage. Soon after we were married he took up with a mistress. She lived in the next village and he would visit her on the weekends. At first he said he was visiting friends or doing work but later he would just leave without saying where he was going. I knew what he was doing. For the sake of our children I tried to be very patient with him. He would often force me to have sex with him and he always shouted at me and complained that I was a bad wife. The abuse was particularly bad after he came back from his mistress. Out of desperation I told the village chief but he said that he could not help me because it was something that my husband and I should deal with.

More time passed and the abuse continued and my husband would sometimes leave for weeks, I knew he was visiting his mistress - he even gave some of our money to her. Once again I went to the village chief for help, however this time he suggested we attend a reconciliation session. He said that he would counsel my husband and I and he would try to solve our marriage problems. I was happy that the village chief was finally going to help us however my husband refused to come to the reconciliation session and the village chief just advised me to stay with husband.

¹¹ CEDAW Article 16

After this, I went to the commune chief who had more power and asked for his help, I really wanted to get a divorce. He said that we need to have a reconciliation session because it was the law. This time my husband came but the commune chief just kept telling me that I needed to stay with my husband and respect him. Things did not change, my husband still kept leaving to see his mistress and he continued to abuse me and the children. I went to the commune chief and asked to get a divorce; he said that we needed to have another reconciliation session. Again my husband came and this time he promised to treat me better and not see his mistress. I felt better and I hoped things would change.

After a few weeks my husband returned to his old ways and left to see his mistress. He seemed angrier now and he gave more of our money to his mistress. Now I really wanted to get a divorce but the commune chief told me that I had to go to court to get a divorce. I knew that this would be expensive and I had no money. I was also afraid of what my husband would do if the court was involved.

Some time later, a friend suggested I go to an NGO for help. So one day when my husband was away seeing his mistress I took my children and went to an NGO in the provincial town and asked them for help. They said that they could help me to submit a divorce petition to the court, but the court would make me have another reconciliation session in front of the judge. I agreed but I said that my husband would be very angry if he had to go to court and I was scared to go back to my house. The NGO said that they would help to place me in a women's shelter with my children so that my husband could not hurt us.

My husband was very angry when he found out that I filed for divorce and at the court reconciliation session I was very scared to see my husband, I had not seen him for several weeks. The court judge did not listen to me and just urged me to reconcile with my husband. The court clerk even said to me "do not worry, all men are like that". I did not get a divorce and kept living at the women's shelter.

Later I had another reconciliation session in the court and it ended the same way with the judge telling me to reconcile with my husband. Only after the third session did the judge finally grant me a divorce because my husband did not come to the court. Now my husband says that he doesn't recognize that we are divorced and he doesn't give me any money to support our children.

I think that if I had money, I would have been able to make the process go much quicker than it did. I think that discrimination against women made me afraid of filing complaints with the local authorities. After many years of trying to escape my husband and the abuse I endured, I feel happier now but angry at how long the process took.

MARRIAGE IN CAMBODIA

Marriage in Cambodia encompasses many social and cultural issues and traditions that are prevalent in Cambodian society today. Cambodian women are often seen as inferior to their husbands and this creates problems for women, particularly those suffering abuse or wanting to divorce their husbands. Traditionally, women are encouraged and sometimes pressured by their families to marry at a young age. Arranged marriages still occur, particularly in rural areas, and once a couple is married there is great pressure on them to stay married. In Cambodian society divorce is considered to be a very shameful act especially if a woman

initiates it and it is also notoriously difficult to actually get legally divorced. In some cases, forced marriages also occur, such as when a woman becomes pregnant and is forced to marry the father of the unborn child or when a woman is raped and forced to marry her rapist.

Women suffering domestic violence also find it difficult to divorce their husbands. Traditionally, upon being married, men move into their wives' family homes and live with her parents and relatives. Whilst in some cases this would offer some measure of protection for women from violence, often her family members are the ones encouraging her to stay silent about her abuse and to try and make her marriage work – no matter the cost. Most women are also dependent (financially or otherwise) on their husband and it is difficult for women in such situations to leave, especially if there are children involved.

LAW ON MARRIAGE AND FAMILY

The *Law on Marriage and Family* (LMF) passed in 1989 is very comprehensive and aims to ensure the equality of partners in a marriage. It governs the following:

- Conditions of Marriage;
- Complaints against Marriage;
- Void Marriages;
- Rights and Responsibilities of Spouses;
- Divorce;
- Foreign Marriages;
- Illegitimate Children
- Adoption;
- Relationship of Father, Mother and Child; and
- Revocation of Parental Power.

MARRIAGE AND FAMILY IN CAMBODIA IS GOVERNED BY:

- LAW ON MARRIAGE AND FAMILY

MINIMUM AGE OF MARRIAGE

Article 5

A marriage may be allowed for a man whose age is 20 years or more and a woman whose age is 18 years or more.

In a special case where a man does not reach the age of 20 years and where a woman does not reach the age of 18 years, a marriage may be legitimized, upon the consent by the parents or guardians, if the woman becomes pregnant.

Article 5 of the LMF provides for the minimum age for marriage in Cambodia. While this is discriminatory towards men the article nevertheless fulfils the requirement of the CEDAW¹² to set a minimum age for marriage. However the second part of Article 5 provides an exception to the minimum age requirement, which creates a situation where there is no specified minimum age. This inconsistency in the LMF could lead to situations where a pregnant girl, regardless of her age, could be married - if her parents give consent. In the context of Cambodian society and its culture to disapprove of children being born outside of

¹² Convention on the Elimination of All Forms of Discrimination Against Women 1979, Article 16(2)

marriage, it is very likely that pregnant girls who are very young will be forced to get married.

DIVORCE PROCEDURES

Section III of the Law provides the procedures for divorce, which are as follows:

1. Complaint for divorce is made in writing, citing grounds for divorce, to commune or other local officials or to the court;¹³
2. If the complaint is filed to local officials, they shall attempt to reconcile the two parties in the marriage. If they cannot, they forward the complaint to the court.¹⁴
3. The Court invites the complainant to come before the court, where the court “if appropriate” will convince the complainant not to proceed further with the case”;¹⁵
4. The husband and wife are invited before the Court for a reconciliation session (lawyers are not allowed);¹⁶
5. If no agreement is made the husband and wife are invited back to the Court for a second reconciliation session (only after month and not more than two months);¹⁷
6. If no agreement is made the husband and wife are summoned to appear in the Court for a trial;¹⁸
7. If the defendant denies the grounds for divorce an investigation will be ordered and witnesses can be called to give evidence;¹⁹
8. A divorce can be granted if both parties agree or the Court finds that the grounds for divorce are valid.²⁰

“The commune chief is a man; he never believes that my husband beats me. He said that my husband is a gentleman, do not argue with him.”

- 38 year old victim of domestic violence, Kampot Province

While the LMF is detailed in its procedures, it is a complicated and drawn out divorce process which is difficult for parties to follow, particularly for women. To ensure that men and women have an equal right to divorce, the LMF provides husbands and wives equal access to the procedures of divorce. Nevertheless, when considering the Cambodian cultural context, where it is more likely that women (particularly victims of domestic violence) will be filing for divorce, the law makes it difficult for women to navigate the long divorce process.

In the third procedure outlined above, the Court will attempt to “convince” the complainant to stop the divorce proceedings. The reality is that this would mean that before the grounds of divorce are even considered, a Court officer (most likely a man) would be attempting to convince the complainant (most likely a vulnerable woman who has either been abused and/or abandoned by her husband) to not divorce her husband. Considering the inferior status women have in Cambodia, the pressure on a woman to disagree with a male Court officer would be immense, especially at the initial stages of filing for divorce.

¹³ Law on Marriage and Family 1989, Article 42

¹⁴ Law on Marriage and Family 1989, Article 42

¹⁵ Law on Marriage and Family 1989, Article 43

¹⁶ Law on Marriage and Family 1989, Article 45

¹⁷ Law on Marriage and Family 1989, Article 46 and 51

¹⁸ Law on Marriage and Family 1989, Article 53

¹⁹ Law on Marriage and Family 1989, Article 56 and 57

²⁰ Law on Marriage and Family 1989, Article 58 and 59

The LMF further requires that at least two reconciliation sessions are attended by the parties. For a domestic violence victim, this means she will have to face her abuser who may have been physically, sexually, mentally or economically abusing her. The trauma of having to confront this person would be overwhelming. Anecdotal evidence also suggests that while two reconciliation sessions are required by the LMF, more in fact are ordered by the Courts and that, often, village or commune chiefs arrange for additional informal reconciliation sessions. The pressure to reconcile would be significant, no doubt increasing at each reconciliation session. Cambodian society places great importance on the institution of marriage and divorce traditionally carries shame for women. By making the process of divorce so long and drawn out, Cambodian women are placed at such a disadvantage, effectively making divorce almost impossible.

REMARRIAGE

Article 9 of the LMF states that a woman may remarry in the event that her husband dies, her marriage is annulled or she is divorced, however she can only remarry after 300 days from the dissolution of the marriage. This restriction placed explicitly on a woman is clearly discriminatory and in contravention of the CEDAW.

CONCLUSION

Although the LMF has other provisions which uphold the equality of men and women, it fails to set a strict minimum age of marriage and fails to ensure that divorce is equally accessible to men and women - two issues which are fundamental to the CEDAW. Additionally in the context of the reform of Cambodia's laws since the end of civil unrest in the early 1990s, the LMF of 1989 is out-dated now and is need of reform.

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4. Rape

CEDAW

“State parties shall take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women...”²¹

“States parties should ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity.”²²

CASE STUDY 3: RAPE - RATANA'S STORY

My name is Ratana and I am 19 years old. On the last day of Khmer New Year, my friends and I decided to ride our bicycles to the pagoda. We had four bicycles and there were eight people, so two or three people rode on each bicycle. My friend Pheak and I rode with another of my friend's neighbors, a man called Thea. I had never met him before, however my friend told me that he was her neighbor and very friendly.

We all started riding to the pagoda, however after a while I noticed that Thea was riding quite slowly and that we were quite far behind the others. After a while Pheak and I could not see my friends anymore. I told Thea to hurry up, because I wanted to catch up with our friends. He replied that he thought that our friends had been attacked and beaten up and that we should turn back. Pheak and I told him that he was crazy, what was he talking about? Instead of replying he turned the bicycle around and started riding back the way we had come.

At an isolated place, he stopped riding and made Pheak and I get off the bicycle. By this time, both of us were extremely scared, Pheak jumped off the bicycle and ran near the road. I tried to run after her, however all of a sudden two men grabbed me from behind and held my arms behind my back. I was screaming and trying to escape – the men just laughed at me. Thea told me that these men were his friends and that I should be nice to them.

They each raped me – one after the other.

One of the rapists wanted to kill me, however Thea told them that they did not need to kill me and that they should let me go home. However he threatened me, saying that if I told anyone about what had happened, they would find me and kill me. They then all rode off on the bicycle.

I was in a daze, I could not believe what had just happened to me. I started walking back to my house. After walking for a while, I heard a motorbike pass me. I was very scared when I heard the motorbike because I thought the men had come back to rape me again. The motorbike stopped and a man came to look at me. I was so scared, however it turned out to be my uncle. I was too ashamed and afraid to tell him what had happened so when he asked me what I was

²¹ CEDAW Article 5

²² General Recommendation 19 Comments on specific articles within the CEDAW (Paragraph 24 (b))

doing by myself on the road I lied to him and told him that I had come back from the pagoda and that my friends had dropped me off. He took me home and when we arrived at my house, my mother was waiting outside, looking out for me.

My friend Pheak, who had escaped from the men was with my mother, she had run to my house and had told my mother what had happened. My mother asked me if anything bad had happened and I lied to her and told her that nothing had happened. I was so ashamed and I did not know how I could tell her, so I lied. Later that night, I told Pheak what had really happened and my mother overheard. My mother was so angry and at first I thought she was angry with me, however she started crying and told me that we needed to report what had happened. She took me to the police station that night – it was 3am and the police were sleeping. They refused to help me and told me to come back the next day. The next morning I returned to the police station and told the police what had happened. They helped me to write a complaint to the court, however so far, nothing has happened.

I still have nightmares about what happened that night and I am very scared to be alone by myself. I also worry because I do not think any decent man will want to marry me now that I am no longer a virgin. I am sad and cry all the time. I do not know what I will do for the rest of my life.

CASE STUDY 4: RAPE – SITHA'S STORY

My name is Sitha and I am 28 years old. When I was 15 years old, I was raped by a former Khmer Rouge soldier who happened to live in my village. I felt like my whole life was over. I went to my mother and told her what had happened to me. At first she did not believe me. Then, she told my father what had happened. My father went to the village chief and demanded that the village chief help me. The village chief then met with my parents and the man who raped me. They decided that this man should marry me in order to make everything better, to make the rape just "disappear."

Nobody asked me what I wanted.

My parents and the village chief told me that if I did not accept this man as my husband I would never be able to get married or have a family. Because he had raped me and taken my virginity no man would ever want me as his wife. I was 15 years old, confused, vulnerable and very, very sad. I was embarrassed that people in our village were talking about me. I was scared of disobeying my parents and the village chief but I was more afraid of fighting back against the man who raped me. So I married him.

It has been 13 years since I married this man. It has been 13 years of immense suffering – I have never had any peace or happiness. This man has abused me physically and mentally every day of our marriage. When I was pregnant with my third child, he beat me and injured me. He beats our children and has no love for them.

One day, after years of suffering, I decided that I could not suffer any longer! I decided that I would go and see his commanding officer and I told him that my husband was constantly beating myself and my children and that I wanted a divorce. The commanding officer told me that we would have to try and reconcile and he made my husband and I promise to reconcile and not to get divorced. A few days after we reconciled, my husband started beating me again. Nothing had changed.

Throughout our marriage, my husband has always forced me to have sexual intercourse with him. Any time that I tried to refuse, he would beat me and rape me. I tried to escape from him several times, however he would always find me, beat me to punish me – and then bring me back.

Because my husband abused myself and the children so often, the local authorities and my neighbors would just ignore our problems. A few months ago, I decided that I could not live with him any longer. One of my neighbors helped me to go and see someone at an organization that provided me with accommodation in their shelter. They also helped me to file for divorce – my case is now waiting at the courts. My life has been very difficult and I have suffered a great deal. I am very tired, I just want my children and I to be able to feel safe.

RAPE IN CAMBODIA

Rape is one of the most serious and most common crimes reported against women in Cambodia. Although it is impossible to know the full extent, the available information indicates that rape and other forms of sexual abuse are extremely prevalent. This includes violent rape (including murder-rapes); gang rape; and the rape of children as young as two or three years old.

Rape in Cambodia must be viewed within the context of Cambodian cultural and social attitudes towards women and sexuality. Men are perceived as having more value than women, and women are supposed to be subservient to them. In this context many men do not respect women's rights to be free from sexual or other violence, and many women are not confident in standing up for their rights. Traditionally, women are expected to remain virgins until marriage, and a girl who loses her virginity beforehand (even through rape) is often considered to be "unmarriageable". The shame of being raped (felt by victims of rape in many countries) is exacerbated in Cambodia by prevailing societal attitudes. As is the case of Ratana, this shame may lead the victim to keep silent about the rape, or to refuse to report it to the authorities and seek to prosecute the perpetrator. This attitude is often encouraged by family and community members, including local authorities such as village and commune chiefs and local police.

"Society places a higher value on men."

- 18 year old victim of rape and forced marriage, Battambang Province

The severity of rape as a crime is often not acknowledged or deliberately minimized, including by beliefs that men cannot control themselves and thus cannot be held responsible for acting on their passion, or that victims must have in some way provoked the rape or consented to sex. Even when rape is recognized as a serious violation (such as when the victim is young child), shame and embarrassment may lead victims and their families to quietly resolve the matter rather than seek a criminal prosecution.

Countless rapists escape punishment by the law, primarily by making compensation payments to the victim or her family in return for a complaint not being pursued. Such out-of-court settlements, which are unlawful, are usually brokered by local authorities or even court officials who take a slice of the money for themselves. In other cases (such as rape of young unmarried women), the victim may be encouraged or forced by her family and local officials to marry her rapist. While this solution is intended to preserve the honor and

reputation of the victim (and her family), in reality it further traumatizes the victim and legitimizes the rape of her.

If victims do strongly seek to pursue a criminal complaint, the perpetrators may escape justice due to widespread corruption in the police and courts. Anecdotal evidence indicates that rapists who are poor (and have no money to bribe law enforcement officials) may well be prosecuted, convicted and receive strong prison sentences; perpetrators who have money, or connections to influential persons, are rarely convicted or imprisoned. (The corruption of the police and courts is well known to Cambodians, and this serves to deter victims and families from going to court and encourages them to accept out-of-court settlements – a quick compensation payment from a perpetrator is far more easily achievable for them than getting a conviction at court.)

DEFINITION OF RAPE

The definition of rape is “any sexual act involving penetration carried out through cruelty, coercion or surprise.”²³ Committing the act of rape or *attempting* to commit rape is considered the same crime under Cambodian law.²⁴

LACK OF DEFINITION OF CONSENT

The law makes no reference to consent. Considering that at the most basic level, rape means sexual penetration without consent, it is crucial that this element be defined. Cambodian law makes “cruelty, coercion and surprise” the defining elements of rape, not the absence of consent. This tends to lead judges to seek evidence of serious violence and injuries in any rape case, ignoring the fact that many victims may not struggle with their attackers for fear of being further injured or killed. In many cases, medical certificates documenting injuries on victims of rape are used to convict perpetrators. However if there is no or little physical evidence of violence and no medical certificate confirming this fact, then judges may declare that the penetration was consensual and not rape.

RAPE IN CAMBODIA IS GOVERNED BY:

- UNTAC LAW
- LAW ON AGGRAVATING CIRCUMSTANCES OF THE FELONIES
- LAW ON THE PREVENTION OF DOMESTIC VIOLENCE AND THE PROTECTION OF VICTIMS

“The laws should not be biased to support men; may the laws assist women too.”

*- 43 year old victim of domestic violence,
Battambang Province*

In the context of Cambodia’s corruption-ridden judiciary, dishonest prosecutors and judges can also take advantage of the deficiencies in the law’s rape definition to justify non-prosecution or acquittal of perpetrators who pay them bribes.

The lack of definition or any legal guidance relating to consent, coupled with cultural prejudices towards rape, effectively means that women will be discriminated against whenever they report a rape.

²³ UNTAC Criminal Code, Article 33 and *Law on Aggravating Circumstances of the Felonies*, Article 5.

²⁴ *Law on Aggravating Circumstances of the Felonies*, Article 5.

MARITAL RAPE

Marital rape is covered by the *Law on the Prevention of Domestic Violence and the Protection of Victims* and is discussed further in Chapter 2 Domestic Violence. Marital rape is not explicitly covered by the UNTAC Law and its weak rape definition discriminates against women who are raped by husbands or boyfriends.

REHABILITATION MEASURES

There are no provisions concerning rehabilitation contained within any rape legislation. General Recommendation 19 of the CEDAW says that states should implement “protective measures, including refuges, counseling, rehabilitation and support services for women who are the victims of violence or who are at risk of violence.”²⁵

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²⁵ General Recommendation 19 Comments on specific articles within the CEDAW (Paragraph 24 (t)(iii))

5. Human Trafficking

CEDAW

“State Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.”²⁶

“Specific preventive and punitive measures are necessary to overcome trafficking and sexual exploitation;

States parties in their reports should describe the extent of all these problems and the measures, including penal provisions, preventive and rehabilitation measures that have been taken to protect women engaged in prostitution or subject to trafficking and other forms of sexual exploitation. The effectiveness of these measures should also be described;

Effective complaints procedures and remedies, including compensation, should be provided.”²⁷

CASE STUDY 5: SOPHEA’S STORY

My name is Sophea and I am 19 years old. It was the end of 2003 and my aunt was visiting my family. My aunt was quite rich compared to my family and she would often come to visit and to give my family some money because we were very poor. This time during her visit she mentioned that I should go to the city and find work. She said I could earn more money and that she would help to find me a job working in a food store. I didn’t want to go, because I was scared to leave my family and live in the city. I only had been to the city a few times but I always went with my parents but because my family was poor and I knew they needed the money I obeyed my parent’s wishes and went with my aunt to the city.

When I arrived in the city my aunt brought me to a karaoke bar where she said she worked. I thought maybe I would serve drinks and clean tables. However my aunt brought me to a room in the back and said that I had to have sex with men and she would pay me \$20 a month. I was totally shocked and didn’t know what to do I just stayed in the back room and cried.

Later I told my aunt that I wouldn’t have sex with any men and that I wanted to go back home. I said that my parents wouldn’t want me to do this. My aunt then said she didn’t care and she beat me with an electrical cable on my back until I bled. I cried all that night. The next day I had to have sex with many men. I lost my virginity and I was very ashamed at what happened.

After seven days I could not bear to stay there any longer. So one day I told my aunt that I wanted to go to the market to buy shoes. I think because I had sex with many men already she didn’t think I would leave and she let me go to the market alone. I had arranged to meet my brother-in-law at the market and we were able to drive away to his house where I told him about my situation. I was scared to tell him but he was very kind and believed me. He said it was very bad of my aunt and that we should tell the police. So with his help we went to the police station that day and made a complaint. My brother-in-law then contacted my parents and told them what had happened

²⁶ Article 6

²⁷ General Recommendation 19 Comments on specific articles within the CEDAW (Paragraph 24 (g) -(i))

When my parents heard about what happened they were very shocked but they told me not to tell the police and that I should withdraw my complaint. When I asked why, they said that my aunt was very rich and that we should not anger her otherwise she would cause trouble. I was still very angry at my aunt and I did not agree with my parents. So with the support of an NGO I continued with my complaint to the police.

However, later that week a photo of me and my story was published in a newspaper, apparently the police had given my details and story to the newspaper. I knew everyone in my home village would find out what happened to me and I felt very ashamed for my parents.

In the end I had to go to court three times to explain what happened to me. The NGO helped me to find a lawyer but I still found it very difficult each time I went to court. I kept retelling what I was forced to do and there were only men in the court who asked me questions which made me feel very ashamed and embarrassed. My lawyer encouraged me to continue and said that I was not alone; many other girls had gone through the same experience.

Even though I went to court so many times my aunt has still not been arrested and I don't know what is happening with my case.

HUMAN TRAFFICKING IN CAMBODIA

Human trafficking is a form of slavery. In Cambodia, women are mainly trafficked for the purposes of sexual exploitation and for forced domestic labor, however other forms of trafficking also occur. Cambodia is a source, transit and destination country for trafficked women and whilst there are no clear statistics on the numbers of women being trafficked within Cambodia and out of the country, it clearly affects a large number of women.

The main factors affecting the trafficking of women in Cambodia are poverty and migration, both of which are interlinked. Families that struggle to survive and live in poverty may feel forced to sell their daughters to traffickers or to give their daughter to a third party to cover the debts of a family member. Once trafficked, the victim is forced to work in order to pay off her family member's debt.

Women, especially those living in border areas, are often vulnerable to trafficking during the migration process as they travel to different areas in search of work. During this migration, women are often deceived into procuring work through a trafficker, who also promises assistance to a destination in exchange for a fee. This process is known as 'recruitment.'²⁸ Once the woman is completely reliant on the recruiter for transport, accommodation, food, work and (if she is going outside of Cambodia) language, it is at this point that she may be trafficked and sold into forced labor. Debt-bondage may also occur, where the victim is told she owes funds to the person who arranged for her travel and other expenses and, in order to pay these costs back, she must work as a sex worker or in other forms of forced labor.

"I used to think that the rights of women and men are equal, but for me it seems that I don't have equal rights; I am a smaller and lower person than men."

- 52 year old victim of domestic violence, Battambang Province

²⁸ LICADHO Violence Against Women in Cambodia Report 2005, page 15

Traffickers prey upon the most vulnerable of women, those who are often poor, uneducated and unaware of their rights. Trafficked women usually suffer multiple violations. A trafficked woman sold into the sex trade, for example, is essentially raped on a daily basis. She will also likely be beaten or given narcotic drugs by her pimp, to keep her submissive and less likely to escape. Similarly, a woman forced into domestic labor is extremely vulnerable to physical or sexual abuse by her employer or others in the house.

LAW ON THE SUPPRESSION OF KIDNAPPING, TRAFFICKING AND EXPLOITATION OF HUMAN BEINGS

In 1996, Cambodia passed the *Law on the Suppression of Kidnapping, Trafficking and Exploitation of Human Beings* (Trafficking Law) in response to a rapidly expanding trafficking industry which was fueled by the demand for sex workers

INSUFFICIENT DEFINITION OF TRAFFICKING

Article 3 of the Trafficking Law defines the offence of trafficking as:

"Any person who lures a human person, even male or female, minor or adult of whatever nationality by ways of enticing or any other means, by promising to offer any money or jewelry, even though upon there is or no consent from the concerned person, by ways of forcing, threatening or using of hypnotic drugs, in order to kidnap him/her for trafficking/sale or for prostitution..."

Those who are accomplices, traffickers/sellers, buyers, shall be subject to the same punishment term as which of the perpetrator(s). Shall also be considered as accomplices, those who provide money or means for committing offences."

Whilst the definition of trafficking appears to be detailed, it fails to take into account the multitude of acts that can be considered trafficking. The definition covers some of the more common forms of trafficking which involve the promise of money, the use of threats, force or drugs and deceit. However in order to suppress all forms of trafficking the definition needs to be comprehensive enough to consider every possible way in which a person may be trafficked. For example the current definition does not explicitly cover the situation where a girl is sold by her parents in order to pay a debt, a common situation in Cambodia. The girl who is being trafficked is not lured or promised money and may not even be forced to go with the trafficker; she may merely be obeying her parents' wishes and helping her family to repay a debt. Clearly she is being trafficked, but the current Trafficking Law does not clearly consider her a victim of trafficking.

The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children provides a very comprehensive definition of trafficking which is the internationally accepted standard.

(a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of

HUMAN TRAFFICKING IN CAMBODIA IS GOVERNED BY:

- LAW ON THE SUPPRESSION OF KIDNAPPING, TRAFFICKING AND EXPLOITATION OF HUMAN BEINGS
- UNTAC LAW
- LAW ON IMMIGRATION
- LABOR LAW
- THE CONSTITUTION

others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article.²⁹

This definition takes into account the complexities of recruitment which can also involve abuse of power, particularly power exerted by men over women, deception which plays an important role in most trafficking cases, and exploitation of the vulnerability of the person.

THE LAW ON IMMIGRATION

Article 29 of the Law on Immigration (LOI) provides the following:

"any alien without authorization, entered the Kingdom of Cambodia by stealth or fraud or by any other forms whatsoever, contrary to the provisions of this law, shall be subjected to condemnation from three to six months imprisonment, before he/she is expelled."

A common situation that victims of trafficking face is finding themselves working and living in a foreign country illegally and liable to imprisonment. The CEDAW obliges states to take rehabilitative measures to protect victims of trafficking, however Cambodia's LOI provides no exemptions from prosecutions for trafficking victims. There have been cases of Vietnamese sex workers rescued from brothels, presumed to have been trafficked, being detained for the violation of illegal entry into Cambodia. In a situation like this, victims find themselves exposed not only to prosecution and imprisonment but also to expulsion from Cambodia without any assistance in terms of rehabilitation, recovery and other support services. This leaves them at heightened risk of re-victimization and re-trafficking.

There are no specific provisions in Cambodian law concerning repatriation or rehabilitation of trafficking victims. However the government has made some efforts to repatriate victims of trafficking by entering into Memorandums of Understanding (MOU) with Vietnam and Thailand. These MOUs provide for reciprocal agreements to repatriate victims of trafficking.

THE LABOR LAW

Articles 15 and 16 of the Labor Law prohibits forced labor and debt labor which are common form of trafficking and akin to modern day slavery. However there are no penalties attached to these violations.

REHABILITATION

²⁹ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 November 2000. (Article 3) <http://www.ohchr.org/english/law/protocoltraffic.htm>

There are no provisions concerning rehabilitation measures contained within any human trafficking legislation as required by General Recommendation 19 of the CEDAW.³⁰

CONCLUSION

The enactment of the Trafficking Law in 1996 was a step forward in the elimination of trafficking practices, however there is a critical need for the Law to be comprehensive enough to cover all aspects of the complexities of human trafficking from recruitment to repatriation and rehabilitation. The Trafficking Law in its current form is insufficient and does not fulfill the requirements of the CEDAW

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³⁰ General Recommendation 19 Comments on specific articles within the CEDAW (Paragraph 24 (g) -(i))

6. Conclusion and Recommendations

Every day, women in Cambodia suffer excruciating violence. This occurs as a result of living in such a patriarchal society and due to their lower status as women, which makes them vulnerable to exploitation by their husbands, fathers, neighbors, authorities and others in society.

“I don’t understand why there is discrimination between men and women. Men and women have equal rights: so men and women have to be treated equally.”

- 44 year old victim of domestic violence, Phnom Penh

The very laws that should protect Cambodian women from such violence, explicitly and implicitly discriminate against them, aggravating their suffering and their vulnerability to violence. The case studies included throughout this report are based on true accounts and portray actual realities of the ugliness and frequency of violence towards Cambodian women, and how Cambodia’s laws and implementation often fail the victims.

The members of CAMBOW hope that this report will encourage change in Cambodia’s laws relating to violence against women; and that the Cambodian Government will embark on an overhaul of its legal system in order to eradicate discrimination against these already vulnerable victims and in order to conform with the terms of the CEDAW, a convention that Cambodia ratified in 1992.

RECOMMENDATIONS

1. The international community should exert its combined influence to ensure that the Cambodian Government fulfils its obligations under the *Convention on the Elimination of All Forms of Discrimination Against Women*.
2. Civil society should work together to bring attention to the most urgent issues regarding violence against women and use every opportunity to insist that the Cambodian Government fulfils its obligations under the *Convention on the Elimination of All Forms Of Discrimination Against Women*.

Specifically, CAMBOW urges both the international community and Cambodian civil society to lobby and pressure the Cambodian Government to immediately implement the following recommendations:

- Enact all laws related to violence against women in accordance with the CEDAW and other international instruments.

Domestic Violence

- Implement a sub-decree for the clear operation of the *Law on the Prevention of Domestic Violence and the Protection of Victims*.
- Amend the DV Law to include economic violence as a form of domestic violence.
- Amend the DV Law to include specific penalty provisions. Ideally the section should punish acts of physical, sexual, mental and economic violence.

- If the penalties section cannot be drafted, amend the UNTAC Law to include relevant penalty provisions.
- Amend criminal laws to include a provision of self defense for crimes such as murder, manslaughter and battery with injury.
- Broaden the definition of marital rape and define the notion of consent.
- Clearly define the term “authorities in charge.”
- Remove the provision related to moving victims from the scene of violence without their request.
- Amend the reconciliation provision to allow the victim to have the choice of choosing neutral arbitrators, and clearly specify the types of acts which can and cannot be subject to reconciliation/mediation rather than criminal prosecution.
- Ensure that a domestic violence victim seeking a divorce from her perpetrator is not required to undergo reconciliation sessions, by local or court officials, designed to persuade her to remain with the perpetrator.
- Include rehabilitation measures for victims of domestic violence within the Law.

Marriage and Family

- Remove the provision giving parents the authority to permit the marriage of their daughter in special circumstances (such as her pregnancy) at a younger age than that stipulated by law.
- There should be fewer steps for women to go through in order to obtain a divorce in terms of the amount of reconciliation attempts and the number of reconciliation sessions needs to be enforced more rigorously than at present.
- Amend the *Law on Marriage and Family* to state that, in any case where there is reason to believe domestic violence has occurred, a victim seeking a divorce shall not be obliged to undergo any mandatory rehabilitation sessions with the perpetrator.

Rape

- Enact rape legislation that comprehensively defines the element of “consent” as a crucial term needed to objectively assess the crime of rape or attempted rape.
- Amend the *Law on the Prevention of Domestic Violence and the Protection of Victims* to specifically and objectively define the crime of marital rape.
- Include rehabilitation measures for rape victims.

Trafficking

- Pass the draft *Law on Human Trafficking and Sexual Exploitation* as soon as possible, ensuring that this law includes a comprehensive international standard definition of trafficking.
- The law should include a protection clause for victims of trafficking including rehabilitation and repatriation where necessary, as well as other support services.
- Amend the *Law on Immigration* to exempt foreigners who have been trafficked into Cambodia from prosecution for illegal immigration.

Appendix 1. Literature Review

1. The Asia Foundation, "Reintegration Assistance for Trafficked Women and Children in Cambodia: A Review", September 2005

The report provides a global review of the Asia Foundation's standards regarding the trafficking reintegration process. The report summarizes the Cambodian Government's response to trafficking, including a summary of laws and governmental programs focusing on trafficking. It also gives an overview of the international response to trafficking, focusing on International Organizations' different anti-trafficking programs. Finally, the document gives an overview of Cambodian NGOs response to trafficking reintegration.

2. Cambodian NGOs Committee on CEDAW and Cambodian Committee of Women, "Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women in Cambodia", supported by DanChurch Aid, 2005.

Shadow report of the Initial, Second and Third Periodic Report prepared by the Royal Government of Cambodia (RGC) for the CEDAW Committee for examination in January 2006. The report discusses how the RGC's laws and practices fail to comply with CEDAW, listing obstacles to CEDAW's implementation and giving recommendations for further improving of Cambodian women's situation, covering the following dimensions of women's rights: land and natural resources, education, reproductive health rights, economy, women in decision making and violence against women.

3. Committee on the Elimination of Discrimination against Women, "Combined initial, second and third periodic reports of States parties: Cambodia", 11 February 2004

This is the first report by the RGC detailing its efforts to implement the CEDAW since Cambodia ratified it on 15 October 1992 without any reservation. RGC recognizes its failure to comply with CEDAW on certain grounds, claiming that the past two decades of civil war still harm full implementation of international human rights' instruments. RGC recognizes that traditional values are an obstacle to full recognition and respect of women's rights but claims it takes a long time to change such strong assessments, especially amongst the rural community.

4. Committee on the Elimination of Discrimination against Women, "Concluding comments of the Committee on the Elimination of Discrimination against Women: Cambodia", 34th session (16 January-3 February 2006), 25 January 2006

The CEDAW Committee outlines its principal areas of concern and recommendations to Cambodia.

5. Committee on the Elimination of Discrimination against Women, "Responses to the list of issues and questions for consideration of the combined initial, second and third periodic report: Cambodia", Pre-session working group, 34th session (16 January-3 February 2006), 4 February 2006

This document gives the list of questions from CEDAW Committee to Royal Government of Cambodia (RGC) regarding concerns and recommendations identified by CEDAW Committee and the answers given by the RGC.

6. Economic and Social Commission for Asia and the Pacific, "Violence Against and Trafficking in Women as Symptoms of Discrimination: The Potential of CEDAW as an Antidote", Gender and Development Discussion Paper Series no 17, December 2005.

This document presents a discussion on trafficking as gender-based discrimination and the potential of the CEDAW as a legal instrument to address both violence and trafficking in women. It provides CEDAW definitions of violence against women and trafficking in women.

7. LICADHO, "Rape and Indecent Assault", March 2004.

This report analyses information obtained by LICADHO through investigations of rape and indecent assaults in 2002-2003. This paper focuses on legal issues and how the justice system deals with these cases.

8. LICADHO, "Violence Against Women in Cambodia" January 2006.

This report explores the situation in Cambodia of domestic violence, rape and human trafficking for the purposes of sexual exploitation and provides an analysis of the government's response to it. The analysis also focuses on the laws protecting women and the major obstacles that exist in implementing the laws and/or reform.

9. LICADHO, "Violence Against Women in Cambodia", March 2007.

This report provides real life accounts of trauma suffered by Cambodian women from domestic violence, rape, and human trafficking for the purposes of sexual exploitation. The report also provides updated information to the 2006 Violence Against Women in Cambodia LICADHO report.

10. Lyndsay Marvis, "Final Report: Women and the Cambodian Legal System", December 1994.

Analysis of the Cambodian laws relevant to women's issues, based on research conducted in Cambodia (February-August 1994). The report refers to history and cultural values regarding the status of women in Cambodia.

11. Ministry of Women's and Veteran's Affairs (MOWVA), "Concept Paper: Strengthening Mechanisms and Strategies to Counter Trafficking", March 23 2002.

Report on the Cambodian Government's response to trafficking in women. It gives a general presentation of the MOWVA's strategy regarding trafficking in women: covering prevention, protection, recovery/rehabilitation and reintegration and cooperation and coordination.

12. Ministry of Women's and Veteran's Affairs (MOWVA), "Counter Trafficking Information Campaign Stakeholder Analysis of Six Provinces: Preliminary Results and Recommendations (IOM; USAID; MOWVA, Cambodia)", March 2004.

The report provides results of a field analysis on trafficking in Cambodia.

13. Dr. Dagmar Oberlies (GTZ - Promotion of Women's Rights, Cambodia), "The Role and Limitations of National Legislation Against Trafficking in Human Beings", Act of Conference, Korea, 2003

The report discusses the types of legislation that can effectively combat human trafficking.

14. Diane O'Connell, "Rape and Indecent Assault: Crimes in the Community", A LICADHO Special Report, February 2001.

This report analyses information obtained by LICADHO through investigations of rape and indecent assaults between January 1999 and March 2000. It also discusses the incidence of rape in Cambodia, the multiple challenges victims face in seeking legal redress, and the causes of impunity for offenders.

15. V.S, Rekha, "Project on Strengthening of the Secretariat of State for Women's Affairs in Cambodia: Report on Legislative Review (The Cambodian Women's Code, 1994)", UNIFEM, 1994.

The report provides recommendations on the Cambodian Women's Code (CWC), 1994, proposal. It explains articles of the CWC related to the CEDAW and ILO relevant Conventions.

16. Abigail Schwartz, "Sex Trafficking in Cambodia", *Columbia Journal of Asian Law*, Vol. 17, No. 2 (2003-2004), pp.371-432.

The report provides a broad analysis of the relevant Cambodian laws related to sex trafficking from a women's rights perspective as well as a comprehensive overview of Cambodia's context regarding sex trafficking.

17. UNIFEM, The World Bank, ADB, UNDP and DFID/UK, in cooperation with the Ministry of Women's and Veteran's Affairs, "A Fair Share for Women: Cambodia Gender Assessment", April 2004.

This document gives a general overview of violence against women in Cambodia, based on a review of existing information from government, donor and non-governmental organization (NGO) sources and also from extensive consultations with various stakeholders.

18. Ly Vichuta (Legal Support for Children and Women) and al., "Gender, Human Trafficking and the Criminal Justice System in Cambodia", Asia Regional Cooperation to Prevent People Trafficking (ARCPPT), December 2003.

The document discusses whether existing national laws are inadequate to deal with the problem of trafficking in Cambodia.

19. Mélanie Walsh, M. Ps. Psychology, “Report on the Status of Cambodian Women: Domestic violence, sexual assaults and trafficking for sexual exploitation”, Project on Women’s Rights In Cambodia: LICADHO – UQAM PARTNERSHIP, March 2007

This report addresses the status of women in both private and public spaces in Cambodia, mainly focusing on gender-based violence. The report gives an overview of Cambodia’s legal framework regarding violence against women; laws are explained and obstacles to their implementation are identified. The document also provides information about resources for victims and protection strategies built by communities, local authorities and NGOs.

20. Takashi Yasunobu, “Combating Human Trafficking in Cambodia: Establishing a Legal Environment for the Effective Counter Trafficking Measure”, A paper in partial fulfillment of the requirement towards the Master of Arts Degree in Sustainable International Development at Heller School of Social Policy and Management, Brandeis University, May 2004

This document discusses Cambodia’s legal framework regarding trafficking in women and children, including a comparative analysis of the relevant national laws with other national frameworks as well as international standards, and a critique of the implementation of the laws.

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Appendix 2. CAMBOW Members

No	NGOs Name	Contact Person	Contact Directory
01	សមាគមការពារសិទ្ធិមនុស្ស និង អភិវឌ្ឍន៍នៅកម្ពុជា (ADHOC) Cambodian Human Rights and Development Association	Mr. Thun Saray, President Ms. Lim Mony, Women Project Coordinator	016 880 509 012 834 449 Email: adhoc@forum.org.kh
02	អង្គការបន្ទាយស្រី (Banteay Srei) Banteay Srei	Ms. Chhoeun Thavy, Executive Director Ms. Chhun Sarorn, Advocacy Program Officer	012 932 357 011 615 483 Email: banteaysrei@online.com.kh
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04	មជ្ឈមណ្ឌលអភិវឌ្ឍន៍សង្គម (CSD) Center for Social Development	Ms. Seng Theary, Executive Director Ms. Eam Sivnin, Personal Assistant	012 222 552 012 1993 118 Email: theary@csdcambodia.org
05	អង្គការជំនួយកុមារ និង ស្ត្រីជនបទ (CWARO) Organization for Children and Rural Women	Ms. Lim Davy, Executive Director	012 821 178
06	អង្គការកម្ពុជាដើម្បីជួយស្ត្រីមានវិបត្តិ (CWCC) Cambodian Women's Crisis Center	Mrs. Nup Sarin Sreyroth, General Secretary Mrs. Sin Lypov, Shelter Manager	012 947 186 011 976 839 Email: cwccpnp@cwcc.org.kh
07	សម្ព័ន្ធស្ត្រីកម្ពុជាដើម្បីអភិវឌ្ឍន៍ (CWLD) Cambodian Women League for Development	Ms. Sorn Dy Deline, Deputy Director Ms. Tith Vandy Executive Director	011 889 920 or 012 942 692
08	មជ្ឈមណ្ឌលកម្ពុជាដើម្បីការពារសិទ្ធិកុមារ (CCPCR) Cambodian Center for the Protection of Children's Rights	Ms. Tep Sopheap, Trainer Mr. Yim Po, Executive Director	012 963 907 Email: ccpcr@online.com.kh
09	សមាគមអភិវឌ្ឍន៍វប្បធម៌ស្ត្រីកម្ពុជា (CWCD) Cambodian Women's Culture Development	Mrs. Heng Sovuthy, Executive Director	012 891 153 Email: sovuthy_cwcd@yahoo.com
10	ភ្នាក់ងារអភិវឌ្ឍន៍ស្ត្រីកម្ពុជា (CWDA) Cambodian Women's Development Agency	Ms. Serey Mealy, Counselor Mrs. Kean Sereyphal, Executive Director	012 824 957 Email: cwda@online.com.kh
11	មជ្ឈមណ្ឌលកម្ពុជាសម្រាប់ទុរគុណ និងអភិវឌ្ឍន៍ (CDRCP) Cambodian Development and Relief Center for the Poor	Mrs. Leng Sothea, Executive Director	012 651 123 Email: cdrpc@online.com.kh

12	អង្គការខាមកម្ពុជា (CARAM Cambodia) Coordinator of Action Research on AIDs and Mobility	Mr. Ya Navuth, Executive Director	012 961 427 Email: caram.cam@online.com.kh
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14	សមាគមវិចិត្រសិល្បៈ (FAA) Fine Art Association	Mr. Hang Puthea, President Mr. Ne Sony, Vice President	012 959 666 012 987 676 Email: nicfec@wicam.com.kh
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16	អង្គការហាការ (HAGAR) Hagar Project	Ms. Soun Samnieng, Assessment Center Manager Ms. Elise Elzinga, Research and Advocacy	012 202 894 Email: soun.samnieng@hagarproject.org 092 429 516 Email: elise.elzinga@hagarproject.org
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20	មជ្ឈមណ្ឌលសំឡេងស្ត្រីខ្មែរ (KWVC) Khmer Women's Voice Center	Ms. Yim Nimola, Executive Director	012 919 099 or 016 396 699 Email: kwvc@forum.org.kh
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24	អង្គការមាតាខ្មែរអភិវឌ្ឍន៍ (MKD) Meada Khmer Development	Ms. Tep Savery, President Ms. Prom Mon, Administrative Chief	012 728 049 012 390 843 Email: tepsavery@online.com.kh
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26	គណៈកម្មាធិការអព្យាក្រឹត្យនិងយុត្តិធម៌ដើម្បីការបោះឆ្នោតដោយសេរីនិងត្រឹមត្រូវនៅកម្ពុជា (NICFEC) Neutral and Impartial Committee for Free and Fair Election in Cambodia	Mr. Hang Puthea, President Ms. Tim Sisoda; Program Officer	012 959 666 012 544 931 Email: nicfec@wicam.com.kh

27	អង្គការប្រឆាំងអំពើហិង្សាក្នុងគ្រួសារ (PADV) Project Against Domestic Violence	Mrs. Hor Phally, Executive Director	012 838 721 Email: padv@online.com.kh
28	អង្គការស្តារកម្ពុជា (STAR kampuchea) STAR Kampuchea	Mr. Nhek Sarin, Executive Director	011 725 873 Email: star-director@starkampuchea.org.kh
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33	មជ្ឈមណ្ឌលនាវ៉ាថ្មី (WVC) Neavea Thmey Center	Mr. Nhim Sambath, Trauma Project Manager	012 817 721 Email: sambath_nhim@wvi.org
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