



BREAKING THE SILENCE

SEXUAL VIOLENCE
IN CAMBODIA

STOP VIOLENCE
AGAINST WOMEN

AMNESTY
INTERNATIONAL



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Cover photo: A Cambodian girl carries a basket on her head in front of the Royal Palace in Phnom Penh, Cambodia. January 2010.

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1. INTRODUCTION AND SUMMARY

Chantha was 14 years old when her 40-year-old stepfather raped her in 2007. It was the first time he sexually assaulted her, but he had subjected her to violent abuse earlier. The first person she turned to about the rape was her aunt.

“Then my mother found out and she filed a complaint with the district police after a few days.

“We also went to the doctor, first to a district clinic, but they were too busy there, so instead we went to an NGO which took me to hospital for a [medical] examination. I never got any treatment.”

Chantha told Amnesty International that police first arrested her stepfather, but then released him within days.

“I don’t know why, but he must have bribed the police. He knew the policemen. And I think he gave some money to my mother too.”

He left the area, but because he is at liberty, Chantha is still afraid of him and lives at a shelter.

“I am afraid he would kill my family, and also when I am in the village, I feel a lot of shame. I’m afraid that I won’t be able to find someone to love me.”

A growing number of rape reports, including against very young girls and gang rapes, fill Cambodian newspapers. Most police, NGO workers and public officials working with the issue agree that rape is on the increase. The lack of appropriate services for victims of rape is acute, and reflects social attitudes about rape and sexual violence.

Cambodia’s new Penal Code will enter into force late 2010. Amnesty International urges the Cambodian government to seize this opportunity to address inadequate law enforcement in cases of gender-based violence. The government has plans and strategies to tackle gender-based discrimination, with a clear focus on human trafficking and domestic violence. They need to incorporate rape and other sexual violence into these efforts, ensuring political will to address this problem. The government’s limited public condemnation of rape echoes a lack of social sanction. The lack of services – and policy discussions – may be interpreted as an implicit acceptance of sexual violence on the part of the government and vast swathes of society. The limited access to adequate medical and social services is a further indication that the authorities do not acknowledge the severe trauma experienced by victims.

The lack of effective investigations and prosecution further harms victims, who often live with the fear that the perpetrator is free to attack them again, with the additional psychological pain and a perceived loss of dignity. Failures by the authorities, including in the criminal justice system, go unquestioned and become an extension of the initial abuse. With every

perpetrator who goes unpunished, a signal is sent that society as a whole does not condemn sexual violence.

Those at the highest level of government, the judiciary and national institutions should strongly condemn rape and other forms of sexual violence against women and girls in Cambodia. This is a crucial step towards enabling and supporting victims to report the crimes committed against them and would support the healing process of victims. Cambodian authorities must also help remove obstacles to effective investigation and prosecution that currently block victims of rape from seeing justice served. Amnesty International calls on the government to ensure that victims of sexual violence have access to adequate and effective legal reparation and to health information, protection and services.

Amid a culture of impunity and widespread corruption, victims of sexual violence in Cambodia are often denied justice; struggle to pay informal fees for health services; and grapple to obtain assistance and support.¹ Commonly, law-enforcement officials, including police and court staff, arrange unlawful out-of-court payments between the victim and the perpetrator (or their families). These are money-making schemes, in which officials or civil servants take a share of the money paid by the perpetrator, while the higher authorities turn a blind eye. The victim is expected to withdraw any criminal complaint against the suspected perpetrator, and public prosecutors ignore their duty to carry forward an investigation, with or without a complainant.

There are no comprehensive statistics on rape and sexual violence against women and girls in the country. However, centrally placed sources, including at the General Commissariat of National Police, the Ministry of Women's Affairs and the NGOs with nationwide or near nationwide outreach providing services to victims, believe that the incidence of rape in Cambodia is increasing and that a growing number of victims are children.²

The government has initiated a data collection process, through the General Commissariat of National Police, but figures are extremely low and unreliable. From November 2008 to November 2009, police had recorded 468 cases of rape, attempted rape and sexual harassment, a 24 percent increase over the previous year.³ This figure would include cases that are reported to police only, but excludes cases in which police mediated out-of-court payments, as reports of such cases are settled at the local level and do not appear in official documentation. An NGO network has compiled data on rape and human trafficking since 2005, drawing on information from over 20 participating NGOs. Its most recent report includes 677 cases of rape in 2008.⁴ This figure too is low when compared to statistics from other countries,⁵ and includes only cases that have been reported to NGOs. Data of cases reported both to police and NGOs indicate that an increasing number of victims are children. In 2009, 78 percent of rape victims turning to human rights NGO Adhoc were children, compared to 67 percent in 2008.⁶ It is not known if this increase accurately reflects the real situation, or the fact that rape of under-18s is more likely to be reported.

This lack of comprehensive data on sexual violence against women and girls hampers an understanding about the extent of the problem. The acute lack of adequate services and assistance available for survivors of sexual violence may be linked to the incomplete information about how many girls and women are affected, what kinds of medical and psychosocial needs they have, and in what circumstances they live. There is also an absence

of a tracking system of victims and what happens to them after they report rape, which prevents the authorities from critically analyzing how they deal with rape cases and assist victims, and identify where in the process systemic shortcomings appear.

In meetings with Amnesty International, NGO staff, service providers and government officials alike agreed that women and girls living in poverty are more vulnerable to rape and other sexual violence. Many women and girls living in poverty lack power to defend themselves or their interests, both before and after an assault. Poverty also increases the risk for Cambodian women and girls of being re-traumatized due to inadequate support and assistance. To make matters worse, their chances of redress and reparation are slim, as the Cambodian justice system, like many others, displays a bias against people living in poverty, favouring those with financial resources and influence.

In 2009, **Vanna** was raped by a fellow-villager when she was 15. Her parents reported the crime to police, who arrested the man. However, after court officials and police had negotiated an extra-judicial settlement whereby the perpetrator paid money to the family, he was released. Vanna had to move to a shelter. *“I don't dare to go home. The perpetrator was released because he paid a bribe and that's not right.”*

Sex workers, whose poverty is compounded by social stigma, are often targeted for rape, and given that it is commonly accepted practice in Cambodia for men to use sex workers, rape of sex workers is extremely common.⁷

Five men in their 20s raped **Pheap**, a sex worker, outside Phnom Penh in November 2009. They beat her badly, fractured one hand, and stole some money.

“I haven't filed a complaint [with the police]. I only told some policemen I know about it, and they said I was lucky not to be killed and that we sex workers have to suit ourselves,” Pheap told Amnesty International. *“Police should seek justice; instead they look down on me.”*

Rape is an act of gender-based violence and constitutes ‘discrimination’⁸, prohibited under international human rights law, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), to which Cambodia is a state party. Rape should not be understood as a “sexual” activity, but as one that is motivated by a desire to control, harm and humiliate a woman.⁹

In view of this report's findings and with the new Penal Code entering into force, Amnesty International recommends that the Cambodian government take the following steps as a matter of urgency:

- Publicly condemn rape and other sexual violence against women and girls, and speak out against the widespread complacency and lack of concern regarding the effects of rape on victims.
- Amend policies and plans of action to explicitly prevent, adequately investigate and punish sexual violence against women and girls, and ensure that the authorities, including courts, clarify that rape is a crime against the physical and mental integrity of the victim and that it signifies an absence of consent.

- Address the government's current failures to provide victims with adequate reparations, including health and psychosocial services.

1.1 METHODOLOGY

Amnesty International extends its gratitude to the courageous women and girls who came forward to share their stories. This report seeks to amplify their voices so that their perspectives and experiences – in particular the obstacles they face in trying to cope – can inform actions of the government, donor countries, service providers and others to more effectively address the issue of rape in Cambodia. Their recommendations and thoughts have given invaluable input throughout the research.

Amnesty International has prepared this report with the aim of supporting the work of Cambodian women's rights organizations, service providers and others working to protect and defend women and girls who are subjected to rape and other sexual violence. The report is part of Amnesty International's global campaign "Stop Violence Against Women".

The report is based on research trips to Cambodia in April and November-December 2009, and draws on interviews in Battambang, Siem Reap, Phnom Penh and Kampong Thom with some 30 female victims of rape from across ten provinces, and around a dozen of their family members. The violations described in the report took place between early 2006 and December 2009.

Amnesty International also met with some 50 service providers, government officials, law enforcement agents, and lawyers in the same provinces, and interviewed five convicted rapists in two prisons, Siem Reap and Kampong Thom. These meetings, too, informed the research, as did a review of existing research into gender-based violence against women and girls in Cambodia and beyond.

The research concentrated on the victim's experience. To that end, the research focused on assessing their access to justice, health care and social services from a human rights perspective. As the purpose of the research was to explore the aftermath of rape for the victim, Amnesty International has not investigated the crime itself, the criminal responsibility of the alleged perpetrator, or details of the rape.

For practical reasons, Amnesty International only met with victims who had some prior connection with NGOs. However, the vast majority of rape cases in Cambodia – as well as elsewhere in the world¹⁰ – go unreported and so most victims will not have any contact with NGOs. The victims who chose to speak to Amnesty International include girls and women from 10 to 40 years of age, from various geographical areas, some of whom were being housed in different shelters. Their testimonies greatly contribute towards an understanding of the problems that rape victims in Cambodia frequently face.

Grouping women and girls together for the purposes of this report is a consequence of how the research evolved, and does not imply that Amnesty International perceived them as facing problems, obstacles and discrimination in the same way. Children have particular needs and their ability to make choices is more dependent on others.¹¹

We selected interviewees in cooperation with local NGO partners and/or service providers with which the victim was in contact as a client, to ensure that victims would be in an environment that enabled them to freely give their permission to speak with Amnesty International – or refuse to do so.

During interviews with children (under 18), Amnesty International requested that a parent or close family member accompany the victim, providing comfort and support. In seven instances, the victim and her parent, in one instance a father, in six instances mothers, answered questions together. When parents were unable to attend, counselors of shelters where the girls were staying were present.

Names of victims and details of locations which could identify them are withheld throughout the report, to protect the victims.¹² A number of law enforcement agents, NGO workers and other experts spoke to Amnesty International on condition that their names and certain other details not be made public. Specific references to such conditions are noted throughout the report.

This report focuses on rape and other sexual attacks on women and girls. The overwhelming majority of rape and sexual violence reports, in Cambodia and elsewhere in the world, come from women, and it remains the case that, as stated in human rights law and standards, violence against women is both a cause and a consequence of women's inequality. However, like in all other countries, men and boys also fall victims to such attacks, suffer no less as a result, and are re-victimized by official apathy and inaction. Amnesty International's condemnation of rape and other sexual attacks on women and girls, its criticism of the Cambodian authorities failure to exercise due diligence to protect, prevent, punish and ensure reparations to victims and its recommendations for action to redress this failure apply equally to men and boys. Due regard should be paid to the particular problems faced by men and boys who are victims of rape and other sexual attacks.

2. INTERNATIONAL LAW AND STANDARDS

Cambodia has ratified all key human rights treaties, including CEDAW and the Convention on the Rights of the Child (CRC). This chapter outlines the main relevant human rights law and standards binding on Cambodia.

Rape, when committed by state agents, has been recognized as a form of torture under international human rights law,¹³ and the state's failure to prevent, investigate and prosecute violence against women has been seen as a breach of its human rights obligations to prevent torture and cruel, inhuman or degrading treatment or punishment. The identification of rape as torture under particular circumstances underlines the seriousness of the crime and the importance of an effective state response.

Article 31 of the 1993 Constitution of the Kingdom of Cambodia gives the force of law to the Universal Declaration of Human Rights and the international human rights treaties that Cambodia has ratified, including CEDAW in 1992:

“The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights, women's and children's rights.”

This was reaffirmed on 10 July 2007 in a ruling by the Constitutional Council, which instructed courts to consider “international conventions that Cambodia has recognized” as domestic law alongside the Constitution and other applicable law.¹⁴ However, since the ruling in the Constitutional Council, no court has ever been known to refer to international treaties, either when domestic law has been too vague, or in order to clarify its principles.

The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights require that women should enjoy their human rights in equality with men, and should not be subject to discrimination of any kind. The Convention on the Elimination of All Forms of Discrimination against Women provides more detail on how women's human rights can be best ensured.

The CEDAW Committee recognizes violence against women as a form of discrimination. In its General Recommendation 19 the Committee calls on states parties, among other things, to 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.” and

“Effective legal measures, including penal sanctions, civil remedies and compensatory provisions to protect women against all kinds of violence, including, inter alia, violence and abuse in the family, sexual assault and sexual harassment in the workplace.”¹⁵

2.1 HUMAN RIGHTS OF WOMEN AND GIRLS

Article 1 of CEDAW provides that the term “‘discrimination against women’ shall mean 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.”

CEDAW further states that states parties “agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women” (Article 2).

Under CEDAW’s provisions states have a binding obligation to “take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.”¹⁶ Further, it requires states parties to refrain from engaging in “any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation” and to “take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise”.

CEDAW also requires states to take all appropriate measures to address stereotypes leading to gender-based discrimination, such as violence against women: the treaty calls on states 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.”¹⁷

The CEDAW Committee has defined violence against women as “a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men.”¹⁸

The UN Convention on the Rights of the Child (CRC) requires states parties to “take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse”. It also sets out measures of child protection, including: “effective procedures for the establishment of social programs to provide necessary support for the child” and “for identification, reporting, referral, investigation, treatment... and, as appropriate, for judicial involvement”. (Art19)

The CRC also provides that:

“States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

(a) The inducement or coercion of a child to engage in any unlawful sexual activity;

(b) The exploitative use of children in prostitution or other unlawful sexual practices;

(c) The exploitative use of children in pornographic performances and materials.” (Article 34)

2.2 DUE DILIGENCE

Governments have an obligation under international law to respect, protect and fulfill human rights. When states know, or ought to know, about human rights violations committed by non-state actors, yet fail to take appropriate steps to prevent them, the state, as well as the perpetrators, bears responsibility. The state also bears a responsibility if it fails to investigate and address the crimes appropriately.

A state's failure to respond with due diligence to violence against women, including by using the criminal justice system and ensuring reparation, violates women's right to equality before the law. According to the CEDAW Committee:

"States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation." ¹⁹

The responsibility of the state to exercise due diligence does not reduce the criminal responsibility of perpetrators of violence. The duty to prosecute non-state perpetrators of serious human rights abuses is part of states' due diligence obligations.

3. SEEKING REMEDY AND ASSISTANCE

Cambodian victims of rape and other sexual violence face a wide range of difficulties when trying to cope with their situation. This chapter sets out the various obstacles that victims commonly face at each step of the process if and when they seek assistance, remedy and justice. These problems, of course come in addition to, and compound, the immense pain and suffering - psychological and very often physical - caused by the attack itself.

- Victims' reporting of the crime – stigma and fear
- Experiences at the police station
- Extra-judicial settlements – samroh-samruol
- Forensic evidence and examinations
- Health services
- Social services
- Courts and prosecutors

This chapter is based on the testimonies of victims and/or their family members. Representative cases are cited to illustrate the barriers which rape victims face at each step of the process. Finally, this section briefly describes the particular situation for women and girls with special needs, and for sex workers.

The reality for most victims of rape reflects the enormous gap between their experience on the one hand, and their entitlements under international human rights law and standards on women's and children's rights on the other. The testimonies cited below also demonstrate the failures by the Cambodian authorities to enforce and implement the law. The government is also responsible for addressing gaps in domestic law, which have had the effect of denying victims proper protection against sexual violence.

3.1 THE INTERVIEWEES

The testimonies detailed below are representative of the situation for rape victims in Cambodia. However, the interviewees have, unlike many victims of rape in the country, received at least some assistance and support from civil society groups. All officials, service providers, police and NGO staff who spoke to Amnesty International consistently said that victims receiving NGO support enjoy better treatment than those without any assistance.

Around half of the interviewees were under 18 years old (hence, children), and over two thirds were very poor. Altogether five were married, 25 unmarried. The children were mostly

students and farmers, while the adults were predominantly farmers and labourers. Five had been sex workers, four of whom remained in the industry at the time of the interview, while one had become a scavenger, recycling rubbish. Four had disabilities predating the rape.

“Breaking the eternal silence”

The authorities met **Meas Veasna** with inaction and silence when she reported a rape. To break the silence and seek justice, Veasna decided to speak out about her situation. She also requested that Amnesty International use her real name and include relevant details.

On 11 June 2009, Meas Veasna was raped at Wat Kaley in Prey Veng. She had gone to the pagoda to get holy water only weeks after having given birth. A monk had approached her with a cup of coffee. Drinking it made her exhausted and numb – drugs had evidently been added to knock her out. The monk led her by the arm to a room on the first floor in one of the monastery buildings, where he raped her.

Other visitors at the monastery felt concerned that Veasna had been gone too long and when her husband arrived, they pointed him in the direction she had gone. As he opened the door to the room where she had been taken, the monk jumped out of the bed and ran out another door, leaving Veasna and her husband in the room.

Veasna couldn't walk, so her husband carried her down the stairs and took her to hospital, where she was given some treatment to recover from the drugs in the coffee.

After recovering, Veasna wanted to seek justice and returned to the monastery to talk to the senior monks, and to complain to the police. The pagoda called a meeting where both police and local authorities were present, along with Veasna, pagoda leaders and the perpetrator. A pagoda representative offered her a sum of one million riel (250 USD) for medication. She agreed, but maintained that she wanted the perpetrator to be prosecuted, and did not want to withdraw her complaint.

Since then, nothing has happened. Whenever she followed up with the local authorities, the police claimed that the investigation was ongoing. All the while, the alleged perpetrator remained at the pagoda, seemingly protected by the authorities and the sangha (Buddhist clergy). A few dozen faithful living around the pagoda signed a petition to the monastery leadership asking to have him removed from their place of worship, but nothing has come of this initiative.

“It is still very hard. He did that to me; I reported it, but no one has done a thing. And my reputation is just crashing.”

“I am feeling a lot of shame, and initially wanted to commit suicide because of what had happened. And although I reported the crime, no one has been brought to justice.”

“I feel both anxiety and pain – it is hard to explain, but reporting [the crime] all over the place, with no one has taken any action... Just eternal silence.”

“Why it is important that the perpetrator get a punishment? To stop him from doing to others what he did to me. If he can't be touched, and is not brought to account, he can do it again. This would make him arrogant, and a terrible role model to the people.”

Although Veasna's husband has been supportive of her, other relatives made it impossible for her to live at home. She spent a few months at a shelter of the Cambodian Women's Crisis Centre. And if the perpetrator is not found guilty she probably has to agree to divorce her husband because of the shame that the rape is perceived as having brought to her family.

3.2 VICTIMS' REPORTING OF THE CRIME – STIGMA AND FEAR

"I want to report the crime but don't think I can win, but I don't have any organization to back me up, so if I can't win then it will only get worse afterwards."

A sex worker who was raped by a police officer in Phnom Penh, speaking to Amnesty International in December 2009.

The Beijing Platform for Action calls on governments to:

"Create or strengthen institutional mechanisms so that women and girls can report acts of violence against them in a safe and confidential environment, free from the fear of penalties or retaliation, and file charges."²⁰

Several victims told Amnesty International they had been reluctant to tell anyone about what had happened to them. Some did not even tell their closest family members until several weeks or months after the incident. This was true also for children and younger victims, some of whom expressed fear of punishment at the hands of their parents as a reason.

Both younger and older victims said that they felt they had done something wrong and brought the rape upon themselves. For example some reported their families would implicitly or explicitly accuse them of going too far away from home against the will of the parents, of staying up too late, or of being tricked by strangers.

One 19-year-old woman with learning difficulties, **Mony**, said that initially, she did not dare to tell her father, her main custodian, about what had happened, because she thought he would punish her for having walked too far away from their house. In need of medical assistance, she went instead to her aunt, who lived in the same village. The aunt helped Mony to explain to her father, whose initial response was to slap his daughter, just as she had predicted.

When her father went to the police, they did not believe him, or the victim, because of her mental disability.

"At first they didn't want to believe what had happened. She had pointed them to the wrong place," said Mony's father, who located the crime scene by the side of the road.

Mony's father told Amnesty International that he regretted slapping his daughter and had since come to understand that she was not at fault.

Several other victims said they felt discouraged from reporting the incident to the authorities for fear of not being believed. They also indicated that if they were not believed, reporting the crime would be futile in terms of obtaining justice, and could even make their situation worse by placing them at risk of retaliation, loss of face and reputation.

Five of the interviewees had been raped when working in the commercial sex industry. All of the sex workers had survived multiple rapes, and none had ever reported rape or other sexual violence, including extremely brutal gang rapes, to the police for fear of further violence.

Sokha was hospitalized after two police officers raped, beat and assaulted her in a quiet isolated place outside Phnom Penh:

“I didn't seek help as I was afraid of retribution,” she said.

“We don't complain to the police because they hate us sex workers and they don't intervene [...]. What would it take for police to intervene? If we had money, perhaps. But we don't.”

Another sex worker, who is homeless and sleeps in the open in Phnom Penh, spoke about being frightened of retaliation from the perpetrator, a police officer, if she were to report the rape:

“He knows where I sleep at night and may take revenge if I report the incident.”

Many officials who spoke to Amnesty International, including the Secretaries of State for the Ministries of Interior and Justice, believed that the public, including victims, require knowledge and education about the legal system. Legal literacy for women and girls, they argue, would enable women to assert their rights, rather than to continue to suffer in silence.

This mirrors the statement of the first UN Special Rapporteur on violence against women, Radhika Coomaraswamy:

“Recognizing that women and girl children often do not report the violence that is perpetrated against them because they do not understand that they are victims of, rather than participants in, the violence, states should undertake legal literacy campaigns to inform women of their legal rights and educate them specifically about domestic violence.”²¹

At the same time, most interviewees understood that they had been victims of a criminal offence. Almost everyone realized that such crimes should be reported to the police. There were several factors behind their choice not to report or to delay reporting, most notably fear, but also their perception that the legal system cannot be trusted, in particular by people living in poverty. But procedures and systems to a large extent fail to deliver what victims need. The authorities must ensure that the criminal justice system is reformed so that rape victims can report crimes with confidence that they will be treated fairly and receive justice.

Fear of the perpetrator was the single most common consideration the victims cited when talking about whether to report what had happened to them. One victim told Amnesty International:

“The perpetrator told me he would kill me if I told anyone, so I only told my father six months later, by which time police said that it had happened so long ago that there was no evidence.”

Ravy, now 15, was repeatedly raped by her stepfather for over a year from the age of 13. He often beat her with a stick and threatened her with a knife.

“I didn't dare to tell anyone at first. I didn't tell my mother, as I didn't think she would believe me, and I didn't tell my grandma. Eventually, I told an uncle,” Ravy told Amnesty International.

Another issue that informed victims' tendency not to report was corruption and nepotism within the police force. *Khnang*, literally meaning “back” signifies powerful ties:

“I haven't reported it anywhere. You know, I don't have any khnang and that's what you need in this era. If not, there is no chance for justice,” said **Dy**, a former sex worker, who was gang raped by six men outside Phnom Penh in November 2009.

Bopha, 18, was raped by a fellow villager in April 2009. She told Amnesty International:

“The biggest obstacle to get justice is poverty. The perpetrator had khnang, so I was afraid I'd never win.”

Moreover, perpetrators with *khnang* could sometimes evade justice. Because of his connections, the alleged perpetrator received a warning about impending arrest and escaped before the police arrived. Bopha still lives in a shelter for her protection.

She added: *“Perpetrators can harm the victim. He has threatened to burn down my house.”*

Hou Samith, Secretary-General of the Cambodian National Council for Women, also linked *khnang* with weak law enforcement:

“The main point is that victims often are not strong enough if perpetrators have khnang. Who would be able to raise their cases and assist them?”

The Secretary of State at the Ministry of Interior, Chou Bun Eng, believes the inherent weakness of the victim and stigma block or delay reporting.

“Perpetrators frighten their victims. The perpetrators are more powerful, older, sometimes the stepfather. [...] If [the rape] takes place in an environment where it isn't seen as a serious crime, the victim gets even weaker compared to the perpetrator and she doesn't dare to go against him. And victims also want to keep quiet,” she said.

None of the victims interviewed by Amnesty International had gone to report the incident to the police by themselves, and victims who reported were almost always accompanied by a family member. Therefore, a consequence of the delay in telling family members about the crime is a delay in reporting the crime to police, which has a serious impact on securing evidence to support prosecution.

Amnesty International came across one measure that showed some potential in supporting victims to report rape and seek assistance, so-called Women and Children Focal Point at the commune level. These are female volunteers who receive basic training from NGOs,

established in a number of provinces to facilitate access to basic service for women and children. Amnesty International met with one such volunteer, who had assisted a victim of a gang rape to report the crime to police. In doing so, the volunteer had been able to act as a link to the authorities for the victim. However, the voluntary status of these Focal Points, according to some NGOs, makes them prone to be excluded from “other” commune affairs, while at the same time giving the elected Commune Council an excuse not to address issues with particular relevance for women and children.

In some cases, victims and their families may delay reporting the crime because they are awaiting an offer of an extra-judicial settlement from the perpetrator or his family. While only one of the victims talked openly about this, several NGO staff working with rape victims had come across this as a reason for reporting delays many times.

Several interviewees told Amnesty International that neighbours had stigmatized them and the family after learning about the incident. The age of the victim, or circumstances surrounding the rape appeared not to influence the way fellow villagers or neighbours treated the victim and/or her family.

In contrast, perpetrators did not seem to be stigmatized in their village or even in prison. Convicted rapists who spoke to Amnesty International said that their fellow prisoners did not look down on them because of the crime they had committed.

“I haven’t heard of anyone looking down on me in the village, and not here in prison either; there are so many here who have done bad things,” said Meng, who was convicted and sentenced to 14 years for the rape of two girls living next door, aged nine and 10, respectively.

However, Meng did express regret for what he had done:

“I know I am responsible. I pity them; I destroyed both their futures and mine”.

Another convicted rapist, Sophal, 52, was himself concerned about the stigma facing the victim, his 17-year-old foster daughter:

“I know what I did to her, that’s why I confessed [in court]. Because of the rape, she lives with a lot of shame, but she must try to ignore what people say. I want her to marry and not be ashamed, and when I get out I will work hard to get money to restore her honour”.

He is serving an 18-year sentence for rape under aggravating circumstances, having threatened his foster daughter with a knife.

3.2.1 POVERTY – INCREASING RISK AND RE-TRAUMATIZATION

While emphasizing that rape occurs in all socioeconomic strata of Cambodian society, all those who spoke to Amnesty International agreed that women and girls living in poverty are at relatively higher risk of rape. The rape victims Amnesty International interviewed described

themselves as either poor or very poor,²² and most described the perpetrator as economically better off. Several interviewees explicitly said their poverty made them vulnerable.

As Hou Samith, Secretary-General of the Cambodian National Council for Women, said:

“Nobody would dare to rape the rich.”

She also emphasized the resource trap for victims living in poverty:

“We keep hearing about victims needing to go back and forth to Court or other places. They lose time that they would otherwise use to work, and they have to pay for transport. The fact that they don't always win in Court makes it even more problematic; it poses tremendous difficulty for their dignity.”

Poverty hampers victims' access to assistance services and justice. Aside from bribes, they perceived costs for transport to health clinics, police and courts as particularly difficult to cope with. Most had received some financial assistance from NGOs to cover these, but they did not think that they received what they needed. The authorities appear to have handed over the responsibility for such support entirely to NGOs, which may not have the ability to cover such costs on an ongoing basis. Clearly, support for victims living in poverty is required to ensure that they have access to available services and justice.

The right of victims of human rights abuses to justice, regardless of whether the perpetrator is an official or a private individual (non-state actor) underpins any human rights protection system.²³ States have an obligation to ensure that this right is respected, protected and fulfilled; this obligation is provided, among other things, in Article 2(3) of the International Covenant on Civil and Political Rights (ICCPR), which is binding on Cambodia as a state party. Like all other rights in this Covenant, its enjoyment must be ensured without discrimination, including on the basis of “social origin, property, birth or other status.”²⁴ Specifically, the fact that a victim of human rights abuses has limited financial capabilities must not obstruct or restrict his or her access to justice. The Cambodian authorities fail to fulfil their international obligations under this principle, for victims of rape and other sexual violence.

In the Cambodian context, protection of the rights of rape victims living in poverty is particularly weak. As the Cambodian justice system displays a bias against the poor, poor women and girls appear to have disproportionately limited access to justice.²⁵ Of the five who described perpetrators as having a similar standard of living to them, four were males living in the household of the victim, three of them step-fathers. Victims said they did not have enough means to pursue justice; could not afford paying what the police or court requested; and could not pay bribes to court officials, whereas the suspected perpetrator in most cases was richer and could secure such resources. As mentioned, poverty was also an explanation as to why so many agree to out-of-court payments.

Witnesses' limited availability to come forward was also identified as being related to poverty. People who may have witnessed a crime, find it difficult to afford taking time out from their farming or other work in order to go to the police or court, according to staff both at NGOs and the Ministry of Women's Affairs. In the absence of witness support mechanisms, victims

are often expected to pay “their” witnesses expenses to attend interviews or court hearings, which further increases the financial pressure on the victims and their families.

3.3 EXPERIENCES WITH THE POLICE

Sexual abuse of women, in all its forms, is a serious violation of their rights and a crime of the gravest kind. As is the case with domestic violence, it signifies that a State has failed to protect the right to security of person and possibly even the right to life of a person or persons within its jurisdiction. For this reason, and because rape and other sexual attacks are criminal offences, it is the responsibility of police to ensure that they are effective in both the prevention and the detection of such crime, and that their response to victims is humane and professionally competent.²⁶

Rape victims who spoke to Amnesty International expressed a very ambivalent view of the police. On the one hand, they described police officers dealing with their cases as corrupt, dishonest, and often siding with the alleged perpetrator. On the other hand, most victims and their family members chose to first report the crime to police, and all except one interviewee highlighted the importance of reporting rape to the police, underscoring their perception of the crucial role of the police force in addressing crime.

The Cambodian police force is ill-equipped, lacking means of transportation and essential equipment such as tools for evidence collection. Decisions about which alleged crimes to respond to and how to do so appear to be left largely to the discretion of officers who receive them. Amnesty International found that police did not respond to reports of sexual violence with particular urgency, with few exceptions.

Victims experienced particular delays at the police investigation stage when crimes had occurred over the weekend or public holidays and police had no time to see them or initiate an intervention. Another obstacle was that some policemen were reluctant to receive a criminal complaint when the victim did not know the identity of the perpetrator.

Police also did not inform victims about what they were doing and how far the case had progressed. Several victims did not know whether police had concluded the investigation and forwarded the case to the prosecutor, and some did not even know if police had launched any investigation in the first place.

International human rights standards call for crime victims to be fully informed and protected, and urge prompt resolution of cases. According to Article 6 of the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power:

“The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:

(a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;

(b) *Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;*

(c) *Providing proper assistance to victims throughout the legal process;*

(d) *Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;*

(e) *Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.*²⁷

3.3.1 BRIBERY AND LACK OF PROPER INVESTIGATIONS

“Police only works if you have money, if you can pay. One hundred thousand riels²⁸ and you get someone arrested, but we didn't have that. And if you don't, the police just ignore the case.”

Father of an 18-year-old woman with a mental disability who was raped on two occasions, most recently in November 2009.

Two perpetrators raped **Mom** five times in 2006, when she was 11 years old. Her mother went to the district police, where the police chief asked her for a 10 USD bribe to pay for “the investigation and stationery”. When she did not have the money he requested, the police chief asked her to meet him at a hotel room, suggesting that sex in lieu of money would facilitate the investigation of the rape of her daughter.

“Police initially didn't help us at all. They are very hard to trust, and you really need NGO support to get proper police assistance. We were afraid to turn to the police: we know they harass, intimidate and torture people, and extort, especially weak and poor families,” Mom's mother explained.

A clear majority of interviewees told Amnesty International that they had paid bribes to the police, or had been asked to pay bribes but did not have any money. In 21 of the 30 cases victims reported that police had “investigated” the incident. Sixteen of these responded that they knew they had had to pay bribes to ensure an investigation. Typically, they were asked for between five and 10 USD to initiate an investigation, which almost none of them could afford.

In a rape case involving a nine-year-old victim from a family of average means, the parents had to pay the equivalent of 45 USD to the police alone. They first reported the crime to commune level police, who demanded 50,000 riels to take up the case. After police had tried to facilitate an illegal extra-judicial payment, which the victim's family rejected, they went to the provincial police, where guards demanded 20,000 riels just to let them in, and police officers an additional 50,000 to investigate the allegations, money which the family paid.

Victims and their families also complained that police appeared not to take their complaint seriously, in particular when there were no financial gains for them. The family of mentally disabled **Mony** located the crime scene after police ignored their complaint and suggested that the young woman had consented to have sex with the two alleged perpetrators. It was only when her aunt found bloody underpants on the crime scene, police initiated an investigation.

“The commune police officers are friends with the perpetrator so they don't really have an interest in the case,” Mony's father told Amnesty International.

To investigate a serious crime on condition that a bribe is paid is in clear violation of Cambodia's due diligence obligation to protect and investigate human rights abuses, including rape. Victims of crimes are entitled to access to the mechanisms of justice and to prompt redress.²⁹ Police should also give special attention in providing services and assistance to victims with special needs.³⁰

Investigations typically were neither thorough nor impartial, and extremely limited in scope, including in the collection and preservation of evidence. Only four victims reported that police had visited the crime scene, when even then there had been serious deficiencies in protecting the crime scene. In most other instances, police did not try to gather evidence beyond obtaining testimony from the victim, who was typically interviewed in her home or at the police station.

Police officers who wished to remain anonymous told Amnesty International that their experience in working directly with victims and criminal investigations confirmed this bleak situation. They complained they had no available budget to conduct investigations, and therefore either had to ask the complainant to provide funds; not conduct an investigation; or pay with their own money. Clearly, the prevalence of corruption in the police force takes place in a context of inadequate resources allocation.

Police told Amnesty International that a lack of budget blocked them from acting in ways that ensures the well-being of the victim. For instance, when victims and suspected perpetrators were transported to court for initial questioning, police officers said they typically transport them in the same car, often sitting together in the back seat. Police officers also explained that families of victims and perpetrators were generally also required to split the transportation cost.

According to National Police Brigadier General Chiv Phally, the Deputy Director of the Anti Human Trafficking and Juvenile Protection Department, which is responsible for dealing with cases of rape, a budget for investigations is available at the national level. However, he told Amnesty International that there are problems with ensuring accurate budget disbursement to the local levels and that this has an impact on law enforcement and quality of police work.

Corruption of this kind within the police did not only have a financial impact on victims and their families who could ill afford to pay. It was also clear that victims were reluctant and uncomfortable to talk about paying bribes to the police, expressing concerns that they had engaged in something illicit and opaque, which added to the sense of shame they already felt as a result of the assault they suffered.

Amnesty International is not aware of any instances of disciplinary measures – or indeed criminal procedures – against police who demand money in exchange for carrying out investigations or otherwise doing their jobs. It is critical that sufficient budgets are allocated and distributed to ensure that all complaints of rape and other sexual violence are investigated promptly and efficiently, with due regard to the victim’s sensitivities and avoidance of re-traumatisation.

3.3.2 RAPE AND OTHER VIOLENCE AT THE HANDS OF POLICE

Amnesty International interviewed two sex workers who reported that uniformed police officers had raped them. In both instances, the victims had been rounded up in raids on sex workers and first encountered the perpetrator while in police custody.

Police had arrested **Thavy** together with four other sex workers in a Phnom Penh park in November 2009. They were taken to the nearest police station, where a few officers, who appeared to be drunk, beat the detainees with their batons on the ankles and forced them to clean the toilet. A uniformed policeman who did not work at this particular station was also there. After a couple of hours at the station, he approached Thavy and forced her to go with him to a guesthouse in another part of town, where he raped her.

“If I refused, he threatened that I would end up in prison. [...] I don’t want this to happen again. They arrest, beat, ill-treat and then rape us. Police should be peaceful; they should stop violence...”, the victim said.

In the second instance, the two perpetrators seriously injured **Sokha**, who had to be hospitalized after the assault. In September 2009, two uniformed police officers appeared on a motorbike and apprehended Sokha, pretending to arrest her. They drove her to an isolated field on the Phnom Penh outskirts.

“I didn’t know where they came from, I had never seen them before. But I have seen them since, at a police station [in another part of town].”

The assault was brutal. The two police officers were also waving their guns and shouting threats.

“They were strong men and were very violent. I couldn’t fight back at all, so just pleaded for my life. I was thinking that I have to survive to take care of my children. They are three and nine years old.”

Sokha was left alone in the field when the police eventually left the scene. She coughed blood and knew she had to go to hospital.

“But I didn’t go to seek help [from the police]; I was too fearful of retribution. Even if I would file a complaint, they wouldn’t help a sex worker.”

She survived the assault, but has to live with the scars:

“It is very difficult now. I don’t know what to do; I am too afraid of clients now, and of the police. If I think too much, I can’t sleep.”

Sex workers are particularly vulnerable in their relations with police, which translates into a very low reporting rate of rape, regardless of whether the perpetrator(s) was a policeman or not. All five sex workers interviewed by Amnesty International had been raped numerous times, but none of them had ever gone to the police. Four had concluded that the police pose a danger to them, not a means of protection or assistance. One had not even known that she could have reported the incident to police.

“I didn’t know that police could help sex workers before. All I knew was that police were corrupt and linked with gangs. But now I know I can lodge complaints and should keep any evidence, such as stained clothes.”

All five said explicitly that police discriminate against sex workers, and called on the government to address this.

Another case demonstrating the problems within the police is that of the alleged rape on 30 October 2009 of a 19-year-old woman at a karaoke parlour where her sister was working. The suspects were a police officer who raped the woman, and a security guard, who held the woman down during the rape. The young woman received 250 USD in an out-of-court payment³¹ from the men. On the following day, the men were reportedly arrested, but police told the press a criminal investigation was unlikely.

“The karaoke parlour woman is not a virgin...and the victim did not complain about the policemen,” said Phnom Penh’s Chief of Police, Touch Naruth to the Cambodia Daily.³²

“This is not a rape case, because the victim took money from them [the police officers] already, so in this case we cannot say they raped the victim by force.”

Police Lieutenant-General Khieu Sopheak, spokesperson at the Ministry of Interior, was quoted in the same article saying that a payment of this kind would not be an adequate reason for police to drop an investigation, implicitly correcting the statement of the police chief, which had drawn strong condemnation from the human rights constituency. Subsequently the police chief himself denied having said what was initially reported.³³

Within about a week, Touch Naruth told the press that he had sent the two suspects to the Phnom Penh Municipal Court. A few days later, he retracted the information and said he had only sent the policeman to Court, and that the Court had released the suspect without charge. Court officials, however, claimed that they had only received the paperwork belonging to the case, but that the suspects had not been transferred to the Court.³⁴ Since then, the two suspects remain at large, but the police officer suspect was dismissed from his post in December 2009.³⁵

As far as Amnesty International is aware, the Phnom Penh Police Chief’s actions, inactions and statements have not led to any public inquiry.

3.4 EXTRA-JUDICIAL SETTLEMENTS - SAMROH-SAMRUOL

Extra-judicial settlements are widely used in rape cases; several high-ranking officials believe it is the most common “solution”. In Khmer, the term *samroh-samruol* is used for this mediation process, which is typically initiated and facilitated by police at the commune or district levels. The police act as a mediator between the families of the victim and the perpetrator, and seek to secure a monetary settlement from the perpetrator or his family to the victim or her family, on the condition that the victim withdraws any criminal complaint.³⁶ The mediator receives part of the settlement. Around half of the interviewees had experienced such intervention.

Partly accepted as alternative justice, and by some perceived as “the best option available,” extra-judicial settlements are not recognized as a legitimate form of remedy in Cambodian law. Nevertheless, they continue and the authorities recognize that they are widespread.

“The Deputy Prime Minister [Minister of Interior Sar Kheng] always tells the judicial police³⁷ that the law needs enforcing and perpetrators must be prosecuted in cases of rape and trafficking of minors,” Secretary of State at the Ministry of Interior, Chou Bun Eng, told Amnesty International. *“If the victim is an adult, whether the solution is [achieved] through law enforcement or samroh-samruol does not have the same priority”.*

Samroh-samruol in rape cases involving victims over 18 years of age appears to be accepted, and Amnesty International is not aware of any instance in which a law enforcement official has been disciplined, let alone prosecuted, for having initiated, led, facilitated or benefited from this kind of settlement. Neither the Ministry of Interior, Ministry of Justice nor Commissariat General of National Police were able to point to instances of law enforcement officials being punished, disciplined or prosecuted for failing to enforce the law or breaking it.

Although high-level government officials conceded that this intervention is widespread, they also expressed indecision about what to do: in the absence of a fully functioning court system, an extra-judicial settlement may well be the best available option for the rape victim, according to several officials and service providers.

Officials pointed out that the advantages of the process were that the perpetrator explicitly or implicitly confessed to the crime, and had to “pay” for what he had done. The Secretary of State for the Ministry of Interior also pointed out that it is cheap and fast, and it requires very few human resources compared to prosecution. However, she did note that:

“The disadvantage is that if the perpetrator does not get a sanction that is proportionate to the act, it seems as though we tolerate or pardon that act. And perpetrators may offend again.”

Amnesty International observed that the secrecy around the process – the fact that it is not sanctioned by law, and that, moreover, it involves corruption, which clearly is unlawful – means that many victims were reluctant to admit to having received money. It was clear that victims were uncomfortable with having taken part in a “secret” process, which they know is against the law.

Although the *samroh-samruol* is an intervention that is sometimes perceived as providing some “closure” for the victim, several of its characteristics indicate that it may perpetuate the stigma facing victims of rape. One source also said that some victims do not want to receive money, as such a transfer would make them look “cheap,” or as indicated in the case referred to on page 25, would lead the police to perceive the rape as consensual sex. Several of the victims who had received, or agreed to receive, money expressed fear or anger that the perpetrator remained at large and that he could repeat the offence against other women or girls.

3.4.1 MARRIAGE AFTER RAPE

Another response to rape in Cambodian society is marriage between the perpetrator and the victim. This settlement is not sanctioned by law either, and has the effect of making the crime justifiable, while “restoring” the victim’s social status. A human rights lawyer expressed a widespread opinion about such marriages:

“They come from a very traditional view, and basically serve to rid history of the error. In essence, they are to the benefit of the perpetrator [who otherwise risks prison]. We remind victims that ‘you are the victim of a serious crime, and this would be a wedding into unhappiness’ because it is against their will. Also, it is a solution that doesn’t discourage perpetrators from repeating [the offence].”

Marriages between victim and perpetrator following rape are not as widespread as out-of-court payments, but they are not uncommon. One victim told Amnesty International why she did not want to accept the offer:

*“I don’t love him and I can’t trust him. Even if I did love him, I wouldn’t marry someone like that, who uses drugs and who would perhaps just marry me in a *saen*³⁸ and then kick me out. Also, this way, the perpetrator would not have to face justice. The mother of the perpetrator came to me several times to ask me to marry him, but I didn’t accept. And I wouldn’t want to be forced into a marriage.”*

A 12-year-old victim from Siem Reap was raped by a neighbourhood boy of around 17. She told Amnesty International:

“Even if she [his mother] had offered money [for me to marry him], I wouldn’t have taken it. But I do want [monetary] compensation for having lost my virginity.”

Not even gang rape is off-limits for extra-judicial settlements. **Leap**, a 26-year-old labourer was gang raped in a rural district by five young men. A village chief assisted her in reporting it to the police and trying to locate the suspects. However, the five perpetrators were released from pre-trial detention after their families paid money to the court. Some of the money was for the victim on condition that she withdrew her complaint. Leap lived up to her end of the bargain, but she never received any compensation or justice. She expressed regret about this:

“Make sure you take money before thumb-printing any agreement to something. And if you are poor, go for money rather than going to court,” she told Amnesty International.

The widespread use of extra-judicial settlements also leads to loss of data. Police reports, court documents and complaints are suppressed and leave a void in terms of data gathering about the true extent of sexual violence against women.

3.5 FORENSIC EVIDENCE AND EXAMINATIONS

Explaining the difficulties in successfully prosecuting rapists, police officers at local, provincial and national levels complained to Amnesty International that the force lacks modern equipment for forensic analysis. Above all, they perceived the absence of a DNA testing laboratory as particularly critical.

“We can only detect what is visible to the eye; we lack the equipment for any more in-depth tests, except blood group, which we can check”, said General Hing Chandara, at the Ministry of Interior’s Science and Technology Department.

“Some specialist police have received training and have a better procedural understanding, but from there to implementation is really hard. We don’t have forensic tools. We don’t even have rubber gloves,” said one police officer in south Phnom Penh.

Although these are serious shortcomings, Amnesty International believes there are much more far reaching consequences from inadequacies pertaining to collecting evidence in the first place, both in police investigations, when, as shown earlier, police fail to take victims seriously and otherwise often do not seek to gather any evidence, and at medical facilities where victims turn for assistance. Also, a set of routines need to be in place for DNA testing to be valid, including for instance by documenting throughout the examination process, the order of sample taking, changing of gloves, and use of other equipment.

Medical examinations and treatment of rape victims in Cambodia fall far short of the standards set out in the WHO protocol published in 2003³⁹ and continue a traditional focus on the state of the hymen. While injury to the hymen should be noted, it cannot be regarded as defining evidence of rape; nor can absence of injury to the hymen be regarded as evidence of the absence of rape. Amnesty International read several medical certificates from doctors in rape cases that only commented on the status of the victim’s hymen. Such findings do not only ignore that there are other genital injuries beyond the hymen, but also that the most common injuries in rape are not genital, and that victims of rape do not necessarily have physical injuries.⁴⁰

The mother of a nine-year-old rape victim from an outlying district in Siem Reap province had taken her daughter to a district health clinic as soon as the girl told her what had happened, a few days after the incident. The nurse observed visible bruising around the genitals, and advised the mother to contact the forensics committee at the Provincial Hospital in Siem Reap. They made the expensive journey to hospital and found that no one was working in the forensics unit that particular day. She told Amnesty International:

“We returned three days later, and a male doctor was there. He examined her. It was very difficult because she couldn’t hold still, but was feeling shame and crying, and was clearly afraid of being hurt again. The doctor asked some questions about the incident and then said to me: ‘Don’t worry. Your daughter’s hymen is not spoiled.’”

Many doctors seem to view the absence of hymenal injuries not as a neutral finding, but rather as an indication that rape did not take place. As these medical certificates should document injuries in order to establish the physical and possibly psychological evidence to be used in court to prosecute suspects, such conclusions are devastating for the victim and her family. Doctors' focus on an intact hymen may also re-traumatize the victim, as the conclusions seem to suggest that rape did not occur.

A senior doctor in Siem Reap province examining rape victims in order to complete forensic certificates, highlighted this stance:

“Looking at the victims, we don't see that many injuries, actually. There isn't really too much violence. You know, boyfriends break up and then the girlfriends file complaints. There are few real rapes.”

“If it isn't a virgin, I write that the tear of the hymen is old, over seven days. And then we have to look at the vagina. It is difficult to see anything if the victim is not a virgin,” he said further.

Secretary of State at the Ministry of Justice, Chan Sotheavy, expressed a view to Amnesty International about the link between traditional values and the focus on hymen:

“If the girl [victim] is good, she doesn't have pre-marital sex and then the hymen can be of importance. But a professional judge needs to assess everything, to ensure that all evidence is considered.”

The collection and use of forensic evidence is made even more difficult by uncertainty around which institution can issue medical forensic certificates admissible as evidence in court. A sub-decree regulates that only one public hospital in each province, and a few large hospitals in Phnom Penh, are mandated to issue such certificates. However, some officials and service providers were of the opinion that other medical institutions or medical professionals elsewhere can do so too, but that the courts are reluctant to admit them as evidence. What is clear, though, is that the public hospitals are mandated to issue forensic certificates, and that a committee including both medical and administrative hospital staff and managers oversee the work, with medical staff conducting the examination and the committee as a whole approving the forensic certificate.

It was evident that few interviewees had received prompt information, or indeed an actual referral from police, to ensure that a forensic examination took place without delay. Most victims had gone to hospital with the help of a service-providing NGO, and none of the girls or women had clear information about what happened to the forensic certificate afterwards. Some did not know whether a certificate had been completed after the examination, while others did not know to whom the hospital had sent the document. According to the regulations, a copy is to be sent directly to court, and the original kept at the hospital.

In February 2009, Minister of Interior Sar Kheng announced on behalf of the government that medical forensic certificates should be free of charge for victims of sexual violence. Health officials told Amnesty International that a new form based on the WHO protocol was introduced into hospitals across the country around the same time, with the assistance of

UNICEF. At the end of 2009, Amnesty International observed that the form was used to some extent in Siem Reap, and had been introduced in Battambang. However, the forensics committee in Battambang had stalled the issuance process for a period of around two months in spite of the availability of the new forms.

The message that examinations should be free, however, appeared not to have reached the provincial authorities or even service-providing NGOs. Hospitals in both Battambang and Siem Reap still charged a cost of 40,000–50,000 riels for the examination.⁴¹ In Battambang province, patients also had to pay typists, who, according to the Director of the Department of Health, assisted doctors in filling out the new forms.

The issue of money is one of the biggest concerns for the Director of the Department of Health in Battambang, Nhek Bunchhup, who heads the provincial Forensics Committee. Medical staff involved in these examinations receive no salary supplements for the increased workload and responsibilities arising from use of medical forensic certificates. The absence of such personal monetary benefits for doctors, he felt, stood in contrast to the range of “benefits” available to police and court staff through bribes.

“Others involved with rape victims get personal benefits for these cases, but the doctors don’t. This is very discouraging for doctors,” Nhek Bunchhup told Amnesty International.

Many victims expressed indecision whether or not to turn to medical professionals immediately or very soon after the rape. In most instances, it depended on whether the victims could afford the cost of medical treatment. In some instances, however, the victim chose not to go to see a doctor despite serious injuries, so that her parents would not find out about the rape.

The referral hospital units that issue certificates do not administer any treatment. Therefore victims with injuries requiring medical treatment need to go to medical institutions several times. For those living far from a provincial capital, even one visit to hospital may involve prohibitive costs. Medical examinations can also be a traumatizing experience, and it was clear that the division of clinical and forensic services works to the victims’ disadvantage.

Corruption and nepotism were also reported within the health services. A high-ranking official from the Ministry of Women’s Affairs told Amnesty International about a case in Svay Cheik, Banteay Meanchey province. The district health centre had first carried out a comprehensive examination of the rape victim and managed to document her injuries. Someone subsequently falsified the medical report, removing information about the injuries so that the report would be useless as evidence. Later, it emerged that the perpetrator was related to key staff at the health centre, who had evidently changed the report.

3.6 HEALTH SERVICES

The right to a remedy includes a comprehensive range of health services to assist victims of gender-based violence. In its General Comment on the Right to Health, the Committee on Economic, Social and Cultural Rights outlined some general requirements for services for victims of human rights violations:

- Available: services should be of sufficient quantity within the state;
- Accessible: services should be available to all who need them without discrimination within the jurisdiction of state. This means physically accessible, economically accessible, and genuinely affordable, especially for the most vulnerable and marginalized sections of the population.
- Acceptable: service providers should be respectful of professional ethics, particularly confidentiality, and culturally appropriate, as well as gender-sensitive.
- Of appropriate quality: staff providing services should be trained and professional, providing a service that responds to needs.

The responsibility to fulfill these requirements, if necessary with international assistance, rests with the government.

Specialized medical and psychosocial treatment for victims of sexual violence is not widely available in Cambodia, not even for victims who are supported by NGOs. Only one of the 30 interviewees had been offered testing and prophylaxis for sexually transmitted infections including HIV, pregnancy testing, and emergency contraception, or similar services facilitated by so-called rape kits. The victim was provided with the testing at a clinic of the local NGO Reproductive Health Association of Cambodia (RHAC), like every survivor of sexual violence who turns to the agency.

As noted above, examinations at referral hospitals to document forensic evidence appear to ignore health considerations, while specialized clinics are not certified to provide forensic certificates for investigations and trial.

Dr Chamroeun Sosivann, manager for RHAC in Siem Reap, said that staff at her clinic are well-placed to document any forensic evidence they may find. RHAC has had discussions with the Ministry of Health's provincial department, seeking to ensure victims only have to go to one clinic or health facility, but without result. It also appears that judicial authorities ignore their expertise.

"The Court has never called us to a hearing [as an expert witness], because they see that this task rests with the referral hospital," according to Dr Chamroeun.

She also noted another practical drawback. If a rape victim is admitted for examination and treatment RHAC staff take care of the victim, talk to her *"in a smooth and friendly manner, one step at the time to uncover what has happened."*

"And of course we also clean the patient, essentially removing any evidence."

The health of rape victims should be the priority, but a system that requires a specific examination for a forensic certificate creates problems. If the survivor's initial examination visit takes place at RHAC or another institution, typically a local health clinic, medical staff do not undertake any collection of forensic evidence which could be used for the investigation and trial, as they are not mandated to do so. As pointed out earlier, if an injured

victim turns to health services for treatment, she will have to go again for a forensic examination, by which times injuries may no longer be visible and other evidence may have been lost. Such visits are also expensive, in particular a visit to the referral hospital in the provincial capital, which often involves transportation costs, and this may lead the victim not to turn to the health services.

“I bought medicine at the pharmacy, and didn't have enough money to go to the doctor. Also, I was ashamed,” one victim noted.

Several girls and women indicated that stigma made them try to avoid telling medical staff that they had been raped, and in several instances, medical staff appeared unable to analyze – or simply ignored - the patient's situation.

“I stayed in hospital for three, four days,” said 12-year-old **Kunthea**, who was raped by a motorcycle taxi driver in her village in Kandal province.

The perpetrator, a 46-year-old fellow-villager, had entered her house when Kunthea was alone at home. He drugged her and carried her out of the house to the forest, where he raped her over several hours, out of sight of the village. Afterwards, she could not walk, so he carried her back home, and threatened to kill her and her family if she told anyone about what he had done. For a long time, she did not. Her neighbours, however, observed the following day that she was unwell.

“The neighbours took me to hospital because I had fever and vomited.”

The treatment at hospital related to the nausea and fever, and although the doctor conducted a gynaecological examination, he did not discuss the result with her and did not refer her anywhere else for further treatment or assistance. Kunthea only told her parents six months later. When she did, her father went to the village chief and the police, but the latter said the incident had occurred so long ago that there was no evidence available which required them to intervene.

Going to a doctor after experiencing sexual violence may be further traumatizing for the victim. This risk increases when health workers do not respond appropriately, by, for instance, asking questions insensitively, taking little time when meeting and examining a victim, not allowing children to be accompanied by parents or social workers, and not focusing on the victim's health and security needs. Medical professionals, including those working for the forensics committees at referral hospitals, tend to have very limited knowledge and understanding of the needs of victims of rape and sexual violence:

“If a client isn't going to court, we'd never dream of referring her to the provincial hospital, but would turn to NGOs that have proper procedures and respectful staff,” said one service provider requesting anonymity.

Chan, now 15, was repeatedly raped by her stepfather since she was 13, abuse that her mother appeared to ignore. Chan attempted to escape to stay with her grandmother, but the stepfather always managed to ensure her return. Chan became pregnant, and asked her mother to accompany her to hospital for an abortion. The nurses, however, said the

pregnancy was too far advanced for an abortion. The stepfather continued the abuse through the pregnancy. Eventually, human rights group Adhoc heard about the abuse and assisted her in contacting the police. Information about the impending arrest of the stepfather leaked out and the day before the planned arrest, the stepfather and Chan's mother fled the village. After being rescued, Chan was assisted in going to hospital, where she was offered no treatment or even referral to NGOs that could provide psychological support or counseling to deal with her trauma.

"The doctor just said that there was no need for me to take any medicine. He said I would heal by myself", Chan told Amnesty International.

Despite huge problems within the public health system, some medical staff who met Amnesty International displayed both an understanding about the serious short-comings in dealing with survivors of sexual violence, and motivation to try to help. This awareness bodes well for improving the situation, and so does the fact that many staff within the public health system appear open to collaborating or cooperating with the non-governmental sector.

3.7 SOCIAL SERVICES

Services for the vast majority of Cambodian rape victims fall far short of international standards in terms of availability, accessibility, acceptability and appropriate quality. Social services by non-governmental organizations, including psychosocial support, are scarce and often basic, and victims have particularly limited access to assistance if they prefer not to stay at a shelter, but at home or with family, or have special needs.

There are no government social services available for survivors of sexual violence, according to officials at the Ministry of Social Affairs. NGOs are to a certain extent filling this gap, while the line ministries are in the process of drafting policy guidelines and directives. To date, there are no specific regulations or guidelines on services for survivors of sexual violence.

The Cambodian government is providing no funding for these NGO service providers, which invariably receive funding from foreign civil society groups, churches, or international aid organizations.

Human rights groups, legal aid organizations, and health and social service providers often work on the same cases, each providing victims with different and complementary assistance. With several actors involved, there is sometimes a lack of coordination, and some victims may not receive proper assistance because of this lack of coordination, or differing conditions of eligibility between different service providers.

Amnesty International met with one victim who had been told by her social service provider that they could not offer legal aid through a partner organization, so long as she opted to live in her own home. She had been told she could only receive such assistance if she stayed at a long-term shelter. Other victims stayed in shelters because they wanted access to the skills training available for residents, though they said they would have preferred to live at home if only there had been some services or support available to them there. It is a concern that home-based service provision is seen as an obstacle, when support of the family and the community is central in cases where it is feasible.

An example of a lack of coordination is the case of a legal appeal against an acquittal of a perpetrator, where the NGO which had provided legal representation in the first instance had run out of funding in Phnom Penh. The lawyer had contacted other NGOs in the capital to try to identify another lawyer for the appeal, and told Amnesty International that several legal aid organizations only provide legal representation at the Appeals Court if the organization had represented the client at the court of first instance.

Some service providers pointed out the importance of also providing support to the family of victims – parents of girls and the husbands of married women. In psychosocial recovery processes, including, when applicable, moving back home after living in safe housing, the victims need the firm support of their families. In particular, parents or custodians play a tremendously important role. Parents' feelings of guilt for what happened to their child, their lack of knowledge and exposure about how to deal with the child's reactions, and the stigma that their community may project on the family are issues they need help to overcome. Generally, service providers have limited support to offer in this regard.

Victims staying at shelters were generally very positive about their experience, praising the safe environment, as well as learning opportunities and skills training, which they hoped would help them in the future. When Amnesty International visited shelters and interviewed shelter residents, it clearly emerged that many counselors and social workers are highly motivated and committed, offering crucial support to victims, and above all young victims demonstrated trust and appreciation for the staff. The counseling to help these victims in the psychological healing process, however, is very basic in Cambodia, with few exceptions. Most counselors have very limited qualified training, and Amnesty International heard counselors telling their clients to “forget” about their traumatic experience, rather than validating their feelings.

3.7.1 WOMEN AND GIRLS WITH DISABILITIES OR SPECIAL NEEDS

The Beijing Platform for Action, paragraph 124 m), calls on governments to:

“Ensure that women with disabilities have access to information and services in the field of violence against women”.

Amnesty International met with one victim who was profoundly hearing impaired; one who had a learning disability predating the rape and two victims who were seriously traumatized by horrific experiences.

In September 2009, three men raped **Neary**, an 18-year-old woman with a profound hearing impairment. It was late at night when some neighbours heard her scream and called for the police. Neary is illiterate in sign language, and has only a very basic vocabulary, which made it difficult for her to describe what happened to her and to relate her needs and feelings. There was also no assistance available to help facilitate her understanding of her experience, her own trauma and the legal process. One of the three suspects was arrested, and remains in pre-trial detention. The two others remain at large. Since the assault Neary does not want to go out of the house, and her mother also said that she has become aggressive and fearful,

in particular of men.

For 19-year-old **Mony** (see under *Victims' reporting of the crime – stigma and fear*) and her father, the lack of social services that take account of her learning difficulties is also a problem. The alleged perpetrator remains in the village, and the family lives in fear that he may attack her again. Because of Mony's special needs, she requires some assistance and supervision to ensure her safety, which her father cannot offer as he needs to work. Other family members are reluctant to offer her support because of her difficulties, a situation that became worse after the rape.

"There are no services for people with special needs here. She used to stay in [a distant province] for a few years, but it was too difficult; we missed each other. But we would need help to have her stay in a shelter," her father told Amnesty International.

The limited resources of service providers – both financial and in terms of expertise – make it difficult for them to accommodate special needs. The sometimes haphazard coordination between NGOs, including service providers at the provincial level, makes for limited sharing of advice and experiences in cases such as these. The government needs to ensure that rape victims with special needs have access to adequate medical and social services without discrimination.

3.8 COURTS AND PROSECUTORS

"If not justice, then what?"

Mol Pong was 17 when a young man in her village in Prasat Bakong District, Siem Reap province, raped her. She is an illiterate farmer, and had been guarding the family buffalo with her sister, who had gone home already. Pong walked through the forest when he assaulted her.

"He used the knife and told me that if I shouted, he would kill me", said Pong, now 18. *"And then he threw me to the ground".*

Her sister had started worrying about Pong not coming home, so she returned to where they had last been together. En route, she heard Pong crying. With the support of her sister, it took Pong an hour to limp the 500 metres home. An hour later, her mother went to the police.

Police officers went to the crime scene almost immediately, and on the following day, the man, whom Pong described as an aggressive gangster type of 19, was arrested. Commune police collected much evidence at the crime scene, including buttons, a kramar – a traditional scarf, underwear, shoes and a hat. They took photos too, and also collected Pong's clothes from home. All the evidence was dispatched to District Police, and police also referred Pong to the Cambodian Women's Crisis Centre (CWCC) in Siem Reap town.

Two to three months after the incident, two friends of the perpetrator approached Pong, asking her to withdraw the complaint and instead marry him. She did not want to marry him, but wanted the perpetrator to be held responsible, so she refused.

"If not justice, then what? There will only be more victims from more violence."

Legal Aid of Cambodia provided her with a lawyer, and six months later the case went to court.

“At the trial, the judge said there was no evidence, but they had all these things [from the police investigation]. I wonder why. And the perpetrator confessed in court,” she told Amnesty International.

It appeared that the evidence had not been transferred from the District Police to the courthouse. Nevertheless, the suspect confessed to having raped Pong and that he had taken her knife and used it to threaten her.

The police apparently did not have a budget to send the evidence to court, Pong’s lawyer Tep Sovann said, while also questioning the forensic certificate. Pong had been at the hospital three days after the incident, but the doctor had concluded that a tear of her hymen was more than seven days old and so concluded that the case was unclear.

“The police didn’t send the evidence to court, and the prosecutor didn’t try to acquire it [from the district police]. Instead, they only used the forensic certificate,” Tep Sovann told Amnesty International.

The court decided that the suspect had not raped her, and, in breach of its powers under Cambodian law, changed the charge to sexual assault.

“This is a clear case of corruption,” said Tep Sovann. *“The prosecutor has appealed, as he had charged [the suspect] with rape, yet he was convicted for another charge.”*

Mol Pong told Amnesty International she knew from the neighbours that the perpetrator’s family had paid the court. The police has also expressed concern about the case, and keep supporting her.

“The police didn’t understand why they changed the charge either. They too felt hopeless. It is a serious crime!”

Pong and her family are intent on seeking justice, and she has decided to speak out about what happened, using her real name.

“I can’t really hide anyway. And if no one intervenes or advocates and the perpetrator has money, it will just go on. It shows to others that perpetrators can just go on and on.”

“I no longer know how to trust the law. The government must ensure respect for the law, to stop corrupt practices and seek justice. Even if a victim has no money, the authorities must help them”.

Courts are an insensitive and disrespectful environment for victims of sexual violence. The introduction of the new Penal Code should be used as an opportunity to clarify what the crime of rape signifies, and what the responsibilities of court staff and prosecutors are.

There is a clear need for the Cambodian criminal justice system to change the practice of burdening the woman victim of rape for proceeding with the prosecution. It is the prosecutor who has the legal authority to vigorously pursue such cases. Once that is made clear, the pressure on the women to drop the case or withdraw a complaint may ease.

Rape is not only an offence against the victim - the woman or girl. It is an offence against everything that a state respecting human rights represents, and an attack on the concept of the inherent dignity of every woman, man and child. It is therefore not only the right of the victims but also the duty of the authorities to vigorously pursue every reasonable avenue of finding perpetrators of rape and other sexual violence, bringing them to justice, punishing those found, in fair proceedings, to be guilty of these crimes, and ensuring reparations for victims.

As stated by the UN General Assembly in its Resolution 52/86 – Crime prevention and criminal justice measures to eliminate violence against women: Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice states *inter alia*:

“7 b) The primary responsibility for initiating prosecutions lies with prosecution authorities and does not rest with women subjected to violence...”

3.8.1 LACK OF VICTIM-FRIENDLY COURTROOMS AND STAFF

Defense lawyer: Why didn't you shout for help?

Complainant: I didn't dare to.

Defense lawyer: I said why didn't you shout for help?

Complainant: (sobbing) I didn't have any clothes on so I didn't want anyone to find me naked.

Extract from re-trial testimony for a gang rape of an 11-year-old girl

A social worker accompanying the young victim in court told Amnesty International how the defense lawyer had shouted at the girl and how the victim had broken down in court. The social worker herself found the situation so terrible that she couldn't hold back her tears during the hearing.

“There has to be a code of ethics for those speaking to a victim. They shouldn't be impolite, use bad words or pressure the victim”, she told Amnesty International a day after the trial.

The hearing had been one of seven on that day, the other six about other crimes. The young victim had to go through the harrowing experience of testifying in court, in front of not only the person she had identified as the rapist, but also suspects, perpetrators, family members and the press attending the other six trials. As is the case in most provinces, she was not allowed anyone, such as a counselor or social worker, to be near her at the bench. She had to stand on her own facing the defense lawyer, whom the social worker described as “bullying”.

Both victims and service providers consistently told Amnesty International that judges and prosecutors often seemed from the outset very sceptical about victims' accounts, questioning their credibility, while paying attention to issues such as personal relationship with the perpetrator or sexual history which were not relevant to the merits of the case.

Most rape victims Amnesty International interviewed reported that the perpetrator(s) had threatened to kill them if they resisted the assault, shouted for help or spoke about the rape afterwards. As the case above indicates, when victims are seen not to put up resistance, there is a risk that defence lawyers use the absence of such resistance to convince the court that the woman had consented to sex.

Because the Cambodian judiciary lacks independence and is subject to corruption⁴², there is also a real risk that dishonest prosecutors and judges will use issues such as lack of evidence of resistance to justify non-prosecution or acquittal of perpetrators who pay them bribes.

In absentia trials are also widespread, which means that convicted rapists are not penalized, as they do not serve a sentence. One legal aid organisation estimated that one in every three successful prosecutions was against a suspect tried in absentia.

“We don’t want perpetrators to get away. Most perpetrators are known to the victim after all. In an in absentia trial, you get no punishment, no compensation and no deterrence. It simply establishes low morals,” noted a legal aid professional.

In addition, victims are provided with very little information from their lawyers, the criminal justice system and law enforcement professionals involved in their case about the process itself. They lack access to information about their case; whether the prosecutor has charged the suspected perpetrator; whether the case is going to trial any time soon, and often even whether they have a lawyer representing them. The frustration of victims who are not informed of the status of their case adds to their pain.

“They released the perpetrator after a day because they couldn’t keep him detained, though I don’t know why. He is now at home and that’s why I am at the shelter. If he had been arrested, I’d be able to be at home,” **Arun**, 16-years-old, told Amnesty International. She was raped at home in 2008 by a relative, and has lived in the shelter for nearly two years.

As pointed out earlier, trials often place the victim in a situation of having to relive the experience, with an inherent risk of re-traumatization. Most victims are not well prepared for the court proceeding, and find the confrontation with the perpetrator particularly traumatizing. The predominance of male legal professionals often makes this even more difficult.

3.8.2 MALE DOMINANCE IN THE LEGAL PROFESSION AND CRIMINAL JUSTICE SYSTEM

As elsewhere in the world, many female survivors of sexual violence in Cambodia find it less intimidating to talk to female legal professionals about their experience. Cambodian courthouses, however, are dominated by male judges, prosecutors, and lawyers.

The Ministry of Justice is undergoing a gender mainstreaming process which aims to rectify this imbalance. According to the Gender Mainstreaming Action Plan of the Ministry of Justice (2009-2013), in 2008 courts had improved the gender balance compared with 2003, but still had 21 female judges to 167 males; one female prosecutor⁴³ to 32 males; 103 female court clerks to 482 males.

There are very few female lawyers to support victims. There has been an acute shortage of legal professionals at all levels for decades, and female lawyers are few and far between among the 400 practicing lawyers in the whole country. As there is no government support for legal aid, NGOs providing legal assistance find that the demand far outweighs the need, and lawyers simply have too little time to prepare cases and victims for the process. Many lawyers lack professional training on, for example, the particulars about dealing with survivors of sexual violence, and/or children.

3.8.3 CORRUPTION AND COSTS

Bribery of court officials entails high costs for victims seeking justice. Informal payments abound, and start when the court calls a victim for questioning. NGO workers with close insights put the cost of “postage” for such an invitation to around five USD.

If a complainant does not pay anything to ensure that the court investigates a case, progress is slow, and it may be well over two years before anything happens, unless the suspect is in detention. If the suspect is in custody, the case is most commonly adjudicated just before reaching the maximum time permitted for pre-trial detention, which under the 2007 Criminal Procedure Code is 18 months – an initial six months which can be extended for two additional six month periods.

Such a long pre-trial period increases the risk that the perpetrator’s family will pay a bribe to secure his acquittal or reduced charge. Several informants told Amnesty International that authority representatives have built in delays into processes to make sure there is ample time for those involved to pay bribes.

“It’s hard to say if there is a deliberate delay strategy to open up for personal benefits, but we see a lot of delays,” one legal aid professional said, requesting anonymity. He believed it is more difficult for officials to extract bribes when other officials are directly involved.

“But the more officials involved in the process, the harder [for the individual] to act for personal interest.”

As noted, victims have to pay to facilitate a speedier process in court. Payments to both the Investigating Judge and a court clerk are common to make sure an investigation begins, with around 50 USD appearing to be a typical payment. However, complainants may have to pay several times that amount to secure a trial, and possibly to secure a guilty verdict, though no victim had paid bribes to this end. The four interviewees whose cases had led to convictions, however, either had not paid anything to secure the conviction, or did not know whether their families had paid anything. A written verdict costs around 10 USD.

Similarly, perpetrators pay money to ensure the court serves in his/her interests. Police with close insights into cases of rape told Amnesty International that between 100 and 200 USD generally would lead to an acquittal. If, however, the perpetrator is rich, costs could be significantly higher. In a gang rape in a rural province early 2009, the mothers of the five perpetrators secured their release for 1,000 USD. In this instance, the victim knew the amount, as it had originally been offered as compensation for her, though was never paid.

“Police arrested all the suspects. Two in the afternoon the day after the incident. On the following day, they nabbed the rest. And around two months ago, they released all of them,” said a family member of the victim, who had witnessed the incident.

The issue of corruption is highly sensitive to officials, at ministries, courts and within the police force, in particular when speaking on the record, but even in off the record conversations. In particular Amnesty International was met with a lack of openness in discussing the problem within the Ministry of Justice, including how it may negatively affect victims of sexual violence, let alone seeking solutions to the problem of corruption.

“I hear a lot about this, but I am a legal professional and need evidence to make an assessment”, the Secretary of State at the Ministry of Justice, Chan Sotheavy, told Amnesty International. *“But it is rare with complaints relating to samroh-samruol and corruption. Complaints could come from victims and those aware, but complainants must have concrete evidence, otherwise their action may amount to defamation. [...] If we were to receive cases [of complaints relating to corruption] we would send them to the Supreme Council for Magistracies for investigation and invite judges to discuss the issues.”*

As the statement above by the Secretary of State illustrates, there is limited initiative from within the criminal justice system to assess the extent of court corruption and none whatsoever to assess the consequences of such corruption on victims of sexual violence. Each case where corruption is blatant or the sentence is not proportionate to the crime further undermines the willingness of women and girls coming forward to report the crime. Corruption in courts – as well as in police– undermines the framework for respect, protection and fulfillment of human rights.

The reference by the Secretary of State to defamation is an additional concern; in the past five years, the use of defamation and libel laws has emerged as an increasing threat to freedom of expression in Cambodia. Defamation and disinformation are provisions in the “UNTAC Law” of 1992 that people in powerful positions commonly use when trying to silence critics.⁴⁴ Defamation and libel laws in the forthcoming Penal Code may be subject to abuse too, including provisions such as Publication of any Commentaries to Put Pressure on Jurisdiction (Art 533) and Discrediting the Court Decision (Art 534). These may aim to protect the independence of the judiciary, but in a country with such weak courts and law enforcement, they risk being abused to stifle legitimate criticism of the working of the courts.

Moreover, social workers and legal aid professionals indicated to Amnesty International that prosecutors in rape cases often appear to prioritise making money over doing their duty.

“Prosecutors do not work to prove the charges”, one social worker with more than a dozen years’ experience told Amnesty International.

4. NATIONAL LAW

The Constitution enshrines the prohibition of all forms of discrimination against women. (Art. 46). This prohibition has not translated into a specific definition of the forms of discrimination against women in domestic law, a shortcoming pointed out by the CEDAW Committee in the 2006 Concluding comments on Cambodia.⁴⁵

Cambodian domestic law on rape is due to change, as the new Penal Code replaces the “UNTAC Law” of 1992, entering into force late 2010. Both laws are discussed in this chapter, as the old legislation formed the legal basis for all cases that the victims interviewed by Amnesty International represent, and the new is soon to replace it.⁴⁶ The UNTAC Law defines rape as *“any sexual act involving penetration carried out through cruelty, coercion or surprise”* (Art. 33). The Article criminalises both rape and attempted rape. While rape and attempted rape are felonies, indecent assault is a misdemeanour (Art. 42).

The new Penal Code provides that *“All acts of sexual penetration, of any kind whatsoever, or an act of penetrating any object into sexual organs of a person of either the same sex or different sexes by violence, coercion, threat or surprise constitutes a rape.”* (Art 239)

It strengthened the wording of the UNTAC Law, which defined rape as *“any sexual act involving penetration carried out through cruelty, coercion or surprise”*, into the clearer *“acts of sexual penetration” involving “violence, coercion, threat or surprise”*. The new law, then, brings some clarity by replacing the vague “cruelty” with “violence” and “threat”. It also sets the age of consent to 15 years old, which was previously not regulated by law.⁴⁷

The drafters of the new Penal Code, however, failed to incorporate language to demonstrate clearly that rape signifies an absence of truly and freely given agreement to engage in sexual acts. This shortcoming is particularly serious as it may increase prejudice towards rape victims and could serve judges who only focus on tangible attempts by the victim to resist an attack, rather than the lack of consent.⁴⁸ The addition in the new law of “threat” may go some way to counter this short-coming, but it will be imperative that the authorities, and in particular the courts, clarify this. They should also demonstrate that Article 239 admits of no exceptions, including for instance for rape within marriage. Moreover, the drafters of the new Penal Code missed an opportunity to explicitly state that rape and other sexual violence are crimes against the physical and mental integrity of the victim.

Marital rape is criminalised by the Law on the Prevention of Domestic Violence and the Protection of Victims. This law, however, does not have penalty provisions, but crimes are punishable under the UNTAC Law and the Law on Aggravating Circumstances for the Felonies, and the new Penal Code once it has entered into force late 2010.

Cambodia’s legal framework is going through significant change, with a number of key laws promulgated in recent years: the Civil Code, the Civil Procedure Code, the Criminal Procedure Code and soon, the Penal Code. This involves massive transition for legal professionals and it is clear that many will need of training and support.

However, it takes much more than amendments to laws and training efforts on the law alone to make the rights to justice and compensation a reality for survivors of sexual violence in Cambodia. Corruption, stigma, and discrimination are much more immediate barriers to justice and recovery.

5. BACKGROUND

5.1 WOMEN'S STATUS IN SOCIETY

The expert committee that monitors implementation of the international Convention on the Elimination of Discrimination against Women (CEDAW) has expressed concern about the strong gender-role stereotyping in Cambodia, including in the traditional code of conduct known as *chbab srey*, or “women’s law” in the Khmer language. The CEDAW Committee argued that *chbab srey* legitimizes discrimination against women and impedes women’s full enjoyment of their human rights.⁴⁹ *Chbab srey* presents moral principles for women, instructing women to serve and respect their husbands at all times, and never to raise domestic problems outside the house.⁵⁰ It has been passed on from one generation to the next, and was taught in schools until 2007, with the intention that children “should discuss and analyze it.”⁵¹ It was removed from the school curriculum in 2007.

Amnesty International spoke to many government officials who appeared to agree with the CEDAW Committee’s concerns and analysis about the role of gender stereotypes in this context. Many of them also demonstrated a commitment to addressing violence against women as part of the promotion of women’s rights, displaying an understanding of how impunity perpetuates a cycle of sexual violence. This was particularly true for senior female officials within the Ministry of Women’s Affairs (MoWA). At a November 2009 regional conference on violence against women, the Minister, Dr Ing Kantha Phavi, noted:

*“Due to the Cambodian tradition which imposes women to keep silence and because this abuse infringes on family honour, most families accept financial compensation for abuse rather than seek prosecution. This makes it difficult to achieve criminal convictions, which then fails to deter the perpetrators from offending again, and furthermore, sets a bad example for other people.”*⁵²

Gender roles are part of Cambodia’s hierarchical social structure, where society prescribes specific codes for women and men. Although the role of women and their participation in Cambodian society have varied over time, historically, women are the informal head of households and family matters, but under the auspices of men. Men have dominated in the public sphere.⁵³ In recent times, women’s participation in economic activities within the public sphere has grown considerably and in all fields, in particular as market traders and in other small trade, and over the past decade in the garment export industry, where women comprise 80 to 85 percent of the workforce.⁵⁴ At the same time, their subservience to men remains by and large intact. The prevailing ideals of a good traditional Khmer woman is “gentle, soft, obedient and shy,” which “limits women’s freedoms and deprives them of their rights.”⁵⁵

Reflecting their role in society, women are under-represented not only within the executive branch of the government, parliament and civil service, but also in courts, the police force and other areas where an understanding of female victims of sexual violence is crucial.⁵⁶

The Cambodian social system traditionally treated women as subservient, but it did provide some social strictures against violence. These social restrictions disappeared during the brutal Democratic Kampuchea regime (the Khmer Rouge) 1975-1979, which to a large degree shattered social structures. Cambodia's demography changed through mass killings, deaths through starvation and the break-up of families. The reconstruction of post-war Cambodia took place against this backdrop of a shattered society, and led to the weakening of social and cultural norms. Such uncertainties have left women and girls more vulnerable to violence, including rape.

5.2 WOMEN, SEX AND SOCIETAL VALUES

“Men are gold, women are cloth”, is a Khmer saying explicitly emphasizing the lower value socially placed on women. It is widely believed that women can be worn, torn and stained; men cannot. A “good” woman is supposed to remain a virgin until she marries, and then stay with one partner through her lifetime. At the same time, it is widely accepted for men to have multiple sexual partners and frequent commercial sex workers both before and after getting married. Men's need for sex is perceived as uncontrollable and men are even at times pressured by peers and social perceptions into pursuing extramarital sex and multiple partners.⁵⁷ Such relations are seen to enhance masculinity, as well as physical and mental health.⁵⁸

Several senior government officials acknowledged in meetings with Amnesty International that sexual violence against women is a growing problem in the context of gender stereotypes and perceived gender roles. Nevertheless, discussion about rape in Cambodia rarely takes place against an acknowledgment of the wider context of gender-based discrimination or even gender-based violence, as if rape were an issue distinct from domestic violence and other forms of violence against women.

The behaviour of women is perceived as closely connected to their honour and reputation. Even the Constitution illustrates and entrenches this perception when it provides that human trafficking and commercial sexual exploitation are prohibited on the grounds that they would “...affect the reputation of women”, rather than on the grounds of violating their human rights and causing harm to their physical and mental integrity.⁵⁹

Cambodian tradition places a high value on virginity and the view that virginity is a prerequisite for marriage remains widespread. Such perceptions significantly contribute to the shame of rape victims, reduce their willingness to report and encourage discrimination against rape victims. Most interviewees told Amnesty International that they felt shame after the rape, and some talked about themselves as “*khouch*”⁶⁰, spoiled or broken, and said their future had been jeopardized by the rape and that they would have limited prospects of marrying. It was clear that their perception of themselves as “spoiled” was intrinsically linked to how people in their surroundings reacted to them.

While on the one hand, traditional perceptions lead to discrimination against women and girls, there is widespread concern across Cambodia about the impact of modernization, trends and fashion, which many believe have caused a shift in moral values that in turn affect the popular perception of sex. Almost every NGO staff and government representative

who talked to Amnesty International expressed fears about pornography, suggesting its prevalence is changing the norms and behaviours, in particular among men. Many also said increased drugs and alcohol use played an important role. They view sexual violence against women as one consequence of such changes. To counter such developments, the government needs to initiate a widespread social debate about the status of women, instead of attempting to limit free expression under the dubious claim of combating pornography.

“It is very different here from say, in Europe. Here, men can do what they want; many men openly watch pornographic films. They are fearless of the law, and we even see old men raping young children.

“Then you have the also widespread superstition and belief about benefits of having sexual intercourse with children, such as curing kidney problems or getting energy. Fearing HIV/AIDS, men also perceive sex with virgins as safer, which may place younger girls at increasing risk of rape”, said a department manager at Ministry of Women’s Affairs.

Although pornography or superstitious beliefs – and indeed alcohol consumption – may be some of the elements in individual cases of rape, there is a risk that such elements are used to justify the criminal act of rape. A focus on rooting out pornography or superstition would not address men’s perceived entitlement to sex, whether consensual or not, and it would risk losing sight of violence against women as *“a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men.”*⁶¹

State authorities have failed to initiate an appropriate effort to change social mores to protect girls and women from sexual violence. The authorities often do not provide them with information about their rights and the obligations of various state actors. The predominant discourse appears to identify women and their actions as the main obstacle to their own safety, legal literacy and assertion of their rights. *“We provide information about [violence against women] in leaflets and in television spots, but they don’t access these,”* commented one senior official. For her, the question whether the authorities had chosen the right channels to raise awareness about the law and where victims could get assistance, seemed irrelevant. Materials from the authorities on awareness-raising relating to gender-based violence present very little, if anything, on how victims could cope with the systemic obstacles facing them, including out-of-court payments, corruption and discrimination in the criminal justice system.

More broadly, there is a widespread tendency in discussions to blame sexual violence against women and girls on the victims themselves. Commonly held views are that sex workers place themselves at risk by their choice of work; child victims have exposed themselves to risk by choosing to wander off too far from home against instructions from the parents; young women opt to wear short skirts and have lost their traditional values. Almost all officials Amnesty International talked to, including at the Ministry of Interior, the General Commissariat of National Police, the Cambodian National Council for Women and the Ministry of Women’s Affairs noted that women and girls are at risk because of their lack of knowledge about the law and because of poverty, both of which resulted in high-risk behaviour. Only a very few

concluded that the state is failing in its protection duties and in its defence of the rights of these women to be free from gender-based violence. Similarly, few expressly noted that a focus on the behaviours or level of understanding of victims or women more broadly, failed to take account of the role of men in addressing the issue. However, one senior official who did was Hou Samith, head of the Cambodian National Council for Women:

"It is the attitude and behaviours of men that need to change. They don't take responsibility, but simply blame the victim," she told Amnesty International.

5.3 NATIONAL POLICY INITIATIVES TO ADDRESS GENDER-BASED DISCRIMINATION AND VIOLENCE

*"On behalf of the Royal Government of Cambodia and myself, I would like to call on the near and far befriended countries, development partners, international organizations, civil society and people from all walks of life to assist in preventing violence against women and promoting women's human rights and the well-being of the family."*⁶²

Prime Minister Hun Sen, in the National Action Plan to prevent violence on women

In recent years, the Cambodian government, in collaboration with several international donors, has come a long way to mainstreaming gender in the National Strategic Development Plan and the Cambodian Millennium Development Goals (MDGs).⁶³ Government leaders speak publicly about respect for women's rights, and have become increasingly vocal about two issues that are linked to gender-based discrimination: domestic violence and human trafficking. With the assistance of its international donors, the government directs efforts at curbing these crimes. But, at the highest level of government, rape and other sexual violence against women do not receive similar levels of attention as do domestic violence and human trafficking. Rape is not dealt with as an inherent part of these abuses or even as another side to the same problem of gender-based discrimination and violence.

Several government policy documents include statements on gender equality, including the government's main policy document, Rectangular Strategy for Growth, Employment, Equity and Efficiency and its development plan: the National Strategic Development Plan (NSDP) 2006–2010, which sets out plans and achievements towards attaining the Millennium Development Goals.

In its policy documents, the Cambodian government has made combatting violence against women a priority and adopted the reduction of violence against women and children as a benchmark to measure the country's development.⁶⁴ This is one of five medium-term targets identified to measure progress towards "reduce[ing] significantly all forms of violence against women and children."⁶⁵

- *Increasing the proportion of cases of domestic violence counselled by qualified personnel to 100 by 2015*
- *Increasing the population percentage aware that violence against women is wrongful behaviour and a criminal act to 100 by 2015*

- *Developing and implementing laws against all forms of violence against women and children according to international requirements and standards by 2005*
- *Collecting annual statistics to monitor violence against women by 2005*
- *Developing and Implementing a Prevention Plan by 2005.”*

However, there has been no comprehensive monitoring of MDG progress since 2005, when there was an update progress report.⁶⁶ This progress report presented no qualitative assessment of whether or in what ways the targets relating to violence against women had been met, and the report dealt specifically with domestic violence only.

As of early 2010, the United Nations Development Programme noted that progress towards MDG3 “Promote Gender Equality and Empower Women” risked becoming “off-track” unless robust efforts were directed at addressing domestic violence.⁶⁷ In comparison with the other benchmarks, it appears progress since the turn of the millennium has been particularly visible in the development of law and plans. These include the Law on Prevention of Domestic Violence and Protection of the Victims (2005); and the Law of Suppression of Human Trafficking and Sexual Exploitation (2008), both of which have since been adopted and entered into force. The launch in 2009 of the National Action Plan to Prevent Violence on Women (2009) is also a step forward. Implementation of these three key documents is underway.

The National Action Plan to Prevent Violence on Women 2009-2012 (hereafter the National Action Plan) reveals that the government’s focus in terms of addressing violence against women is on domestic violence, and human trafficking. Sexual violence against women appears neglected in the 14-page document. Rape, for instance, is explicitly mentioned only once – in a section on raising “public awareness on the prevention of all forms of violence”, where a set of activities are planned to “disseminate successful convictions,” especially of rape cases, to the general public in order to “intimidate perpetrators” and deter rape.

Finally, the Ministry of Women’s Affairs plays an important role in coordinating women’s affairs and promoting the status of women. The Ministry has its own five-year strategic plan for Gender Equality and the Empowerment of Women in Cambodia (2009-2013), called Neary Rattanak III.⁶⁸ This strategic plan overlaps with other policy documents, and goes into more detail, in particular relating to gender mainstreaming.

One of five “strategic areas” in Neary Rattanak III is Legal Protection of Women and Girls, the only area with direct links to rape and other forms of sexual violence against women. The plan outlines objectives in the area to include improved legal protection, improved access to justice, improved trust of victims’ in the judicial system, and improved psycho-social and health services for victims of rape and other forms of violence. These crucial targets will require significant political will and adequate budget allocation to address effectively.

5.4 CIVIL SOCIETY INITIATIVES

Cambodia has a vibrant civil society, with a large number of non-governmental organisations that are actively engaged in issues that relate, directly or indirectly, to assisting victims of rape and other sexual violence. But it is clear that the NGOs in Cambodia do not have the

capacity or the means to provide adequate services for all victims of rape. Many victims receive services from NGOs, but NGOs do not have resources, networks, policy guidelines and coordination to take over the role of the state. The responsibility to provide, or support the provisions of, necessary social and health service ultimately rests with the state.

These NGOs form a loose network, and often work on the same cases, each providing victims with different and complementary services. Human rights groups, in particular the large ones with significant outreach across the country and office facilities in provincial towns, play an important role as a first point of contact for victims, at the same time lobbying local law enforcement officials to take urgent and appropriate action. Legal aid organizations provide legal advice and legal representation for clients.

A number of organizations have safe housing and counseling services, and another group of NGOs run medium to long-term shelters, with skills training, and programs for psychological assistance, including counseling. Most organizations running shelters work with victims of human trafficking, domestic violence and rape, a mix which appears to reflect on the services, and possibly to the detriment of victims of rape. However, it appears that support services encourage rape victims to stay at a shelter, rather than working towards developing the conditions which would help ensure that victims, to the largest possible degree, can remain living at home.

The government does not provide any financial support to NGOs providing services for victims of sexual violence. On the contrary NGOs often supplement salaries of government staff to participate in courses and workshops. NGOs, in turn, rely on foreign donors, international agencies, church-based groups, and other charities.

Many of the more sizeable and well-known NGOs also play an important role in advocacy and lobbying for the respect and protection of women's rights, and engage in awareness-raising efforts, often in cooperation with the government.

NGOs who are advocating for human rights protection, raising concerns in individual cases or around patterns of abuse in ways that criticize government action or inaction, face additional problems. A government crackdown against perceived critics has had a stifling effect on freedom of expression, including within the NGO sector over the past two years. Human rights workers have received threats of prosecution relating to their work, and the government has expressed its firm intent to adopt an NGO law to enable increasing control.⁶⁹

6. CONCLUDING REMARKS AND RECOMMENDATIONS

General Recommendation 19 of the Committee on the Elimination of All Forms of Discrimination against Women, paragraph 24 (t)(ii), calls for:

"Preventive measures, including public information and education programmes to change attitudes concerning the roles and status of men and women;"

The Declaration on the Elimination of Violence against Women, Article 4f), calls on states to:

"Develop in a comprehensive way, preventive approaches and all those measures of a legal political, administrative and cultural nature that promote the protection of women against any form of violence,"

"Ensuring women's access to justice means that governments must commit to establishing a rule of law that factors in all the issues that affect implementation and exercise due diligence to prevent, investigate and punish violence against women."

At its worst, the system in place to help survivors of sexual violence in Cambodia, is a set of moneymaking schemes, to provide personal benefit for the public officials involved rather than bring justice to the victims. Failures go unquestioned and for too many victims of rape, their experience within the criminal justice system compounds the initial abuse. Every perpetrator that goes unpunished as a result of these failures is a signal that the authorities are indifferent to the plight of the victims of sexual violence, as well as to their own duty to combat it, under both international and national law.

It seems evident that many men's sense of unbridled entitlement to sex is widely considered acceptable, and widespread impunity is reinforcing this sense of entitlement. In contrast, discriminatory attitudes require that women be "pure" – a woman is held responsible for a crime committed against her; her position in society and her future is jeopardised; while the rapist often faces limited, if any, social or legal sanction. Despite its importance in the context of sexual violence against women, men's attitudes and behaviours have not been made the focus of much scrutiny.

The paucity of vocal government condemnation of rape and other forms of sexual violence echoes this lack of social and legal sanction. The shortage of services and structures to properly aid and support victims reflects the government's attitude. Indeed, the lack of services – and policy discussions – may be interpreted as an implicit acceptance of sexual violence.

The failure to impose legal sanctions further disempowers and harms the rape victim. Impunity not only forces many victims to live in shelters away from their families in fear of a

perpetrator who remains at liberty, but also increases pain and a sense of loss of dignity: To comply with international standards, all victims of crime should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress. The authorities, including the police, should also give special attention in providing services and assistance to victims with special needs.

Amnesty International urges the Cambodian government to ensure that the state meets its national and international obligations to respect, protect and promote the right to freedom from discrimination and violence for Cambodian women and girls. Using the introduction of the new Penal Code late 2010 as an opportunity, Amnesty International calls on the government to firmly address inadequate law enforcement in cases of suspected rape. There is an urgent need for the Cambodian authorities to speak out against sexual violence against girls and women as a way of showing that it will not tolerate impunity for sexual violence and to clarify that rape signifies an absence of truly and freely given agreement to engage in sexual acts.

Finally, the Cambodian government needs to view rape in the context of gender-based discrimination, as well as address the particular vulnerability facing girls and women living in poverty.

6.1 RECOMMENDATIONS

Amnesty International makes the following recommendations to the Cambodian government and service providers, which, if fully implemented, could help prevent and address rapes of women and girls.

Address discrimination against women and stereotypes that perpetuate gender-based violence:

- The government should publicly condemn sexual violence and all other forms of gender-based violence against girls and women;
- The authorities should use the introduction of the new Penal Code to combat gender stereotyping of girls and women. They should articulate, including in the National Plan to Prevent Violence on Women and Neary Rattanak III, that rape and other sexual violence is a crime against the physical and mental integrity of the victim; that it causes immense damage to the victim; and that stigma against survivors further harms them and perpetuates discrimination;
- The authorities should incorporate such messages in all education programs in schools in a manner appropriate to the age of the children concerned, and education campaigns for the general public, and speak out against the widespread lack of knowledge about the effects of rape on victim.

Incorporate provisions to combat sexual violence into policies and efforts relating to domestic violence and human trafficking:

- The authorities should, in consultation with women's rights groups and service providers, develop methodologies and systems to obtain data on sexual violence against girls and women that is as comprehensive and accurate as possible, so as to facilitate an accurate assessment of the extent of the problem;

- Gather and publish statistics on the resolution of investigated cases, disaggregated by factors including ethnicity and age of the victim, prosecution and attrition rates, convictions and criminal sanctions of perpetrators. This data should inform policies and plans of action for both girls and women.

Remove financial barriers to services for victims of rape:

As corruption and costs related to health care continue to act as barriers to women's access to police, courts and medical services, including forensic examinations;

- Adopt an anti-corruption law, and investigate all credible allegations of corrupt practices and punish those responsible;
- Ensure that victims of sexual violence have access to immediate emergency medical care and rape kits free of charge;
- Enforce the exemption from fees charged for forensic examinations at referral hospitals.

Ensure that victims and survivors of sexual violence have access to safe, timely and effective reporting mechanisms:

- Female police officers should interview female rape victims; the authorities must increase their efforts to recruit women into the police force;
- The authorities must ensure that the police in no way intimidate, threaten or humiliate victims of sexual or gender-based violence, either when they file their complaint or during the subsequent investigation. Responding officers should immediately ascertain if the complainant is at risk of further violence and if so, ensure that she receives appropriate protection;
- Put into effect codes of conduct guaranteeing that police officers work professionally and sensitively with victims of sexual or gender-based violence, prohibiting dismissive, discriminatory, aggressive, unduly sceptical or otherwise unprofessional attitudes;
- Victims should be allowed to bring someone to accompany them into any meetings with the police or other investigators, such as an NGO worker or family member;
- Police officers should be trained (as part of their basic training and as ongoing professional training) in best practice methods of interviewing and supporting victims who have been subjected to sexual violence;
- Victims should be interviewed in a secure and private environment. Police officers should, as routine practice, assess the safety of the complainant and implement measures to ensure the victim's safety during the ongoing investigation.

Ensure that the police force receives training, equipment and budgets to combat sexual violence against women:

- Ensure that police officers promptly investigate all complaints of rape and other sexual violence; assist victims in accessing medical and other assistance, while protecting victims and witnesses against threats of reprisal; refer cases promptly to the Prosecutor and ensure

that police staff who fail to respond effectively to allegations of such violence are disciplined;

- Leaders of the General Commissariat of National Police should condemn all forms of sexual violence, intimidation and harassment by law enforcement officials, and ensure that any such act perpetrated by police officers will be investigated, disciplined and, wherever required, prosecuted;
- Give police clear instructions to ensure that the human rights of sex workers are protected in the course of all law enforcement activities;
- Train police to sensitize them to the needs of victims, and guidelines to ensure proper and prompt aid;
- Promote increasing numbers of female officers in law enforcement agencies and ensure that female law enforcement officers are available as far as possible in all provinces to carry forward investigations into allegations of sexual violence against women and girls;
- Investigate and prosecute alleged misconduct, including in relation to facilitating out-of-court payments; introduce disciplinary and where necessary legal measures against law enforcement officials found to have failed to act (or acted inappropriately) on reports of sexual violence or conducted inadequate investigations;
- Ensure there are sufficient budget allocations to fund competent investigations into all reports of rape and other sexual violence.
- Ensure that allegations of corruption by police officers are investigated, and that anyone found to have been involved in acts of corruption is immediately suspended from duty and subjected to disciplinary and/or criminal proceedings commensurate with the severity of the offence, as set out in the UN Code of Conduct for Law Enforcement Officials;
- Police should establish practices for providing complainants with ongoing information about progress and updates, about whether a case is being referred for prosecution and if so where. Police should also explain to the victim any decision not to forward the case for prosecution. Such decisions and the reasons for them should be available for appeal to the prosecutor. Police should also inform victims when an alleged perpetrator is released from pre-trial detention;
- Ensure that women can report allegations of misconduct against police officers, including of sexual violence, and that these are promptly, independently and impartially investigated, and where reasonable suspicion exists of misconduct and/or a criminal offence the suspect should be immediately suspended from duty and subjected to disciplinary and/or criminal proceedings commensurate with the severity of the offence.

Ensure that forensic examinations are accessible, appropriate and free:

- Ensure access to all victims of sexual assault to an adequate and prompt forensic examination, free of charge, including transport costs. Examinations should take place as soon as possible, subject to the victim's wishes;

- All health professionals carrying out such examinations should receive specialist training to ensure interview skills, as set out in the WHO protocol;
- Ensure providers of forensic examinations also provide health examinations and treatment, including post-exposure prophylactics, or if necessary, prompt referrals for such treatment;
- Medical professionals should be trained in citing appropriate facts in the forensic medical report in a format that could be used by police and prosecuting authorities in taking actions against perpetrators. Forensic medical staff should never draw conclusions relating to the legal case, if an incident is likely to have been “rape” or not, but only document health and medical issues of concern;
- Review the current separation of treatment from evidence collection, with only referral hospitals mandated to conduct forensic examinations. The initial examination at any health service should be conducted in such a way as to ensure that forensic evidence which could be used for the investigation and trial is collected and preserved at that time.

Develop a system of adequate support services:

- The Ministries of Social Affairs, Health, Interior, Justice, and Women’s Affairs should draft policy guidelines for service providers, to ensure appropriate, sensitive support for rape victims and their families, and adequately trained and supervised professional staff;
- Ensure that all victims of rape and other sexual violence have prompt and free access to measures such as post-exposure prophylaxis, emergency contraception, testing and treatment for sexually transmitted infections, as well as general medical care for other injuries; and initial psychological support;
- Nurses, doctors and support staff, including at forensic examination units, should be trained in sexual assault protocols, including screening for and identifying sexual violence, and in appropriate skills to deal with survivors of sexual violence sensitively, confidentially and without discrimination;
- Ensure that the relevant authorities, including Department of Women’s Affairs (the provincial level of the Ministry of Women’s Affairs, DOWA), police and courts are informed and trained to provide victims with information about support services such as shelters and ongoing counselling or peer-based support for referrals;
- Service providing NGOs should seek to map out services to ensure that its staff across the country, including in the provincial offices, are able to promptly assist victims with referrals. Such mapping should include services for victims with special needs, and services for victims who prefer home-based recovery to shelters.

Ensure that courtrooms, courts and proceedings are victim-friendly:

- The Ministry of Justice should review and adapt courtrooms and proceedings taking into account the particular needs of rape victims. Mobile screens could be introduced into courtrooms, and separate exits made accessible to victims of sexual violence. Proceedings should be held separate from other trials, ensuring privacy for the victim;

- Train court staff, lawyers, clerks, judges and prosecutors in dealing with victims of sexual or gender-based violence, especially to provide them with interview skills, in the appropriate use of medical evidence, and use of expert evidence, such as psychological or psychiatric reports;
- Continue the gender-mainstreaming process of the Ministry of Justice with a view to achieving gender balance within the ministry and the criminal justice system; ensure to the highest possible degree the participation of women officials or officials that have undergone relevant training, in cases of sexual violence against women and girls;
- Train judges to take responsibility for maintaining a safe and respectful environment within the courtroom, in particular ensuring that witnesses are protected from abusive or demeaning treatment by the defense, and by ensuring the use of equipment such as screens to avoid direct exposure of victims or witnesses to the suspect, or allow them to give their testimony in a closed courtroom.
- Ensure that allegations of corrupt practices are investigated, and where proven, that sanctions are commensurate to the severity of the offense, including disciplinary measures or criminal procedure where the infraction amounts to criminal offences;
- Judges should not allow evidence about the previous sexual history of a complainant to be raised in court, apart from in very exceptional cases where such evidence is relevant;
- Judges should impose penalties on convicted offenders proportionate to the offences within the context of a trial and sentencing process that conforms to international fair trial standards;
- Prosecutors should vigorously prosecute cases of sexual violence; ensure that the cases are treated as a matter of urgency and dealt with without undue delay. Public prosecutors must initiate and carry forward investigations, whether or not the victim of rape has filed a complaint, or has withdrawn her complaint. Alleged wrong-doings of prosecutors should be investigated and as necessary, sanctioned.
- Prosecutors should ensure that witnesses have access to support, including financial so that poverty does not preclude their participation. If necessary, witnesses should be protected from further violence through witness protection measures;
- The office of the prosecutor should routinely publish statistics on the resolution of cases of sexual violence against women and girls referred to it. It should provide information on cases disaggregated by factors such as race and age of the victim, and on cases that have not been pursued.

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- ¹ Health care for victims of sexual violence is authorised to be free in Cambodia. Informal fees relate to costs imposed by health care providers without any legal basis.
- ² Five Year Strategic Plan 2009-2013 - Neary Rattanak III, Ministry of Women's Affairs, September 2009, p. 5.
- ³ Statistics provided by Brigadier-General Chiv Phally, Deputy Director of Anti Human Trafficking and Juvenile Protection Department, Ministry of Interior, Phnom Penh, 1 December 2009.
- ⁴ NGO Joint Statistics – Database report on trafficking and rape in Cambodia 2007-2008, ECPAT Cambodia, NGO CRC, and Cosecam, 2009. It should be noted that all victims in the report are female.
- ⁵ In neighbouring Thailand (pop. 67.8 million) 5,308 rapes were reported in 2006 (source: UNODC, the Tenth United Nations Survey of Crime Trends and Operations of Criminal Justice Systems). In March 2010, Amnesty International is releasing two other reports about rape of women and girls, in the Nordic countries and in Uganda. Sweden (pop. 9 million) recorded 3,703 reported rapes in 2006 (ibid), while in Uganda (pop 31.6 million) there were 1,536 reported rapes in 2008 (Ugandan Bureau of Statistics).
- ⁶ Annual Report 2009, Adhoc, February 2010.
- ⁷ See for example, Violence And Exposure To Hiv Among Sex Workers In Phnom Penh, Cambodia, USAID, March 2006.
- ⁸ "Gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men." Article 1, General Recommendation 19 of the Committee on the Elimination of All Forms of Violence against Women, Committee on the Elimination of Discrimination against Women, General Recommendation 19, Violence against women (Eleventh session, 1992), U.N. Doc. A/47/38 at 1 (1993), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 243 (2003).
- ⁹ Rape of women, including marital rape, Committee on Equal Opportunities for Women and Men, Council of Europe, September 2009.
- ¹⁰ It's in our hands - Stop violence against women, Amnesty International, 2004, pp 22-23.
- ¹¹ See for example the Preamble of the Convention on the Rights of the Child.
- ¹² In two cases, victims asked specifically that Amnesty International use their names and details. Both said using their names would empower them to address the injustice they felt they were facing, and to become advocates against sexual violence against women in Cambodia.
- ¹³ *Raquel Marti de Mejia v. Perú, Case 10.970, Report No. 5/96, Inter-Am.C.H.R., OEA/Ser.L/V/II.91 Doc. 7 at 157 (1996); Aydin v Turkey judgment of 25 September 1997 (Application 57/1996/676/866) European Court of Human Rights, paragraph 86.*
- ¹⁴ Decision No. 092/003/2007, 10 July 2007. The Constitutional Council was asked to consider whether Article 8 of the 2002 Law on Aggravating Circumstances for Felonies was unconstitutional as it seemed to violate article 37 of the CRC. The Constitutional Council ruled that the article was constitutional as there was no intent to apply it to under 18s and remove the protection provided to juvenile offenders by earlier domestic law, and that judges should continue to consider the age of an offender in accordance with the CRC.
- ¹⁵ Committee on the Elimination of Discrimination Against Women, General Recommendation 19, Equality in Marriage and Family Relations (11th session, 1992), UN Doc. HRI/GEN/1/Rev.1, paras. 24(b) and 24(i), respectively.
- ¹⁶ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1981, Article 2.
- ¹⁷ Ibid. Article 5 (a).
- ¹⁸ *General Recommendation 19, Equality in Marriage and Family Relations (11th session, 1992), UN Doc. HRI/GEN/1/Rev.1, para 1 (11th session, 1992).*
- ¹⁹ Ibid. Article 9.
- ²⁰ Beijing Platform for Action, Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995, UN Doc A/CONF/177/20/Rev.1, para. 124(l).
- ²¹ UN Commission on Human Rights, Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, UN Doc. E/CN.4/1996/53, 5 February 1996, sec. VII, recommendation g.

22 Amnesty International defines "poverty" as living in situations in which a low income level is exacerbated by deprivation, exclusion, insecurity, and lack of voice. This broad definition of poverty better reflects the descriptions used by people living in poverty, and it accords with the definition used by the UN Committee on Economic, Social and Cultural Rights. The UN Committee on Economic, Social and Cultural Rights has defined poverty as 'a human condition characterised by the sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights. While acknowledging that there is no universally accepted definition, the Committee endorses this multi-dimensional understanding of poverty, which reflects the indivisible and interdependent nature of all human rights.' E/C.12/2001/10, 10 May 2001. However, in the context of the semi-structured interviews for this report, AI tried to make a basic distinction between poor and very poor by asking the respondent or her family about the following informal economic indicators: if they owned land or not, if their house was of thatch, straw or wood, if the family owned a motorbike or a bicycle, possessed cattle, and if they often went hungry.

23 See for instance, Human Rights Committee, General Comment No. 31 on Article 2 of the Covenant: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. CCPR/C/74/CRP.4/Rev.6, 21 April 2004, para. 8.

24 Article 2(2) of the International Covenant of Civil and Political Rights.

25 For housing rights relating to this systemic bias against people living in poverty, please see for example Amnesty International, Rights Razed – Forced evictions in Cambodia (Index: ASA 23/002/2008), February 2008 and Losing ground – Forced Eviction and Intimidation in Cambodia, Cambodian Human Rights Action Committee, September 2009.

26 Human Rights and Law Enforcement: A manual on human rights training for the police (Professional Training Series No 5), OHCHR 1997, para 720.

27 UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by General Assembly resolution 40/34 of 29 November 1985.

28 One US dollar equals approximately 4,000 Cambodian riels. Both currencies are in use throughout the country.

29 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Adopted by General Assembly resolution 40/34 of 29 November 1985, para 4.

30 Ibid. para 16.

31 Such out-of-court payments are widespread, and explained below under Extra-judicial settlements – Samroh-samruol.

32 Police Chief Says No Need To Prosecute Officers, Cambodia Daily, Saing Soenthrith and Bethany Lindsay, 5 November 2009.

33 Police to investigate rape allegations against officer, Chrann Chamroeun, Phnom Penh Post, 9 November 2009.

34 Ibid. and Karaoke Rape Suspects Disappear Between Police and Court, Eang Mengleng, Cambodia Daily, 16 November 2009.

35 Police officer fired for alleged rape of teen, May Titthara and Tep Nimol, Phnom Penh Post, 1 February 2010.

36 See for example Somroh-somruel and violence against women, AusAID, International Women's Development Agency Inc, Banteay Srey, and ADHOC, 2008, and Out of Court Resolutions of Violence Against Women - Practices and Issues in Cambodia, Jo-Ann Lim, DanChurchAid/Christian Aid, Cambodian Defenders Project (CDP), ADHOC, and Cambodian Women's Crisis Center (CWCC) June 2009.

37 Judicial police support the criminal justice system and has a duty to control crimes, make arrests and collect evidence. They are under the control of the Prosecutor-General and under the supervision of prosecutors, who monitor the activities of judicial police. See for example CAMBODIA: Establishing an independent national human rights institution in Cambodia, Dr Lao Mong Hay, Asian Human Rights Commission, Hong Kong, Asian Legal Resource Centre, 2008.

38 A saen refers to an informal wedding ceremony.

39 WHO. Guidelines for medico-legal care for victims of sexual violence, Geneva, 2003; available at: <http://whqlibdoc.who.int/publications/2004/924154628X.pdf>.

40 Physical injuries are found in about one third of rapes. These injuries may affect the genitalia but many other parts of the body where force may be inflicted. It is important that a forensic examination take account of this. See WHO, *ibid.* chapter 2 and table 8 pp.51-52 and *passim*. It is also important to bear in mind that a rape does not necessarily involve penetration of the hymen, for instance because of anatomical hurdles in small children, where the perpetrator does not want to inflict the kind of pain deep penetration would entail.

41 Human rights groups Adhoc and Licadho were exempt from payment under an agreement with the Department of Health in Battambang, though some victims thought that the NGOs had paid for their examinations.

42 See for example Cambodian Corruption Assessment, USAID, 2004; Report of the Special Representative of the Secretary-General for human rights in Cambodia, A/HRC/7/42, February 2008; and Amnesty International, Cambodia: Submission to the UN Universal Periodic Review: Sixth Session of the UPR Working Group of the Human Rights Council, November - December 2009, (Index: ASA 23/005/2009), April 2009.

43 By end 2009, there were two female prosecutors, the Co-Prosecutor at the Extraordinary Chambers in the Courts of Cambodia, and the provincial Prosecutor in Kratie.

44 See for example Amnesty International, Cambodia: A risky business – defending the right to housing (Index: ASA 23/014/2008) September 2008, and Attacks & Threats Against Human Rights Defenders in Cambodia 2007, Licadho, September 2008.

45 Concluding comments of the Committee on the Elimination of Discrimination against Women: Cambodia; UN Doc. CEDAW/C/ KHM/CO/3, 25 January 2006, para 11.

46 The Penal Code will enter into force late 2010.

Several laws make up the Cambodian legal framework for rape cases. The most important are:

- 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, known as the UNTAC Law;
- 2010 Penal Code;
- Law on the Prevention of Domestic Violence and the Protection of Victims 2005;
- Law on Aggravating Circumstances of the Felonies 2001;
- Law for the Suppression of Human Trafficking and Sexual Exploitation 2008.

47 The 2008 Law on Suppression of Human Trafficking and Sexual Exploitation provides for a prison sentence of between five and 10 years for anyone who has sexual intercourse with a person aged less than 15 (Art. 42).

48 Violence against women, Licadho, 2007, p. 20.

49 Concluding comments of the Committee on the Elimination of Discrimination against Women: Cambodia, UN Doc. CEDAW/C/KHM/CO/3, 25 January 2006, para. 17.

50 Violence against women in Cambodia in 2006, Licadho, March 2007.

51 Summary record of the 705th meeting, Committee on the Elimination of Discrimination against Women, CEDAW/C/SR.705; 13 February 2006; para 28.

52 Speech at regional conference "Primary Prevention of Violence Against Women and Children: Focusing on Urban Youth ", 25-26 November 2009, Siem Reap, Cambodia.

53 See for example, In the Shadow: women, power and politics in Cambodia, Kate Frieson, Centre for Asia-Pacific Initiatives, 2001, p 2.

54 Rapid assessment of the impact of the financial crisis in Cambodia, ILO Asia-Pacific Working Paper Series, March 2009.

55 More than White Cloth? Women's Rights in Cambodia, Nakagawa Kasumi, Cambodian Defenders Project, 2006, p. 23.

56 A Secretary of State at the Ministry of Interior told Amnesty International that 3,000 of a total of 60,000 police in the country are women. This number includes police who do not work with victims of crime, but with administrative duties. Out of the National Assembly's 123 members, 20 are women, a marked increase over the previous legislature. According to the Gender Mainstreaming Action Plan of the Ministry of Justice (2009-2013), in 2008 there were 21 female judges to 167 male;

one female prosecutor to 32 male; 103 female court clerks to 482 male.

57 See for example Rape – Attitudes and Solutions in Cambodia, Adhoc, 2004; Violence against women in Cambodia in 2006, Licadho, March 2007.

58 Violence against Women - a Baseline Survey, Ministry of Women's Affairs, 2006, p. 7.

59 Constitution of the Kingdom of Cambodia, 1992 (as amended 1999), Article 46.

60 The same word is used for the widespread derogatory term for sex worker, *srey khouch*, spoiled woman.

61 Preamble para 6, The UN General Assembly Declaration on the Elimination of Violence against Women, UN Doc A/RES/48/104 23 February 1994.

62 Letter of the Prime Minister of the Kingdom of Cambodia to endorse the National Action Plan to Prevent Violence on Women, Ministry of Women's Affairs, July 2009.

63 The UN Millennium Development Goals are internationally agreed targets to reduce poverty. Goal 3 reads "Promote Gender Equality and Empower Women."

64 One indicator towards the "gender equity" goal in the NSDP is measuring the awareness that violence against women is a criminal offence. In 2005, 4.5 percent of the population was aware, according to the NSDP; in 2010 the target is 25 percent, and by 2015, 100 percent.

65 This objective is one of eight "overall targets" within Millennium Development Goal 3: "Promote Gender Equality and Empower Women addressing violence against women".

66 See Achieving the Cambodia Millennium Development Goals 2005 Update, Ministry of Planning, pp.7-9.

67 See UNDP Cambodia: How does Cambodia measure up now? <http://www.un.org.kh/undp/CMDGs/How-does-Cambodia-measure-up-now.html>, 12 February 2010.

68 *Neary* is a formal word for female or woman, while *rattanak* means gemstone. The choice of "gemstone" is a reference to the traditional Cambodian saying "Men are gold, women are cloth", which implies the lower value of women, and the fact that they can be stained, whereas the men cannot. *Neary rattanak* replaces "cloth" with "gemstone", highlighting they are of equal value. The strategy's name was introduced by Mu Sochua, Minister of Women's and Veteran's Affairs 1998-2004.

69 See for example Amnesty International, Cambodia: Submission to the UN Universal Periodic Review: Sixth session of the UPR Working Group of the Human Rights Council, November - December 2009 (Index: ASA 23/005/2009), April 2009, and Amnesty International, Cambodia: A Risky Business – Defending the Rights to Housing (Index: ASA 23/014/2008), September 2008.



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BREAKING THE SILENCE

SEXUAL VIOLENCE IN CAMBODIA

Reports of women and girls being raped are on the increase in Cambodia. Amid a culture of impunity, victims have limited access to justice and the acute lack of medical services and psychosocial support reflects social attitudes to rape and other sexual violence.

Breaking the silence: Sexual violence in Cambodia exposes how corruption and discrimination within the police and courts prevent survivors of rape from receiving justice and the necessary assistance. Women and girls who try to report these crimes are met with extortion, ignorance and disbelief from officials.

Amnesty International has found that Cambodian society, like many around the world, exhibits deeply engrained gender discrimination that stigmatizes survivors. Perpetrators of sexual violence, most of whom remain at large, face limited, if any, social sanction.

With this lack of social support for victims, it is crucial that the Cambodian government break the silence and publicly condemn sexual violence, to show that these serious crimes will not be tolerated and to acknowledge the pain of the survivors.

With a new Penal Code entering into force in late 2010, Amnesty International calls on the Cambodian government to firmly address inadequate law enforcement, extrajudicial settlements, weak prosecution and widespread corruption in cases of suspected sexual violence.

This report is released as part of Amnesty International's global Stop Violence against Women campaign.

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