

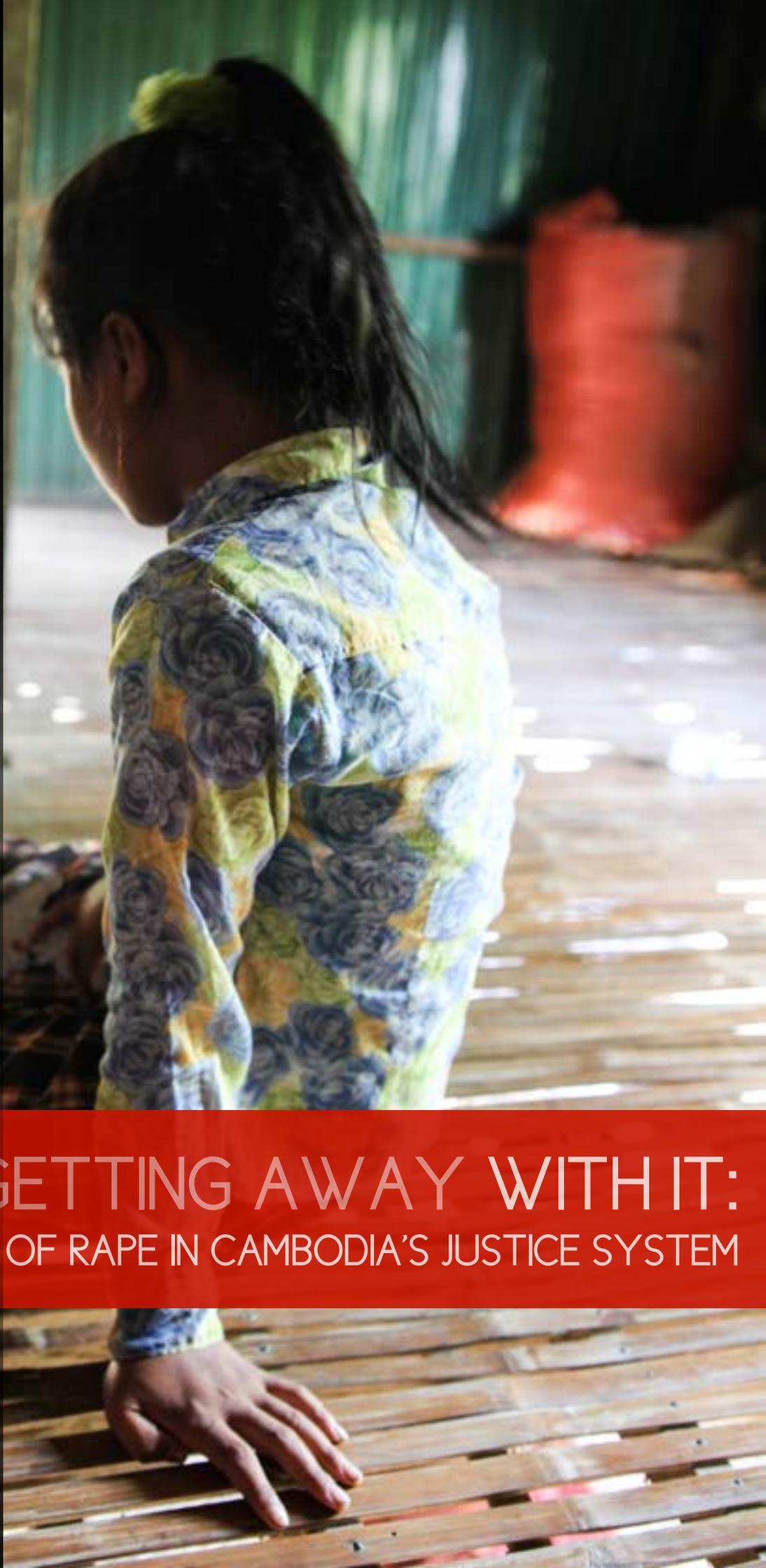
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LICADHO

CAMBODIAN LEAGUE FOR THE
PROMOTION AND DEFENSE OF
HUMAN RIGHTS



GETTING AWAY WITH IT: THE TREATMENT OF RAPE IN CAMBODIA'S JUSTICE SYSTEM

A report issued in
November 2015



GETTING AWAY WITH IT:

The Treatment of Rape in Cambodia's Justice System

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LICADHO

CAMBODIAN LEAGUE FOR THE PROMOTION
AND DEFENSE OF HUMAN RIGHTS

CAMBODIAN LEAGUE FOR THE PROMOTION AND DEFENSE OF HUMAN RIGHTS (LICADHO)

LICADHO is a national Cambodian human rights organization. Since its establishment in 1992, LICADHO has been at the forefront of efforts to protect civil, political, economic and social rights in Cambodia and to promote respect for them by the Cambodian government and institutions. Building on its past achievements, LICADHO continues to be an advocate for the Cambodian people and a monitor of the government through wide ranging human rights programs from its main office in Phnom Penh and 13 provincial offices.

MONITORING & PROTECTION



Monitoring of State Violations & Women's and Children's Rights:

Monitors investigate human rights violations perpetrated by the State and violations made against women and children. Victims are provided assistance through interventions with local authorities and court officials.

Medical Assistance & Social Work:

A medical team provides assistance to prisoners and prison officials in 14 prisons, victims of human rights violations and families in resettlement sites. Social workers conduct needs assessments of victims and their families and provide short-term material and food.

Prison Monitoring:

Researchers monitor 18 prisons to assess prison conditions and ensure that pre-trial detainees have access to legal representation.

Paralegal & Legal Representation:

Victims are provided legal advice by a paralegal team and, in key cases, legal representation by human rights lawyers.

PROMOTION & ADVOCACY

Supporting Unions & Grassroots Groups and Networks:

Assistance to unions, grassroots groups and affected communities to provide protection and legal services, and to enhance their capacity to campaign and advocate for human rights.

Training & Information:

Advocates raise awareness to specific target groups, support protection networks at the grassroots level and advocate for social and legal changes with women, youths and children.

Public Advocacy & Outreach:

Human rights cases are compiled into a central electronic database, so that accurate information can be easily accessed and analyzed, and produced into periodic public reports (written, audio and visual) or used for other advocacy.

For more information contact:

Dr. Pung Chhiv Kek, President
LICADHO
#16, Street 99
Phnom Penh, Cambodia
Tel: (855) 23 72 71 02/216 602
Fax: (855) 23 727 102/217 626

E-mail: contact@licadho-cambodia.org

Web: www.licadho-cambodia.org Facebook: www.facebook.com/licadho Twitter: www.twitter.com/licadho

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A young rape victim at home



A LICADHO monitor and client visit the police station

Introduction



In 2013 the UN published research on the prevalence of Cambodian men's use of violence against women. It found that out of a sample of 1,812 men, 369 (20.4%) admitted to having committed rape. This figure included partner, non-partner and gang rape. Of that 369, nearly half had raped more than once and over 20% had raped more than one victim.¹ These figures indicate that rape is a grave and widespread problem in Cambodia and yet despite this, there is a severe shortage of all kinds of services for rape victims with law enforcement being particularly inadequate.

Within Cambodia there is no reliable, centralized system for recording data about reported rape cases or tracking their outcomes. The lack of such data makes it easy to ignore the scale of the problem and the extent of the current shortcomings in the treatment of rape cases. While there is no replacement for such a centralized system, LICADHO's work investigating rape cases and supporting victims means that the organization is well-placed to examine and comment on the current treatment of rape cases in Cambodia.

This report is based on an analysis of data on rape cases gathered by LICADHO during the last three years.

It reveals serious and systemic flaws in the prosecution of rape cases resulting in a disturbingly low number of convictions. The reasons for this are varied but amongst the most significant factors are the high numbers of cases settled by financial compensation, the widespread negative impact of corruption amongst the police and judiciary, poor understanding and application of the law by judges, and the deleterious effect of discriminatory attitudes towards women, and in particular towards women's sexuality.

It is particularly disturbing to note that, while over 11 years have passed since LICADHO's last report on rape,² the issues uncovered have not changed and there seems to have been very little improvement in the situation. LICADHO recognizes that the nature and extent of the problems present many challenges and that change will not be easy. But the lack of effort to achieve change, and the apparent lack of will, are deeply disturbing. This report ends with a series of practical recommendations to the Cambodian government which, if followed, will enable the process of change to begin.

¹ Partners for Prevention, Why Do Some Men Use Violence Against Women and How Can We Prevent It? Quantitative Findings from the UN Multi-country Study on Men and Violence in Asia and the Pacific, September 2013, p.40-43, <http://www.partners4prevention.org/node/515>.

² LICADHO, Rape and Indecent Assault, March 2004, <https://www.licadho-cambodia.org/reports/files/48Rape%20briefing%20report%202003%20English.pdf>.



Study methods



LICADHO has been investigating rapes of women and children for over 20 years. The organization currently has a Phnom Penh office and 13 provincial offices. All offices investigate cases of rape of children under 18 and women of 18 and over. Cases come to LICADHO from a variety of sources including direct requests from victims or victims' relatives, referrals by other NGOs, and media reports. As part of their investigations LICADHO's monitors interview victims and witnesses and record the facts of each case, contact the police and prosecutors to ensure investigations are carried out, provide legal services to clients or refer them to other organisations that provide such services, provide first aid and basic material support, refer clients to shelters where necessary and follow up cases with authorities with the aim of ensuring that all steps are taken to investigate and prosecute the perpetrator.

When a case is opened, information about the case is

recorded in a central database. Periodically, monitors send progress reports which are entered into the database, and when the case ends, information is recorded about how the case was closed. Information about all rape and attempted rape cases opened by LICADHO in 2012, 2013 and 2014 forms the basis of this report. Because the report is based only on cases directly investigated by LICADHO, it should not be considered a comprehensive review of all reported rape cases in Cambodia.

To ensure that information about the cases included in the report was up-to-date and comprehensive, between June and August 2015, LICADHO monitors were asked to provide detailed information about their case lists from that period. As part of that process they were interviewed about each case and also asked to share their more general experiences of working on rape cases. These experiences also contributed to the contents of this report.



Overview of all cases



Between the beginning of 2012 and the end of 2014 LICADHO investigated 225 cases of rape or attempted rape involving women of 18 or over, and 537 cases involving children under 18. Of the 225 adult rape cases, 131 are closed and of the 537 child rape cases, 293 are closed.³ This report will focus on the outcomes of closed cases but it is worth pausing to review the main trends in all of the cases opened during the period as they reveal some of the difficulties surrounding the reporting and prosecution of rape.

Firstly, the number of cases that remain open is striking and gives an indication of how slowly reports of rape are processed by the criminal justice system. LICADHO's monitors commonly report that police and court officials respond to requests for updates by saying that they are still investigating when in fact there is no evidence that anything is being done; as a result many cases simply never reach any kind of resolution. In some of these cases, the reason they remain open and without resolution is that the suspects run away. In 52 of the 330 cases that are open on LICADHO's database, the most recent information is that the suspect has escaped. Often the circumstances of the escape are not known but

LICADHO's monitors report that it is usually the result of a failure by police to respond to reports by victims, and in some cases, of suspects being tipped off by police that a claim has been made against them. In some of these cases, police use the rape complaint as an opportunity to extort money from the suspect. In others, the suspect is allowed to run away because he knows the police or is in a position of power.

The high number of rapes of victims under 18 compared to victims of 18 and over is also notable. Of the victims under 18, 58 (10%) were under 6, 181 (32%) were 6-11 and 328 (58%) were aged 12-17.⁴ The figures do not necessarily mean that there are fewer rapes of adult women than of children - adult women may be reluctant to report for fear of being blamed or rejected by their husbands and stigmatised by neighbours. But by themselves, the numbers of child rapes, including rapes of children under 12, are high and draw attention to the need for services within the justice system specially designed to meet the needs of children.⁵

A review of all cases opened during the period also raises questions about the cases that are missing. Out of the total of 537 cases involving children, only 28 of the

³ Not all of the closed cases have been included in the analysis of outcomes. Eight cases which are closed on the database but for which we were not able to obtain clear or sufficient information about how the case ended were left out of the analysis.

⁴ The total number of victims was 567 as some of the cases involved more than one victim.

⁵ The details of such services are beyond the scope of this report but have been covered comprehensively in a recent Hagar/UNICEF report. Dr J.K. Reimer, *A System Just for Children*, January 2015 http://www.unicef.org/cambodia/A-System-Just-for-Children_FINAL_Jan-2015.pdf

Escaped suspects

A 15-year-old girl was the victim of an attempted rape by her father, who was a soldier. At first, the victim told the district police and her father's commanding officer about the attempted rape. Rather than allowing the police to arrest the suspect, the commanding officer kept him in the military barracks. The victim then came to LICADHO for help and monitors went to the provincial police to ask them to arrest the suspect. By then, however, the commanding officer had allowed the suspect to run away. He remains at large.

A 15-year-old girl was raped by a neighbour one night when she left her house to go to the toilet. When she informed the local police station about what had happened to her, the police told the suspect that the victim had made a complaint against him and that unless he gave them some money they would arrest him. The suspect paid the police and they allowed him to run away. The case is proceeding through court but the whereabouts of the suspect are unknown.

victims were boys. This very low number almost certainly indicates under-reporting by male victims and is perhaps unsurprising given the social stigma attached to being a male rape victim, stigma that is no way reduced by the treatment of boy victims by the justice system. LICADHO monitors report that police tend not to believe the accounts of boys who have been raped and that some even laugh at them when they describe their experience. Where they have been sent to hospital for rape testing, doctors do not know how to examine them. Where cases do go to court, it is common for prosecutors and judges to treat them as indecent assault because of the lack of conclusive evidence of rape in the medical certificate and because many of them simply do not believe that male rape happens.

Finally, in all the rape cases opened during the three-year study period, not one victim is recorded as being a sex worker. The evidence that exists indicates that sex workers all over the world are extremely vulnerable to rape;⁶ a 2010 study of rape in Cambodia by Amnesty International also contains evidence that rape of sex workers is high but that levels of reporting are very low.⁷ That study found that one of the reasons for not reporting was fear of further violence or rape at the hands of the police. Whilst it is possible that some sex workers have withheld information from LICADHO about their work, it is unlikely to be many. The total absence of cases involving sex workers from LICADHO's database indicates that there remains great reluctance to report, even to NGOs, and that this extremely vulnerable group is severely underserved by the justice system.



A policeman investigating a case gathers evidence

⁶ Shannon et al, A systematic review of the correlates of violence against sex workers, *American Journal of Public Health*, May 2014, Volume 104(5), e42-54, <http://www.ncbi.nlm.nih.gov/pubmed/24625169>.

⁷ Amnesty International, *Breaking the Silence – Sexual Violence In Cambodia*, 2010, p.18 http://menengage.org/wp-content/uploads/2014/06/Breaking_the_silence_-_Sexual_violence_in_Cambodia_FINAL.pdf.

CATEGORIES OF CLOSED CASES

The analysis of closed cases involved first allocating them to three broad categories: those which ended with a prosecution for rape and a prison sentence compliant with the requirements of the Criminal Code;⁸ cases that ended at some point before trial; and cases that went to trial but which ended without a conviction or with a conviction that was dubious. This report will look in detail at cases falling within the latter two categories.

The second category of cases includes those which ended with the payment of compensation from the suspect to the victim, cases which ended with marriage between the suspect and the victim, cases of rape inside marriage, and cases where the victim dropped the criminal complaint, for example because the suspect was a relative or a person with power and influence.

The third category of cases includes those where there was a conviction but the sentence was wholly or partly suspended, cases where the perpetrator was convicted of indecent assault instead of rape, and cases where there was a conviction but the sentence was shorter than prescribed by the Criminal Code. This category also includes a small number of cases where the suspect was found innocent. In many of these cases, there was no concrete evidence that the judgment was flawed but in some, the circumstances were such that our monitors felt that the finding of innocence was probably the result of corruption.

The decision about whether a case fell into the first or third category, that is whether a conviction and sentence was appropriate or flawed, was based on information about the facts of the case gathered during investigation by LICADHO monitors. There may have been legitimate reasons, of which LICADHO was unaware, for judges reaching the decisions they did, however, in many cases, LICADHO monitors attended the trial and could perceive no such reasons.

⁸ Article 239 of the Criminal Code sets out the elements of rape and states that it is punishable by five to 10 years' imprisonment. Articles 240 to 244 list the aggravating circumstances to the charge of rape. The articles state that where there are aggravating circumstances offence is punishable with seven to 15 years' imprisonment.



A policeman visits the house of a rape victim

OUTCOMES OF ALL CLOSED CASES

Outcomes of LICADHO closed rape cases involving women and children, 2012-2014

Out of the total of 424 closed cases involving both women and children, 147 (35%) ended with a prosecution and an appropriate sentence, 136 (32%) ended before trial, and 141 (33%) ended with a trial followed by a flawed conviction or an acquittal.

Before analysing these results further, it is worth noting that the outcomes recorded by LICADHO are likely to be more positive than the outcomes of all rape cases in Cambodia. Many victims simply do not report at all and, of those that do, many do not have any support. Where LICADHO (or other NGOs) become involved and are able to help the victim and push the police and the courts to pursue the case, the likelihood of achieving a satisfactory outcome is higher. For example, LICADHO's clients often report that before the organisation becomes involved

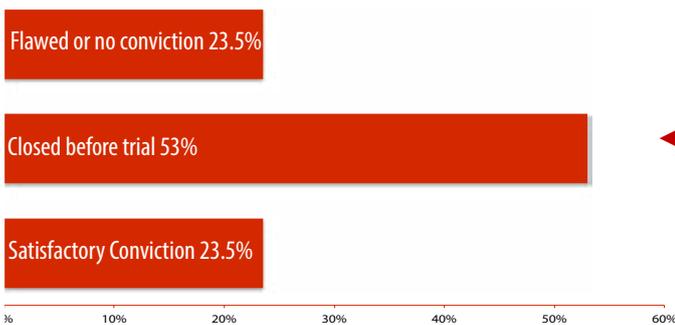


in their case, the police are unwilling to help them or demand payment to investigate their cases; if they have taken the case to court, court staff also demand illegal payment before they will take any action. Once LICADHO becomes involved, however, the police and court staff tend to change their attitude and at the very least, do not demand payment. Many clients report, that had LICADHO not become involved in their cases, they would have given up.

DIFFERENCES BETWEEN CASES INVOLVING WOMEN AND CHILDREN

When the outcomes of cases involving women of 18 and over and children under 18 are analysed separately, some striking differences emerge.

Outcomes of LICADHO rape cases involving female victims of 18 and over, 2012-2014



In cases involving women, the distribution between the three categories is as follows: 31 out of the total of 131 cases (23.5%) ended with a prosecution and proper sentence, 69 out of 131 cases (53%) ended before trial and 31 out of 131 cases (23.5%) ended with a trial at which there was a flawed or no conviction.

Outcomes of LICADHO rape cases involving child victims under 18, 2012-2014

In cases involving children, 116 out of the total of 293 cases (39.5%) ended with a prosecution and proper sentence, 67 out of 293 cases (23%) ended before trial and 110 out of 293 cases (37.5%) ended with a trial at which there was a flawed conviction or an acquittal.



Cases involving children have a higher percentage of category one outcomes, that is, outcomes where there is a conviction for rape and an appropriate sentence (39.5% compared to 23.5%). A higher number of cases involving adult women fall into category two, cases that never reach trial (53% compared to 23%).

The reasons for this are unlikely to be straightforward but they may arise at least in part from social expectations about women's behaviour. LICADHO's monitors report that when questioned by police or court officials, the behaviour of adult women is often scrutinised indicating an attitude that it is their responsibility not to do anything that might put them at risk of rape. Younger children are regarded as having less agency and are therefore less likely to be blamed for their behaviour. When women are subjected to this kind of questioning, with its implication of blame, it is less likely that they will want to pursue the case to its conclusion. Moreover, it is probable that if judges share the attitudes described, that women are in some way at fault for being raped, they are less likely to make a conviction.

There is also a second, more practical reason why cases involving adult women end before trial. As will be described below, many such cases end with a payment of money from the suspect to the victim in return for the victim dropping the case. These payments are often negotiated by police, prosecutors or judges and after the victim drops the complaint, the official involved closes the criminal case. Where the victim is over 15 (the legal age of sexual consent), it is easier for police and court officials to bring the criminal case to an end by stating that the victim admitted that they had consented to sex and that the suspect therefore has no case to answer. But if the victim is under 15, according to law she is not capable of giving consent and it is much harder for police and court officials to find a reason to drop the criminal case.

Unwillingness to report

An 11-year-old girl was raped by a 54-year-old neighbour. He threatened that he would kill her if she told anyone what he had done. The girl's family found out what had happened to her but decided to take no action. LICADHO heard about the case from another source and contacted the family to ask if they wanted any support. The family said they did not want to do anything as they had no faith in the legal process. Furthermore, they were worried that the suspect would take revenge if they reported him and that as they lived in the countryside, far from the police, no one would help them. They said that they were reasonably well off financially and therefore did not want to make a claim for compensation.

The feet of a young rape victim

Corruption



Below, the category of cases which ended before trial and the category of cases which ended with a flawed conviction or an acquittal will be examined in more detail. Each of these categories covers cases which came to an end in a number of ways and for a variety of reasons. Despite the variety, there is a common theme uniting many of the case outcome types: corruption. From cases which end with compensation agreed at the local police station to cases that go all the way to trial, corruption is a feature.

The number of cases for which LICADHO has concrete information about corrupt payments to officials is low. There are several reasons for this: in many cases, the victim knows nothing about it as the negotiation and payment takes place privately between the suspect and the official; in other cases the victim is involved in the negotiation, but the negotiators swear them to secrecy and tell them that they will be prosecuted if they reveal the information;⁹ where the victim is a LICADHO client, it is common for the negotiator to specifically warn them not to tell LICADHO.

Despite this, LICADHO's monitors, some of whom have 20 years' experience working in the field, have often received information about corruption from victims and other sources at court or elsewhere. All of them stated that in their experience corruption is rife and that at every stage of a case where there is an interaction between a victim and a public official, there is a possibility that there will be some kind of corrupt transaction.

Because of its endemic nature, corruption will not be treated as a standalone topic in this report. Instead, its role in each of the different types of case outcome will be explored separately. Some of the cases in which our monitors have received concrete information are described below and conclusions about the extent, nature and effects of corruption are drawn from those cases as well as monitors' broader experience.



A Cambodian police station

⁹ This is not an idle threat. Under article 605 of the Cambodian Criminal Code (2009) delivery of bribes to a public servant is punishable with imprisonment of five to 10 years.



A LICADHO monitor interviews a young rape victim

Settlement by compensation



The largest number of cases falling within the category of those which ended before reaching trial are those which were settled by compensation. In 72 of the 424 closed cases (17%), the victim received a compensation payment from the suspect in return for dropping their complaint. 36 of the cases involved women of 18 or over (27% of the total of 131 cases involving women) and 36 of the cases involved children under 18 (12% of the 293 cases involving children). Looking at cases involving women and children together, of the 72 cases, 43 settlements were negotiated by the police - police of all types were involved including commune, district, provincial and even anti-human trafficking police. In some cases, the victims themselves stated from the outset that they wanted to negotiate a compensation settlement and did not want to go to court but it was much more common for the police to initiate negotiation between the victim and suspect.

Fewer cases are negotiated in court, mainly because if police think there is a chance of settlement, they will hold onto a case until the negotiation succeeds, but also because it is more difficult to close a criminal case once it has been sent to court. Of the 72 cases, monitors had information that six cases were negotiated by the prosecutor and three by the investigating judge. The remaining 20 cases were either negotiated without an intermediary or there is no information about who was involved in the negotiation.

CORRUPT PAYMENTS TO OFFICIALS

All monitors said that they believed that almost 100% of cases settled by compensation involved a corrupt payment

to the official involved, either from the suspect or from the victim by taking a cut of their compensation payment. Information about this is difficult to gather as police and court officials are very fastidious about not leaving any written evidence of their corruption. Occasionally LICADHO's monitors have seen the documents used to confirm compensation payments made by suspects to victims. They make no mention of the criminal case and simply state that one person has agreed to pay money to another and that the agreement is legally binding. Where the compensation was negotiated by the police, victims also report having to thumbprint a document stating that they have withdrawn the criminal complaint against the suspect. Where cases have been negotiated in court, some victims report having to sign a new witness statement saying that they consented to sex and so were not raped. This document enables the prosecutor or judge to close the case without pursuing the prosecution.

Despite the above, in a small number of cases, clients do inform LICADHO's monitors, or monitors receive information about corrupt payments from other sources. In 11 of the cases negotiated by the police, LICADHO monitors received concrete information that the police received money in return for brokering the deal. In one of those cases, the suspect also paid money to the prosecutor to ensure that he would not be charged. In two of the cases where the prosecutor negotiated the deal, victims confirmed that the suspect also paid money to the prosecutor. In two other cases that were negotiated between the parties, LICADHO monitors received information that the suspects paid money to the investigating judge to drop the cases against them.

Information about the amount of money paid to officials is limited but in some of the cases where police have taken a cut of the victim's compensation money, the victims have informed LICADHO's monitors. The amounts vary widely. In one case where the victim expected to receive \$500, the police took \$15. In another, the suspect agreed to pay the victim \$2,300 but the victim only received \$2,100 and the police kept the other \$200. In two other cases, where the victims expected to receive \$1,200 and \$1,750 respectively, the police took \$500. In one final case, the victim negotiated a payment of \$4,000 but the police persuaded her to take \$2,000. The victim told LICADHO monitors that the police kept the other \$2,000. For the 2012-2014 period, LICADHO's monitors do not have any information about the amounts of money paid to prosecutors or judges for negotiating compensation agreements. However, based on previous experience, there was a consensus among the monitors that the minimum amount is \$500 and that where the suspect is rich, it is often thousands of dollars.

WHY VICTIMS SETTLE

Pursuing a criminal case through the courts is a very unattractive prospect for many victims. One of the main reasons for this is that many more people will hear about the case if it goes to court. Settling early, and in the police station, means that the victim will have a much higher chance of keeping the case a secret. Cambodian society is one which places a very high value on women's sexual modesty and virginity and the burden on them to maintain their virtue is a heavy one. Loss of virginity, even if it is through rape, may make girls unmarriageable in the eyes of those around them. It is therefore not unreasonable for women and girls to want to ensure that very few people hear that they have been raped. In some cases, LICADHO clients have said they do not want to file a criminal complaint because it is time for them to get married and they do not want anyone to hear about the case. In one case, the victim did file a criminal complaint but later dropped it when she became engaged as she did not want her fiancé to know that she had been raped.

The second main reason for settling a case with compensation is the cost and practical difficulty of pursuing a case through the courts. This takes several forms. For very poor clients, the cost of simply travelling back and forth to court makes pursuing a criminal case difficult. Moreover, most Cambodians are well aware of the corruption of the judicial system and know that despite the fact that no payment is required under the law, they are likely to have to make informal payments at every stage of the case if they want it to proceed. Furthermore, as mentioned above, cases can often take years to reach a conclusion and the longer they drag on the more likely victims are to become disillusioned with the process and decide that they want to settle.

Victims are also aware that the chances of getting

the outcome they want are slim. Firstly, if the suspect has any money the likelihood is that he will not be properly punished; secondly, even if the case goes to trial and the suspect is imprisoned and ordered to pay civil compensation, the legal mechanisms for enforcing payment of that compensation are complicated and will require further corrupt payments to the courts if they are to have any chance of succeeding. All of the above issues are well-known to police and are often used by them to persuade victims to settle. For many victims, especially those that are poor, settling early is a rational decision as a compensation payment is the best justice they can hope for in the Cambodian system.

One final factor influencing victims' decisions about whether to settle is the power and influence of the suspect. There are some cases in which the suspect is wealthy and has powerful friends or works for the police or military. In these cases victims may feel forced into settling by the explicit or implicit threat that the suspect will take retaliatory action against them if they don't.

For example, two cases in which the suspect was a policeman and another case in which the suspect was the son of a policeman were settled with compensation negotiated by police. In one of these cases, the negotiation took place in the police station where the suspect worked and was facilitated by the suspect's colleagues. The police station was located very close to the house of the victim. After the compensation was paid the only action taken by the police against the suspect was to move him to another police station.

In another case, the victim was a 12-year-old girl. Her father was a soldier and the suspect was his commanding officer. The family lived on land next to the military base. Initially the family took the case to court but later dropped it as they were worried they would lose their land and that the father may lose his job. The monitor in this case thinks that the victim's family probably received compensation. But once the family dropped the case it was very difficult to get any more information from them and it is possible that they received nothing at all.

COMPENSATION PAYMENTS AND THE LAW

Cambodian law allows any victim of a criminal offence involving personal injury to make a civil complaint for damages at the same time as taking criminal proceedings. It is the civil claim that is brought to an end by payment of compensation – although in cases settled by the police, this claim is theoretical as the victim has not yet filed either complaint at court. Settling a civil claim out of court is not illegal and is common practice in many countries with well-functioning justice systems. However, in the cases discussed in this report, the settlement is negotiated on the understanding that the victim will withdraw the criminal complaint as well as the civil complaint and this is not permitted under Cambodian law.



The costs of settlement

A 9-year-old girl was raped five times by a 23-year-old neighbour. The victim's family reported the case to the commune police who negotiated a settlement with the suspect. The victim's family agreed that they would receive \$1,200 and drop the criminal complaint. When they finally received the money from the police, they only received \$700. The police said that they took the money as payment for facilitating the agreement, for transport costs, and also for payment to other police departments to ensure that they would not take up investigation of the case.

A young rape victim at home



The price of poverty

A 13-year-old girl was the victim of attempted rape by her 70-year-old neighbour. The girl's family reported the case to the district police but later decided they did not want to take the case to court. They were very poor and lived 80 km from the court and could not afford the costs of travelling back and forth. They therefore negotiated a settlement of \$300 with the help of the district police.

An adult rape victim at her home

Under the Cambodian Code of Criminal Procedure (CCCP) withdrawal of a civil complaint does not suspend criminal proceedings.¹⁰ The same legislation explicitly prohibits police officers from preventing a criminal case from proceeding when a victim has withdrawn a complaint or if there has been a negotiated settlement between the victim and the suspect, and police officers are potentially criminally liable if they do so.¹¹ Receipt of bribes by public servants¹² and judges¹³ is also prohibited under the Criminal Code and the Anti-Corruption Law.¹⁴ But these provisions are seldom if ever enforced.

If a case does reach court, the civil and criminal claims are dealt with by the same judge and in the same proceedings which makes it easy for judges to negotiate a settlement of the civil claim and bring an end to the criminal claim at the same time. The provisions in the CCCP prohibiting police officers from preventing a case from proceeding in the event of a negotiated settlement

do not extend to judicial staff but provisions on receipt of bribes do. However, corruption cases against judges are rare.

IMPACT OF COMPENSATION PAYMENTS

The widespread use of compensation to settle rape cases is harmful in several ways. It implies that rape is not a criminal matter and that it is not serious enough to be dealt with by the courts. It also undermines the deterrent effect of the law: all Cambodians know that criminal matters can be resolved with money and as a result there is very little disincentive to commit serious crimes like rape. Finally, when cases are settled at the police station, the information about those cases goes no further. This means that data about reported rape cases is lost and that rape appears to be a much less widespread problem than it really is. As a result, the resources necessary to begin to tackle the issue remain seriously lacking.

Marriage of the victim to the suspect



In 7 (2.5%) of the cases involving children and 4 (3%) of the cases involving women, the victim ended up marrying the suspect. Whilst these cases make up a small percentage of the total, the fact that there are any at all ending in this way is shocking and disturbing.

The reason that marriage is seen by some as an acceptable outcome for rape victims seems to be the value placed on female virginity. Once a girl is no longer a virgin, in the eyes of much of Cambodian society, her value is gone and her future becomes a problem for her family, even if her virginity has been lost because she was raped. For some families, the way to solve the problem of a girl's unmarriageability is for her to marry the man who raped her. Many parents recognise that this is a bad choice but they feel that social attitudes give them no other option and that it is better for their daughters to be married to their rapists than to remain as unmarried rape victims. For them marriage is a way to save their daughters' honour and the honour of her whole family.

In fact, marriage between a victim and a suspect is extremely harmful in a number of ways. The choice of marriage diminishes the seriousness of the offence of rape and, as well as being a result of the idea that a girl's value lies in her virginity, it in turn perpetuates it. Moreover, it completely ignores the suffering of victims: on top of their initial trauma, victims are forced to enter

into a relationship with the person responsible for that trauma. Their suffering continues while their perpetrators go unpunished.

Where a marriage takes place, there is normally a payment from the suspect's family to the victim's family. This is not regarded as a compensation payment but rather as a type of bride price, something which is still very common in Cambodian society. In some cases, it seems that the marriage and the associated payment is negotiated by the families of the victim and the suspect without any intermediary but in most cases a public official is also involved and it is likely that the official also receives a payment from the family of the suspect. In three of the 11 cases mentioned above, the police helped negotiate the marriage and in all of them LICADHO's monitors heard that they received money. In one of those cases the suspect's family paid the police \$2,000 – the family was rich and the police told them they would send the case to court if they did not receive the money. In three cases it was the prosecutor who brokered the arrangement. LICADHO's monitors did not receive any information about payments in these cases. In one case the trial judge was party to the marriage negotiation and allowed the perpetrator to go free so that he could marry the victim. LICADHO's monitors heard from the victim that the suspect's family paid money to the judge.

¹⁰ Article 25, Cambodian Code of Criminal Procedure, 2007.

¹¹ Article 75, Cambodian Code of Criminal Procedure, 2007.

¹² Article 594, Cambodian Criminal Code, 2009.

¹³ Article 517, Cambodian Criminal Code 2009.

¹⁴ Article 35, Anti-Corruption Law, 2010.



From rape to marriage

A 14-year-old girl was gang raped by three men. One of the men was caught and brought to trial. Before the verdict was announced the families of the victim and perpetrator came to an agreement that the two would marry and that the perpetrator's parents would give a sum of money to the victim's family. They also gave money to the trial judge who convicted the perpetrator of rape, sentenced him to 18 months in prison and then suspended the whole sentence. The monitor involved tried to discourage the victim's family from going ahead with the marriage. The victim's mother replied that she didn't want her daughter to get married but that in the countryside it would be better for her daughter to be married and subsequently divorced than to remain unmarried with people knowing that she had been raped.

A young rape victim points out the place where she was raped



Rape inside marriage



In 10 of the 131 cases involving women over 18 (8%), women were raped by their husbands. In all of the cases the rape happened repeatedly and was part of a long-term pattern of violence and abuse by the husbands. But in only one of the cases was there a trial and a conviction; the other nine cases all ended with the couple getting divorced and with no prosecution. In those nine cases, the women either decided not to make a criminal complaint or they made a complaint but later withdrew it. The desire of the women to get a divorce and just get away from their husbands, rather than going to the effort of making a criminal complaint, is understandable. But given that the result of their choices is impunity for men who have committed violent sexual abuse, it is also very worrying.

If the women were to pursue a criminal complaint, however, it is likely that the outcome would be extremely unsatisfactory as the law relating to rape inside marriage, while recognising it as an offence, fails to treat it with appropriate seriousness. The Criminal Code definition of rape does not exclude rape inside marriage but nor does it specify that it is included. The Law on the Prevention of Domestic Violence, which is only 10 years old, recognises sexual aggression as a form of domestic violence but contains no provisions on penalties; it merely states that acts of domestic violence are punishable under the

Criminal Code. In practice this means that if rape inside marriage is prosecuted, the article of the Criminal Code which is used is Article 222 on violence committed by a spouse. The penalties for this offence are two to five years' imprisonment, considerably less than the five to 10 year penalty for rape. Indeed in the one case out of 10 in which there was a prosecution and conviction, the perpetrator was sentenced to only three years in prison with two years suspended.

Whilst the law does, albeit imperfectly, recognise rape inside marriage, social attitudes seem to be lagging behind and LICADHO's monitors commented that many police and judges still do not really believe that rape of a wife by a husband is possible. This attitude may also contribute to women's reluctance to pursue criminal complaints. For example, many women do report the rape and violence to the authorities but later withdraw their claims - in the nine cases mentioned, all of the women either informed the police or the commune chief about the rape and violence and those with legally registered marriages went to court to get divorced.¹⁵ Therefore it is often the case that authorities are fully aware of cases of rape inside marriage. Despite this, it is very unusual for police or authority figures to encourage or support women to press ahead with their criminal complaints.

¹⁵ Many couples have a traditional ceremony only and do not register their marriages legally. They therefore do not have a marriage certificate and do not need to go to court to get divorced unless there is a dispute over children or property.



A LICADHO monitor visits a client at her home in the countryside

No complaint filed or complaint dropped



The final group of cases¹⁶ falling under the category of those that ended before trial is that in which the victim decided not to make a complaint or did make a complaint but later dropped it without receiving compensation. The number of cases is small but the reasons behind the victims' decisions raise some important issues.

One of the main reasons is poverty. Of the closed cases, only two were dropped because the victims said that they simply could not afford to pursue the case but LICADHO monitors stated that they felt it was quite a common reason for victims giving up on their cases. They explained that it could be because the victims lived in remote rural areas and so could not afford to travel to the police station, let alone the court. In other cases, victims feel that they cannot afford the time. For example, in one of the closed cases, the victim was a garment factory worker in Phnom Penh. She was worried that if she took time off work to go to the police station and later to court, she would be fired. She was very poor and could therefore simply not afford to take the risk. She made this decision despite the fact that the man who had raped her was her colleague.

In other cases, particularly those which take place in provinces bordering Thailand, poverty has an impact in a different way. In three cases, the victims, having made a complaint, migrated to another province or across the border for work and as a result their complaint went no further. LICADHO monitors reported other cases in which they had lost touch with the victim and that the victim had probably migrated but that they could not confirm that information. In some cases where poverty is a factor, NGOs can help to a certain extent, for example with travel costs, but they do not have the resources to do so in any systematic way.

Another reason that victims drop cases is that they are pressured into doing so by their families because the suspect is a family member. There were six cases in which it was clear that this was the reason for the case being dropped, three cases in which the victim was 18 or over and three in which the victim was under 18. In these cases, it seems that there is a desire to protect family members and also a financial motivation if the suspect is a breadwinner for the family.

¹⁶ There are a few cases in the category of those that finished before trial that are not covered in detail here. In some of them the suspect ran away and the case was not pursued; in others the victim dropped the complaint but it is not clear why.

In some cases, there is evidence that the family at least took steps to send either the victim or the suspect away. But perhaps the most disturbing element of these cases is the failure of the authorities to continue to pursue the prosecutions. In one of the cases the decision not to take the case any further was made at the police station in full knowledge of the police. In two other cases, the suspect was already in pre-trial detention and was released by the prosecutor on the family's request. Whilst LICADHO's monitors received no information about corrupt payments in these cases, they stated that it was very unlikely that the prosecutors released the suspects without payment.

One final reason victims have for not being able to

pursue cases is disability, especially deafness or learning disability. Occasionally in such cases, NGOs are able to provide specialised help, such as interpreting services, but for the most part this does not happen. As a result victims may be unable to pursue their claims. In one case, the victim was a 30-year-old deaf woman and because she did not know sign language well, she relied on her sister to interpret for her. Her sister was a garment factory worker who initially helped her sister to make a complaint. However, because of the family's poverty and because they were able to get no other support, the victim's sister made the decision to drop the complaint. As in the case above, she felt she could not take the risk of taking the time off work necessary to support her sister's case.

Indecent assault



The third category of cases is that of flawed convictions and acquittals. Cases in which an original charge of rape was followed by a conviction for indecent assault make up the largest group in this category. Under article 246 of the Criminal Code, indecent assault is punishable by one to three years' imprisonment which is considerably less than for the offence of rape. In 47 cases involving children under 18 (16%) and seven cases involving women of 18 and over (5%), there was a conviction for indecent assault following an allegation by the victim of rape and a charge by the prosecutor of rape. In many of the cases, the reason for the change in the charge was unclear but according to the LICADHO monitors, it is most likely to be either a result of a misunderstanding of the law on the part of the judge, or corruption.

One of the most common misunderstandings encountered by LICADHO monitors is that if there is no evidence of serious injury to the genitals, the penetration of the vagina was not deep enough to count as rape. This is particularly so in the cases of children and unmarried women where, without evidence of recent damage to the hymen, judges often decide to convict of the lesser offence. Given that many rape victims suffer injuries to areas of the body other than the genitals and that some show no physical injuries at all, this approach is severely flawed. The problem is made particularly acute by the manner in which courts view medical evidence. According to LICADHO monitors, judges often treat the result of the victim's medical examination as the most important, and in some cases the only, piece of relevant evidence. This is deeply misguided: for reasons of fear and shame, some rape victims take a long time to report what has happened to them so that their injuries have healed by the time that they do so; and as stated above, some victims who report immediately may not have any physical injuries at all.

Furthermore, LICADHO monitors report that medical examinations are another element of the judicial process in which corruption plays a part. Because they are so decisive, they are a means by which a suspect can influence the outcome of his case, and it is not uncommon for medical examiners or local health departments to take bribes in return for producing an examination result that states that the victim's injuries are less serious than they actually are.¹⁷ The outcome in these cases is normally a conviction for indecent assault and not rape.



Hands of a young rape victim

¹⁷ Under article 639, acceptance of bribes by medical practitioners is prohibited and punishable with between two and five years in prison.

An examination of the closed cases which ended with a conviction for indecent assault reveals some of the other ways in which the law on rape is misinterpreted. Four were cases of attempted rape in which the act of rape was interrupted by someone else or the victim fought back and screamed causing the perpetrator to run away. Under the Criminal Code, an attempted offence is defined as one in which the perpetrator has the intent to commit the offence and has started to commit the offence but has been interrupted by circumstances outside his control.¹⁸ In cases where the established facts comply with this definition, to convict of indecent assault is a misinterpretation of the Criminal Code and an injustice to the victim.

Three other cases in which there was a conviction for indecent assault are also informative: in one the victim was a 16-year-old boy, in another the perpetrator was a woman, and one other involved oral sex in which the perpetrator forced his penis into the mouth of a 5-year-old girl. All of these cases fall within the Criminal Code definition of rape.¹⁹ The fact that they resulted in convictions for indecent assault reveals not only judicial misunderstanding of the law but also perhaps, pervasive and outdated ideas about rape: that men cannot be the victims of rape, that women cannot commit rape and that rape requires vaginal penetration. These ideas are apparently still widespread and often find their way into the courtroom.

The final reason that some cases end with a conviction for indecent assault instead of rape is corruption. If a suspect is able to pay, a conviction for indecent assault is an easy way for the judge to reduce the sentence whilst still being seen to mete out punishment. Information about payments from suspects to judges is very difficult to get and in most of the cases that closed with a conviction for indecent assault LICADHO's monitors have no concrete evidence of corruption. But this is not surprising as it is in the interests of all parties to keep such arrangements secret; in almost all of the cases, however, the monitors involved said that they believed that there was corruption and in some cases, there is often strong circumstantial evidence. For example, in one case, the prosecutor charged the suspect with rape and this charge was confirmed by the investigating judge. Once the trial had taken place and before the verdict was announced the suspect's lawyer came to an agreement with the victim that the suspect would pay her \$925. The judge then announced the verdict which was a conviction for indecent assault with a sentence of two years in prison with one year suspended and an order for compensation of \$925. The monitor in this case believes that the victim agreed not to appeal the verdict in return for the payment and that the trial judge also received payment. It is likely that the suspect would also have had to pay the prosecutor and possibly the investigating judge in order to ensure that the verdict was not appealed.

¹⁸ Article 27, Cambodian Criminal Code, 2009.

¹⁹ Article 239 of the Cambodian Criminal Code, 2009 states 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". English translation by Bunleng Cheung.



Entrance to the house of a LICADHO client



A young rape victim sits with her mother

Age of victim



Article 241 of the Criminal Code states that one of the aggravating circumstances of rape is where it is committed “against a person who is particularly vulnerable by reason of his or her age”.²⁰ The penalty for rape with aggravating circumstances is between seven and 15 years’ imprisonment, as opposed to the normal sentence of five to 10 years. The words, “vulnerable by reason of his or her age” are not defined in the article, perhaps to allow judges to exercise discretion. But the result of this lack of clarity is inconsistent sentencing and some shockingly low sentences. Of the 293 cases involving children under 18, 37 (13%) resulted in convictions followed by sentences of less than seven years.²¹

Because of the lack of definition, vulnerability by reason of age could be interpreted in a number of ways and by reference to a variety of laws. Whatever reasoning the judges are using, it is neither clear nor consistent. The 37 cases mentioned above involved victims under the age of 18, which is the age of criminal responsibility in the Criminal Code²² and also the age of minority in the Law on the Suppression of Human Trafficking and Sexual Exploitation.²³ 26 out of the 37 cases involved victims under the age of 15, which is the age of sexual majority under Cambodian law.²⁴ Seven involved victims under

years old. And yet in none of them was the perpetrator sentenced to more than six years in prison, indicating that the judge has ignored or given no consideration to the provisions on aggravating circumstances. The most common punishment was a sentence of five years, which was handed down in 24 of the 37 cases, including one case in which there were two victims aged two and four.

This issue of low sentencing in cases where the victims are minors seems to be more prevalent in some provinces than others. In Battambang there were nine cases, in Kampong Cham six, and in Pursat five.²⁵ In other provinces, notably Kampot, Svay Rieng and Phnom Penh, judges seemed to be much more likely to use the full range of possible sentences. It seems that the lack of clarity in the law is giving rise to geographically inconsistent sentencing.

When asked about the issue of low sentences in cases involving minors, several LICADHO monitors explained that in their experience judges gave very little thought to aggravating circumstances and almost mechanically applied the minimum sentence of five years. Some monitors commented that in cases where the victim was physically mature, judges often ignored her age and treated her like an adult.

²⁰ Article 241, Cambodian Criminal Code, 2009, English translation by Bunleng Cheung, May 2011.

²¹ From the cases closed during the period, it was not possible to judge how or whether the provision was being applied to elderly victims.

²² Article 38, Cambodian Criminal Code, 2009.

²³ Article 7, Law on Suppression of Human Trafficking and Sexual Exploitation, 2008.

²⁴ Article 239, Cambodian Criminal Code, 2009.

²⁵ Given that this is a study of LICADHO’s closed cases only, it is not possible to draw firm conclusions about patterns of sentencing in different provinces. A proper sample of all rape convictions across all courts would have to be undertaken to draw such conclusions.

Suspended sentences



Under the Criminal Code, prison sentences may be suspended if they are of less than or equal to five years.²⁶ The only other condition is that the accused must not have been sentenced to a term of imprisonment in the previous five years.²⁷ Otherwise there is no guidance on when and why suspended sentences should be given. This means that someone who has been convicted of rape is eligible for a suspended sentence as long as they have been given the minimum sentence of five years. Wholly or partially suspended sentences were given in seven (5%) cases involving women of 18 or over and 13 (4%) cases involving children under 18.

Problems with sentencing mentioned above are also relevant here. In three of the 37 cases in which the victim was under 18 and the sentence was only five years, part of the sentence was also suspended. In cases where charges of rape have been changed to indecent assault, suspension is also possible because the maximum sentence is three years. In six of the cases in which the conviction was ultimately for indecent assault, the perpetrator received a suspended sentence. It is worth examining the details of some of these cases as they illustrate how flaws in sentencing, and in some cases corruption, combine to undermine a just outcome and make the whole process of prosecution almost pointless.

In one case in which the victim was 14 and became pregnant after being raped, the judge sentenced the perpetrator to five years in prison but suspended two years of the sentence. In another case in which the victim was also 14, the judge gave a sentence of five years but suspended three years, and in one other case, involving a five-year-old victim, the trial judge sentenced the perpetrator to 10 years in prison but on appeal, this was reduced to five years with three years suspended.

The indecent assault cases are, if anything, more troubling. In one case, the victim was a nine-year-old girl. The original charge was for rape but this was changed by the judge to indecent assault. The perpetrator was sentenced to three years in prison but the judge ordered that he serve only one year in prison with two years suspended. In another case, the victim was five years old. The prosecutor charged the suspect with rape but the investigating judge changed the charge to indecent assault. The reason given was that the penetration was not

deep enough to constitute rape. At trial the perpetrator was sentenced to 18 months in prison, a year of which was suspended.

Two other cases involved attempted rape. In the first, the victim was a 13-year-old girl. The prosecutor charged the suspect with attempted rape but this was changed by the investigating judge to indecent assault. At trial the judge sentenced the perpetrator to two and a half years in prison but suspended one and a half years. In the final case, the victim was a 12-year-old girl. Whilst the prosecutor initially charged the suspect with attempted rape, this was changed to indecent assault by the investigating judge. At trial, the perpetrator was convicted of indecent assault and sentenced to two years in prison. This sentence was wholly suspended which meant that the only term served by the perpetrator was one month in pre-trial detention.

In all of the cases mentioned, the monitors believe that the suspended sentences were a result of corrupt payments from the perpetrator to the trial judge. It is likely that payments would also have been made to the prosecutor and the investigating judge to ensure that they did not appeal the sentence.

Allowed to go free

A 31-year-old woman became ill and was sent by her family to the local clinic in an ambulance. While she was at the clinic a medic raped her, using his fingers to penetrate her. The case went to trial and the medic was convicted of rape and sentenced to five years in prison but the sentence was wholly suspended meaning that he served no time in prison.

Judicial discretion is an important part of any justice system but it is very hard to imagine any circumstances in which a suspended sentence is appropriate for someone convicted of rape. Furthermore, as demonstrated by the cases above, the power to suspend sentences is open to abuse and seems to have given rise to some unjust and disturbing outcomes.

²⁶ Article 107, Cambodian Criminal Code, 2009.

²⁷ Article 106, Cambodian Criminal Code, 2009.

Short Sentences



In seven (5%) cases involving women of 18 or over and 12 (4%) cases involving children under 18, there was a charge of rape²⁸ and a conviction, followed by a sentence of less than the minimum sentence of five years. On the available information it is hard to find a reason for this but it is notable that seven of the 19 were cases of attempted rape. Under the Criminal Code, whilst all attempted offences are described as punishable,²⁹ no specific sentences are given for the offence of attempted rape.

This is odd as the Criminal Code does, in the chapter on sexual offences, state that an attempted misdemeanour (that is, an offence of medium seriousness) carries the same punishment as the misdemeanour itself. However, there is no equivalent article for felonies such as rape. This may be the reason why there seem to be some very low sentences for attempted rape, including for example one in which the victim was seven years old and the sentence was 18 months' imprisonment.

Gang rape



During the study period, 10 (8%) of the cases involving women of 18 and over and six (2%) of the cases involving children were cases of gang rape. Gang rape means rape by more than one perpetrator. One of the problems with gang rape cases is that if they do actually go to court, it is quite common for only some of the perpetrators to be convicted. There were convictions in 12 of the 16 gang rape cases and in four of those, only some of the perpetrators were tried and convicted. For example, in one case in which the victim was able to name all of the five men that raped her, only two were tried and convicted. Sometimes, the victim cannot identify all of the perpetrators, making the job of the police a difficult one, but even in cases where the victim has identified the perpetrators, it is often only those who are arrested immediately who face justice, with police making little effort to find the others.

Gang rape is treated as an aggravating factor under Cambodian law meaning that the penalty is between seven and 15 years' imprisonment.³⁰ In six out of the 12 cases in which there were convictions, the sentences were of the proper length but in the other six, the sentences were under seven years. In four of those the sentence was under five years, which is the minimum sentence for rape committed by one perpetrator. In most of the cases, there is no apparent reason, legitimate or otherwise, why the sentence was so short.

Two of the gang rape cases are worth examining in more detail as they seem to reveal a particularly disturbing attitude. In one case, a 17-year-old girl went to visit her boyfriend at his house. There she was raped by three men, one of whom was her boyfriend, another of whom was a friend of the boyfriend who the victim was able to identify, and the last of whom was a man she could not identify. The boyfriend and the second man were tried for rape but were found innocent. In the second case, the victim was a 35-year-old woman who was taken by her boyfriend to the house of one of his friends where they both raped her. The case went to trial and despite both being convicted of rape, the boyfriend was sentenced to 18 months in prison and the other man to one year.

According to the judge in the first case, the girl had gone of her own accord to her boyfriend's house and consented to have sex with him. As a result, the judge decided that none of the suspects was guilty of rape. In the second case, the judge was not so explicit but the monitor in the case felt that the very light sentence was due to the fact that one of the perpetrators was the victim's boyfriend. These cases seem to demonstrate that some judges at least hold deeply discriminatory attitudes about women's sexuality and that for them it is women's behaviour, particularly their previous sexual activity, that is the key to determining a man's culpability for rape.

²⁸ In all but one of these cases, the sentence was for three years or below so it is possible that some of the convictions were for indecent assault and not rape but that the monitors were unaware of this.

²⁹ Article 27, Cambodian Criminal Code, 2009.

³⁰ Article 240, Cambodian Criminal Code, 2009.

Acquittals



In seven (3%) of the cases involving children under 18 and nine (7%) of the cases involving women of 18 or over, there was a trial resulting in a finding of innocence. In any properly-functioning justice system it is normal and quite proper that some cases should result in an acquittal and in most of the 16 cases, there is no evidence that the decision was flawed. However, LICADHO's monitors report that findings of innocence are often the result of corruption and there are a few cases amongst the 16 in which they thought corruption was likely.

In one case, the victim was a 63-year-old woman and the suspect a 40-year-old man. When the case reached trial, the judge ordered a delay stating that more time was needed to gather evidence. When the case came back to trial, the judge found the suspect innocent. The LICADHO monitor who attended the trial said that both the prosecutor and the judge seemed to protect the suspect during the hearing and gave no support to the victim, who found it very difficult to give evidence. In his defence, the accused said that there was no way he could have raped the victim as she was so old. The judge agreed with this assertion. The monitor in this case believes that the judge ordered the delay to allow the accused more time to find the money necessary to bribe him and the

other court officials. In one other case, a 23-year-old woman with a learning disability was raped three times and became pregnant. The suspect was charged with rape and held in pre-trial detention for a year. After the trial took place, the suspect paid the victim \$750 and when the verdict was announced he was found innocent. Our monitor believes this happened because of a corrupt payment from the suspect to the judge. It must be said that in neither case is there concrete evidence of corrupt payments to the judges but according to the experience of other monitors, when judges delay hearings or reserve judgments, it is often to allow a negotiation to take place.

One other case is also troubling for a different reason. The victim was deaf and knew some sign language but was not fluent. At trial, an NGO provided a sign language interpreter for her but she was not able to communicate fully what had happened to her. As a result the suspect was found innocent. This is clearly a difficult situation for a judge as it involves wider social issues relating to the education of deaf people and also because it is not correct to convict on insufficient evidence. But the effective preclusion of deaf victims from participation in the criminal process because of their disability is a severe injustice.



A LICADHO monitor interviews a client



A policeman points to where a rape took place

Conclusion



This report brings to light the immense failure of the Cambodian justice system to properly investigate and punish cases of sexual violence against women and children. The reasons for this failure are many: corruption, discriminatory attitudes towards women and girls, misinterpretation of the law, and lack of resources all combine to perpetuate and entrench a system in which impunity prevails.

The report has focused on the failures of the justice system rather than on the experience of individual victims; it must not be forgotten that at the centre of all the cases discussed there were women and children who had experienced a terrifying and violent attack resulting in psychological and often physical trauma. The failure of the criminal justice system to punish their attackers compounds their experience of abuse and perpetuates the harm they suffer. Moreover, every failure to punish reinforces existing public mistrust of the Cambodian justice system and conveys the message that rape is not an offence that will be treated seriously; it not only lets down the victims concerned but reduces the likelihood that future victims will take the risk of reporting the crimes committed against them.

Many grave issues have been raised in this report but worthy of particular mention is the far-reaching and destructive impact of corruption on the prosecution of rape cases. Although a third of the reviewed cases concluded with a satisfactory outcome, the details of the

remaining two thirds of cases, alongside the experiences recounted by LICADHO's monitors, make it difficult to avoid the conclusion that the majority of public officials – from local police and court clerks, to doctors and judges – look on rape cases as little more than a potential source of income, with both victims and suspects a target for extortion.

Legal provisions for tackling corruption by public officials exist but there have been very few genuine efforts to enforce them³¹ and the fact that those who give bribes are also liable for prosecution is a significant hindrance to whistleblowing.³² Furthermore, legal provisions to punish those who discredit court decisions³³ – the intention of which is to protect the independence of the courts – in fact make it highly risky to criticize court judgments, even when they are blatantly flawed.

The insidious nature of the corruption and the severity and complexity of the other issues raised in this report require a serious and long-term commitment from the very highest levels of government if they are to be resolved. This commitment must take the form of an unequivocal condemnation of all acts of sexual violence as well as practical steps to address the multiple inadequacies in law enforcement raised by this report. It is only government-led fundamental change that will ensure an end to impunity for perpetrators of rape and justice for their victims.

RECOMMENDATIONS

Rape is a complex problem with many facets. This report has touched on only some of them and the recommendations below are limited to those that directly address the issues raised in the report.

▶▶▶ **Steps must be taken to ensure that all victims of rape – male and female – feel confident to report the offence. These should include:**

Condemnation of rape by those at the highest levels of government, the police and the judiciary and repeated public statement of their commitment to punish all perpetrators.

Dissemination to the public of information on the harm done by rape and the criminal law on sexual offences, using all forms of media and social media, and directly to schoolchildren.

Cooperation between the government (particularly the Ministry of Women's Affairs, the Ministry of the Interior and the Ministry of Justice) and sex worker networks to improve reporting of rape by sex workers and ensure that cases are investigated and perpetrators prosecuted without repercussions for the victim.

³¹ Transparency International, *Corruption and Cambodia's Governance System*, 2014, p. 62 and p. 94.

³² Article 605, *Cambodian Criminal Code*, 2009.

³³ Article 523, *Cambodian Criminal Code*, 2009.

►►► The government must take steps to ensure that all rape cases are properly investigated and that any obstacles preventing them from proceeding to trial are removed. These should include:

Allocation of sufficient resources to police to ensure that all rape cases are investigated fully and in a timely manner, that evidence is properly gathered and all suspects apprehended.

Development and implementation of procedures, and training of police, prosecutors, judges and medical staff on how to deal appropriately with victims of sexual abuse of both sexes, and especially child victims, including those with learning difficulties, who are being interviewed or giving evidence in the court or police station.

Establishment of a special government fund to be made available to victims whose poverty prevents them from pursuing criminal prosecutions, to cover amongst other things, transport costs and compensation for days of work lost.

Provision by the Ministry of Justice and the Ministry of Interior of sign language interpreters for deaf victims, to be made available as necessary at police stations and courts.

Vigorous prosecution of all cases of sexual violence regardless of the rank, influence or wealth of the perpetrator and initiation and pursuit of investigations by prosecutors including in cases where the victim has not filed a complaint or has filed a complaint and later withdrawn it.

Enforcement of provisions within the Criminal Code and the Code of Criminal Procedure against police officers who fail to proceed with a case or prevent a case from proceeding after a financial settlement has been paid.

Enforcement of provisions within the Criminal Code and Anti-Corruption Law on corruption by public officials against police officers.

Introduction of amnesty or leniency policies for rape victims who report corrupt transactions involving public officials to which they have also been a party.

►►► Steps must be taken to ensure that where trials take place they are properly conducted and punishment is correctly and consistently applied. These should include:

Training for old and new judges on the Criminal Code provisions relating to rape to ensure they understand what it covers, including male victims, oral sex and female perpetrators, and that they are fully aware of all aggravating circumstances and penalties.

Development of guidance for judges on exclusion from trial of evidence relating to a victim's sexual history, except in exceptional circumstances and where it is relevant.

Separation of the civil and criminal elements of rape cases so that they are handled throughout by different court staff and judges.

Enforcement of provisions within the Criminal Code and Anti-Corruption Law on corruption by public officials against judges and prosecutors.

Amendment of the Criminal Code to make it explicit that the offence of rape includes rape inside marriage and that rape inside marriage should not be prosecuted using provisions on violence committed by a spouse or partner.

Clarification of the meaning of the term "vulnerable by reason of his or her age" in the section of the Criminal Code on aggravating circumstances for the offence of rape and training for judges to ensure it is consistently applied.

Amendment of the law to state that there should be no suspended sentences for rape convictions.

Amendment of the Criminal Code to include a provision that states that attempt to commit rape carries the same penalties as the offence of rape.

