



Legal Support for Children and Women

**REPORT ON  
GENDER SENSITIVITY  
AND THE LEGAL PROCESS  
IN CAMBODIA**

**March 2012\***

## Foreword

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This report considers gender sensitivity and the legal process in Cambodia, particularly in relation to female victims of trafficking, rape, domestic violence and women involved in divorce proceedings (“Victims” and “Women”). Through a series of interviews with Cambodian lawyers and legal assistants, observation of LSCW lawyer-client interviews and trials over a short period, this report aims to highlight the need for legal professionals to increase their knowledge in this area.

‘Gender sensitivity’ is a new concept in Cambodia and is not well understood, including by those legal professionals dealing with women and children on a daily basis. Understanding gender sensitivity has a fundamental role in developing the ability of Cambodian lawyers and the courts to effectively assist Victims and Women and ensure equal justice for all.

LSCW would like to thank the lawyers and their clients who assisted by providing information for this report. In particular, LSCW would like to thank the Cambodian Defenders Project (“CDP”), Legal Aid of Cambodia (“LAC”) and Community Legal Education Centre (“CLEC”) for their participation. In order to protect the identities of victims and parties to legal proceedings, no names have been used throughout this report.

This report was written by Tania Winslade, Legal Consultant, and finalised by Victoria Pearson, Legal Consultant.

## **LSCW's Work**

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Legal Support for Children and Women ("LSCW") is a local Cambodian non-governmental organization ("NGO"), officially registered in 2002. LSCW's mission is to prevent and eliminate all forms of human trafficking, exploitation and discrimination towards children and women (there is also a focus on men in relation to trafficking and migration) in Cambodia. LSCW works to promote gender equality; protect women and children from all forms of exploitation and violence; gain recognition of and respect for their rights; and raise awareness of those rights among women and children themselves.

LSCW provides free legal advice, support and representation to women and children victims of rape, physical and sexual abuse and domestic violence, as well as to women in connection with divorce proceedings. The Legal Aid team is based in Phnom Penh. A mobile team from Phnom Penh provides legal services in Kandal, Kampong Cham, Kampong Speu, Kampong Thom, Prey Veng and Koh Kong. LSCW also has a satellite office in Kampot, providing legal services in Kampot and Takeo provinces.

LSCW is actively involved in supporting reform of the criminal and civil justice systems, and in promoting the rights of women and children at a national level. LSCW staff were closely involved in the drafting of the 2005 Domestic Violence Law and in assessing the Cambodian government's compliance with the Convention on the Elimination of All Forms of Discrimination Against Women.

At a regional level, LSCW works with foreign and in-country partners to support Cambodian women, men and child victims who return to Cambodia after being exploited abroad.

## Abbreviations

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**“CDP”** Cambodian Defenders Project. CDP was established in 1994 and provides free legal defense to the poor and vulnerable. Its goal is to strengthen the protection of human rights through developing the legal system and democracy in Cambodia.

**“CEDAW”** Convention on the Elimination of All Forms of Discrimination Against Women

**“CLEC”** Community Legal Education Center. CLEC was created in 1996 as a legal resource centre promoting the rule of law, justice and democracy in Cambodia. CLEC became a locally registered NGO in 2001. It focuses on projects that combine legal education, legal empowerment and advocacy.

**“IO”** International organization

**“LAC”** Legal Aid of Cambodia. LAC is a non-governmental, independent, Khmer-administered, non-profit and non-political organization of lawyers founded in 1995. LAC’s mission is to provide quality legal aid, legal and human rights education/outreach and advocate for the poor in Cambodia in order to ensure access to justice, promote respect of the law and human rights, and advance legal and judicial reform.

**“LSCW”** Legal Support for Children and Women

**“NGO”** Non-governmental organisation

**“MSAVYR”** Ministry of Social Affairs, Veterans and Youth Rehabilitation

**“MOWA”** Ministry of Women’s Affairs

## Use of Terms in this Report

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**Discrimination:** any distinction, exclusion or preference based on sex, gender (or other classifiers in society, such as ethnicity, colour, religion or political opinion), which has the effect of nullifying or impairing equality of opportunity and treatment.<sup>1</sup>

**Domestic violence:** physical, sexual, psychological (including insults, threats and social isolation) and economic abuse or coercion by one (or more) persons in order to control another person(s) that live(s) in the same household living under one roof.<sup>2</sup>

**Exploitation:** the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children defines exploitation to include, at a minimum, *'The exploitation or the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, or the removal of organs'*.<sup>3</sup>

**Gender:** refers to roles, attitudes and values assigned by culture and society to women and men. These roles, attitudes and values define the behaviours of women and men and the relationship between them. They are created and maintained by social institutions such as families, governments, communities, schools, churches and media. Because of gender certain roles, traits and characteristics are assigned or ascribed distinctly and strictly to women or to men. Gender could be changed, but sex could not be changed. The term now is not only used to describe biological sexual characteristics by which we identify females and males but encompasses the socially defined sex roles, attitudes, and values which communities and societies ascribe as appropriate for one sex or the other. (**Sex** on the other hand refers to the natural distinguishing variable based on biological characteristics of being a woman or a man).<sup>4</sup>

**Gender awareness:** Understanding that there are socially determined differences between women and men based on learned behaviour which affect their ability to access and control over resources, opportunity and benefits.<sup>5</sup>

**Gender discrimination:** To give differential treatment to individuals based on the grounds of their gender. In a patriarchal society this involves systematic and structural discrimination against women in the distribution of income, access to resources, and participation in decision making.<sup>6</sup>

**Gender equality:** where there is no discrimination on the grounds of a person's sex in the allocation of resources or benefits, or in the access to services. Gender equality may be measured in terms of whether there is equality of opportunity, or equality of results. The UN Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") can be understood as a statement on what the principle of gender equality of

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<sup>1</sup> Haspels, N. and B. Suriyasarn, *Promotion of gender equality in action against child labour and trafficking, a practical guide for organizations*, (Geneva: ILO/IPEC), 2003 at 5.

<sup>2</sup> Ministry of Women's Affairs, "Gender Terminology", Cambodia, August 2006.

<sup>3</sup> UNODC, *The protocol to prevent, suppress and punish trafficking in persons, especially women and children*, (UNODC, Vienna), 2001b: Art. 3a.

<sup>4</sup> Ministry of Women's Affairs – Cambodia, "Gender Terminology", August 2006.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

opportunity should mean in practice for all aspects of life, and all sectors of the economy.<sup>7</sup>

**Gender responsiveness:** ways or means of addressing concerns about gender inequality in policy or the design and implementation of, projects.<sup>8</sup>

**Gender sensitivity:** the ability to recognize, accept and examine gender issues and concerns.<sup>9</sup> (Also see “gender awareness”.)

**Gender-specific policies:** policies designed to respond to gender issues and concerns to assure gender equality in the division of resources and responsibilities.<sup>10</sup>

**Sex work:** as used in this report, sex work refers to the commercial provision of sexual services and encompasses a wide spectrum of coercion and/or force, from very little (or none) to extreme in nature and duration. This use is intended to recognise that the nature, degree or existence of sexual and other forms of exploitation to which an individual in sex work is subject, and that individual’s perspective, may vary over time. In this report women and girls are referred to as sex workers rather than prostitutes, to avoid further stigmatising individuals and to emphasise the importance of promoting their health, well-being and rights. This is in no way to diminish the recognition that commercial sexual exploitation is criminal and violates human rights and that measures to end the trafficking of women and children into the sex industry must be a priority for the international community.

**(Human) Trafficking:** the UN Protocol on Trafficking in Persons defines trafficking in persons as *‘the recruitment, transportation, transfer, harbouring, or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation’*.<sup>11</sup> The recruitment, transportation, transfer, harbouring, or receipt of a child for the purpose of exploitation is considered trafficking, regardless of the means used.

**Social norm:** Standards or models of behaviour practiced by societies and rooted in their cultural, ethnic and historical backgrounds. Often social norms limit the participation of women in mainstream development, due to the fact that their main tasks are seen as looking after children and doing household chores (requiring limited formal education), that their opinions are considered less relevant than those of men, and that limited access to resources, services and participation in decision-making processes of women are seen as normal.<sup>12</sup>

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<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> UNODC, 2001b: Art. 3a.

<sup>12</sup> Ministry of Women’s Affairs – Cambodia, “Gender Terminology”, August 2006.

## **Executive Summary**

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‘Gender sensitivity’ is the ability to recognize, accept and examine gender issues and concerns. This report considers gender sensitivity particularly towards Victims and Women during the legal process (from initial interviews with Victims and Women through to trial) in Cambodia. It seeks to identify strengths and weaknesses in relation to gender sensitivity during the legal process and determines that gender sensitivity training would benefit the legal profession’s ability to work more effectively with Victims and Women and assist in ensuring equal access to justice.

Due to cultural and societal views of gender in Cambodia, women suffer from gender discrimination and inequality. Such stereotypes and perceptions can make them more vulnerable to becoming victims of rape, trafficking and violence. It also may make it more difficult for them to seek legal assistance and see legal proceedings through to their conclusion. Given the work of LSCW, this report focuses on gender sensitivity in relation to Victims and Women. However, it is important to keep in mind that ‘gender’ is not only about women and girls; men have an equally important role in striving for gender equality.

Cambodian lawyers (and others involved in the legal process) working specifically with Victims and Women deal with gender issues on a daily basis. However, because concepts of gender and associated terminology are new to Cambodia, many legal professionals have a limited understanding of this area and may not be conscious that they are in fact dealing with gender issues. In other words, they may not be sensitive to, or aware of, gender issues or concerns, that is, they may not be ‘gender sensitive’.

So, why is it important that lawyers and the courts are gender sensitive and adopt gender responsive policies and approaches when carrying out their work? Firstly and perhaps most obviously, victims are more likely to come forward and assist with prosecuting offenders if they feel comfortable working with legal professionals. Victims need to be able to rely on the legal system to see the perpetrators of crimes committed against them brought to justice. That legal system should not re-victimize them. There is also a larger picture to take into account: gender inequality is a major obstacle to poverty reduction and economic growth. Thus, implementing gender responsive policies and programs can also play an important wider role in the development of Cambodia.

Section 1 of this report sets out the importance of gender sensitivity and background regarding gender and gender discrimination in Cambodia.

Section 2 sets out the objectives of this report in greater detail and the methodology used.

Sections 3 and 4 analyze knowledge of gender sensitivity amongst lawyers (and others) and the courts respectively.

Finally, Section 5 details the conclusions of this report together with recommendations for improving gender sensitivity of legal professionals.

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## Section 1 – Understanding Gender

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### 1.1 Terminology

As set out in further detail in this report, gender terminology is new to many Cambodian legal professionals and is not widely understood. It is important therefore to fully understand what the gender terms used in this report mean.

‘Gender’ describes those characteristics of women and men that are socially constructed rather than biologically defined. It is learned attributes of behaviour, attitudes, roles and activities that constitute gender identity and define gender roles.<sup>13</sup> Notions of gender can help to explain, for example, the cultural basis for the existence of sex work and Cambodian women’s particular vulnerability during the human trafficking process, as opposed to men.

When we speak of ‘gender sensitivity’, we refer to an ability to recognize, accept and examine gender issues and concerns. It requires an understanding of the socio-cultural factors which underlie discrimination based on sex (whether against women or men). Gender sensitivity – being able to recognize and analyze gender issues - is the starting point. ‘Gender responsiveness’ takes things further, referring to ways or means that are adopted by legal professionals and the courts (in the context of this report) in order to address concerns about any gender inequality that may exist during the legal process. Thus, gender responsiveness goes beyond gender sensitivity and is ultimately what legal professionals and the courts should strive for in order to truly address any gender inequality.

### 1.2 Gender and international standards

Cambodia has ratified and acceded to the Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”)<sup>14</sup> and is legally bound to put CEDAW’s provisions into practice. Such provisions include incorporating the principle of equality of men and women in the legal system and ensuring elimination of all acts of discrimination against women by persons, organizations or enterprises. CEDAW also demands that States:

*“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.”<sup>15</sup>*

Cambodia is also a signatory to the Beijing Platform for Action and the Declaration on the Elimination of Violence Against Women in the ASEAN Region.

International standards relating to specific offences, for example, human trafficking, recognize the relationship between such offences and gender and therefore a need for a

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<sup>13</sup> This working definition draws on a working definition developed in WHO, “Women and health: mainstreaming the gender perspective into the health sector”, Report of the Expert Group Meeting, Tunisia, 28 September – 2 October 1998.

<sup>14</sup> On 15 October 1992. Cambodia has also signed the Optional Protocol.

<sup>15</sup> Article 5.

gender sensitive approach when adopting strategies in order to address gender-based discrimination.<sup>16</sup>

### 1.3 Domestic law and progress in Cambodia on gender equality

The Constitution of the Kingdom of Cambodia (“the Constitution”) supports gender equality. Article 45.1 of the Constitution states that “*all forms of discrimination against women shall be abolished.*” Other domestic laws<sup>17</sup> and strategies have also been adopted in the hope of protecting women’s interests.

The National Strategic Development Plan 2006-2010 (“NSDP”) identified “*Factor poverty reduction and gender concerns in all activities*” as being the first of nine concerns to govern all other actions to be pursued during the period 2006-2010. The government also recognized the need to mainstream gender “*across the entire spectrum of Cambodian life, including in all levels of government and in budgeting processes.*”<sup>18</sup>

Further to the NSDP, the Ministry of Justice implemented a “*Gender Mainstreaming Action Plan (2009-2013)*” to address gender inequity occurring specifically in the justice sector. The Ministry noted that gender disparity within the justice sector is due to limited knowledge and understanding of women in the areas of rights and law; the perception of discrimination against women; the limited understanding of gender concepts; and the fact that CEDAW has not been disseminated widely throughout Cambodia.<sup>19</sup>

There is also an emerging recognition in Cambodia of the need for gender sensitive approaches in relation to victims of specific crimes. For example, a gender sensitive approach is referenced in the Ministry of Social Affairs, Veterans and Youth Rehabilitation’s (“MSAVYR’s”) “Policy and Minimum Standards for Protection of the Rights of Victims of Human Trafficking.”<sup>20</sup>

While international standards and Cambodian law technically support gender equality, general understanding of gender issues and effective implementation of laws and initiatives within Cambodia is problematic. The Royal Government of Cambodia has itself noted such problems in its Report to the Committee on the Elimination of Discrimination Against Women:

*“... the adoption of legal and administrative measures, as well as the implementation of these measures, have not always been appropriate and fully effective. Gender mainstreaming in public institutions is limited, not deeply accepted and gender issues are not deeply understood.. Inactivity has resulted from the limited understanding of Khmer*

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<sup>16</sup> Guideline 1.4 of the UN Guidelines on human rights and human trafficking recommends that states consider “taking particular care to ensure that the issue of gender-based discrimination is addressed systematically when anti-trafficking measures are proposed with a view to ensuring that such measures are not applied in a discriminatory manner.” The UNODC International framework for Action to Implement the Trafficking in Persons Protocol, New York, 2009, states a need for a gender sensitive approach paying particular attention to “the similarities and differences in the trafficking experience of women and men” (Section IV, p. 8).

<sup>17</sup> For example, the Domestic Violence Law, Labor Code, Land Law and Abortion Law.

<sup>18</sup> As noted in Ministry of Women’s Affairs, “Cambodia Gender Assessment and Policy Briefs”, April 2008.

<sup>19</sup> Gender Mainstreaming Action Group of the Ministry of Justice in cooperation with the Cambodia Criminal Justice Assistance Project 2009, “Gender Mainstreaming Action Plan of the Ministry of Justice (2009-2013)”, p. 5.

<sup>20</sup> 2009.

*citizens in general. Gender issues are not deeply understood. The recognition of women's capability remains poor. Overall, the enforcement of law is still weak, which is the reason why the adopted measures are not very effective.”<sup>21</sup>*

#### **1.4 Importance of gender sensitivity and gender responsiveness during the legal process**

So, why is gender sensitivity important? Victims are more likely to come forward and be of assistance in prosecuting offenders if they are dealt with in a way that makes them feel comfortable and in a safe environment. For example, gender sensitive legal representation may increase a victim's willingness to testify at court and contribute to the quality of their testimony<sup>22</sup>, which ultimately may translate into offenders being appropriately punished.

Even when legal frameworks formally recognize women's rights, their access to justice may be hindered by the existence of gender biases in the legal system. For example, manifestations of gender bias against women in the court system might be:

- Negative attitudes towards female victims and offenders.
- Trivialization of sexual and domestic violence, where women are judged as having provoked the violence or seduced the rapist.
- Gender insensitive court procedures.
- Gender stereotypes affecting court action.
- Under-representation of women in the courts.<sup>23</sup>

As a result of gender bias, cases might be dismissed or women may feel reluctant to go through the intimidating process of court trial, and thus impunity persists, in turn sustaining and promoting the incidence of abuse against women. Therefore, a gender sensitive approach is also necessary to ensure that victims do not find themselves victimized at the hands of the legal system itself and so that trust can be established in the justice system. In addition, recognizing and understanding gender-based obstacles that may prevent women being able to access justice allows legal professionals and others to consider gender responsive approaches that may overcome such obstacles.

Accordingly, it is vital that those involved with the legal process, including lawyers and the judiciary in particular, have the requisite knowledge and skills to deal sensitively with Victims and Women.

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<sup>21</sup> Royal Government of Cambodia's combined initial, second and third periodic report to the Committee on the Elimination of Discrimination Against Women, 11 February 2004.

<sup>22</sup> This was noted by the Cambodian Centre for Human Rights ("CCHR") in its report on "Human Trafficking Trials in Cambodia", July 2010, p. 23.

<sup>23</sup> UNDP, Asia Pacific Rights and Justice Initiative, "Promoting Gender Sensitivity in the Philippine Court System", July 2003.

## 1.5 Gender in Cambodia

In order to discuss gender sensitivity in relation to the legal process in Cambodia, it is necessary to understand gender in the context of the Cambodian cultural and social environment. Gender equality is not an integral part of Cambodian culture. Cambodian society is largely patriarchal and hierarchical. There are strong traditional norms that assign a higher status to men and marginalize unmarried women. Disparities between men and women in resources, decision-making power, and aspects of basic social well-being, coupled with widespread poverty, stand as significant constraints to sustainable economic and social development<sup>24</sup>. Cambodian men and women perpetuate sexist ideals which are reinforced by Buddhist principles and Khmer moral codes of conduct<sup>25</sup>. The low status of women and girls is ingrained in cultural values and customs.<sup>26</sup>

Religious practices in Cambodia reinforce discrimination of Cambodian women and girls. Some people believe that females are born as a result of bad karma. Women and girls therefore are thought to be unable to attain enlightenment, as they are suffering for past illicit behaviour. Accordingly, while men can show gratitude and respect to their parents by becoming monks and pursuing a spiritual life, girls may have to make up for this by caring for and making sacrifices for their families, villages and their own karma, resulting in women trying at all costs to provide for their families through any available opportunity.<sup>27</sup>

Cambodian women's gender roles and their behaviour greatly affect the status of their husbands, sons and fathers. The ranking of a man within society has a direct correlation with the image projected by the women in his life. Women have the power to upset the entire status structure through their behaviour.<sup>28</sup> Cambodian women ('good' women) must remain virtuous to uphold the image of the family and conform to various ideals. For example, the ideal Cambodian woman is shy, submissive and reticent, speaks softly, walks lightly and is well mannered at all times. She takes care of the family, is a dutiful daughter, mother and wife who works and preserves the home.<sup>29</sup> A famous Cambodian poem entitled *Chbab Srei* (Rules of the Lady), which is still taught in certain contexts within some schools, sets down a traditional code of conduct for women. Advice includes:

*"...never tattle to your parents anything negative about your husband or this will cause the village to erupt"; "never turn your back to your husband when he sleeps and never touch his head without first bowing in his honor... have patience, prove your patience, never respond to his excessive anger".<sup>30</sup>*

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<sup>24</sup> USAID, Gender Assessment, 2006.

<sup>25</sup> Gray, I. and B. Wouters, "Country profile on women in development/gender and development in Cambodia", for the Japan International Cooperation Agency, 1999, at 10.

<sup>26</sup> Haspels, N. and B. Suriyasarn, *Promotion of gender equality in action against child labour and trafficking, a practical guide for organizations*, (ILO/IPEC; Geneva), 2003 at 16.

<sup>27</sup> UNIFEM, *Trafficking in women in children*, Gender Fact Sheet No. 2, (Bangkok; UNIFEM East and South East Asia Regional Office), 2002 at 6.

<sup>28</sup> Chey, E., "The status of Khmer women", on the Mekong Network, *Cambodia: beauty and darkness*, available on <http://www.mekong.net/cambodia/women.htm>, (undated) at 1.

<sup>29</sup> *Ibid.*, at 2.

<sup>30</sup> Levi, R. S., "Cambodia: rattling the killing fields", available on Global Frontlines website, <http://endabuse.org/programs/display.php3?DocID=98> (undated).

Pursuant to an old saying, “*A cake is never bigger than the pot*”, daughters live under the strict direction of parents, meaning that they have little right to protest against arranged marriages. After marriage, women are under the direction of their husbands.<sup>31</sup>

Yet, women play a dynamic role within the household, and are seen to make up for the ‘defects’ of men. The honour and reputation of the family is embodied in the behaviour of wives and daughters. Women are generally viewed as objects, and particularly are taught to accept their roles as housewives, submissive to the law of the male world.<sup>32</sup>

Subordinate to their husbands, women retain close ties with and support from the family. However, three decades of conflict have disrupted traditional family life, leaving women with less protection and support.

In addition, there is societal control of women’s sexuality, and of the different perspectives of male versus female sexuality, that is, there are stories telling that men have uncontrollable sexuality and that female virginity is to be protected. Virginity is considered to be an important measure of a women’s value in that if a girl loses it, even through rape, she is seen as broken and can no longer marry. The Khmer word for sex work, *srei khauch*, means ‘broken women’, referring to a loss of reputation and virginity.

Khmer traditionalists compare Cambodian girls to white cloth and boys to gold. When white cloth is muddied it can never be washed to the purity and whiteness it once had. Gold, on the other hand, can be cleaned to shine brighter.<sup>33</sup> Once a woman is not a virgin, she is seen as ‘used goods’. This includes rape victims, who may be considered to have brought shame to their families and can no longer expect to become respectable wives. This is a key problem faced by rape victims that LSCW represents. Such attitudes can also be seen as marginalizing women into areas of sex work.

Good women are not supposed to have sexual feelings, desires, or knowledge about sex, thus sexual knowledge is prohibited, creating vulnerabilities – particularly for young females. In contradiction, wives are held responsible for husbands who are unfaithful, since their knowledge of sex is limited. Hence, Cambodian men may use sex-workers. Wives may state that they prefer their husband to use a sex-worker rather than take another wife.<sup>34</sup> Accordingly demand for sex-workers remains high while sexual repression of women remains fundamental in Cambodian society.

Such views on gender promote discrimination and inequality. They can also make it difficult for female victims to seek legal assistance when a crime has been committed against them.

### *Inequality in the labour market*

Women and girls in Cambodia are seen to be shy and submissive, which means they grow up with a lack of opportunities, especially in the workforce. Because of their demeanour, they have greater constraints, especially in the highly competitive job market in the urban areas, and are more susceptible to differences in economic variations and financial recessions. The cycle of poverty for women, coupled with gender discrimination, means that from mothers to daughters, this poverty and lack of opportunities is continued.

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<sup>31</sup> Cambodia’s Report to CEDAW, para 138.

<sup>32</sup> Human Rights Vigilance of Cambodia, “Report on trafficking of women and children”, (Phnom Penh, 1996) at 3.

<sup>33</sup> Chey, E., undated.

<sup>34</sup> Brown, L., *Sex slaves, the trafficking of women in Asia*, (London: Virago Press) 2000 at 131.

Gender-based discrimination and gender disparity in the labour market takes a variety of forms.<sup>35</sup> Women and girls earn substantially less than men. One of the reasons for this is labour market segregation where women and men are grouped in different occupations, linked to stereotyped ideas about men's and women's roles and weaknesses; that is, men work in construction, fishing and factory work, whereas women work in the service industries, such as domestic work and the commercial sex sector, and in poorly paid exploitative jobs, such as garment factory work and fish processing.

Women suffer from both wage and non-wage discrimination in the workplace and do not have the same opportunities when it comes to promotion, job seniority and benefits.<sup>36</sup> Men earn 33% more for equivalent work and dominate the private and public corridors of power.<sup>37</sup>

Gender discrimination and inequalities are not necessarily the cause of crimes such as trafficking but exacerbate the vulnerability of marginalized groups and render them increasingly more open to a variety of different harms. This leads many women to leave home, migrating internally and cross-border, hence creating a potential supply of female migrants and livelihood seekers who, without education and skills, have limited opportunities and options to survive and are conditioned to accept their fate. Outlined below are other major factors, particularly gender constructs<sup>38</sup> which are influenced by the patriarchal system and religious and cultural values in Cambodia. These highlight discrimination and the unequal and unbalanced relations between the sexes.<sup>39</sup>

#### *Trafficking, Rape and Other Forms of Violence*

Multilayered discrimination and inequality prevent women and girls from taking control of their lives and also increases their vulnerability to become victims of trafficking (especially into the sex trade), rape and other forms of violence. In a paper addressing sexual exploitation from a gender point of view, one of the causes mentioned is the "*systematic undervaluation of females in terms of property or ability to earn in the market*".<sup>40</sup> This relates to the cultural values regarding the role and status of women and men.

Rape, sexual exploitation and sexual harassment are supported by traditional attitudes which blame the victim. Women who are raped are seen as "damaged goods" and experience shame and stigma.<sup>41</sup> Rape may result in entry into sex work as this may

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<sup>35</sup> UNIFEM, *Human rights protections applicable to women migrant workers*, Briefing Paper, (Bangkok: UNIFEM East and South East Asia Regional Office) 2003 at 19.

<sup>36</sup> OXFAM, *Migration in Cambodia: some gender issues*, (Cambodia; OXFAM GB) 2000 at 13.

<sup>37</sup> Asian Development Bank, *Cambodia: enabling a socioeconomic renaissance*, (Manila: Country Operational Strategy ADB) 2000 at 3.

<sup>38</sup> CARAM Asia, 2003.

<sup>39</sup> Haspels, N. and B. Surivasarn, 2003: 4.

<sup>40</sup> WEDO, "Root causes: a gender approach to child sexual exploitation", Report to the First World Congress against Commercial Sexual Exploitation of Children (Stockholm, Sweden) 27-31 August 1996 at 12.

<sup>41</sup> During interviews with LSCW lawyers (October 2010), this was identified as a major concern for LSCW clients who had been raped. In some circumstances, the victim's own family was unwilling for the victim to return to their home due to the shame the family experienced.

seem to be the only option for women who are raped.<sup>42</sup> Alarming, reported incidences of rape and sexual assault appear to be increasing.<sup>43</sup>

Violence against women and girls in Cambodia is prevalent, vicious and often ignored. One in every six women admits to being physically abused.<sup>44</sup> The violence is often severe: 50% of women who reported spousal abuse stated that they received injuries and more than half of those injuries were to the head. Women have reported beatings, whippings, stabbings, and even axe attacks. Levels of acceptance of domestic violence are high.<sup>45</sup>

### *Early marriage and divorce*

Many Cambodian women are subjected to early (under 18) and arranged marriages, therefore losing their independence and right to consent to marriage. Often they suffer from domestic violence (as discussed above).

Divorce is also frowned upon as shameful in Cambodian society. According to Project Against Domestic Violence, “*Women who choose to get a divorce are discriminated against at every turn*”,<sup>46</sup> which results in many women living with constant violence from abusive husbands, leading to a life of servitude. Divorce can lead to vulnerability: women are shunned by their families and communities and are therefore without any support system, education or financial means, at risk of falling prey to trafficking and exploitation. Women are therefore often reluctant to seek legal assistance (and often do not have the means to do so) and can be even more reluctant to give evidence in a court setting.<sup>47</sup>

### *Education*

There are significant areas of gender disparity, particularly in educational attainment. It is estimated that 50% of rural women are illiterate and have not completed primary school education;<sup>48</sup> levels of literacy and education are low particularly in provinces such as Prey Veng. Rural girls suffer from a lack of education and low enrolment, owing to the traditional belief which values investing in boys’ education rather than girls’.<sup>49</sup>

Literacy rates for Cambodian women and girls remain low compared with the rest of Asia. This owes partly to the traditional roles of girls, both in the house as domestic

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<sup>42</sup> Ministry of Women’s Affairs, “A Fair Share for Women – Cambodia Gender Assessment and Policy Briefs”, April 2008, as noted in the section “Violence Against Women and Sexual Exploitation”.

<sup>43</sup> This was noted by the Ministry of Women’s Affairs in “A Fair Share for Women”, April 2008, section entitled “Violence Against Women and Sexual Exploitation”. In addition, this was noted during the interview period (September to October 2010) by LSCW lawyers regularly working with such victims.

<sup>44</sup> Rasmussen, H. M., “Women in Cambodia – a post colonial feminist perspective on an investigation of the construction of gender roles in a third world country”, (unpublished paper; Roskilde University, Roskilde, Denmark) June 2001.

<sup>45</sup> According to the Ministry of Women’s Affairs in “A Fair Share for Women”, April 2008, section entitled “Violence Against Women and Sexual Exploitation”, only 4.5 per cent of Cambodians agree that domestic violence is both wrongful and a crime.

<sup>46</sup> PADV, 26 January 1998, quoted in Levi, R. S., undated.

<sup>47</sup> LSCW lawyers working with women involved with divorce proceedings can attest to this. Interviews with LSCW lawyers, September to October 2010, Phnom Penh, Cambodia.

<sup>48</sup> Gender and Development Network, *Gender in poverty reduction*, NGO Sectoral and Issues Papers on Poverty Reduction and Development in Cambodia (Phnom Penh: NGO Forum on Cambodia) 2003 at 37.

<sup>49</sup> Gray, I. and B. Wouters, 1999: 13.

workers and in the fields as agriculture workers, and partly to the traditional ideal that girls should stay close to home. Many parents believe that the most important duty of women is the know-how to make their husbands happy and to be good at household work. Accordingly, daughters are often not encouraged or supported by parents to attain higher education.<sup>50</sup> Only 60% of students completed primary schooling in 2003 and most of those were those were male pupils.<sup>51</sup> Girls tend to drop out of school earlier because they have to start work as a result of poverty and because of the traditional responsibilities of girls within the family.

Rural women in general have poor health and nutrition, with inadequate access to health facilities. Health costs are extremely high and there is a poor level of reproductive health.

### *Poverty*

In 2003, 90% of Cambodia's citizens were living under the poverty line in rural areas and the majority of these were women.<sup>52</sup> 65% of women were farmers, responsible for 80% of food production.<sup>53</sup> In places like Prey Veng, which is prone to flooding and droughts, this means women in particular face great difficulties in providing enough food and income for the family or in releasing themselves from their debt and poverty cycle.

### *Land and access to resources*

Women are vulnerable with regard to ownership of land and contracts. In particular, female single-headed households, widows and women whose husbands have migrated are susceptible to claims made by the more powerful on their land – leaving them without a source of income.<sup>54</sup> There are numerous reports of violations of land ownership and inheritance rights concerning women, an issue which is fundamental to women's autonomy.

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<sup>50</sup> Cambodia's Report to CEDAW, para 139.

<sup>51</sup> Cambodia Independent Teachers Association, Phnom Penh, May 2004, quoted in Hicks, N. , "The situation of women in Cambodia", (Cambodia: Report for Licadho) 2004 at 53.

<sup>52</sup> Gender and Development Network, 2003: 37.

<sup>53</sup> Ibid.: 35.

<sup>54</sup> Hicks, N.,2004: 23.



## **Section 2 – Background to the Report**

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### **2.1 Objectives of the Report**

The purpose of this report is to identify whether further knowledge and training on gender would be beneficial to lawyers, other legal staff and the judiciary.

The objectives of the report are as follows:

1. Analyze gender sensitivity during the legal process;
2. Highlight areas of strength and weakness; and
3. Provide recommendations for improving gender sensitivity among the Cambodian legal profession and courts.

### **2.2 Methodology**

During September to November 2010 (the “Report Period”), a LSCW Legal Consultant (a foreign-qualified lawyer) assisted by LSCW lawyers and legal assistants, where appropriate, carried out the following:

- observation of lawyer-client interviews of Victims or Women by LSCW lawyers. Such observation was only carried out with the consent of Victims and Women. The limitations relating to such observations are set out below.
- interviews of lawyers (and some legal assistants) at LSCW and other legal aid organizations in Phnom Penh (including the Cambodian Defenders Project (“CDP”), Community Legal Education Center (“CLEC”), and Legal Aid of Cambodia (“LAC”). Where interviews could not be carried out in person due to lawyers’ availability, the lawyers completed a prepared questionnaire in Khmer, which was subsequently translated into English. All lawyers at LSCW were interviewed (four female lawyers and one male lawyer) together with some legal assistants (three males). Four out of five of the lawyers at LSCW had a number of years’ experience working with Victims and Women (their experience ranged from two to six years). Four female lawyers (with a range of five to ten years’ experience) at LAC provided information as well as one lawyer at CDP and CLEC. Collectively, the participants from all the organizations are referred to in this report as “Participants”.
- Observation of trials involving Victims and Women. The limitations to such observations are set out below.

All interviewees were told the reasons for the research and all Victims and Women were asked whether they agreed to observation of lawyer-client interviews. Where the victim was a child, consent was obtained from the mother of the child. However, if upon observing the interview the child victim felt uncomfortable, observation of the interview ceased. Confidentiality was also respected. Names of individuals are not used.

There were a number of limitations and constraints in writing this report:

- The Report Period was short (around two months) therefore there were a limited number of interviews conducted, trials attended and lawyer-client interviews observed<sup>55</sup>. The Participants were selected on the basis that the organizations they work for provide legal aid to Victims and Women. Therefore, those lawyers are more likely to have received training or have knowledge about gender issues than lawyers generally in Cambodia. Accordingly, the recommendations made in this report in Section 5, will apply even more so to lawyers generally.
- Few trials were attended due to numerous delays, private trials (due to victims or suspects being minors) and a lack of court rooms (meaning in one instance that the trial had to be conducted in judge's chambers and therefore attendance was not possible).
- Victims and Women had to provide consent to observation of the interviews. Given the sensitive nature of the cases, consent was sometimes not given as Victims or Women did not feel comfortable with an observer in the room. In such cases, the Victims' or Woman's wishes were respected. In one case, the mother of a child victim of rape gave consent but upon joining the interview, the child victim said she felt "afraid". At that point, the observation ceased. In addition, cases involving young victims were particularly difficult to observe as the victim was often reluctant to speak to the LSCW lawyer at all, so few observations could be made.
- The Legal Consultant writing this report had to rely upon a LSCW legal assistant to translate from Khmer into English. The sensitive nature of cases meant that it was often not possible for the legal assistant to translate word for word. A substantial problem encountered was the translation of gender terminology from English into Khmer.

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<sup>55</sup> In total, 2 lawyer-client interviews and 7 trials (over 4 provinces) were attended for observation of gender sensitivity.

## **Section 3 – Analysis – Participants’ understanding of gender sensitivity**

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### **3.1 Participants’ understanding of gender and gender issues**

#### **3.1.1 Gender and gender stereotypes**

Perhaps the biggest difficulty encountered was the understanding of gender terminology, particularly when attempting to interpret such foreign terminology into Khmer. The notion of ‘gender’ itself was not well understood by Participants and during the course of interviews several Participants noted that the concept was new to Cambodian society and not well understood.<sup>56</sup> Some referred to gender as a ‘Western’ concept. Indeed, from what little research has been conducted into gender and sex in Cambodia, it appears that Cambodian concepts may be more diverse than those of Western concepts<sup>57</sup>. Accordingly, this may explain some of the difficulty with understanding gender and associated terminology.

Nearly all Participants at LSCW described ‘gender’ as *“equality between men and women”*. Similarly, lawyers from other organizations described gender as *“an equal policy between man and woman in the social, work place, living conditions and development.”* All Participants were aware that gender differed from sex but many had difficulty verbalizing it as culturally defined attitudes, behaviors and social positions based on sex.

All Participants however could point to some examples of gender stereotypes in Cambodia, and mentioned the following:

- Women should be submissive to men, as men are superior. A number of female Participants identified Cambodian proverbs reinforcing such views.
- Men are stronger and more energetic than women, who are weaker. Accordingly, men are suited to certain jobs and women others, such as household duties and working in garment factories.
- Women will automatically be caretakers of the home and housewives after marriage.

Participants from each organization identified that such stereotypes were due to social norms and cultural customs.

#### **3.1.2 Gender discrimination and gender inequality**

Participants appeared more at ease discussing ‘gender discrimination’ and ‘gender equality’. The majority of Participants described ‘gender equality’ as equality between men and women in all sectors of society, or something akin to that. Many mentioned the

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<sup>56</sup> This was consistent with the Royal Government of Cambodia’s observations. See above.

<sup>57</sup> See a most recent report by CCHR, “Coming out in the Kingdom: Lesbian, Gay, Bisexual and Transgender People in Cambodia,” December 2010. In fact, Cambodian concepts of gender and sex may be so different in Cambodia, that homosexual men may not in fact identify themselves as such.

government's efforts to mainstream gender equality, although few could verbalize what this meant in practice.

All Participants could identify an example of gender discrimination and gender inequality that occurred in Cambodia. In particular, Participants noted the following discrimination/inequality linked to Victims and Women they worked with:

- Women tend to be less educated than men; boys receive higher priority than girls. There were fewer female students attending university.
- Women are less likely to hold higher ranking jobs than men. In particular, a number of Participants noted that there were few female lawyers and judges when compared to males.
- If a woman decides to divorce her husband she may lose her family income and children and will be assumed to be a "bad" woman.
- If a woman is raped, her neighbours will also consider her to be a "bad" woman and discriminate against her.
- Women and children who are abused may not receive full legal intervention because the authorities consider it "*just a domestic conflict*".

### **3.1.3 Identifying gender issues facing Victims and Women**

Every Participant considered it more difficult for women and children to seek legal assistance compared to men. In particular, every Participant could identify at least one gender issue which they thought lay behind this, which included the following.

- Given that women were seen as submissive and inferior to men, it was not always within their power to seek legal assistance. In addition, domestic violence was often considered to be an issue that should not be discussed outside of the home and in some circumstances was considered permissible. As discussed above, levels of acceptance of domestic violence in Cambodia are high.
- Women in Cambodia are supposed to be shy and submissive so they were often more difficult to interview than male clients. Many women clients were not confident speaking with a lawyer or during court proceedings.
- As emphasis is placed on a woman's virginity; female rape victims were concerned about others, such as their families, friends and communities, knowing what had happened to them. Some Participants noted that in some cases it was much easier for the suspect to return to the community than it was for the rape victim. In addition, some women and their families were sometimes reluctant to report rapes until it had happened on a number of occasions. One Participant noted that they had dealt with two instances where they had sent rape victims to shelters to receive psychological help and subsequently their families refused to take the victims back due to the stigma associated with losing their virginity, despite the fact it was not their fault. In particular, many

Participants noted that it was difficult to discuss the physical details of rape with a victim (particularly when the interviewer was male).

- Women, particularly from the provinces, had little education so it was often difficult for them to seek help or understand legal matters. Even once they had received help, sometimes they would not return to appointments with lawyers and lawyers would have difficulty contacting them. During the observation of a lawyer-client interview<sup>58</sup> involving an 18 year old rape victim, without the lawyer's knowledge, the victim's family had been persuaded by the suspect's family to consider an offer of marrying the victim and providing her family with money, land and a motorbike. Accordingly, the family had arranged for discontinuance of the proceedings without the lawyer's knowledge, although subsequently they decided to pursue proceedings (however, no doubt this would be called into question at trial). Victims agreeing to drop proceedings in return for receiving financial compensation from suspects was a problem often encountered by Participants. However, in those interviews where this issue arose, Participants said they discouraged this method of settlement.<sup>59</sup>
- Financial constraints also prevented women from seeking help. Some could not afford transport. In addition, some Participants noted that, for example, in the case of domestic violence matters it was difficult for women to seek help as their husbands were usually in control of the financial affairs.
- Minor victims were particularly difficult to interview as they often would not answer questions. In particular, where a male had raped a minor girl, some male Participants noted the minor was afraid to speak to male interviewers.

Many Participants could identify gender issues (as set out above) which made it particularly challenging for female victims of rape, trafficking and other violence to seek legal redress.

### **3.2 Understanding gender sensitivity**

Only one of the Participants interviewed appeared to understand the term 'gender sensitivity' although, in particular, LSCW lawyers had heard it being used. Part of the reason for this limited understanding appeared to lie in the difficulty of translation from English into Khmer and difficulties with gender being considered a foreign concept.

Once the term was explained to Participants in greater detail, the large majority appeared to understand that gender sensitivity was part of their role when dealing with Victims and Women and that, to some degree, they had knowledge about it, although they had not previously recognized this as being 'gender sensitivity'. When asked, all Participants said they wanted (and in some cases specifically identified that they needed) to learn more about gender sensitivity to help them work effectively with Victims and Women.

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<sup>58</sup> Observation of LSCW lawyer-client interview in October, 2010, Kampot, Cambodia.

<sup>59</sup> This was noted to be the case during the observation of a LSCW lawyer meeting with their client, September 2010, Cambodia.

### 3.3 Understanding gender responsiveness

None of the Participants understood the term “gender responsiveness”. Even once the term was explained to Participants, they had some difficulty understanding what this meant for them in practice. When the concept was explained further and Participants were questioned further, most were able to point to practices that they adopted which addressed gender issues, although they were not always aware that such practices were in fact gender responsive practices. Some of these responsive practices were also noted during observation of lawyer-client interviews.

#### *Meetings with Victims and Women*

- Trying to find a quiet, private place to speak to Victims and Women, particularly minor victims and rape victims. Observations of lawyer-client interviews confirmed that lawyers and others understood the importance of this, although sometimes it was not always possible. In one instance it was very difficult to find a quiet, private place to interview a minor victim and she refused to talk.
- Assisting victims to meet with lawyers (or legal assistants) by traveling to the victim or working together with NGO partners to have the victim brought to the lawyer.
- Taking the time to explain the lawyer’s (or legal assistant’s) role and that they were there to assist and would try their best to help (although they could not guarantee success). Lawyers were particularly careful about the questions they asked in order to be sensitive to rape victims – they appreciated that some flexibility was needed in respect of the way that they asked questions.
- Explaining that what was said during the interview would remain confidential.
- Speaking with the Victims or Women to make them feel comfortable before writing notes.
- Trying to explain matters in a clear, simple way, particularly the legal process, and meeting frequently with Victims and Women.
- In relation to minor victims, making the victim more comfortable by having the presence of family members and toys if necessary. Where the victim was not willing to speak, working together with the family.
- Recognizing that sometimes Victims and Women were more comfortable speaking to a female. Where the interviewer was male, he would, if available, seek out a female interviewer if the Victim or Women requested.
- In circumstances where it appeared that the victim was under some pressure from relatives, explanation to the victim and family the reasons why they should not, for example, drop the charges in exchange for money or other benefits from perpetrators. In addition, explaining in one instance that having the female victim marry her rapist was not a solution to the problem that she was no longer a virgin.

### *Other services*

- Participants noted that it was not only legal advice that they provided to Victims and Women but also other needs and support and, if necessary, referring them to other NGOs or organizations who might provide such needs, for example, shelter and counseling. Accordingly, Participants from each organization interviewed noted the need for cooperation with NGO partners.

### *Trial*

- Meeting with the victim (and family if necessary) before trial to let them know what to expect and to make them feel more comfortable about being in a court setting.
- Explaining what was happening in a clear, simple way.

Further to interviews with Participants and observation of lawyer-client interviews, some areas for improvement are noted below.

- Providing undivided attention to Victims and Women, for example not taking calls when with clients.
- Ensuring confidentiality and avoiding discussion of matters with others (such as fellow villagers) who may be interested in what has happened.
- Lawyers were sometimes frustrated about not knowing how to deal with rape victims, particularly minor rape victims. Lawyers were not always adequately trained or able to deal with severely disturbed victims who needed psychological intervention. There appears to be little assistance for lawyers seeking to place victims, particularly rape victims, with shelters.
- Methods for obtaining information from victims. Being patient and taking the time to obtain information from the client, particularly from minors. Finding techniques to use that also ensure the client is comfortable and feels safe and gives truthful answers to questions.
- Ensuring a quiet, confidential place is found to speak to victims.
- Taking steps to protect the identity of victims (particularly minors) where possible and ensure they are kept out of the public eye. For example, minor victims should not prior to trial to be seated outside in view of the public or be clearly identifiable in court prior to the court announcing that the trial will be private.

## **3.4 Training received by lawyers on gender**

All Participants considered that lawyers in Cambodia needed further training on gender and how they could ensure gender equality during the legal process. Current knowledge among the legal profession was considered limited by all participating organizations.

None of the lawyers (or legal assistants) had received gender related training during the course of their law degree or from the Bar Association.

LSCW lawyers recalled that they had received some in-house training on gender and development and CEDAW, although the need for a refresher course was identified. Some also pointed to training they had received specifically on how to interview female and minor victims. Lawyers from another organization noted they had received some limited training, while lawyers from the remaining organizations had taken actions to increase their own knowledge in this area, for example, by listening to radio broadcasts on the subject.

The majority of Participants realized they had a role in ensuring gender equality in the legal process. For example, if Participants were trained well, they could play a part in accurate law implementation and work towards ensuring that during the legal process Victims and Women would have access to legal remedies for crimes committed against them.

In addition, two of the participating organizations noted the need to disseminate knowledge relating to gender to local communities. In particular they noted the need to disseminate such information to boys and men in communities in the hope that they could work together with women to promote gender equality.



## Section 4 – Analysis – Gender sensitivity during trial

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### 4.1 Gender sensitivity of court

Participants' opinions on whether those involved in the trial process (judiciary, lawyers and court staff) were knowledgeable about gender and gender sensitivity were mixed. A number of Participants pointed to the fact that the government was mainstreaming gender equality so the courts were perhaps likely to be even more knowledgeable than others in this respect. This appeared to be an assumption, however, and few Participants understood what "mainstreaming gender" meant in practical terms. Other Participants, drawing on their personal experiences attending court, said that sometimes victims were asked impolite questions (particularly regarding rape) or spoken to in a manner that made Victims and Women more frightened. One Participant considered that the clerks, prosecutors and judges did not understand gender sensitivity at all, as they used the same technique of questioning regardless of who the victim was before them.

Some non-governmental organizations in Cambodia have already noted the need for training of the judiciary in relation to gender sensitivity. For example, the CCHR noted in its recent trial monitoring report on human trafficking trials<sup>60</sup> an instance of a judge asking a young victim whether she experienced "*thrill and hurt*" during the violent sexual abuse committed against her. The CCHR also referred to a case where the judge asked a victim inappropriate questions related to her work as a prostitute. Following such observations the CCHR recommended that the RGC should instruct relevant government ministries and/or institutions to ensure the Royal Academy for Judicial Professions ("RAJP") provides instructions to all judges and court officials on gender sensitivity, requesting external assistance if necessary. The RGC should also instruct relevant government ministries and/or institutions to ensure that Cambodia's judiciary is cognizant of all gender issues related to trafficking including gender specific responses to victims of human trafficking.

One thing that is evident is that females are vastly under-represented in the courts. As at September 2008, 21 out of 188 Judges in Cambodia were female. Of 33 prosecutors, one was female. Out of 585 clerks, 103 were female.<sup>61</sup> Again, this may add to an environment which makes Victims and Women more uncomfortable and reluctant to be involved in the legal process.

### 4.2 Observation of trials

Few trials were attended due to numerous delays, the private nature of cases and the short duration of the Report Period. There is little information available about gender sensitivity and the Cambodian courts and further work needs to be carried out in order to analyze the situation.

However, one observation made was in respect of a matter involving a minor rape victim in the Supreme Court. It was not until after some preliminary matters were dealt

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<sup>60</sup> The CCHR, "Human Trafficking Trials in Cambodia", July 2010, p. 24.

<sup>61</sup> Gender Mainstreaming Action Plan of the Ministry of Justice (2009-2013), p. 7.

with that it was announced by the judges that the hearing would be private, due to involvement of minors (both suspects and victim). By that stage the victim, who had been sitting in the public gallery from the outset, was easily identifiable by the public as being the victim (who were subsequently asked to leave).

## Section 5 – Conclusions and Recommendations

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### 5.1 Training needed

#### *Lawyers*

Overwhelmingly, all Participants said that they needed further training on gender sensitivity. They identified that this would help them to improve their skills and ability to work effectively with Victims and Women. In some cases, Participants noted that this would allow them to assist with ensuring gender equality in relation to access to justice.

In particular, the following training should be considered for lawyers and other staff:

- A short course on what gender is, gender roles and gender stereotypes in Cambodia. While most Participants had some understanding of gender and gender stereotypes in Cambodia, a short course will assist lawyers and others to actively consider what gender is, gender perspectives, gender issues and gender inequality and how these directly relate to the Victims and Women they are working with. This training could also form the introduction to further training on gender sensitivity, as set out below.
- Training on gender terminology, such as ‘gender sensitivity’ and ‘gender responsiveness’. Much terminology was entirely new to Participants. It is acknowledged that there is difficulty in translating such concepts into Khmer, accordingly it is even more important that such concepts and terminology are contextualized so that lawyers and others can understand how it relates directly to the work they are already doing. This will assist lawyers and others to consciously consider their current practices and how they might improve them in light of striving to be gender sensitive and gender responsive.
- Further, it is important for legal professionals to understand the importance of gender sensitivity. While many noted that it was important for them to understand it so they could work more effectively with victims, they should understand the wider implications in relation to effective justice, trust in the legal process and its role in development of Cambodia.
- Lawyers at LSCW had already been trained on CEDAW but again it may be helpful for lawyers to understand the Convention in light of their training on gender and gender terminology and how it directly applies to their daily work.
- Many Participants noted that they would like to receive practical training on practices and techniques that they should adopt to ensure that they are gender sensitive and gender responsive towards Victims and Women. Again, this emphasizes the need for training to be specifically tailored to the work that lawyers and others are doing. Such training could take the form of role plays so that lawyers and legal assistants can fully understand what these concepts mean in practice.<sup>62</sup>

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<sup>62</sup> In 2007, the Ateneo Human Rights Center (in collaboration with UNIFEM) produced a comprehensive “*Training Manual on Gender Sensitivity and CEDAW*” for legal professionals and the courts in the Philippines, which may provide a helpful reference point for any training program that is to be considered for lawyers.

## Courts

It would be highly beneficial for all judges and court staff to receive gender sensitivity training, co-ordinated by the Ministry of Justice. Ideally, the Ministry of Justice and the Royal School for Judges and Prosecutors would liaise to develop means by which gender sensitivity training is provided to judges, prosecutors and clerks from the outset. It is important to focus on ensuring that those involved understand gender sensitivity as it directly relates to their role and the legal process. There would also require to be a mechanism to evaluate the effectiveness of such training.

It is noted, that Objective 2 of the *Gender Mainstreaming Action Plan* of the Ministry of Justice is strengthening the capacity of provincial and municipal courts and integrating gender initiatives. The relevant activities have included:

- Preparing a manual and methodology for gender and CEDAW trainings (2010).
- Arranging dissemination of gender concepts (2010).
- Establishing contact officers at provincial-municipal courts of first instance and prosecutors' offices (2010).
- Prepare, encourage and monitor the implementation of gender concepts in provincial-municipal courts of first instance and prosecutors' offices (2012).<sup>63</sup>

Objective 3 was to increase gender mainstreaming and understanding of relevant laws at local level. The relevant activities listed to achieve this objective included:

- Preparation of a manual for delivery training to contact officers at provincial-municipal courts of first instance and prosecutors' offices (2011).
- Gender awareness training to contact officers at provincial-municipal courts of first instance and prosecutors' offices (2010-2012).

Objective 5 is to increase women's representation at all levels. In particular, one of the listed activities is to "*work with competent institutions to prepare the strategy for an inclusion of gender issues into the principles of recruitment of judges and prosecutors*" in order to increase the number of female judges by 5% (2013).<sup>64</sup> Another activity is to "*work with competent institutions to prepare the strategy for the inclusion of gender issues into the principles of recruitment of court clerks*" so that the number of female clerks increases by 7% (2013).<sup>65</sup>

When considering gender sensitivity and training of the judiciary in other countries, it has been recommended that the curriculum should be developed with both gender experts and judges taking part to ensure that it is responsive specifically to the needs of court staff.<sup>66</sup> Accordingly, the Ministry of Justice should ensure when implementing its strategies that any training is appropriately responsive with input from the relevant professionals that the training is aimed at.

## 5.2 Establishment of gender responsive procedural guidelines

It would be helpful for a set of gender responsive procedural guidelines to be established for the judiciary and court staff. Organizations should similarly adopt

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<sup>63</sup> Gender Mainstreaming Action Plan of the Ministry of Justice (2009-2013), pp. 13-16.

<sup>64</sup> Ibid, p. 19.

<sup>65</sup> Ibid.

<sup>66</sup> See UNDP, Promoting Gender Sensitivity in the Philippine court system.

gender responsive procedural guidelines for lawyers and other staff to follow. While such procedural guidelines cannot hope to set out every gender responsive practice that should be adopted, they can at least set out a bare minimum and perhaps encourage professionals to consider other procedures. Guidelines for organizations, such as LSCW, might include formal guidelines related to the following (many of which appear to already be common practice):

- *Meeting places* - Lawyers and legal assistants should consider carefully their meeting places with Victims and Women (and plan ahead if necessary) to ensure that meetings can be private and confidential. All Participants were aware of the need for female and minor victims to be interviewed in a quiet place, away from other people. They were aware of the importance of confidentiality and most noted that they took the time to explain to victims that interviews were confidential. Observations of lawyer-client interviews confirmed this. However, in some instances it was very difficult to find a quiet place. For example, during one observation of a lawyer-client interview, the LSCW lawyer traveled to the village of a minor rape victim to interview her but, despite trying, there was nowhere suitable to hold the interview. The victim was interviewed behind an animal shed, which was less than ideal as the villagers were curious to see what was going on. The victim did not speak to the lawyer. While it was not possible in this circumstance to interview the victim in a suitable place, lawyers (and legal assistants) should always strive to find suitable, confidential meeting places.

Lawyers and legal assistants should ensure that the meeting rooms are suitable and have been prepared for particularly young victims prior to the interview. For example, one minor victim appeared uncomfortable sitting on a chair at a very large table in a small room with several people around the table. Toys should be readily available to hand.

- *Confidentiality* - Legal professionals should ensure that they take steps to keep confidential details of Victims and Women, particularly the identity of minor victims. Such steps range from using private meeting places (as set out above) to ensuring that minor victims are not brought into court sooner than necessary or measures are in place to protect their identities. Such confidentiality will also extend to ensuring that details regarding victims are never disclosed in reports and other publications of the organization.
- *Interviewers* - Ensuring that women have access to a female interviewer if they prefer.

### **5.3 Other considerations - Services to Assist Victims and Women**

One issue that arose frequently when speaking to Participants was their ability to deal with children and women who had been severely traumatized.

Some lawyers wanted guidance as to how to deal with such Victims and Women, particularly when attempting to conduct interviews. Two Participants mentioned that the services of a psychologist would assist them, although the practical difficulty of resources and available psychologists in Cambodia is noted. One of those two Participants mentioned that female victims should meet with a psychologist prior to meeting with the lawyer. Currently none of the lawyers worked in conjunction with a psychologist, although lawyers referred Victims and Women to shelters that were

known to have a counselor available. However, whether the Victims or Women received such help depended on whether they met the policy criteria of the particular shelter.

Ideally, the services of a psychologist would be on hand to work with Victims or Women and lawyers; however if that is not possible, lawyers (and legal assistants) may find it helpful to receive training on working with traumatized victims.

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