



NGO-CEDAW

Shadow Follow-up Report for Cambodia

The UN CEDAW Committee's 2013 Concluding Observations to the combined 4th and 5th periodic reports of Cambodia **“requests the State party to provide, within two years, written information on the steps taken to implement the recommendations contained in paragraphs 15 and 21 (a), (b) and (c) above.”**¹ These sections both focus on the issue of gender-based violence. This report is the response of Cambodia's civil society members to the CEDAW Committee's request. NGO-CEDAW is a coalition of 91 local NGOs and associations committed to the achievement of gender equality in Cambodia.

Part 1

Paragraph 15(a) concerns the government's obligations:

To provide effective redress to victims of sexual and gender-based violence, in particular sexual violence, against women committed during the Khmer Rouge regime and consider to develop effective non-judicial transitional justice programmes, including the provision of adequate reparation and psychological and other appropriate support;

The following types of gender-based violence were reported to have occurred during the Khmer Rouge regime: rape, forced marriage, sexual assault, forced pregnancy² and rape in the form of forced consummation of forced marriages.

The ECCC obtained grants for 11 projects aimed at reparations³. Most of the reparation is general, and nominal, such as memorials to victims of the Khmer Rouge, and a small section on forced relocations in the school curriculum. Approximately 779⁴ victims of sexual violence were able to join as civil parties in the trials and had an opportunity to testify or attend hearings. These individuals were provided with short-term psychological group therapy. Their testimony was included in a book of survivors' stories. In addition, one project implemented by TPO involved the creation of local therapy groups to provide ongoing emotional support; however, this project is very small in scope, involving 212 survivors.⁵

The vast majority of victims have learned to cope with their sexual abuse in silence, and no comprehensive efforts are being made to ensure that these women understand that their rights were violated or that their financial and emotional needs are met. In particular, gay and transgendered persons were frequent targets of violence, but did not speak out or seek help due to the multiple layers of stigma attached to them as both victims of gender-based violence and as members of a minority group.⁶ Comprehensive redress needs to include all of the people who were not directly involved in the tribunal's activities, and for whom public airing of their suffering is not an appropriate remedy. For example, outreach efforts meant to ensure that victims of Khmer-Rouge era violence could apply for free therapy and job training, as well as education on the possibility of obtaining a divorce with financial support should be provided. The government should provide free legal services and a simplified procedure for these cases.

¹ UN CEDAW COB 2013, Paragraph 50.

² Interview with consultant for the Heinrich Böll Foundation.

³ From the ECCC website: Overview of Civil Party Reparation Requests in Case 002/01

⁴ From the ECCC's draft response to the UN Concluding Observation Paragraph 15.

⁵ Ibid.

⁶ Kasumi Nakagawa, Gender-Based Violence Against Sexual Minorities During the Khmer Rouge Regime, 2015

The sexual violence that occurred in the Khmer Rouge era left a cultural legacy of wider acceptance of violence against women and the increased acceptance of marriage as a solution to the crime of rape.⁷ An entire generation of Cambodians was raised by parents who remained in a forced marriage, fundamentally affecting their attitudes toward normal family life. Forced marriage, particularly of rape victims, members of the LGBT community and of underage children, remain a problem in Cambodia. Comprehensive reparations should include measures to undue this cultural harm and to change attitudes toward forced marriage. While financial compensation for all of the millions of victims is unlikely, the government has the ability to provide vocational training and counseling for the population still suffering from the aftereffects of Khmer Rouge era violence. The purpose of reparations should be to prevent the continuation of the harm committed during the Khmer Rouge era. The increasingly recognized approach internationally is of “transformative reparations” which are forward-looking and respond to and “change the basic societal conditions that led to violence so that the society will not relapse into conflict.”⁸

The only reparation efforts made so far were in connection with one now-closed case at the ECCC, but not with the current case pending at the ECCC. On the positive side, a new grant from UNTF will provide some transformative reparations for civil party victims. However, most importantly, transformative reparations are not being conducted outside the scope of the ECCC. Because it is unlikely that many new cases will be brought before the ECCC, and because so many survivors of violence are not directly involved in these cases, it is important to begin alternative approaches toward reparations as soon as possible.

(b) To take advantage of the process of drafting the second National Action Plan to End Violence against Women to fully incorporate into it the provisions of the Convention and of Security Council resolution 1325 (2000).

CEDAW General Recommendation No. 30 recommends that all States Parties ensure that “national action plans and strategies to implement Security Council resolution 1325...are compliant with the Convention, and that adequate budgets are allocated for their implementation.”⁹ In February 2015, more than one year into the five-year period covered by the document, Cambodia finalized its second National Action Plan to End Violence against Women (NAPVAW). The implementation matrix mentions UN Security Council resolution 1325 several times, but only nominally. The plan indicates that the review of laws and training of police on responses to gender-based violence should comply with international frameworks, including UNSCR 1325.¹⁰ However, the specific requirements of UNSCR 1325 and the context of the Resolution as a means of preventing and addressing violence against women in conflict situations has not been addressed in NAPVAW. Moreover, there are no guarantees that the adequate funding will be provided for the required training.¹¹

Resolution 1325 calls for “**increased representation of women at all decision-making levels.**”¹² The increased representation of women in leadership is directly tied to decreased violence. The Plan does

⁷ According to the November 2015 National Survey on Women’s Health and Life Experiences in Cambodia (“National Survey,” sponsored by WHO), 58% of women who had experienced intimate partner sexual or physical violence compared to 49% of all women believed that physical violence by a man against his wife can be justified (p. 58, 66). Experiencing violence thus contributes to condoning violence.

⁸ Australian Human Rights Centre and the Asian International Justice Initiative, “Transformative Reparations for Sexual and Gender-Based Violence at the Extraordinary Chambers in the Courts of Cambodia: Reflections, Recommendations and Next Steps,” p. 12.

⁹ CEDAW General Recommendation No. 30, Paragraph 28.

¹⁰ Second National Action Plan to End Violence against Women (2014-2018), pp. 21-29.

¹¹ The national budget has been cut rather than increased for programs designed related to violence against women.

¹² UNSCR 1325 Paragraphs 1 and 2.

indicate a need to increase the number of female police and judges. The UN recommends that 30% is an appropriate target, but no specific target or deadline is listed in the NAPVAW or in Neary Rattanak IV.¹³

Resolution 1325 also urges “**Member States to increase their voluntary financial, technical and logistical support for gender-sensitive training efforts**”¹⁴ While the NAPVAW indicates that gender-sensitive training should be provided to local and national police, the focus of this training is on responding to complaints of violence against women. The focus needs to be broader, focusing not only on responses but on taking full opportunity for prevention. Additionally, the Plan does not acknowledge the context of UNSCR 1325 as a means of protecting civilians in conflict and post-conflict situations. The Resolution’s full implementation requires the training of the military, national and local police, and private security firms acting on behalf of the government on gender-sensitivity when encountering civilians to avoid state violence against women. A growing concern in Cambodia is that police, or other agents of the government go to sites of protests by unarmed citizens, and the result is an escalation of the situation into violence.¹⁵ The State should take the lead in preparing and training police, military and security staff so that they are able to defuse tensions and avoid violence. Because women and children are often present during protests and relocations related to land-ownership disputes, gender-sensitive training is even more necessary in current Cambodian society.

Part 2

Paragraph 21 addresses current incidents of gender-based violence:

21. Recalling its general recommendation No. 19¹⁶ on violence against women and its previous recommendation (CEDAW/C/KHM/CO/3, para. 16¹⁷), the Committee urges the State party:

to (a) train judicial and law enforcement on strict application of the Law on the Prevention of Domestic Violence and Protection of Victims (DV law) to avoid automatic mediation, (b) encourage women to make formal complaints of DV and sexual violence; and to (c) raise awareness on all forms of violence, especially in rural areas. Paragraph (d) requests statistics on shelters and protections orders in the 2017 report.

Although statistics are not yet due to the CEDAW Committee, it is important to note that even though the government has begun collecting data from the courts pursuant to the NAPVAW, the full scope of the problem of violence against women will not be reflected by these numbers. The combination of the legacy of tolerance for violence left by the Khmer Rouge, and the traditional attitudes that do not

¹³ Neary Rattanak IV, Cambodia’s 5-year gender-equality plan lists a strategy of increasing women in decision-making roles. It states that NEC and political parties will help implement this; yet new legislation on the election of National Assembly members and selection of members of the National Election Committee fail to implement this. No quotas were established, and only 1 woman serves on the new 9-member NEC.

¹⁴ UNSCR 1325 Paragraph 7.

¹⁵ In addition to the concerns of NGOs, at least one official with the National Police expressed concerns over rising state violence against peaceful women land activists (via his completed survey from NGO-CEDAW’s August 2015 National Forum).

¹⁶ General Recommendation No. 19 requires the State to remove harmful traditional attitudes that stereotype women and perpetuate violence (Paragraph 11). GR-19 also notes that economic dependence forces many women to stay in violent relationships.”(Paragraph 23)

¹⁷ The Committee’s previous recommendation (CEDAW/C/KHM/CO/3, para. 16), states:

“The Committee urges the State party to place high priority on implementing a comprehensive approach to address all forms of violence against women” through practical measures and to ensure that “perpetrators of violence are effectively prosecuted and punished with the required seriousness and speed.”

promote women's equal rights with men have created a culture of silence. Women are encouraged not to complain when they are victims of violence, and they face a social stigma and economic consequences if they do complain. HIV positive women and members of the LGBT community face additional layers of stigma. Moreover, local authorities almost never record initial complaints of violence against women, so accurate measurements of complaints will not be obtainable without a complete change in the way that local police and authorities view violence against women and apply the relevant laws.

Shelters provide some of the most effective services and keep records of incidents of violence; however, they are not widely available. The few regular shelters in Cambodia are run by NGOs¹⁸ and are mainly in urban areas.¹⁹ NAPVAW mentions the 2012 One-Stop-Service Center feasibility study, but does not list a plan to build them. The Ministry of Social Affairs has opened two temporary shelters for trafficking victims, but refers them to NGO-run shelters for longer stays. The Ministry program is underfunded.²⁰

21(a) To intensify efforts to train judicial and law enforcement officers on the strict application of the Law on the Prevention of Domestic Violence and Protection of Victims to ensure that cases of violence against women, including domestic and sexual violence, are effectively prosecuted and not systematically diverted to mediation

There is ample evidence that local officials, the general population, courts, and even CSO staff working on the problem do not fully understand or implement the law on domestic violence.²¹ Additionally, lower level government employees are often underpaid and given too few resources to effectively respond to complaints, leading to corruption in the form of asking victims for money and taking a share of negotiated settlements.²²

Moreover, Cambodia has a system of legal pluralism, where the written law is rarely, and only selectively enforced, and the main legal system in actual practice is an informal combination of traditional rules and ad hoc procedures that differ from community to community. Currently, the use of protective orders is virtually unheard of, even though in addition to court protective orders, the local authorities have the power to issue administrative decisions with similar effects.²³ Moreover, the DV does not require authorities to issue protection documents.²⁴ Also, the language of the DV law specifically encourages mediation by nonprofessionals of misdemeanor and petty crimes, along with financial and emotional violence.²⁵

Surveys also showed a belief that law enforcement should get involved in situations where there is violence against women. However, when questioned further, respondents explained that police should only be involved in serious cases of domestic violence. They defined "serious" as physical injuries where a women is literally bleeding and needed hospital treatment. Most interviewees felt

¹⁸ CWCC operates shelters in Phnom Penh, Banteay Meanchey, Siem Reap and Kampong Thom. Banteay Srei operates a shelter in Battambang and a center for men seeking behavior therapy in Siem Reap. Cambodian Center for the Promotion of Children's Rights (CCPCR) operates a shelter for children in Svay Rieng.

¹⁹ NAPVAW 2015, p. 3

²⁰ <http://www.humantrafficking.org/organizations/42>, last visited on September 11, 2015.

²¹ Interviews with local authorities in Battambang and Kampong Speu in July 2015; survey from NGO-CEDAW's National Forum on Legal Pluralism, August 2015; Katherine Brickell, Preliminary Research Report 2014 on DV Law.

²² LICADHO, *Getting Away With It: The Treatment of Rape in Cambodia's Justice System*, November 2015, p. 13.

²³ DV law, Article 14.

²⁴ Articles 14-35 of the DV law outline powers of authorities with terms such as "can issue" decisions.

²⁵ DV law, Article 26.

that talking to the parties and counseling a husband not to be violent is the appropriate response by local authorities in almost all cases of family violence. Local authorities in one city have a policy of giving two verbal warnings before making a written complaint, no matter the circumstances.

The failure by local authorities to consistently make written reports results in the inability to accurately track or measure the prevalence of domestic violence in the community. It also reflects the failure of the community and local authorities to recognize that all domestic violence is serious, whether emotional, physical, financial, or sexual. Decisions not to file written reports when weapons are used reflects the arbitrariness of the procedures and the persistence in the belief that parties can handle violence within the family with just a little counseling from local authorities. There are also false myths that interfere with using innovative solutions, including protective orders, to resolve domestic violence. One such myth is that divorce solves the problem of domestic violence and that domestic violence is just between husbands and wives. Another is that women must put up with abuse for financial reasons, since only living with a spouse can ensure her family will have an income (despite that fact that most Cambodian women work outside the home). Society values money and preserving the household over the safety of women and children. Finally, although the DV law protects children and domestic servants, authorities assume that it only applies to spouses. This leaves whole categories of survivors without protection, including women abused by boyfriends or ex-partners, LGBT youth locked up at home to prevent them from entering into same-sex relationships, disabled women locked up to “protect” them from harm, and women beaten by in-laws.

The NAPVAW rightly notes that the DV law is imperfect and must be analyzed and amended to provide better protection for all women. However, the strengths of the existing law are neither understood nor implemented by authorities, so even a better law will not improve women’s safety without much better training and direct orders from the highest authorities for better implementation. The criminal law is often misapplied in that one article which criminalizes violence against a spouse or partner is the only law applied to men who use violence against a spouse or partner, even when aggravating factors under a different article would lead to a longer jail sentence.²⁶ Judges not only routinely apply minimum sentences, but often suspend sentences, allowing perpetrators of GBV to go free after a conviction.²⁷ Amendments to the criminal law, clearly defining and criminalizing all acts of violence against women, even where there is no visible injury, will help improve women’s safety and assure better implementation of the DV law.²⁸

²⁶ Interview of LICADHO lawyer serving as women’s rights senior monitor, September 2015

²⁷ Getting Away With It, p. 20.

²⁸ Cambodia’s Criminal Code Article 210 sets a penalty for “torture and cruel acts” which is the term used in the DV law to refer to emotional and economic violence. Article 217 refers to intentional acts of violence in general (as opposed to Article 222, which only focuses on acts against a spouse or partner). Article 239 defines rape and does not include an exception for marital rape.

21(b) To encourage women to lodge formal complaints about domestic and sexual violence, by destigmatizing victims and raising awareness about the criminal nature of such acts;

Women in Cambodia are still reluctant to report domestic and sexual violence. A 2015 national survey revealed that 49% of women who experienced such violence never reported it, and those who did chose to report it informally, to friends or family rather than to authorities.²⁹

With regard to sexual violence, women may not report a crime due to lack of support by local authorities and medical staff. For example, local authorities surveyed for this report indicated that there were few rapes in their communities.³⁰ However, they did not appear to consider it rape unless there was a child victim or a gang rape. It seems likely that the other rapes were either not reported, or were not treated as rape by the community and local authorities. It is common in Cambodia not to recognize marital rape and not to distinguish between consensual premarital sex and non-consensual sex. This leads to a failure to prosecute rapists, a failure to educate men not to rape women, and pressure to further victimize a rape victim by having her marry her rapist (setting the stage for ongoing domestic violence).

Moreover, victims face obstacles when seeking forensic testing after a sexual assault. While NAPVAW includes plans to provide free tests throughout the country, the results are inconsistent. In Battambang, tests are free but there is often a delay of up to 48 hours in administering the test, making it much more difficult to obtain useful evidence.³¹ In Sihanoukville and Phnom Penh, hospitals are still charging a fee, but tell victims to contact NGOs to get sponsored.³² Additionally, suspects have been known to bribe officials to alter medical reports to minimize severity of injuries.³³

21(c) To continue public awareness-raising campaigns on all forms of violence against women, in particular in rural areas;

In Cambodia, several national and local surveys have shown a greater awareness that violence against women, including domestic violence is wrong and should be prevented.³⁴ However, there is little indication that the actual occurrence of such violence is diminishing. Many of the people who realize now that a domestic violence law exists do not know what the law says.

One recent study by ICS showed that of 700 interviewees in rural Siem Reap Province, 7 percent of male respondents admitted to committing sexual abuse in the previous 12 months, and 19 percent of the women claimed to be victims of sexual abuse in the prior 12 months. 44% of men and 57% of women agreed with the sentence "I think that a woman cannot refuse to have sex with her husband."³⁵

In a Cambodian national study released in November 2015, only 63% of women thought that women could refuse sex with her husband because she did not want to.³⁶ This means that awareness-raising needs to focus on non-consensual sex as both a crime and a form of domestic violence.

²⁹ National Survey, p. 88.

³⁰ Interviews in Battambang and Kampong Speu.

³¹ Interview of Banteay Srei director.

³² Interview of LICADHO senior monitor.

³³ Interview with LICADHO consultant. See also *Getting Away With It*, p. 17.

³⁴ Interviews with local authorities in Battambang and Kampong Speu in July 2015; survey from NGO-CEDAW National Forum on Legal Pluralism, August 2015; Brickell report, December 2014; ICS May 2015 baseline study in Chi Kraeng Commune on "Community Response to Violence Against Women,"

³⁵ ICS baseline survey.

³⁶ National Survey, p. 64.

NGO-CEDAW conducted a survey of attendees of a national forum, and most indicated that the main reason for violence against women is that men do not respect women. The next most common responses were drug and alcohol abuse. This indicates that awareness-raising needs to include men, and measures combatting drug and alcohol abuse need to be taken at the local level.

Part 3

Recommendations:

NGO-CEDAW welcomes the cooperation of the government with civil society and offers the following recommendations for actions which would address the concerns of the Committee and benefit all of Cambodian society. As NGOs, we have limited resources to provide services and outreach, and call upon the government to use its infrastructure, national budget, and extensive human resources to implement CEDAW at the local level throughout the nation.

- 1) The government should provide additional reparations including nationwide job-training, therapy, education about rights under CEDAW, and the opportunity to obtain free assistance in divorce proceedings for all persons in Cambodia who experienced gender-based violence, including forced marriage during the Khmer Rouge period. These programs will also help end the culture of silence that was strengthened due to Khmer Rouge actions, and has not yet been eliminated.
- 2) While the government is engaged in educating the public on the need to end rape and domestic violence, traditional views condoning this violence are deeply held, and more education is needed. We wish to see the government provide nationwide education on the unacceptability of rape and domestic violence (in and outside of marriage and established relationships) and the need to publically speak out against gender-based violence.
- 3) The government should also ensure the full implementation of UNSCR 1325 by training all military, military police, national police, local police, and private security officers hired by the state on gender-sensitive and non-violent interactions with all civilians, including protesters, who often include a high proportion of women and children.
- 4) UNSCR 1325 requires additional women in leadership positions. Setting a goal of 3-4 women police officers per commune and a 5% increase in female judges by 2017 would be a good first step.
- 5) The Second NAPVAW includes the intent to analyze and amend laws on violence against women. NGO-CEDAW's members have already met several times to analyze the law and have drafted recommendations to expand and improve the protections provided by this law. It would be beneficial for all involved parties for the government to meet with civil society at as early a date as possible to share NGOs' findings with the State to contribute our insights to the drafting process.
- 6) Due to the rarity of protective orders and administrative decisions, more training of local authorities, judicial officers, and the public is needed to explain the DV Law's provisions for judicial and non-judicial protective documents which empower authorities to protect victims even without an ongoing criminal case.

- 7) Judges, prosecutors, lawyers, local authorities and police do not fully understand the laws on gender-based violence, so more training is needed to end the practice of issuing lower sentences for crimes committed against women by relatives, spouses and partners. The additional training must also emphasize that cases must not be automatically sent to mediation or dropped, even if the victim is reluctant to testify. Violence against women harms not just the immediate victim, but children in the home as well as the entire community.
- 8) A simplified version of the one-stop service center can be set up at clinics and hospitals at a relatively low cost to the RGC. These centers can conduct forensic rape tests, HIV and STD tests, pregnancy tests and provide referrals to therapy and other assistance, all provided free of charge to the patient.
- 9) The government must allocate funds to each commune for the sole purpose of training local authorities and the public on the DV law and other laws on GBV, and for monitoring the effectiveness of this training.
- 10) The highest authorities of the police and courts must ensure that local courts and authorities: prosecute cases of rape and domestic violence even if there is a civil settlement, to record all complaints of GBV, and to issue temporary protective orders or administrative decisions immediately upon receiving each complaint.