



**SEXUAL VIOLENCE AGAINST
CHILDREN IN CAMBODIA**
A parallel report by ADHOC



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Parallel Report on Cambodia

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Cambodian Human Rights and Development Association (ADHOC)

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Cambodian Human Rights and Development Association (ADHOC)

The *Cambodian Human Rights and Development Association* (ADHOC)¹ is an independent, nonpartisan, nonprofit and non-governmental organization. It was founded by a group of former political prisoners in December 1991 after the signing of the *Paris Peace Agreements* on October 23, 1991.

In a vision of a society that respects human rights and law, ADHOC's mission is to address violations of basic rights, freedoms and liberties in Cambodia by providing citizens with knowledge and understanding of human rights, law and democracy and of how to defend their own rights and freedoms. ADHOC's objectives are to bring together human rights defenders and help all citizens irrespective of their individual race, gender, language, religion, political thinking or other opinions, ethnic or social origin, resources or family background. The Association has its headquarters in Phnom Penh and runs offices in every province of the country, for a total of 23 offices.

Over the last 20 years, ADHOC has developed an expertise in the protection and promotion of human rights in Cambodia and, in particular, has established a strong integrated program for Women and Children's rights. This program focuses on monitoring, investigation and intervention in cases of violence against women and children by providing legal aid, emergency assistance, counselling and legal representation to victims, and by defending them in court. ADHOC also cooperates closely with other human rights non-governmental organizations (NGOs), stakeholders, interested groups and local authorities. ADHOC seeks to bring offenders to justice, follow up on the victim's reintegration, render justice to the victims and reduce the culture of impunity that will continue to prevail throughout the country if no strict measures are taken by the State. ADHOC also works to raise awareness and understanding of the protection and prevention of discrimination against victims of domestic violence, rape and trafficking.

¹Cambodian Human Rights and Development Association, *online*: <<http://www.adhoc-cambodia.org>>.

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Abbreviations

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| ADHOC | Cambodian Human Rights and Development Association |
| CAMBOW | Cambodian Committee of Women |
| CEDAW | Convention on the Elimination of all Forms of Discrimination Against Women |
| CNCW | Cambodian National Council for Women |
| CRC | Convention on the Rights of the Child |
| CWCC | Cambodian Women's Crisis Centre |
| ECPAT Cambodia | End Child Prostitution, Abuse and Trafficking in Cambodia |
| MOWA | Ministry of Women's Affairs |
| NGO | Non-governmental organization |
| RGC | Royal Government of Cambodia |
| State Report submitted by the Government of Cambodia | Second and Third Periodic Report on the implementation of the <i>CRC</i> |
| UN CEDAW Committee | United Nations Committee on the Elimination of Discrimination Against Women |
| UN CRC Committee | United Nations Committee on the Rights of the Child |
| UNTAC | United Nations Transitional Authority in Cambodia |

Executive Summary

Sexual violence perpetrated against children is pandemic and an acute problem in Cambodia. Domestic violence, rape and sexual exploitation are three interconnected aspects of this pressing issue. The story of “K” is a living testimony to this brutal reality. “K”, a young girl whose father died, was raped by her stepfather. K's stepmother blamed K for the rape and sold her into a brothel where she was beaten until she accepted to have sex with up to fifteen customers per day. Luckily, she was rescued four months later, unlike the majority of sexually exploited girls who cannot escape the fierce ‘grip’ of the brothels.

By not fulfilling all of its obligations under Articles 19, 34 and 37 of the *Convention on the Rights of the Child* (CRC), the State of Cambodia is responsible for perpetuating severe children’s rights violations.

The inferior status of women in Cambodian society constitutes the ideological foundation for the tolerance of sexual violence against women and girls. Taught in elementary school, the *Chbab Srey* (women’s code) advises women to “follow the command of the husband like a slave; dread your husband’s heart for fear of otherwise being insulted or beaten; you must never dare to reply”. The misogynous cultural norms in place disempower women, promote abuse towards girls and thwart the rehabilitation and social reinsertion of the victims. The Cambodian government needs to coordinate a national awareness campaign on discrimination against women and the importance of gender equality to eradicate all forms of sexual violence against girls in the country.

The lack of comprehensive and disaggregated governmental statistics on domestic violence, rape and sexual exploitation of children constitutes a violation of the State’s obligation to monitor and assess progress towards the implementation of the *CRC*. Moreover, this shortage of information makes it difficult for human rights observers and for the State itself to tackle these issues efficiently. No actual progress can be confirmed as long as the State of Cambodia does not effectively implement a comprehensive and reliable data-base system on victims of sexual violence within the *National Institute of Statistics of Cambodia*.

The obvious lack of monitoring and law enforcement in Cambodia jeopardizes any effort to eliminate domestic violence, rape and sexual exploitation of children. The *Cambodian National Council for Children’s* lack of financial and political independence from the government compromises its capacity to formulate effective solutions. There is no Ombudsperson for children, nor a judicial office specialized in the protection of youth. The creation of an Ombudsperson function that could receive children’s complaints about violations of their rights and provide remedies in a child-friendly manner is a crucial step towards the implementation of the *Convention*. Moreover, the acute vulnerability of judges, police officers and local authorities to bribery due to the low level of income, leads to the

impunity of offenders. The Cambodian government must offer decent salaries and impose serious sanctions on State officials who violate the law while performing their duties.

In 2005, the *Law on the Prevention of Domestic Violence and Protection of Victims* was enacted. However, its implementation proves to be insufficient considering that domestic violence has increased in cruelty and intensity over the years. Moreover, the law does not fully condemn some practices related to violence. For instance, Article 8 explicitly authorizes corporal punishment for educational or disciplinary purposes. Commonly present in everyday life of too many Cambodian women and children, domestic violence is considered normal in gender relations across the entire social spectrum. Expressing personal feelings in private or in public is seen as improper behaviour according to Cambodian social standards, which prevent the victims from publicly denouncing violence for fear of making things worse. Thus, the community dismisses or ignores complaints from the victims and considers that they are individually responsible for their problems. Being socially accepted, domestic violence tends to be institutionally accepted as well, as shown by the fact that police officers do not necessarily consider domestic violence a criminal offense. Finally, divorce is not a solution for battered women and their children, since it is socially, economically and legally disadvantageous for the victims, and because the fees for filing a request for divorce are unreasonably high.

In Cambodian society, rape can be observed in its most degrading forms. The issue of rape of children is of great significance given that children represent the biggest proportion of victims of sexual assaults. However, the issue is not at all addressed in the *State Report* submitted to the *Committee*, neither in the national policies. Sexual assaults on children happen in various forms; some sexual predators are minors (as young as seven years old) while others sexually assault their victim in groups. The increasing number of sexual assaults leading to death and the widespread availability of pornography further exacerbate these compelling figures. Research shows that watching pornographic material at an early age leads to premature sexual development and induces children to sexually relate to women through violence and abusive behaviour. According to a fundamental principle of the *Convention*, when a parent fails to protect his or her child from exposure to drugs, alcohol and/or violent pornography, the State has an imminent responsibility to assist him or her in fulfilling this primary duty. Furthermore, the State has the obligation to intervene in cases of ill-treatment or neglect towards a child.

Over the last years, Cambodia took meaningful steps in addressing the problem of sexual exploitation of children, including the adoption of the *Five-year National Plan* and of the new *Law on Suppression of Human Trafficking and Sexual Exploitation* of 2008. Despite the numerous actions that were taken, the government itself admits that there is little evidence that trafficking and sexual exploitation of children decreased. Every year, ADHOC receives complaints from victims of human trafficking, of which 50 to 60% in average are children. There are several social, cultural and economic factors that increase the vulnerability of children to sexual exploitation. Poverty, limited access to education, domestic violence, unemployment, landlessness and discrimination against girls are but a few of the relevant factors.

Child trafficking and child sex tourism are growing at an alarming rate in Cambodia. It is estimated that 50 to 70% of the total demand for commercial sex with children is local, with a high demand for underage 'virgin' girls. Awareness campaigns on the impact of sexual exploitation on children are essential to help reduce the local demand for commercial sex with minors and to fight the stigmatisation of victims upon their rescue.

The numerous administrative and legislative measures will only make a lasting difference in the life of children once they are strictly enforced at every level of government, with the full cooperation of international instances, local NGOs and civil society. The vicious cycle of sexual violence against Cambodian children has to be broken. Every recommendation applied by the State has the potential to have a positive impact on the root causes of this compelling social challenge, and could contribute to the complete elimination of sexual violence against children in Cambodia.

Introduction

Cambodia ratified the *Convention on the Rights of the Child*² (hereinafter *CRC* or *Convention*) in 1992. In 1997, the first report on the implementation of the *Convention* by the State was presented to the *UN Committee on the Rights of the Child* (hereinafter the *Committee*). In 2000, the Royal Government of Cambodia (hereinafter the RGC) sent a new report answering the *Committee*'s inquiries and participated in its 24th session in Geneva. The Concluding Observations of the *Committee* were released the same year. At the end of 2010, the RGC presented a document including its 2nd and 3rd reports on its compliance with the Concluding Observations made by the *Committee* in 2000.

The present document is an independent report from the non-governmental organization ADHOC, putting in perspective the allegations of the State about the implementation of the *Convention* in the country from 2003 to 2009. The purpose of this report is to promote a positive dialogue between civil society and the government of Cambodia, and to help elaborate adequate strategies and lasting solutions that will meet the *CRC*'s fundamental goals. This parallel report focuses on sexual violence perpetrated against Cambodian children and covers three pressing issues in the country: domestic violence, rape and sexual exploitation.

Key Obligations

These different forms of sexual violence suffered by Cambodian children are closely related to three specific Articles of the *CRC*. Articles 19, 34 and 37 constitute the core of Cambodia's obligations under the *CRC* to protect children against domestic violence, rape and sexual exploitation. According to Article 19, children shall be protected against all forms of violence. The word "violence" is defined as "all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse".³ Article 37 a) of the *CRC* specifies the obligation of the State to protect children against any form of "inhuman or degrading treatment". Corporal punishment as well as sexual abuse, including rape and sexual exploitation, qualify as inhuman and degrading treatment.⁴ Lastly, Article 34 specifically provides for a protection of children from all forms of sexual exploitation and sexual abuse, including inducement or coercion of a child, prostitution or other unlawful sexual practices, as well as pornographic performances.

² *United Nations Convention on the Rights of the Child*, 1577 U.N.T.S. 3 (20 November 1989, accession by Cambodia on 15 October 1992).

³ Committee on the Rights of the Child, *General Comment No. 13, Article 19: The right of the child to freedom from all forms of violence*, UN Document CRC/C/GC/13 (February 2011), para. 3.

⁴ Committee on the Rights of the Child, *General Comment No. 8, The right of the child to freedom from corporal punishment and other cruel or degrading form of punishment*, UN Document GRC/C/GC/8 (March 2007), para. 18.

Article 4 of the *CRC* provides that States Parties shall undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the *Convention* to the maximum of their existing resources. To this effect, the *Constitution of the Royal Kingdom of Cambodia* (hereinafter the *Constitution*) recognizes the importance of children's rights. The *CRC* is implicitly entrenched in Article 31 of the *Constitution*, the latter stipulating that the RGC shall recognize and respect children's rights as stated in international conventions. Article 48 of the *Constitution* also specifies that the State shall protect the rights of children as stipulated in the *Convention*, in particular the right to life, to education and to protection from economic or sexual exploitation, in times of peace as well as during wartime. Finally, according to Article 45 of the *Constitution*, "all forms of discrimination against women shall be abolished".

Gender Inequality

The inferior status of women in Cambodian society constitutes the ideological foundation for social tolerance of violence against women and girls. Domestic violence, rape and sexual exploitation are likely to occur in a context where one gender is weakened by a multi-faceted pattern of discrimination. As an old Cambodian adage says; "A man is a gold coin and a woman is a cloth"; implying that even after being dropped in mud, a gold coin can be washed good as new, but a cloth will be permanently sullied.⁵

Discrimination restricts women's equal share to scarce resources in education, land ownership, property rights, paid employment, political influence, and in other vital spheres of society.⁶ Furthermore, dominant collective norms impose on the wife the obligation to obey her husband and to accept being disempowered, as taught in elementary school by the *Chbab Srey* code of conduct.⁷

Furthermore, it is important to mention that Cambodia also ratified the *Convention on the Elimination of All Forms of Discrimination against Women*⁸ (hereinafter *CEDAW*), an instrument that aims to protect women of all ages. Article 2 *CEDAW* establishes the State's obligation to respect the principle of equality between men and women and Article 5 specifies the importance of modifying "social and cultural patterns of conduct of men and women" that are based on the superiority of one of the sexes.

⁵ The Girls of Phnom Penh, a film by Matthew Watson, *online*: <<http://www.thegirlsofphnompenh.com/>>.

⁶ ADHOC, *Human Rights Situation Report* (2005), p. 27. All Human Rights Situation Reports published by ADHOC and cited herein can be accessed through the organization's website (*supra* note 1) in the section "Reports".

⁷ *Ibid.*, p. 21.

⁸ *Convention on the Elimination of All Forms of Discrimination against Women*, 1249 U.N.T.S. 13 (17 October 1980).

Domestic Violence

(Article 19 of the *Convention on the Rights of the Child*)

1. Definition and Obligations

Adding to the general prohibition of all forms of violence against children,⁹ Article 19 of the *CRC* also proscribes corporal punishment, as this form of violence corresponds with the notion of cruel or degrading treatment forbidden by Article 37 of the *Convention*.¹⁰ Every person under the age of eighteen should be in the care of either a caregiver or the State,¹¹ except in the case of emancipated children.¹² For the purpose of the present report, “domestic violence” shall mean all forms of violence that take place while a child is in the care of “parents, foster parents, adoptive parents, (...) guardians, extended family [or] community members”, as stated by the *Committee* in its General Comment No. 13.¹³

In addition to the general obligations of the State under the *Convention*, the RGC shall support and assist parents and all caregivers at providing the living conditions that are necessary for the child’s optimal development.¹⁴ Regarding domestic violence, this includes a home free of neglect or negligent treatment, mental or physical violence, corporal punishment, sexual abuse and exploitation, violence among children, self-harm, other harmful practices, violence in the mass media and of violence through information and communication technologies.¹⁵ These obligations have to be applied at all levels of government¹⁶ and the harmful practices enumerated above shall never be authorized by law.¹⁷ Finally, according to the *Committee*, all States parties have a duty to investigate, punish and provide reparation for violations suffered by children.¹⁸

2. Legislation and Policy

In 2000, the *Committee* recommended to the RGC to include children’s rights concerns in the current and future process of drafting legislation, in particular the draft of Civil, Criminal

⁹ *General Comment No. 13*, *supra* note 3, para. 3.

¹⁰ *General Comment No. 8*, *supra* note 4, para. 18.

¹¹ *General Comment No. 13*, *supra* note 3, para. 31.

¹² *Ibid.*, footnote 13. In some countries, like Cambodia, early marriages or forced marriages give children the status of an adult before the legal age. The *Committee* nevertheless considers underage emancipated children as having the same right to protection from violence.

¹³ *Ibid.*, para. 31.

¹⁴ *Ibid.*, para. 4 and *Convention on the Rights of the Child*, Articles 18 and 27.

¹⁵ *General Comment No. 13*, *supra* note 3, paras. 19-29.

¹⁶ *Ibid.*, para. 4.

¹⁷ *Ibid.*, para. 22.

¹⁸ *Ibid.*, para. 4.

and Criminal Procedure Codes.¹⁹ As a consequence, in 2005, the RGC adopted the *Law on the Prevention of Domestic Violence and Protection of Victims*.²⁰ However, in spite of the *Committee*'s position that corporal punishment of children shall not be legalized,²¹ Article 8 of the law explicitly authorizes corporal punishment for educational or disciplinary purposes.

In its Concluding Observations of 2000, the *Committee* asked the Cambodian government to "continue with the development and strengthening of its data collection system, with a view to including all areas covered by the *Convention*".²² Concerning domestic violence, efforts were made by the Ministry of Women's Affairs to understand the level of violence between spouses across the country.²³ However, official data on domestic violence against children remains essentially inaccessible or inexistent, because of a lack of integrated and inclusive data collection techniques.

The *Committee* also recommended that the State undertake "effective measures (...) to prevent and combat child abuse and ill-treatment of children within the family".²⁴ It encouraged the strengthening of law enforcement as well as the implementation of "child-friendly procedures and mechanisms to deal with complaints of child abuse (...) in order to provide children with prompt access to justice and to avoid impunity for the offenders".²⁵ Although the Cambodian State makes efforts to adopt laws protecting children against domestic violence, many child victims are denied access to justice because of local practices of judicial and police authorities and the lack of implementation of relevant legislation.

Finally, the *Committee* invited the Cambodian government to combat traditional attitudes regarding child abuse and mistreatment that cause prejudice to Cambodian children.²⁶ Nonetheless, cultural misrepresentations and traditional practices are still the only references for parents regarding the way to educate and to give advice to their children. Thus, children are still being exposed to violence within the family and the widespread lack of education about children's rights prevents the non-abusive parent from protecting them effectively.²⁷ The following sections aim to portray the persistence and the magnitude of the problem as well as to explain the reasons for its prevalence within Cambodian borders.

¹⁹ Committee on the Rights of the Child, *Concluding observations of the Committee on the Rights of the Child (Cambodia)*, UN Document CRC/C/15/Add.128 (28 June 2000), para. 10.

²⁰ *Law on the Prevention of Domestic Violence and the Protection of Victims*, National Assembly of the Kingdom of Cambodia, (2005) [hereinafter *Law on the Prevention of Domestic Violence*], online: <http://www.adhoc-cambodia.org/gallery/files/DVLaw2005_ENG.pdf>.

²¹ *General Comment No. 8*, *supra* note 4, para. 22.

²² *Concluding observations (2000)*, *supra* note 19, para. 16.

²³ Ministry of Women's Affairs, *Violence against Women, 2009 Follow-up Survey, Final Study Report*, Cambodia, online: <<http://www.un.org.kh/undp/knowledge/publications/violence-against-women-2009-follow-up-survey>>.

²⁴ *Concluding observations (2000)*, *supra* note 19, para. 43.

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ Royal Government of Cambodia, *2nd and 3rd Report on the Implementation of Convention on the Rights of the Child in Cambodia (2000-2007)*, online: <[http://ngocr.org/attachments/147_2nd_&_3rd_Government_Report_on_CRC_Implementation_2009_\(Eng\).pdf](http://ngocr.org/attachments/147_2nd_&_3rd_Government_Report_on_CRC_Implementation_2009_(Eng).pdf)>, para. 73.

3. Field Assessment

3.1 Data Collection

There is currently no comprehensive system for the collection of statistical data on violence against children, except for victims of trafficking. As the *Committee* mentioned in *General Comment No. 5*, the existence of an effective system for data collection is an essential part of implementation. The data collected is necessary in order “to identify problems and to inform all policy development for children.”²⁸ Since no data is available in Cambodia, it is impossible to analyse the developments related to the crime of rape or domestic violence and to efficiently prevent those problems in the future.²⁹ The lack of comprehensive government statistics on domestic violence and rape reveals a certain degree of indifference on the part of the Cambodian Government and a severe lack of political will to put an end to these serious issues.

3.2 Persistence of the Phenomenon

In the absence of reliable country-wide official data, quantifying domestic violence cases is rather difficult. However, reality shows that domestic violence is still a pressing and recurrent problem in Cambodia. As can be seen in the graph below, the number of complaints to ADHOC and LICADHO dropped slightly between 2003 and 2005, but rapidly increased from 2006 to 2009.³⁰ Except for a minor decrease in 2008, the number of reported incest cases indicates no significant reduction in sexual aggression within Cambodian families.³¹

According to a survey carried out by the Cambodian Ministry of Women’s Affairs in 2009, 75% of respondents declared having been yelled at by their spouse, 31% reported that their spouse had cursed at them, 6% answered that objects had been thrown at them, 4% said that the spouse sometimes hit them “on the head” and 1% had been tied up or beaten or menaced with a knife.³² Moreover, 6% of respondents said that they knew at least one man who had burned or choked his wife and 5% declared that one of their acquaintances had thrown acid on his spouse.³³ Witnessing such violent behaviour causes immediate mental suffering to children. On the long term, they are more likely to develop emotional and psychological disorders and to have problems in their social life. Children who witness violence between

²⁸ Committee on the Rights of the Child, *General Comment No. 5, Article 4, 42 and 44, para 6 : General measures of implementation of the Convention on the Rights of the Child*, UN Doc. CRC/GC/2003/5 (November 2003), para. 48.

²⁹ NGO Committee on the Rights of the Child (Cambodia), *Alternative Report on the Implementation of the UN Convention of the Rights of the Child, (2000-2009)*, online: < <http://www.burmalibrary.org/docs11/TB-NGO-Cambodia.pdf>>, p. 21.

³⁰ See Cambodian League for the Promotion and Defence of Human Rights (LICADHO), *Violence Against Women in Cambodia 2006*, p. 8; LICADHO *Annual Activity Report: Promoting and Defending Human Rights in Cambodia* (January-December 2007), p. 18; LICADHO *Annual Activity Report: Promoting and Defending Human Rights in Cambodia* (January-December 2008), p. 24; LICADHO *Annual Activity Report: Promoting and Defending Human Rights in Cambodia* (January-December 2009), p. 9 and ADHOC, *Human Rights Situation Reports* (2003)-(2009).

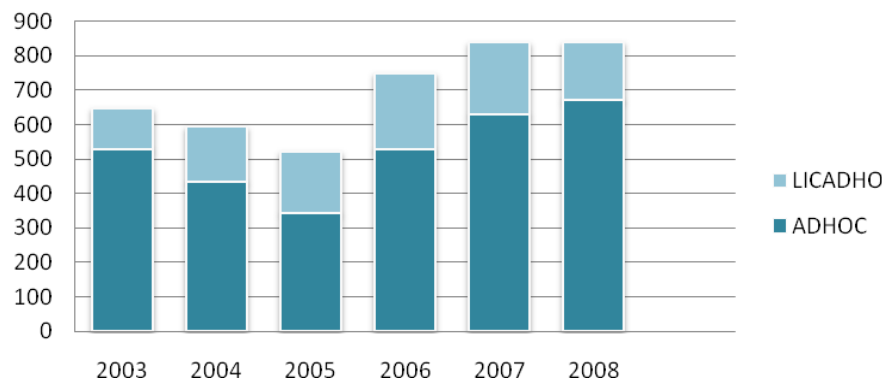
³¹ See the numbers documented in ADHOC’s *Human Rights Situation Reports* (2003) p. 19, (2004) p. 22, (2008) p. 25 and (2009) p. 16.

³² Ministry of Women’s Affairs, *Violence against Women, 2009 Follow-up Survey*, *supra* note 23, p. 27.

³³ *Ibid.*, p. 26.

their parents are also more likely to develop mental problems like depression or a developmental regression.³⁴ The urgency of the situation is such that the RGC must take immediate and effective action in order to prevent domestic violence and to protect victims.

Complaints of domestic violence



From 2003 to 2009, local governmental organisations noted that violence occurring within the family increased in cruelty and intensity.³⁵ Incidentally, the percentage of domestic violence cases leading to the death of the victim fluctuated between 3 and 10% over the past decade.³⁶ Psychological abuse of the mother or the child is also a serious problem that has led a number of women to commit suicide.³⁷ In some instances, a member of the family used sexual or physical violence on children or neglected them in order to inflict psychological pain on the other parent. These acts left the victims and witnesses with an extreme feeling of shame and guilt. When violence results in suicide or murder of one parent, children are regularly subjected to harsher living conditions and risk becoming street children or being mistreated.³⁸ The traumatism and lack of social assistance often induces young orphans to lean towards crime.³⁹

Moreover, in 2005, violence was found to be repetitive in 90% of all reported cases.⁴⁰ In general, situations of violence leading to the killing of the victim take place in households where violence is regular and gradually growing in brutality.⁴¹ In 2007 and 2008, a total of 50 cases of domestic violence eventually led to the murder of the victim. In all of them, the

³⁴ Mia Dauvergne and Holly Johnson. "Children Witnessing Family Violence", *Juristat* (Ottawa: Canadian Centre for Justice Statistics, Statistics Canada, Cat. No. 85-002-XPE, 2001), p. 2.

³⁵ Cf. the numbers documented in ADHOC's *Human Rights Situation Reports* (2005)-(2009). Slapping, beatings and burnings with the purpose of injuring were frequently reported to ADHOC. In a number of cases, parents used objects like knives, sickles, axes, hoes, sticks, motorbikes, guns or acid to hurt or kill their spouse or their child.

³⁶ Cf. the numbers documented in ADHOC's *Human Rights Situation Reports* (2003), (2005) and (2007)-(2009).

³⁷ ADHOC, *Human Rights Situation Report* (2009), p. 14.

³⁸ ADHOC, *Human Rights Situation Report* (2004), p. 24.

³⁹ ADHOC, *Human Rights Situation Report* (2005), p. 26.

⁴⁰ *Ibid.*, p. 27.

⁴¹ ADHOC, *Human Rights Situation Report* (2006), p. 23.

violence occurred repeatedly and the victims were unable to get protection from the law, their neighbours or local authorities.⁴²

4. Causes and Obstacles

Identified as one of nine priorities in the *Cambodian Millennium Development Goals*,⁴³ the protection from domestic violence of the most vulnerable members of society is acknowledged to be a collective responsibility incumbent upon all stakeholders and specifically upon public institutions. The Cambodian *Law on the Prevention of Domestic Violence* implies that violence at home is a transgression of human rights and that such behaviour is prohibited by law.⁴⁴ However, as shown above, the number of cases of domestic violence reported to local authorities does not cease to rise.⁴⁵ Although the adoption of the new law undoubtedly constitutes an important step in the right direction for the protection of children against domestic violence, the continued prevalence of domestic violence in Cambodia attests to the fact that the law is not properly enforced.

4.1 Lack of Independent Monitoring

There is no independent body to monitor and ensure the implementation of the *Convention*. Although formally charged with this task, the *Cambodian National Council for Children* (hereinafter the *CNCC*) is economically and politically dependent on the government. Its impartiality in the assessment of children's rights is undermined by its dependency on unverified information from Government Ministries and its composition of representatives of these Ministries.⁴⁶ In its Concluding Observations in 2000, the *Committee* recommended that the role of the *CNCC* be enhanced, such as through collaboration with non-governmental organizations and through additional funding.⁴⁷ A decade later, the Cambodian Government has still not taken action on these specific issues. Moreover, although likewise recommended by the *Committee* in 2000, no independent mechanism, such as an ombudsperson, through which children can seek redress for breaches of their rights under the *CRC*, has been created.⁴⁸

4.2 Law Enforcement Deficiencies

Besides, even in the standard judicial system, unclear intervention procedures prevent authorities to effectively take action. Until now, no sub-decree has been adopted in order to specify their respective role in the implementation of the *Law on the Prevention of Domestic*

⁴² ADHOC, *Human Rights Situation Report* (2008), p. 21.

⁴³ Royal Government of Cambodia, Ministry of Planning, *Achieving Cambodia's Millennium Development Goals*, (2010), online: <<http://www.un.org.kh/undp/pressroom/latest-report-on-progress-of-cambodia-millennium-development-goals-launched>>, p. 19.

⁴⁴ See Articles 8 and 35 of the *Law on the Prevention of Domestic Violence*, *supra* note 20.

⁴⁵ ADHOC, *Human Rights Situation Report* (2008), p. 19.

⁴⁶ International Bureau for Children's Rights, *Making Children's Rights Work: Country Profiles on Cambodia, Indonesia, Timor Leste, Sri Lanka and Viet Nam*, , online: <http://www.ibcr.org/editor/assets/thematic_report/1/cp_asia_5countries.pdf> , p. 8.

⁴⁷ *Concluding observations* (2000), *supra* note 19, para. 12.

⁴⁸ International Bureau for Children's Rights, *Making Children's Rights Work*, *supra* note 46, p. 8.

Violence.⁴⁹ Article 14 of the Law allows authorities to take protective administrative action by removing the perpetrator or the victim from the “scene of violence”. However, no such decision has ever been taken.⁵⁰ This is also the case for the *Law on Marriage and Family* which contains a clause that allows for immediate divorce without reconciliation process in case of “serious circumstances”⁵¹ - no instances could be found where this clause was ever enforced.⁵²

What adds to these administrative hurdles is the fact that corruption induces an environment of impunity for domestic violence perpetrators. The extremely low level of income of Cambodian judges, policemen and local authorities makes them vulnerable to bribes. Consequently, an offender can easily obtain discharge in exchange for a monetary compensation.⁵³ Unfortunately, judicial authorities tend to take action only if they can gain a personal advantage.⁵⁴ In its 2010 report, the *Special Rapporteur on the situation of human rights in Cambodia* affirmed that corruption is widespread at all levels in the judiciary system in Cambodia.⁵⁵

4.3 Social Acceptance of Domestic Violence

Cambodian social norms do not allow battered women to readily seek support within their communities, because domestic violence is generally culturally tolerated. Violence towards a spouse or a child is legitimized by a number of motives that are considered socially acceptable. For example, preparing unappetising food, supposed shortfalls in the performance of housework and being sexually unreceptive are considered adequate pretexts for using violence.⁵⁶ Being socially accepted, domestic violence tends to be institutionally accepted as well, as shown by the fact that one police officer out of two does not consider domestic violence a criminal offense and only 17% of police officers affirm that they would intervene if they witnessed a man assaulting his wife.⁵⁷ The *Committee* recognizes that traditional practices in Cambodia turn a blind eye to the use of physical violence against children.⁵⁸ This tolerance towards the use of violence against children is reflected in the *Law on the Prevention of Domestic Violence* that expressly allows physical correction for advising or disciplining purposes.⁵⁹

Public perception of domestic violence is not the same as for other types of non-family related violence. A person who experiences violence outside the family household will attract

⁴⁹ ADHOC, *Human Rights Situation Report* (2005), p. 24.

⁵⁰ ADHOC, *Human Rights Situation Report* (2009), p. 24.

⁵¹ *Law on Marriage and Family*, National Assembly of the State of Cambodia (1989), online: <[http://www.bno.com.kh/Cambodia Laws/100_LAW_Marriage and Family Law, Eng.pdf](http://www.bno.com.kh/Cambodia%20Laws/100_LAW_Marriage%20and%20Family%20Law,%20Eng.pdf)>, Art. 43.

⁵² Rebecca Surtees, “Negotiating Violence and non-violence in Cambodian marriages”, in: Caroline Sweetman (ed.), *Gender, Development and Marriage*, (Oxford: Oxfam, 2003), pp. 30-41, at p. 36.

⁵³ ADHOC, *Human Rights Situation Report* (2009), p. 15.

⁵⁴ *Ibid.*, p.18.

⁵⁵ Human Rights Council, *Report of the Special Rapporteur on the situation of human rights in Cambodia*, UNGAOR, 15th Sess., UN Doc. A/HRC/15/46 (2010), p. 13.

⁵⁶ Surtees, *supra* note 52, p. 32.

⁵⁷ *Ibid.*

⁵⁸ *Concluding observations* (2000), *supra* note 19, para.42.

⁵⁹ *Law on the Prevention of Domestic Violence*, *supra* note 20, Art. 8.

sympathy from its community whereas, when a victim of domestic violence publicly exposes her suffering, the community will likely dismiss or ignore her plea and may even consider the victim as being responsible for her problems.⁶⁰ As a result, the victim will feel shame and fear which will prevent her from sharing her experience with members of the community. Furthermore, seeking a divorce is not a realistic solution for escaping violence because it is socially, economically and legally disadvantaging for women. A woman's status in Cambodian Buddhist society is intimately linked to her status as a spouse and a mother. The loss of this status has a negative effect on many social opportunities. Women, on average, earn 25% of the household income and divorce procedures (*psahpsah*) are lengthy, biased against women and unsuited to situations of domestic violence, all of which are strong deterrents against opting for a divorce.⁶¹ Finally, Article 61 of the new *Civil Procedure Code* requires victims to pay the sum of 55 000 riels for filing a civil complaint of domestic violence,⁶² currently the rough equivalent of US\$14.⁶³ This fee is disproportionately high considering that the average annual income of a standard Cambodian family is US\$135.⁶⁴ Therefore, since the law prevents women and their children from escaping a violent relationship, the State fails to protect children from the physical and physiological abuse they are bound to suffer as a consequence.

4.4 Harsh Living Conditions

Poor living conditions also contribute to domestic violence. Alcohol abuse, low education and gambling are socioeconomic problems experienced by many families who are already weakened by poverty, unemployment, illness, or trauma as a consequence of the civil war. There is no public support system for families suffering from one or more of these issues.

⁶⁰ Surtees, *supra* note 52, p. 32.

⁶¹ *Ibid.*, p. 34.

⁶² ADHOC, *Human Rights Situation Report* (2007), p. 25.

⁶³ XE Universal Currency Converter, online : <<http://www.xe.com/>>, accessed on 9 May 2011.

⁶⁴ Resource Development International - Cambodia. *Trade Skills for Rural People of Cambodia*, online: <<http://www.rdic.org/trade-skill.html>>.

Rape

(Articles 19 and 37 of the *Convention on the Rights of the Child*)

1. Definition and Obligations

International law defines rape as an invasion of “the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.”⁶⁵ The definition set out by the International Criminal Court also establishes that the invasion has to be committed by force and against the person’s consent.

According to Articles 19 and 37 of the *CRC*, the State has the obligation to protect children against all forms of violence and inhuman and degrading treatment. The *Committee* specifies in *General Comment No.13* that the term sexual violence includes the crime of rape.⁶⁶

The right to life, provided for in Article 6 of the *CRC*, is closely related to the issue of fatal rape in Cambodia. According to the data available to ADHOC, numerous cases of child rape result in the death of the victim. Article 6 establishes that “every child has the inherent right to life” and that States should do everything to ensure the protection of the child’s life.

2. Legislation and Policy

Article 239 of the 2010 Cambodian *Penal Code* defines rape as “All acts of sexual penetration, of any kind whatsoever, or an act of penetrating any object into sexual organs of a person of either the same sex or different sexes by violence, coercion, threat or surprise”.⁶⁷ The age of consent is set to 15 (Article 231-1). The new *Penal Code* thus replaces the previous definition in the *UNTAC Criminal Code* in Article 33.2: “Rape is any sexual act involving penetration carried out through violence, coercion or surprise.”⁶⁸ However, in 2001, the UNTAC definition was integrated into Article 5 of the *Law on Aggravating Circumstances of Crimes*,⁶⁹ which remains in force. According to this article, the fact that a rape was committed by more than one assailant, by any authority figure for the child, or on a minor under 14 years old constitutes an aggravating circumstance.

⁶⁵ International Criminal Court, *Elements of crimes*, ICC-ASP/1/3(part II-B) (2002), Art. 7, *online*: <<http://www.icc-cpi.int>>.

⁶⁶ *General Comment No. 13*, *supra* note 3, p. 10.

⁶⁷ Amnesty International, *Breaking the Silence, Sexual Violence in Cambodia* (London, 2010), *online* : <<http://www.amnesty.org/en/library/asset/ASA23/001/2010/en/17ebf558-95f0-4cf8-98c1-3f052ffb9603/asa230012010en.pdf>>, p. 43. A full English version of the new *Penal Code* is not yet available.

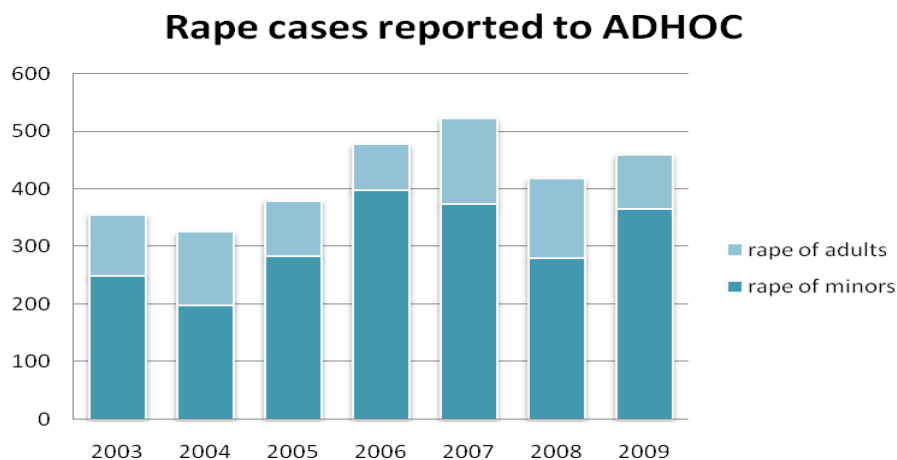
⁶⁸ *United Nations Transitional Authority in Cambodia (UNTAC) Criminal Code* (10 September 1992), *online*: <http://www.alrc.net/doc/mainfile.php/unar_cat_cam_2003/321/>, Art. 33.

⁶⁹ *Law on aggravating circumstances of crimes*, National Assembly of The Kingdom of Cambodia, 7th Sess, (19 December 2001), *online*: <<http://www.bno.com.kh/Tools/Law Updates.htm>>.

There are currently no specific policies designed to counteract the increasing number of cases of rape in Cambodia. This absence of national policies to condemn rape reveals the State's lack of concern for this crime. This situation is confirmed by the fact that the issue of rape, which is an urgent social problem for children, was not even mentioned in the *State Report* submitted to the *Committee*.

3. Field Assessment

This report will address three specific types of rape: gang rape, fatal rape and rape by minors. A gang rape is a rape crime usually committed by two or more perpetrators. ADHOC registered cases of rapes that were committed by up to twelve rapists. Fatal rapes happen when the offender kills the victim during or after the rape. Concerning the issue of rape by minors, ADHOC registered perpetrators as young as seven years old. This last phenomenon is closely related to the issue of gang rape.



Children represent the biggest proportion of victims of rape reported to ADHOC. From 2003 to 2009, the registered victims were younger from one year to the other and represented the majority of victims. The percentages of rape child victims reported to ADHOC throughout those years vary between 61% and 79%.⁷⁰ The situation of rape is constantly worsening, principally because the attacks are becoming more vicious. Cases of serious violence perpetrated by the assailants on their victims before and after rape, such as torture, beatings and injuries on sexual organs, have been reported. The augmentation of cases and of the level of cruelty shows how urgent this issue is for children in Cambodian society. It is imperative that the RGC take effective measures to ensure the protection of children from rape.

3.1 Fatal Rape

In cases of fatal rape, the offender kills the victim, sometimes through gruesome acts such as strangling, beheading, gouging out the eyes and disembowelling. Sexual aggressions on

⁷⁰ Cf. the documentation in ADHOC's *Human Rights Situation Reports* (2003)-(2009).

children have become more violent and cruel year after year,⁷¹ leading to more and more killings. In 2005, 3.68% of rape cases lead to death of the victim, a 1.45% rise compared to 2004. Many victims of fatal rape were cruelly abused by their murderer who, before killing them, committed acts of torture, such as beating, attacking with knives or axes, drowning or penetrating the victim's sexual organs with tools.⁷² Perpetrators of sexual assaults are more tempted to kill a victim they personally know in order to avoid prosecution.

3.2 Gang Rape

This type of sexual aggression is related to a high level of violence leading to serious physical and psychological damage for the victim. In 2005, gang rapes were a particularly serious matter, since all the perpetrators were school age children.⁷³ Furthermore, the number of assailants involved in gang rapes has increased over the years, from nine perpetrators in 2005 to twelve in 2008.⁷⁴ The data available to ADHOC show that most of the cases were perpetrated by assailants under the effect of drugs or alcohol or that had been watching pornography. In most cases, the victim knew the sexual predators. This leads to insecurity and fear of the consequences of filing a complaint.

3.3 Rape by Minors

In 2003, ADHOC observed that 13% of perpetrators were under the age of eighteen. The youngest rapist listed by ADHOC was seven years old and took part in a gang rape. The high percentage of young assaulters can be linked to the deep-rooted climate of violence in which children grow up.⁷⁵ The widespread belief that it is normal for men to abuse women as an expression of masculinity is supported by pornographic material, which results in the transmission to children of customs that go against a respectful view of women. Furthermore, as the issue of rape by minors is growing in importance in Cambodia, minors who commit sexual offences do not receive the social and psychological support that is necessary in order to address the underlying problems.⁷⁶ Apart from working to improve the social status of women, social services must therefore be alert to this troubling phenomenon and adequate human and financial resources must be put into place in order to cope with it.

4. Causes and Obstacles

4.1 Cultural Issues

Some cultural beliefs about virginity have the potential to lead to harmful consequences for children's integrity. For instance, there is a widespread persuasion in South East Asia that

⁷¹ ADHOC, *Human Rights Situation Report* (2006), p. 14.

⁷² ADHOC, *Human Rights Situation Report* (2007), p. 26.

⁷³ ADHOC, *Human Rights Situation Report* (2005), p. 23.

⁷⁴ ADHOC, *Human Rights Situation Report* (2008), p. 24.

⁷⁵ NGO Committee on the Rights of the Child (Cambodia), *Alternative Report on the Implementation of the UN Convention of the Rights of the Child*, *supra* note 29, p. 7, para 1.3.4.

⁷⁶ LICADHO, *Rape and indecent assault cases, and the Cambodian justice system* (2004), online: <[http://www.licadho-cambodia.org/reports/files/48Rape briefing report 2003 English.pdf](http://www.licadho-cambodia.org/reports/files/48Rape%20briefing%20report%202003%20English.pdf)>, p. 12.

sexual intercourse with a virgin can increase longevity, rejuvenate, bring luck or whiten the skin.⁷⁷ These traditional beliefs trivialize sexual aggressions against girls and lead to impunity.⁷⁸ The growing spread of HIV/AIDS may also influence the attraction of children as sexual assault victims as they are less likely to be infected with sexually transmitted diseases.⁷⁹ These behaviours can have long term repercussions on the assault victims since the loss of virginity before marriage brings social disapproval and shame over the woman and her family. Even in cases of sexual violence, a girl who had sexual intercourse with or without her consent before her wedding is perceived as a “used good” and not suitable for marriage.⁸⁰ In these conditions, a girl deprived of her virginity faces countless stigmas, especially in rural areas, impeding her from reintegrating into a normal life.⁸¹

4.2 Pornography and Drugs

The high rates of rape in Cambodia can be closely linked to the viewing of pornography. Pornographic material often shows images of domination, extreme violence and inequality between the sexes. In a high percentage of cases reported to ADHOC, the viewing of pornography is linked to rape. This is particularly true when sexual predators are children, because their behaviour is based on imitation. A study conducted by *World Vision* in Cambodia showed that more than 80% of children, both boys and girls, had been exposed to pornography around the age of 13.⁸² Watching pornography at an early age can lead to premature sexual development and teaches children to sexually relate to women through violence and other abusive ways.⁸³ Article 46 of the *Constitution* stipulates that “obscenity which affects the reputation of women shall be prohibited”. However, local authorities’ actions to fight against the proliferation of pornographic material seem to be ineffective, most importantly the enforcement of legislation in this field.

Under Article 33 of the *CRC*, the State has the obligation to protect children against “illicit use of narcotic drugs and psychotropic substances”. Cases of rape which can be attributed to the spread of drugs among youth gangs have increased and sexual assaulters are frequently under the influence of drugs. The State should take further action concerning the reduction of drug consumption, especially among minors.

4.3 Inaccessibility and Inefficiency of Judicial Proceedings

An important concern is that there is only a low percentage of cases where the aggressors are arrested. In 2003, only 44% of reported cases have led to the detention of the rapist and

⁷⁷ Mam Somaly, *Le Silence de l’Innocence*, (Paris: Anne Carrière Editions, 2005), p. 56.

⁷⁸ *Ibid.*

⁷⁹ LICADHO, *Rape and indecent assault cases*, supra note 76, p. 15.

⁸⁰ LICADHO, *Violence Against Women in Cambodia 2006*, online: <<http://www.licadho-cambodia.org/reports/files/105LICADHOREportViolenceWoman2006.pdf>>, p. 9.

⁸¹ Somaly, *Le Silence de l’Innocence*, supra note 77, p. 57.

⁸² Dr Graham Fordham, “Wise” before their time, *Young People, Gender-Based Violence and Pornography in Kandal Stung District*, World Vision (2005), online: <http://www.worldvisionap.org/downloads/publications/gender_cambodia.pdf>, p. 21.

⁸³ *NGO Committee on the Rights of the Child* (Cambodia), *Alternative Report on the Implementation of the UN Convention of the Rights of the Child*, supra note 29, p. 5.

only 65% of complaints have led to prosecution.⁸⁴ The data collected by ADHOC shows that most of the assaulters have escaped investigation by authorities. Moreover, investigations that were, in fact, undertaken, have remained unsuccessful, leading to widespread indifference of the judicial authorities and police officers. Courts held hearings against and sentenced only 7% of perpetrators in 2004.⁸⁵ In contradiction to the data collected by ADHOC, the Police Commissariat of Phnom Penh registered only three cases of rape in 2005. Officers from police commissariats are often careless when dealing with complaints of sexual assault. They do not respond to complaints or, very frequently, do not believe the victims, thereby exposing them, yet again, to more suffering and to what is called a double victimisation. The indifference from authorities contributes to the victims' mistrust in the legal system. It also discourages them to file complaints and take the necessary legal action in order to obtain monetary compensation. Neither the government, nor the police forces or judicial officials seem to regard rape as an urgent matter or an area where immediate action is needed.⁸⁶ In this situation, the only reliable references for victims are local NGOs, which have only limited resources to offer.

A strong culture of impunity characterizes the prosecution of crimes in Cambodia. Deeply anchored in the beliefs and morals of the population, mostly in rural areas, impunity manifests itself in a widespread practice of unlawful compensation payments rather than of the punishment of the perpetrator. As the population and the victims of rape are not commonly informed about the fact that they can pursue rapists under both civil and penal law, they are more likely to accept token compensation in exchange for the dismissal of all judicial proceedings.⁸⁷ This practice is cultivated and sometimes even imposed by the police. The State should ensure that the victims are well-informed about their rights and the avenues available to them; for instance they should be aware that the reception of a monetary compensation does not foreclose the right to press criminal charges against the perpetrator. Impunity due to the intimidation of the victim and the fear of reprisals is even more widespread when the rapist is in a position of authority, such as a police officer, a government official or a military officer.⁸⁸ It is also very common that the victim and the rapist live in the same village or are acquainted. In 2003, in up to 86% of the cases reported to ADHOC, the perpetrator and the victim knew each other.⁸⁹ Under such circumstances, the victim is under immense pressure from the community to remain silent or to accept compensation payments.

⁸⁴ ADHOC, *Human Rights Situation Report* (2003), p. 19.

⁸⁵ ADHOC, *Human Rights Situation Report* (2005), p. 25.

⁸⁶ *Ibid.*, p. 23.

⁸⁷ *Ibid.*.

⁸⁸ LICADHO, *Violence Against Women in Cambodia 2006*, *supra* note 80, p. 11.

⁸⁹ ADHOC, *Human Rights Situation Report* (2003), p. 19.

Sexual Exploitation of Children

(Article 34 of the *Convention on the Rights of Child*)

1. Definition and Obligations

According to Article 34 of the *CRC*, States Parties should undertake to protect the child from all forms of sexual exploitation and sexual abuse, including inducement or coercion of a child, prostitution or other unlawful sexual practices, as well as pornographic performances. In its recently published *General Comment No. 13*, the *Committee* provides an extensive definition of “sexual abuse and exploitation” that includes child prostitution, sexual slavery, sexual exploitation in travel and tourism, trafficking (within and between countries), as well as the sale of children for sexual purposes and forced marriage.⁹⁰

In addition to the general obligations set out in Article 4 of the *CRC*, Cambodia is bound by the *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*⁹¹ which contains several specific obligations to prevent sexual exploitation of children.⁹² Cambodia also ratified the *Protocol to Prevent, Suppress & Punish Trafficking in Persons, Especially Women and Children*⁹³ and the *ILO Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour*,⁹⁴ which labels the sale and trafficking of children and child prostitution as one of the worst forms of child labour under Article 3.

While the intention of Cambodia to eradicate sexual exploitation of children for commercial purposes is clear on paper, this section aims to shed light on the reality of exploited children in Cambodia.

⁹⁰ *General Comment No. 13*, *supra* note 3, para. 23.

⁹¹ *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*, GA Res., UN Doc. A/RES/54/263 (May 2000), ratified by Cambodia in 2002.

⁹² *Ibid.*, Art.3: to fully cover such offense under the criminal or penal law, Art. 6: to take measure of assistance in connection with investigations or criminal or extradition proceedings, Art. 8: to protect the rights and interests of child victims, Art.9: to adopt and implement laws (...) to prevent such offense.

⁹³ *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*, 2237 U.N.T.S. 319 (15 November 2000).

⁹⁴ *ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour*, Convention: C182, (17 June 1999), ratified by Cambodia in 2006, *online*: <<http://www.ilo.org/public/english/standards/reIm/ilc/ilc87/com-chic.htm>>.

2. Legislation and Policy

In 2000, the *Committee* recommended to the RGC to reinforce its legislation, to fully put into effect its current legislation against sexual exploitation, and to implement its *National Plan of Action*⁹⁵ with the help of sufficient human and financial resources.⁹⁶

Over the last few years, Cambodia achieved several accomplishments in addressing the problem of sexual exploitation of children. As mentioned in the *State Report*, these initiatives include the adoption of new laws and policies, the dissemination of *Prakas* (ministerial orders) and circulars, educational campaigns and capacity building programs, victim rescue initiatives and services, the punishment of corrupted authorities and offenders, international and local cooperation, as well as the adoption of the *Five-Year National Plan* to combat trafficking and commercial sexual exploitation of children (2000-2004), to name but a few.⁹⁷

Following a recommendation by the *Committee*, the new *Law on Suppression of Human Trafficking and Sexual Exploitation*⁹⁸ was enacted in 2008. More comprehensive than the former law,⁹⁹ Articles 15 and 16 now punish human trafficking offenses with 15 to 20-year imprisonment terms when the victim is under 18 while Article 231-1 of the 2010 *Penal Code*, sets the legal minimum age for consent to sexual activity at 15.¹⁰⁰

3. Field Assessment

Child trafficking and child sex tourism are lucrative multi-billion dollar industries throughout the world which are particularly prevalent in Cambodia and Thailand.¹⁰¹ International organisations, such as UNICEF, estimate that there are between 50,000 and 100,000 women and children involved in the sex trade industry in the country and that 30% of sex workers in Phnom Penh are under the age of 18.¹⁰² Sexually exploited and trafficked children can suffer conditions equivalent to slavery, are subject to debt bondage, illegal confinement, forced drug usage, unwanted pregnancies and are exposed to HIV/AIDS.¹⁰³ The consequences are far-reaching - some children die and many suffer permanent physical and mental damage.¹⁰⁴ As documented in ADHOC's Situation Reports from 2003 to 2009, the

⁹⁵ Cambodian National Council for Children (CNCC), *Five-year National Plan to combat trafficking and commercial sexual exploitation of children (2000-2004)*, online: <<http://www.ecpat-esp.org/documentacion/planes-nacionales/Camboya.pdf>>.

⁹⁶ *Concluding observations (2000)*, *supra* note 19, p. 12.

⁹⁷ *2nd and 3rd Report on the Implementation of the CRC*, *supra* note 27, paras. 204-239.

⁹⁸ *Law on Suppression of Human Trafficking and Sexual Exploitation*, National Assembly of the Kingdom of Cambodia (2008), online: <<http://www.adhoc-cambodia.org/?id=25&p=22>>.

⁹⁹ *Law on the Suppression of Kidnapping, Trafficking and Exploitation of Human Persons*, National Assembly of the Kingdom of Cambodia (1996), online: <<http://www.bno.com.kh/Tools/Law Updates.htm>>.

¹⁰⁰ *Supra* note 67.

¹⁰¹ Susan Song, *Global Child Sex Tourism, Children as Tourist attractions*, Youth Advocate Program International Resources Paper, online: <www.yapi.org/rpchildsextourism.pdf>, p. 2.

¹⁰² Dan Rivers, *Girl, 6, embodies Cambodia's sex industry*, CNN, January 23, 2007, online: <<http://www.cnn.com/2007/WORLD/asiapcf/01/23/sex.workers/>>.

¹⁰³ Give2Asia, *End Child Prostitution, Abuse and Trafficking in Cambodia (ECPAT)*, online: <<http://give2asia.org/ecpat>>.

¹⁰⁴ *Ibid.*

conditions in which sexual exploitation of children occurs in Cambodia remain the same overall, and no significant changes or improvements have been noticed since 2000.

3.1. Internal and Cross-border Sex Trafficking of Children in Cambodia

In the case of internal sex trafficking of children, traffickers still use recruiters to deceive parents from poor rural families with false promises of job opportunities in the cities for their children.¹⁰⁵ When parents agree to send their children away, the traffickers give them small cash advances, promising that more money will follow when the victims start to work. Victims are then sold to rich people and are sexually abused on a frequent basis in barber shops, massage parlours, hotels, karaoke clubs and guest houses.¹⁰⁶ After they are considered to have lost their virginity, they are sold to brothels.¹⁰⁷ Many children exploited knew their offender or their family trusted him or her.¹⁰⁸ In other cases, children are simply caught in the streets, drugged and then forced into prostitution.¹⁰⁹ Cambodian and ethnic Vietnamese children from rural areas are mostly sent to Phnom Penh, Siem Reap, and Sihanoukville.¹¹⁰

Contrary to popular belief, local demand for commercial sex with children accounts for the majority of demand in Cambodia.¹¹¹ As much as 70% of the total demand is local, with a high demand for underage virgins,¹¹² since predators want to avoid the risk of HIV infection. Moreover, this demand is not only fuelled by pedophiles or virginity-seekers,¹¹³ it appears to be the result of gender inequality and sexual beliefs in place.¹¹⁴

The cross-border trafficking schemes are very similar to those used for internal trafficking, the main destinations being Thailand and Malaysia.¹¹⁵ Economic hardships can lead parents to sell their own child to the sex industry at an age as early as 5. Stigmatisation of trafficked girls trying to reintegrate into society is an important cultural issue. As a result, even when girls are rescued from trafficking, they often end up being exploited again as sex workers as they go to work in another part of the country.¹¹⁶

3.2. Child Sex Tourism

Cambodia is a destination country for foreign child sex tourists, with increasing reports of men traveling to Cambodia in order to have sex with underage virgin girls.¹¹⁷ Here again, the sale of virgin girls through brokers is a serious problem, with foreign and Cambodian men

¹⁰⁵ ADHOC, *Human Rights Situation Report* (2009), p. 28.

¹⁰⁶ *Ibid.*; see also the information contained in ADHOC's *Human Rights Situation Reports* (2003)-(2008).

¹⁰⁷ ADHOC, *Human Rights Situation Report* (2008), p. 28.

¹⁰⁸ ADHOC, *Human Rights Situation Report* (2004), p. 24.

¹⁰⁹ ADHOC, *Human Rights Situation Report* (2006), p. 25.

¹¹⁰ ADHOC, *Human Rights Situation Report* (2009), p. 18.

¹¹¹ Isabelle Chan, *Addressing local demand for commercial sex with children in Cambodia* (A Recommended Strategy for ECPAT-Cambodia), March 2010, online: <http://www.ecpatcambodia.org/documents/Research_on_Local_Demand_for_Commercial_Sex.pdf>, p. ii.

¹¹² *Ibid.*, p. 1.

¹¹³ *Ibid.*, p. ii.

¹¹⁴ *Ibid.*.

¹¹⁵ ADHOC, *Human Rights Situation Report* (2009), p. 26.

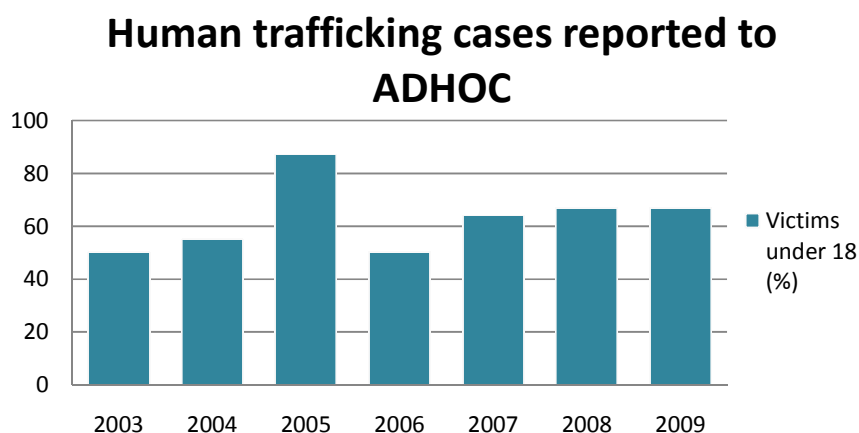
¹¹⁶ *Ibid.*, p. 24.

¹¹⁷ *Ibid.*.

paying up to \$4,000 to have sex with virgins.¹¹⁸ The brokers, usually school girls already working in the sex industry, use fancy gifts, such as cell phones, to attract other girls into their circle, promising them that rich men will help them and will support them financially.¹¹⁹ Lured by such luxurious items, the young girls are then prone to deception, victimisation and sexual trafficking.¹²⁰

3.3. Cases Reported

It is difficult to obtain precise figures on the situation of sexually exploited children in Cambodia, since the issue of trafficking is complex in general and dangerous to investigate for NGOs,¹²¹ and because of the lack and inaccuracy of official data. However, the number of cases reported to ADHOC over the years has noticeably increased. Every year, ADHOC receives human trafficking complaints with an average of 50% to 60% of the victims being children. In 2008, ADHOC's investigation reports showed that human trafficking cases increased by 38%, while the cases of trafficked minors rose by 3%, if compared to 2007.¹²² Other NGOs have observed the same trend. In 2009, LICADHO's database report regrouping 27 NGOs documented 109 sex trafficking cases compared to 73 in 2008, reflecting an increase of 49%.¹²³ All victims were female, between 7 and 39 years old, and 36.7% were children.¹²⁴ In 2010, *ECPAT-Cambodia* also reported that trafficking cases in Cambodia remain alarmingly high and that the majority of victims are underage.¹²⁵



¹¹⁸ Office To Monitor and Combat Trafficking in Persons, U.S. Department of State, *Trafficking in Persons Report* (2010), online: <<http://www.state.gov/g/tip/rls/tiprpt/2010/142759.htm>>.

¹¹⁹ ADHOC, *Human Rights Situation Report* (2009), p. 19.

¹²⁰ *Ibid.*

¹²¹ ADHOC, *Human Rights Situation Report* (2006), p. 25.

¹²² ADHOC, *Human Rights Situation Report* (2009), p. 26.

¹²³ LICADHO, *NGO Joint Statistics, Database Report on Trafficking and Rape in Cambodia 2009*, online: <http://www.ecpatcambodia.org/documents/database_report/database_report_on_rape_and_trafficking_2009_eng.pdf>, p. VI.

¹²⁴ *Ibid.*

¹²⁵ ECPAT-Cambodia, *Reported Cases of Sexual Abuse in Cambodia in the First Half of 2010*, online: <http://www.ecpatcambodia.org/documents/media_analysis_of_rape_and_trafficking/2010/media_analysis_firsthalf_2010_eng.pdf>, p. 2.

3.4. Tier Ranking

In 2005, Cambodia officially became recognized as one of the worst countries for trafficking of women and children and was subsequently placed in a Tier 3 category by the Office to Monitor and Combat Trafficking in Persons of the U.S. Department of State.¹²⁶ In 2010, Cambodia was classified Tier 2, which means that the country does not fully comply with the *Minimum Standards for the Elimination of Trafficking of Persons* but is making significant efforts to bring itself in compliance with those standards.¹²⁷ The Tier 2 status is not always sustainable since more efforts are made by Cambodia only when the U.S. Department of State gives a lower ranking position to the State and threatens to enforce economic sanctions. For instance, Cambodia was classified Tier 2 in 2008, then lessened its efforts to address human trafficking, and, as a consequence, dropped back a notch lower to the Tier 2 watch list in 2009.¹²⁸ This is direct proof of temporary efforts by the State that do not meet the long-term goals of the *Convention*.

4. Causes and Obstacles

4.1. Factors of Vulnerability

There are several social, cultural and economic factors that increase the vulnerability of children to sexual exploitation. Poverty, limited access to education, domestic violence, unemployment,¹²⁹ indebtedness, lack of land and discrimination against girls¹³⁰ are but a few of the relevant factors. With an estimated 30% of Cambodian sex workers under 18 having less than three years of basic schooling and barely any vocational skills, a clear link can be drawn between the lack of education and vulnerability to sexual exploitation.¹³¹

Most children who end up being sexually exploited come from deprived rural families or are homeless. With an estimated 50% of the Cambodian population being under 20, around 90% of youth leave their poor families to search for work in Phnom Penh, a situation that makes them a major target for human trafficking networks.¹³² HIV/AIDS orphans who have to support themselves and their siblings¹³³ are also more vulnerable to the sex-trade industry.

The lack of governmental reintegration programs for former sex-trafficking victims also contributes to the vulnerability of these children. In spite of the recommendation made by the *Committee* in 2000 to expand social services for the rehabilitation of child victims¹³⁴, short-term and long-term shelters as well as medical and psychological treatment are still mostly provided by dedicated civil organisations. Even if cooperation with NGOs is highly

¹²⁶ LICADHO, *Violence Against Women in Cambodia 2006*, *supra* note 80, p. 13.

¹²⁷ Office To Monitor and Combat Trafficking in Persons, U.S. Department of State, *Trafficking in Persons Report*, *supra* note 118.

¹²⁸ ADHOC, *Human Rights Situation Report* (2009), p. 19.

¹²⁹ *Ibid.*, p. 27.

¹³⁰ Song, *Global Child Sex Tourism*, *supra* note 101.

¹³¹ Brigitte Stark-Merklein, *For Cambodian girls, education is antidote to poverty and sexual exploitation*, (August 2005), online: <http://www.unicef.org/infobycountry/cambodia_27896.html>.

¹³² ADHOC, *Human Rights Situation Report* (2007), p. 28.

¹³³ Committee on the Rights of the Child, *General Comment No. 3 (2003): HIV/AIDS and the rights of the child*, UN Doc. CRC/GC/2003/3 (March 2003), para. 30.

¹³⁴ *Concluding observations (2000)*, *supra* note 19, para. 64.

encouraged, it is the State's obligation to provide more financial and human resources to these programs.

4.2 Lack of a Comprehensive National Database

Despite the numerous actions undertaken by Cambodia over the last years, the government itself admits that there is little evidence confirming that trafficking and sexual exploitation of children has decreased.¹³⁵ Unfortunately, the impact assessment conducted by the State has been too limited and, in order to be conclusive, requires an improved and integrated approach.¹³⁶ As long as a comprehensive national database with extensive statistics is not put into place, it will be extremely difficult to assess the real impact of any measures taken.

4.3 Lack of Law Enforcement

Despite the efforts made by the State and the new legislation that was adopted, the number of convictions for sexual abuse and exploitation is still alarmingly low, which means that the offenders know that they will not be punished.¹³⁷ There also seems to be a lack of political will to prosecute and convict officials involved in traffic-related offenses, despite the high prevalence of this problem.¹³⁸ For instance, in 2010, authorities reported only one conviction of a public official for traffic-related corruption to the US government.¹³⁹

In 2010, Cambodia's score on the *Corruption Perceptions Index* (CPI) by Transparency International was 2.1/10, which ranked the State at the 154th position out of 178 countries.¹⁴⁰ Given the fact that corruption directly leads to impunity, it is unfortunate that the legislative measures that have been taken are not fully enforced.

This situation has a direct impact on the situation of sexually exploited children, since the vulnerability of court officials to bribery often leads to impunity of brothel owners and sexual predators. For instance, in 2008, a court official reportedly accepted \$30,000 in exchange for the release of brothel owners convicted of trafficking.¹⁴¹

Another example of the correlation between corruption and impunity is that of two minor girls who, on July 25th, 2006, were duped and sold by two offenders, one of them being the wife of a forestry administration official. The minors were promised jobs, but were instead sold to a businessman for sexual exploitation. The victims' mothers were forced by the Anti-Human Trafficking and Juvenile Protection police bureau to withdraw the complaints they

¹³⁵ 2nd and 3rd Report on the Implementation of the CRC, *supra* note 27, para. 240.

¹³⁶ *Ibid.*

¹³⁷ ECPAT-Cambodia, *Reported Cases of Sexual Abuse in Cambodia in the First Half of 2010*, *supra* note 125.

¹³⁸ Office To Monitor and Combat Trafficking in Persons, U.S. Department of State, *Trafficking in Persons Report*, *supra* note 118.

¹³⁹ *Ibid.*

¹⁴⁰ Transparency International, *Corruption Perceptions Index 2010* (Full Report), *online*: <<http://www.transparency.org/content/download/55725/890310>>, p. 3.

¹⁴¹ Office To Monitor and Combat Trafficking in Persons, U.S. Department of State, *Trafficking in Persons Report*, *supra* note 118.

had filed and to accept 1.2 million riel each in return. With the help of ADHOC, the case is now being heard by the Supreme Court.

Following the adoption of the *Law on Suppression of Human Trafficking and Sexual Exploitation*, the Cambodian police conducted numerous raids on brothels and detained a large number of women and girls involved in prostitution, while failing to arrest, investigate or charge any large number of persons for human trafficking offenses. Worse yet, the detained females that were charged for prostitution may have included some trafficking victims¹⁴².

It is therefore imperative that the RGC implement a Juvenile Justice System and provide proper training on children's rights to judges, in order to recognize the vulnerability of child victims and to adapt procedures to their special needs. A *Juvenile Justice Law* has been drafted, however, it has not yet been adopted.¹⁴³ The adoption of a Youth Protection Act is also essential to ensure that children are not arrested or incarcerated for unlawful acts committed as a result of being sexually exploited or trafficked.¹⁴⁴

In 2004, the closure of brothels in Sway Pak did not result in the arrest of any brothel owners. They could therefore resume their business elsewhere in Phnom Penh or in other provinces.¹⁴⁵ Years later, the same situation remains. In 2009, raids were conducted to rescue trafficked victims from exploitation but very few of the illegal business owners were punished, and those who were arrested were released soon after.¹⁴⁶ Some of the owners of sex businesses even complained that they had to spend at least US\$ 3,000 to bribe police officers to set them free after each raid.¹⁴⁷

Governmental measures and legislation will only make a lasting difference in the life of children if they are strictly enforced at every level of government, in full cooperation with international instances, local non-governmental organizations and civil society.

¹⁴² Office To Monitor and Combat Trafficking in Persons, U.S. Department of State, *Trafficking in Persons Report*, *supra* note 118.

¹⁴³ International Bureau for Children's Rights, *Making Children's Rights Work*, *supra* note 46, p. 8.

¹⁴⁴ Office To Monitor and Combat Trafficking in Persons, U.S. Department of State, *Trafficking in Persons Report*, *supra* note 118.

¹⁴⁵ ADHOC, *Human Rights Situation Report* (2006), p. 24.

¹⁴⁶ ADHOC, *Human Rights Situation Report* (2009), p. 18.

¹⁴⁷ *Ibid.*, p. 18. An official from the Ministry of the Interior, who asked to have his identity covered, said that raid operations at sex trafficking places have become a business for some local authorities.

Concluding Remarks

The vicious cycle of sexual violence against Cambodian children has to be broken. By fulfilling its obligations under Articles 19, 34 and 37 a) of the *Convention*, the RGC will directly protect other interdependent rights of children, such as the right to life, to education, to health and to an adequate standard of living. Moreover, the Cambodian Government will support the achievement of the Millennium Development Goals (MDGs), by addressing factors such as poverty (MDG 1), lack of basic education (MDG 2), lack of gender equality (MDG 3) and the spread of HIV/AIDS (MDG 6).¹⁴⁸

While it is evident that the problems are interconnected, the same holds true for their solutions. Every recommendation followed by the State has the potential to directly impact several aspects of this compelling social challenge, contributing to lasting solutions and to the eradication of sexual violence against children in Cambodia.

¹⁴⁸ United Nations Inter-Agency Project on Human Trafficking, *online* :<http://www.no-trafficking.org/cambodia_action.html>; *see* also the United Nations website dedicated to the Millennium Development Goals: <<http://www.un.org/millenniumgoals/>>.

Recommendations

1. General Recommendations

THE ROYAL GOVERNMENT OF CAMBODIA SHOULD:

- 1.1 Coordinate a national awareness campaign about discrimination against women, focussing on the cultural beliefs that perpetrate such inequality, its impacts on the lives of girls and the importance of gender equality to help eradicate all forms of sexual violence against girls.
- 1.2 Create an Ombudsperson for Children competent to monitor the implementation of the *CRC*, receive children's complaints about violations of their rights, and provide remedies in a child-friendly manner.
- 1.3 Create a Juvenile Justice System and train judges on children's rights, in order to recognize the vulnerability of child victims and adapt procedures to their special needs.
- 1.4 Guarantee the financial independence of judges and court officials in order to ensure adherence to the rule of law and a functioning system of justice.
- 1.5 Implement an inclusive data-base system within the National Institute of Statistics of Cambodia, in order to maintain reliable statistics on child victims of sexual violence, rape and sexual exploitation.
- 1.6 Impose severe sanctions to state officials who violate the law in performing their duties.
- 1.7 Foreign States and companies should follow strict guidelines related to financial support or commercial activities within Cambodia, based on its performance to protect children's rights.

2. Specific Recommendations

THE ROYAL GOVERNMENT OF CAMBODIA SHOULD:

Domestic violence

- 2.1 Enact a sub-decree providing for the respective role of law enforcement officers in the implementation of the *Law on the Prevention of Domestic Violence*.
- 2.2 Coordinate a nationwide awareness campaign on the destructive effects of domestic violence intended to the general public as well as to public servants, such as police officers and judges.

2.3 Give the Cambodian National Council for Children total financial and political independence from the Cambodian State, and grant sufficient human and financial resources to adequately fulfill its mandate.

2.4 Remove the *Chbab Srey* from every school program.

2.5 Abrogate Article 61 of the new *Code of Civil Procedure*, so that civilians do not have to pay a fee in order to file for divorce.

2.6 Amend the *Law on the Prevention of Domestic Violence* to eliminate Article 8 permitting corporal punishment and to implement a code of procedure in situations of domestic violence.

Rape

2.7 Conduct awareness campaigns in order to educate children and their families, especially in rural areas, about the risk of rape.

2.8 Implement a sexual education program for Cambodian children in primary schools and high schools in order to instruct them about the devastating consequences of rape and the types of recourse available to victims.

2.9 Strictly enforce the prohibition of pornography viewing and access to pornography by children.

2.10 Provide social services and sufficient human and financial resources in order to address the needs of minors who commit sexual assault on other minors.

Sexual Exploitation of Children

2.11 Fully enforce the *Law on Suppression of Human Trafficking and Sexual Exploitation*, so that the criminals are duly prosecuted in accordance with the law and impose serious punishment on government officials and police officers involved in sexual trafficking activities with children.

2.12 Conduct awareness campaigns in order to inform and educate children, families, teachers and school principals, especially in rural areas, about the dangers of human trafficking and about the deceiving techniques used by the offenders and their criminal networks.

2.13 Conduct awareness campaigns on the impact on children of sexual exploitation, especially in order to help reduce local demand for commercial sex with minors, as well as to fight the stigmatisation of the victims.

2.14 Expand social and psychological services for the rehabilitation of child victims of sex trafficking and implement reintegration programs in rural communities.

2.15 Develop and implement more job opportunities and vocational training programs for youth, especially in rural areas.