

# Report on the Violence Against Women in Cambodia

*~ With Focus on the Status of Implementation of  
the Law on the Prevention of Domestic Violence  
and the Protection of Victims in 2005~*



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## Human Rights Now

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*Human Rights Now (HRN) is an international human rights NGO based in Tokyo with over 700 members of lawyers and academics. HRN dedicates to protection and promotion of human rights of people worldwide.*

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## **I. INTRODUCTION**

### **1. The objectives of the survey**

Human Rights Now (hereinafter, HRN) conducted a survey on violence against women in Cambodia in March 2010 under the ‘Violence against Women Project’. The survey was carried out after the adoption of the Law on the Prevention of Domestic Violence and the Protection of Victims (hereinafter ‘DV Law’) at the National Assembly of Cambodia in October 2005, focusing on the situation of domestic violence.

Cambodia ratified the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) in 1992, and the government is, therefore, obliged to protect women from violence and discrimination. Domestic violence, however, continues to be a serious problem in Cambodian society. When the DV Law was passed in 2005, it was expected that the Cambodian government, courts, and NGOs would endeavor to prevent and protect women from ill-treatment.

Although five years have passed since the introduction of the DV Law, this law is yet to be widely used to provide enough protection for women. It has not been fully enforced. The judiciary who is responsible for the enforcement of the law and women themselves do not completely understand the law. As a result, the legal system is not able to prevent domestic violence and provide adequate protection.

In this research, we investigated the actual situation of domestic violence and how the DV Law has been utilised to prevent it. Where the Law is not functioning properly, the reasons and the solutions were also explored.

### **2. Methodology**

In this research, the following methodologies were used;

- (1) An analysis and a review of the DV Law and concerning systems,
- (2) An analysis of the DV Law, and concerning laws, in conjunction with interviews with people who support the laws,
- (3) An interview with those responsible for the enforcement of the Law (the Ministry of Women’s Affairs, the GTZ, the courts, local authorities),
- (4) An interview with people and NGOs engaging in the activities to protect victims of domestic violence in Cambodia, asking them, in particular, the problems of the implementation of the DV Law, and
- (5) An interview with people who support the enforcement of the Cambodian Civil law.

First of all, we focused on whether the proper law and legislative system are adopted in Cambodia in light of the CEDAW, its General Recommendation No. 19 on violence against women, and the Declaration on the Elimination of Violence against Women adopted by the United Nations General Assembly.

Secondly, we explored whether the DV Law and concerning laws are working effectively, fully utilised and providing enough protection for women. In Cambodia, many laws have been introduced recently, yet confusion and misunderstanding of concerning personnel hinders the effective implementation of those laws.

HRN also analyses the causes for the impediment and problems, and provides recommendations accordingly.

We wish to thank everyone for all the support we received during the research.

## **II. RECOMMENDATIONS**

HRN gives the following recommendations;

### **1. Review of the DV Law**

To accomplish the prevention of domestic violence and provide protection for victims, HRN recommends the following reviews and improvements;

- (1) The General Provision (Chapter 1) of the DV Law which states that “This law has the objective to prevent domestic violence, protect the victim and strengthen the culture of non-violence and the harmony within the households in society in the Kingdom of Cambodia” should be deleted or amended in accordance with Article 4 of the Declaration of the Elimination of Violence against Women. Further, it should be clearly stipulated that the no consideration for custom, tradition and religion shall be given when interpreting of the DV Law and contemplating the content of the guidelines for the implementation.
- (2) Article 8 of the DV Law which justifies the domestic violence under the name of “disciplining” should be deleted.
- (3) Article 2 of the DV Law should be amended so as to include violence from former spouse.
- (4) The obligations and responsibilities of authority in charge of the intervention in the domestic violence incident and remedies for the victims should be concretely clarified by virtue of, for instance, the amendment of the DV Law, the enactment of the concerning law and the promulgation of Sub Decree. In particular, the primary authority should be clearly indicated to alleviate the confusion in the field.
- (5) The punishment for contravening the protection order should be stipulated.
- (6) The system under which the repeated petition for the protection order is possible should be introduced.
- (7) Article 27 of the DV Law should be amended in such a way that the reconciliation in the domestic violence incident will be conducted only where both parties intend so.

### **2. Effective enforcement of the DV Law**

#### **(1) Accomplishment of the prevention of domestic violence and the protection of the victims**

- 1) The establishment of the guideline

In order to alleviate the confusion in the field where remedies are given, the Ministry of Women’s Affairs should set the guidelines for the DV Law. The obligations of the responsible authorities and the consistency with the relevant laws should be elaborated. The obligations and responsibilities of the authorities in charge, particularly, of the prevention of domestic violence and the protections of the victims (normally, the local administrative authority) should be

concretely provided for. In addition, the Ministry of Interior, the National Police, courts and the local administrative authorities should cooperate in establishing the guidelines.

## 2) Dissemination of knowledge by proper training

### A) Training for local government agencies

The Ministry of Women's Affairs should provide trainings concerning the DV Law for the local government, and make them realize their responsibilities and authorities according the above guideline.

### B) Training for citizens and local communities

In order to promote the prevention of domestic violence and to create an environment under which the victims feel easy utilizing the remedy system, it is crucial that each citizen is equipped with the proper knowledge concerning the gender discrimination, the causes of the domestic violence, the concrete ways to prevent domestic violence and so forth. Therefore, the government should arrange the training for citizens, paying attention to the points elaborated below. Such training must be conducted nationally so that the difference in information between cities and rural areas will not exist.

### C) Considerations about training

#### a) Local communities

For values deriving from Cambodian culture and traditions could be a cause for a violation of women's rights, there should be a training and education to deal with domestic violence and the respect for women's right in the divorce procedure due to domestic violence.

#### b) Institutions which give consult to victims

Where the court confirms the domestic violence, reconciliation between parties should not be promoted only for the sake of the home harmony. The safety of victims must be given top priority. The remedies should be given promptly and properly in accordance with the DV Law. Special attention should be paid so that the remedy procedure under the DV Law which has the primary objective of "protecting victims" will not be confused with the divorce procedure under the New Civil Law which promotes "reconciliation".

## 3) The local staffs of Ministry of Women's Affairs

The Ministry of Women's Affairs is expected to play the primary role to implement the DV Law. In order for the local staffs of the Ministry of Women's Affairs to perform duties under Articles 10 and 11 and implement the prevention of domestic violence and the protection of victims based on the cooperation with the local administrative authorities, the strengthen of the

system is indispensable. Therefore, at each local government (Commune/*Sangkat*), one staff responsible for the prevention of domestic violence should be deployed. Furthermore, there should be an annual publication reporting the performance of such a staff. The necessary budget should be provided accordingly.

#### 4) Training for the Police

A) The Ministry of Interior, together with the Ministry of Women's affair should provide for the police the necessary trainings concerning the duties relating to the DV Law.

B) Each police station should take statistics of the domestic violence incident against women and disclose such statistics to the public. They should not only keep record of the number of offences, petition of protection orders, their response, the details of their intervention, and the number of proceedings, but also reveal those data to the public.

### **(2) Issuing prompt and appropriate protection order**

#### 1) Establishment of the protection order template and guideline

The uniformed guideline of the court's procedure for each case should be set for the prompt and proper procedure for the issue of protection order. In addition, the template for the protection order should be created and disseminated to all courts.

#### 2) Disclosure of required complaint form, fee and attached paper work for complainants

To improve the access to the protection order system for the victims, complaint form along with fee explanation and required attached paperwork should be placed at every court.

#### 3) Shortening the trial period

It is desirable that the period from petitioning the protection order to issuing one should be made short. Temporary protection order should be issued within ten days and the appropriate system needs to be adopted.

#### 4) Collection of statistical data

In order to ensure proper implementation of the DV Law, the court should record the statistical data such as the number of Protection Order issued, the content of those orders, how long it takes to issue those orders and disclose such data..

#### 5) Research and Improvement by the court

The courts should conduct a research on the delay of the issue of the protection order and take measures to clarify the causes and takes measure to improve the situation.

### **(3) Training for the Judicial Officials and extension of law protection**

1) To ensure the remedy and protection for the domestic violence victims, the Cambodian Government should allocate sufficient and necessary time, and provide continuous and

adequate trainings for the judges, public prosecutors and attorneys by coordinating with Royal School for Judges and Prosecutors, Royal Academy for Judicial Professions, the courts, the Bar Association of Kingdom of Cambodia. The training should include the workshops on gender so that the participants understand the characteristics of domestic violence and practice their duties properly.

- 2) The Cambodian government should obtain sufficient budget to implement such training programs.
- 3) The Cambodian government should provide the trainings which clarify the difference between the DV Law and the New Civil Law by making clear the characteristics and purposes of each law.
- 4) Legal aid for civil trials including the domestic violence cases should be provided where the domestic violence victims cannot get access to the administration of justice.

#### **(4) Prompt support and protection for the victims**

- 1) The Cambodian government should take measures for the domestic violence victims to obtain support and protection irrelevant of their domicile or financial resources.
- 2) The government should increase the number of public shelters and improve the facility of them.
- 3) The government should establish the system not only to provide the emergency medical care but also long-term rehabilitation, psychological counseling and self support assistance including job training to ensure victim's recovery and independent.
- 4) The government should guarantee the budget to implement above programs.

### **3. Continuous assistance for enforcement of the laws**

The Ministry of Women's Affairs should recognize the misunderstanding and confusion about the DV Law and its related laws. It should provide and supervise the continuous training and monitor the status of enforcement of those laws to clarify misunderstanding and confusion with assistance from the countries which were involved when the DV Law was drafted. Those include Germany, Japan, France and so forth.

#### **4. The courts.**

- (1) The judges must not ask for or receive a bribe concerning the petition for the protection order under the DV Law, the criminal procedure and any other circumstances. The court can neither make a request for nor receive the litigation cost which exceeds the amount stipulated under the law.
- (2) The judges cannot lose the document for petition and deny the petition without due reasons.

Moreover, they should not unduly delay the issue of the order.

(3) The courts should reinforce the trainings and conduct a survey to eradicate such issues.

#### **5. Assistance for legislation, donor, International Community**

(1) The countries involved in the supporting of the preparation of relevant laws should cooperate in the legal training sufficiently so that the enacted laws can popularize in Cambodia society. The international organizations responsible for supporting preparation of the Civil Law, the Civil Procedural Law, the Criminal Procedural Law and so forth should cooperate and conduct legal trainings on the law they were in charge of for Cambodian legal practitioners. They should hold, in particular, the training for the actual operation of the laws. The assistance should be continuous in order for the legal practitioners to be able to effectively use the laws.

(2) Each country should recognize that the prevention of violence against women is one of the most important issues and provide support for victims. The supports include the assistance of growing the role of Ministry of Women's Affairs, providing appropriate training and public shelters.

(3) The international organizations should review the short-term project every two or three years. They should further systematically and continuously conduct a long-term project, establishing the strategy for eradication of violence against women.

### III. THE CURRENT SITUATION OF DOMESTIC VIOLENCE AGAINST WOMEN

#### 1. The current situation of domestic violence in Cambodia

(1) Domestic violence against women has spread across the country and become a serious problem in Cambodian society. According to the Cambodia Demographic and Health Survey in 2005 (“CDHS”), 22% of women have experienced physical/sexual/ psychological abuse from their spouse and 13 % of women have been physically abused. In addition, one out of ten women experienced physical abuse from their spouse within 12 months prior to the survey. The GTZ conducted surveys in 2005, examining 3000 people in 113 provinces. The survey showed that 64% answered that they actually heard of the husband’s violence against their wives and 22.5% of women have been physically abused by their spouse. Some NGOs suggest the increasing number of domestic violence instances and its seriousness. The LICADHO, for example, reported the increase in the instances every year as follows;

Year	2000	2001	2002	2003	2004	2005	2006
Number of Cases reported to LICADHO	75	88	96	118	159	178	220

According to the independent survey by the ADHOC, 364 domestic violence cases were reported in 2005, and 531 in 2006 (44% increase by 44%). Most of the victims were injured. For example, the victims were injured in 501 cases out of 531 cases in 2006. It was reported that the victims were speared with a harpoon, thrown hot water and acid at, or used abusive languages. In 30 cases, the victims were dead. The numbers of reported domestic violence cases increased from 2005 to 2006, but the numbers of cases where victims were dead are constant.

(2) The Ministry of Women’s Affairs, however, suggested the contrary. According to its Report on Data Collection and Monitoring of Violence against Women in 2010, it was concluded that the number of domestic violence has been decreasing based on the following surveys.

1) National Institute of Statistic, Cambodia Demographic and Health Survey (CDHS)

	Percentage of women experiencing domestic violence in twelve months prior to the survey
2000	15.2%
2005	12.8%
Relative decrease	15.8%

## 2) Commune Data Base

	2006	2007	2008	2009
Number of families in 24 provinces	2,596,322	2,657,820	2,760,756	2,852,943
Number of families experiencing DV	42,436	38,062	36,182	35,408
Percentage of families experiencing DV	1.63%	1.43%	1.31%	1.24%

The decreasing trend of domestic violence instance revealed in the CDHS (2000 - 2005) is, thus, different from that of the NGOs. It would be improper to conclude that the domestic violence has decreased after 2005 based only on the Commune Data Base. The statistics in the report of the Ministry of Women's Affairs revealed much higher number in 2007, 2008 and 2009 than that prior to 2006. Therefore, it is safe to say that the current trend is hard to determine.

### 2. The Circumstances of the victims

Below, a number of cases which were consulted at the NGO will be described.

#### Case 1;

At 8:30 am, on September 2, 2006, the woman living in Dal Pou village Sla Kram region was severely injured as a result of her husband throwing hot water at. The family was financially supported by her, and after the violence, the husband took her purse and left the house.

#### Case 2;

There was a domestic violence instance in Kompong Cham on November 25, 2006. The woman was killed by her husband who stabbed her with a knife in her left jaw and throat. Apparently, the husband liked drinking wine and rarely came back home. He was aggressive and routinely attacked the wife but she was often rescued by the children. He also attempted to burn the house when in anger.

#### Case 3;

Srey Mom married her husband at the age of 19. Her husband was unemployed and used the money she earned for the children for drinking. When she came back home and found her drinking husband one day, she got angry and started to shout at him. Her husband then became angry and swung the sword towards her. As a result, she was injured in her right foot. When asked about the foot, Srey Mom could not tell the truth. She simply said she fell over and hurt herself.

Since then, she became scared of her husband. She reckoned that it was her fault, too, that her

husband was not working and just drinking alcohol. She then decided to behave and become a good wife. However, her husband did not stop drinking. Sometimes, he even attacked her with a knife. When he was attacking her with an axe, she fled to her parents' home with the children. Her parents did not accept the divorce, telling her not to complain about the violence. They returned them to the house on the following day. She gave birth to the fifth child and two weeks after that, the husband burnt down the house when Srey Mom and her child slept in the house. She and her child were woken up by the smell of the smoke and thereby saving their lives. After that, the violence was directed towards the children as well. Srey Mom never consulted the administrative authorities about the violence. She took her children and dashed to the office of the NGO, telling them everything she had experienced. She decided to escape from the violence and subsequently got divorce.

### **3. The causes of domestic violence**

Causes of domestic violence prevailing in the society may include the facts that the issue is hardly reported to the outside, that the victims in a weaker position are forced to remain silent and that the government is deemed not to intervene in a private matter. The specific causes for Cambodian society could be given as follows;

#### **(1) Violence has been widely used to solve problems**

Prior to the Cambodian Civil War in 1970s, although there existed instances on domestic violence and violence against women such as rape, it was perceived that such violence is not allowed, at least in the rural area. However, after 30 years of the civil war, people started to recognize violence as a means of resolving conflicts. One could say that widespread violence in the civil war and the impunity created the violent culture enrooting in the Cambodian Society.

#### **(2) The status of Cambodian women in the household**

Another reason for domestic violence against women is underlying gender inequalities in Cambodia. The status of a woman and a child at home is traditionally deemed to be lower than that of a man. Women's respect for a husband is applauded. The deviation from such a traditional norm tends to be used as justification for sanctions against women. Some women even accept such justification.

According to the CDHS survey in 2005, 55% of women showed a belief that domestic violence was justified under circumstance when they neglect their child, go out without husband's approval and argue with their husbands. 33% gave the same answer in 2003.. Of course, we cannot say CDHS survey reflects the view of all women in Cambodia, but it seems that if there

is legitimate reason, women have grown to accept violence from their spouse.

### **(3) Women's social status and empowerment**

Women's participation in politics, economy and society is still feeble. The social status of women in a society as a whole is lower than that of men. Cambodia ranks 124<sup>th</sup> out of 169 countries in the Gender Inequality Index (GII) in the 2010 Human Development Report. Male with at least secondary education constitutes 20.6% of the whole population whereas female only 11.6%.

According to the Global Gender Gap Report 2010, Cambodia ranks 97<sup>th</sup> among 134 countries in the Global Gender Gap Index 2010. It ranks 68<sup>th</sup> and 78<sup>th</sup> for Economic Participation and opportunity and political empowerment respectively. Regarding the education, the matters are worse as it ranks 115<sup>th</sup> for Educational Attainment, 117<sup>th</sup> for both Enrolment in primary and second education, and 108<sup>th</sup> for Literacy rate. The background for this lies in the social circumstances under which parents tend to outweigh the education of a son than a daughter and it is generally thought that education may hinder marriage as some men respect a marriage with an educated woman. The limitation of an access to education culminates in a woman's disadvantage at work and a difference in wage, thereby rendering it inevitable for a woman to depend on her husband for living. As suggested by the above figure, the low status of a woman causes a violation of women's rights.

### **(4) Influence of Buddhism and Cambodian tradition**

The reason for discrimination against women in Cambodia could be originated also from its religion and tradition. Cambodian society and Buddhism are closely linked as Buddhism is an established religion and 90% of the nationals are Buddhist.

The Committee on the Elimination of Discrimination against Women of UN (CEDAW) shows a concern that *Chaab srey* (Code of conduct of women) could strengthen the strong stereotype of gendered role, justify the discrimination against women and interfere with the protection of women's rights and equality in Cambodia. Such values stemming from religion lowers women's social status and could link to the justification and an acceptance of domestic violence.

#### **IV. THE OPINION AND THE RECOMMENDATION OF THE CEDAW**

In 2006, the CEDAW Committee examined the reports on the implementation of obligations under the CEDAW submitted by Cambodian government. It subsequently revealed the Concluding Comment and the Recommendations.

The Committee commended on the establishment of the Ministry of Women's Affairs and the National Council for Women. It, however, showed deep concern on the human rights of women in Cambodia and the eradication of discrimination, and called for development by the government, in particular, the proper application of laws through the education of legal practitioners. Following is the primary recommendation of the Committee to the government.

##### **1. The general issues**

The Committee revealed a concern that the CEDAW is yet to be reflect in the domestic laws and judicial procedures notwithstanding the Constitution which “recognize and respect human rights as stipulated in” numerous human rights treaty (Article 31), clearly provides that “all forms of discrimination against woman shall be abolished” (Article 45) and confirms that superiority of treaties (paragraph 9).

The Committee, therefore, urged that the government should ensure that the CEDAW becomes fully applicable in the domestic legal system. It further recommended the government to create awareness about the CEDAW among judges, prosecutors and lawyers to ensure that the CEDAW is well known and used in judicial processes (paragraph 10).

##### **2. Regarding the law concerning woman**

Taking into account the vague definition on “discrimination against woman” under Article 1 of the CEDAW, the Committee required the government to clarify the term in the domestic system. Further, it recommended the government to include sanctions in the civil and criminal codes for discrimination against woman and ensure that effective remedies are available to the victims (paragraphs 11 and 12).

##### **3. Regarding the gender policy of the government**

The Committee is concerned that the gender perspectives are not adequately reflected in the programmes of the government and that the policy evaluation is insufficient (paragraph 13). Accordingly, the Committee called on the government to enhance the mechanism to advance gender mainstreaming, implement the policy evaluation and report on the result (paragraph 14).

#### **4. Regarding the DV law**

Although the Committee welcomed the enactment of the DV law, it indicated some problems including, for instance, the non-appliance of the law in case of violence from the former spouse (paragraph 15).

The Committee strongly urged the government to take comprehensive measures to cope with all forms of violence against woman. For instance, the government should raise public awareness through media and education program that violence is unacceptable. The government should train the judiciary, law enforcement officials, legal professionals, social workers and health providers on the DV law to ensure that the perpetrators are effectively prosecuted and punished with seriousness and speed. The number of female judges and law enforcement officials should be increased so that a victim can report cases without reluctance.

#### **5. Regarding Cambodian culture and traditions**

The Committee is concerned that a violation of women's rights are legitimized by the strong gender-role stereotyping, in particular that reflected in the traditional code of conduct known as *chbab srey* (paragraph 17).

The Committee urged the government to undertake a comprehensive assessment of the traditional code of conduct to identify those elements that discriminate against women. The government should refrain from disseminating and teaching those elements of the traditional code of conduct that discriminate against women, and instead undertake every effort to make the principle of equality of women and men better. Further, it calls on the government to implement to the national campaign to work towards the elimination of stereotypes associated with men's and women's traditional roles in the family and in society (paragraph 18).

#### **6. Regarding the Marriage and Family Law**

The Committee expressed a concern about the lack of enforcement and an effective monitoring mechanism under the Marriage and Family Law. It is also concerned that traditional and cultural factors are preventing women from exercising the full enjoyment of their rights within the family, in particular the right to enter into marriage with free and full consent (paragraph 33).

The Committee, therefore, urged the government to widely disseminate information about the Marriage and Family Law and to eliminate the cultural and traditional factors that perpetuate discrimination against women, and to raise the minimum age of marriage for women and men to 18 years (paragraph 34).

## **V. LEGISLATION OF THE DV LAW AND ITS CONTENT**

### **1. The history of the legislation of the DV Law**

To overcome the prevailing domestic violence and the tolerant society and to provide domestic violence victims proper protection, the Ministry of Women's Affairs began to draft the DV Law under the auspice of the GTZ in 2002. With the political lobbying by the domestic NGOs and the international groups including GTZ, the DV Law was passed by the National Assembly in 2005 and came in to force on 24<sup>th</sup> October 2005.

The legislation of the DV Law is the first step to eradicate domestic violence. Yet, remedy system for the victims is still ineffective. This is due to the ambiguity of the content of the law and the lack of the adequate mechanism to enforce it. In the following sections, the content and the features of the DV Law will be elaborated.

### **2. Content of the DV Law**

#### **(1) Chapter 1: General Provision (Art. 1)**

Article 1 stipulates the objectives of the law; namely, to establish a legal mechanism to prevent domestic violence, to protect domestic violence victims, and to preserve the harmony within the households in line with the Nation's good custom and tradition and in accordance with Article 45 of the Constitution of the Kingdom of Cambodia.

#### **(2) Chapter 2: Scope of Implementation (Art. 2 – Art. 8)**

##### **1) Persons protected**

Domestic violence is referred to the violence that happens and could happen towards 'husband or wife' (Art. 2 para.1), 'dependent children' (Art. 2 para2) and 'persons living under the roof of the house and who are dependent of the households' (Art.2 para.3). According to the Explanatory Notes of the DV Law<sup>1</sup>, 'persons living under the roof of the house and who are dependent of the households' include husband or wife who gets married traditionally without a proper registration (therefore, they do not fall within Art.2 para.1), an adult with disability, an adult ward, an adult under curatorship, grandparents, an uncle, an aunt, a cousin, a niece, a nephew, a maid, a cook, a domestic helper, a cleaner, a baby sitter and a driver. The Explanatory Notes further suggests that as the law has an objective to protect those who cannot easily escape from the dangerous circumstances, those who do not live with one who commits domestic violence are presumed not to be protected by the law.

##### **2) Acts of domestic violence**

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Article 3 stipulates that domestic violence includes acts affecting life, acts affecting physical integrity, tortures or cruel acts and sexual aggression. Article 4 sets out that acts affecting life include premeditated homicide, intentional homicide, unintentional homicide resulted from other intentional acts of perpetrators, and unintentional homicide. Article 5 provides that acts affecting physical integrity include physical abuses with or without using weapons, with getting or not getting wounded and tortures or cruel acts. Article 6 further states that tortures or cruel acts include harassment causing mental/psychological, emotional, intellectual harms to physical persons within the households and mental/psychological and physical harms exceeding morality and the boundaries of the law. Article 7 provides that sexual aggression includes violent rape, sexual harassment and indecent exposures.

Article 8 provides that It is also required to prevent threats aiming at frightening, shocking the victims and acts affecting individuality and properties of the persons living under the same roof of the house and who are dependent of the same households. However, it is unclear that the acts set out in Article 8 are subject to the protection, just like the acts set out in Article 3. In addition, the Article 8 states that if the disciplining and teaching are conducted with the noble nature (*consisting of compassion, pity, joy at other's happiness, and sincerity*) and in accordance with the principles of the United Nations Conventions on Human Rights and Child Rights recognized by the Kingdom of Cambodia, shall not be included as the use of violence or acts of domestic violence. This is very problematic provision as the definition of act of domestic violence is unclear.

### **(3) Chapter 3: Authorities and Procedures (Art. 9 – Art. 12)**

Article 9 states that the nearest authorities in charge have the duty to urgently intervene in case domestic violence occurs or is likely to occur in order to prevent and protect the victims. It further provides that during the intervention, the authorities in charge shall make a clear record about the incident and then report it immediately to the prosecutors in charge.

In performing their duty, the authorities in charge shall comply with the procedures defined in the provisions of DV Law and the penal procedures in effect (Art. 12). Article 13 sets out the way of intervention. The Article 9 (e) sets out the duty of the authority in charge, and the authority and responsibility of the authorities in charge or the nearest authorities in charge are also mentioned in the Article 12,13,14,15,16,17,18,20,22,25,28,29.

The problem is that the DV Law does not clarify which authorities are referred to. The practical consequence of this could mean that various authorities all fail to act and women in situations of

domestic violence are not protected. The DV Law could cause the victims would be sent around different authorities, and no authority will take responsibility.

Next, under Article 10, in the purpose to prevent domestic violence and protect the victims, the officials of the Ministry of Women's Affairs who work in the fields regulated under this law shall obtain the legal qualification as the judiciary police and can act as the complaining party instead of the victims in accordance with the penal procedures in effect. Therefore, the officials of the Ministry of Women's Affairs have a right to make a complaint in criminal procedure for domestic violence cases.

Further, Article 11 states that in case of the absence of the officials who have already earned the legal qualification as the judiciary police, other officials in charge including police officials, police agents, Royal Gendarmerie, local authorities in commune/*Sangkak*, officials of the Ministry of Women's Affairs as well as village chiefs who have intervened to prevent domestic violence and protect the victims shall be empowered under this law to make a record to the court. This record has also the same value as the record made by judiciary police officials.

#### **(4) Chapter 4: Prevention and protection of victims (Art. 13 – Art. 19)**

Here, the way of intervention to protect domestic violence victims are demonstrated. In order to prevent domestic violence which is occurring or is believed to occur, the authorities in charge shall intervene urgently by (Art. 13) seizing the weapons or concrete objects that have been used or could be used by the perpetrators, moving the perpetrators from the scene or moving the victims if there is a request from the victims. In any special case the victim can be removed without having a request if there is a necessary reason to do so, offering the appropriate assistance to the victims in accordance with their circumstances, especially providing the temporary shelter in which safety can be guaranteed and urgent medical assistance, and explaining, educating and mediating both parties to stop violence and informing the victims about their rights to prevent violence.

Also, under Article 14, in order to protect the victims' security, the authorities in charge can issue the administrative decisions in line with Article 43, Article 48 and Article 49 of the law on the Management of Commune Administration and take legitimate temporary measures as follows, prohibiting from committing domestic violence by themselves or by others, prohibiting from destroying the properties or instructing not to put on sale the joint properties of the victims or the joint properties of the victims' relatives, prohibiting the perpetrators from approaching or entering the house shared together or the places where the victims stay or work without the

permissions from the victims and the authorities in charge, and taking other legitimate measures that are necessary to protect the safety of the victims and the household members or the persons involved.

If there is a request for intervention and the occurrence of the *Flagrante delicto*, the authorities in charge have the rights to have access to the scene, despite there is no warrant authorized by the court. In any cases that the officials and agents in charge believe with the reasonable ground that domestic violence has occurred during the past period of 48 hours, or could occur during the upcoming period of 24 hours. During the intervention, the authorities in charge shall make a clear record about the incident and report it immediately to the prosecutor in charge (Art. 15).

The victims can file a complaint to the provincial/municipal court asking for issuing a protection order. The assigned judges shall issue the protection order with the presence or without the presence of the perpetrators (Art. 16).

The rules about Protection Order are stated after Article 20. Article 24 provides that the court can issue the temporary protection order when receiving the complaint for protection without necessarily questioning the perpetrators, if the temporary measure is necessary to protect the safety and welfare of the victims or to preserve the properties of the victims temporarily before a final verdict is handed down.

In addition, under Article 19, any domestic violence which is characterized as the criminal offence in the manner of felonies or severe misdemeanours shall be subjected to a criminal suit, and the authorities in charge cannot intervene (Art. 17).

The authorities in charge can arrest the perpetrators who are committing the *Flagrante delicto* or any perpetrators who are violating the court's protection orders, but can not arrest other cases. The authority in charge is supposed to hand an offender over to the court along with the record. However it is uncertain how the court will handle such perpetrators who are violating the court's protection order since violating protection order does not constitute a crime.

#### **(5) Chapter 5: Authorities of the Court (Art. 20 – Art. 32)**

In this chapter, the procedure for the issuance and execution of protection order are set out. The protection order is the civil measures and the protection order can be 1) Influential for a while or 2) Temporarily influential in accordance with the provisions as stated in Article 23 of this law.

Under the Article 23, the protection order consists of two stages

Name	Effective Period	Description
the temporary Protection Order	2 months	issued during the emergency period during which domestic violence occurs immediately
the Protection Order	6 months	issued during the period the court is investigating the case, the trial is not yet conducted, or before a final verdict is declared.

The judges in charge have the rights to issue a new protection order. According to the Article 21, only the provincial/municipal court has the authority to issue the protection order. According to the Article 24, the court can issue the temporary protection order when receiving the complaint for protection without necessarily questioning the perpetrators.

Under the Article 22, the complaint to ask for the protection order from the court can be made by 1) The victims, or 2) representatives of the victims, or 3) representatives of the victims or the authorities in charge within the victims' residential areas, or 4) Any person who has learned about the incident of domestic violence if the victims are children, mentally retarded persons, or the persons whom the court believes to be unable to file the complaint themselves. As the Article 25 states, during the issuance of the protection order, the courts have the rights to define, impose an order on the activities of the perpetrators in order to protect the victims as follows: 1) Prohibiting from committing domestic violence by themselves or by others, 2) Prohibiting from approaching or entering the house shared together or the places where the victims stay or work without the permissions from the victims and the authorities in charge 3) Prohibiting the perpetrators from contacting the victims through any means 4) Prohibiting from destroying the properties or arranging to put on sale the properties of the victims or the victims' relatives 5) Separating the perpetrators or the victims, if there is a request, from the house shared together. In any special case, the victim can be removed without a request if there is a necessary reason to do so.

The following additional measures can be taken if the court knows that it is necessary to protect or provide the safety, health and welfare to the victims: 1) Ordering any police agent or Royal Gendarmerie to preserve personal properties of the victims, 2) Making a decision on the custody

of the children and the rights to visit the children by paying the highest attention to the rights and interests of the children, 3) Halting the victims' duty of financial support towards the perpetrators, and 4) Imposing the perpetrators to provide the financial assistance to the victims, based on the perpetrators' financial resources.

The Article 26 states that for the offences that are the mental/psychological or economic affected violent acts and minor misdemeanours, or petty crimes, reconciliation or mediation can be conducted with the agreement from both parties. The household members can choose any way by requesting parents, relatives, Buddhist monks, elders, village chiefs, and commune councillors to act as the arbitrators to solve the problems in order to preserve the harmony within the household in line with the nation's good custom and tradition in accordance with Article 45 of the Constitution of the Kingdom of Cambodia.

Further, the Article 27 states that the court shall try to reconcile the violence disputed parties under the condition that it is in response to the wishes of the household members. While reconciling and mediating, the court shall avoid putting pressures on the party who refuses to go along with each other or forcing any party to reconcile, or forcing to come into an agreement without the agreement from the two parties.

Except in emergency cases as stated in the Article 24, the court shall inform the perpetrators about the request for the protection order in a period of not exceeding five days before looking into this issue. If the perpetrators do not show up at the court to clarify about the reasons, the court can examine this issue without the presence of the perpetrators or if it is necessary, the court can take measures in accordance with the procedures in effect against the perpetrators who ignore the court's decisions (Art. 29).

In addition, if there is a request from any party, the court can amend, erase or add up the weight in the protection order after informing the other party in the period of five days before making decisions (Art. 30).

The court can issue the temporary protection order when receiving the complaint for protection without necessarily questioning the perpetrators, if the temporary measure is necessary to protect the safety and welfare of the victims or to preserve the properties of the victims temporarily before a final verdict is handed down (Art. 24).

Article 32 provides that after issuing the protection order, the prosecutors or the officials in

charge regulated by laws shall take all actions to enforce the protection order in accordance with the defined procedures.

#### **(6) Chapter 6: Education, Dissemination and Training (Art. 33 – Art. 34)**

The importance of dissemination and education is explained. However, we have to keep in mind that Cambodia's good custom and tradition are emphasized again here.

#### **(7) Chapter 7: Penalties (Art. 35 – Art. 36)**

Here, the penalty of domestic violence offender is set out. The DV law itself is not criminal law, therefore the domestic violence offender is not subject to the punishment relying on the DV Law. Under Article 35, any acts of domestic violence that are considered as criminal offences shall be punished under the penal law in effect, however, all domestic violence included in the DV Law is not criminal offence. For instance, Acts affecting physical integrity is included in domestic violence, but it is not criminal offence.

In addition, some acts violating the DV Law, such as the violation against protection order cannot be punished under criminal law. Further, the Article 36 sets out that criminal prosecution shall not be possible if there is a request from a victim who is an adult, the offences are minor misdemeanours or petty crimes, it is first offence. In the Explanatory Notes on the Law on the Prevention of Domestic Violence and the Protection of the Victims, it is stated that criminal penalty not only stigmatizes the offender but also his family who might suffer economic loss without provider of the family. The policy behind this rule is to prevent such situation by not prosecuting the offender.

### **3. The characteristics of the DV Law**

The DV Law of Cambodia has a broad stipulation concerning the acts of violence. Yet, it has strong influences of religion, traditions, and social particularity.

#### **(1) Tendency for reconciliation**

Article 1 stipulates the objectives of the law as, first, to prevent domestic violence, second, to protect the victims, and third, to strengthen the culture of non-violence and the harmony within the households. While the former two objectives are common with the laws of other countries, the last one is connected with Cambodian traditional values, which clearly characterise the Cambodian DV Law.

Regarding the third objective, Article 1 highlights the objective to 'preserve the harmony within

the households in line with the Nation's good custom and tradition and in accordance with Article 45 of the Constitution of the Kingdom of Cambodia, in addition to the regulations in effect'. To avoid troubles and to treasure harmony within the household are deemed as 'good custom and tradition'. Based on this, avoidance of divorce due to domestic violence and reconciliation with the purpose to maintain the relationship in the family are promoted.

## **(2) Strong influences of Buddhism**

Cambodian society is inextricably linked with Buddhism. More than 90% of the nationals are Buddhists. As Article 43 of the Constitution provides that Buddhism is the established religion, the legal instruments sometimes mention 'the Khmer tradition (= Buddhism's teachings)'. Such teachings also influenced the DV Law.

For instance, Article 8 (2) stipulates a discipline to teach 'noble nature' is an exception of domestic violence. The teaching of Buddhist is referred to. Article 26 provides that 'The household members can choose any way by requesting parents, relatives, Buddhist monks, elders, village chiefs, and commune councilors to act as the arbitrators to solve the problems in order to preserve the harmony within the household in line with the nation's good custom and tradition in accordance with Article 45 of the Constitution of the Kingdom of Cambodia.'

According to the explanatory notes, monks are regarded as holy since the ancient time. Historically, they have played a role as an arbitrator in the dispute. It is appropriate to grant such a role to the monks under the DV Law.

## **(3) Powerful people in the local**

Under the DV Law, the powerful people in the local have broad authorities. These include the head of a village, the head of a Commune, the police, the staffs at the department of Women's Affairs. Powerful people in the village must intervene into the instance and force an offender or a victim to leave the house. They can also intervene into the arbitration and formulate documentation to be submitted to the court.

## **(4) Broad coverage of an act of domestic violence**

As provided by Articles 3-8, the act amounting to domestic violence is very broad. As well as physical violence (Arts. 4-5) and mental violence (Art. 6), it covers sexual violence (Art. 7). Nonetheless, although the coverage is so broad, the definition of the term 'violence' is still unclear.

## **(5) Broad coverage of protected persons**

The DV protects wide range of persons. It covers the spouse, the family members and those living under the same roof. Both men and women are protected. Yet, it leaves out the *de facto* married couple and former spouse.

#### **4. Problems of the DV Law**

As mentioned above, there are points such as the broad definition of domestic violence which could be commended. There are, however, impediments of the protection of the victims such as the influences of the traditional customs and Buddhism. In particular, by stipulating the consideration of customs and Buddhism under the DV Law, there is a risk of the violence could be allowed, which is contrary the purpose of the CEDAW and the Declaration on Elimination of Violence against Women. We also found, through the survey, that there are issues at the implementing stage such as the ambiguity of the responsibilities of the implementing institutions.

At the time of the survey, the Ministry of Women's Affairs took the view that, as a measure to improve the current situation, the proper implementation of the law should be given first priority, rather than the amendment of the law. It suggested that the amendment of the law was too early. HRN, on the contrary, is of the view that as the current law includes the impediments of the proper enforcement, it is vital to contemplate the amendment of the law. Following are the issues of the current DV Law and suggestions for the amendment.

##### **(1) The concept and principles of the law**

Reconciliation based upon customs and religion disregards the 'rule of power' which is the mechanism engendering domestic violence. It does not lead the fundamental solution. *Chbab Srey*, the religious teaching reflecting Khmer traditions, strictly provides that a woman must pay respect and follow a husband and parents, and that she must not disclose family issues to the public. Given the influence of such teaching, it is easy to imagine that victims will be left under the circumstance that forces them to remain under the violent rule because the DV Law defines one of its objectives as the respect for the harmony within the household based upon customs and traditions.

Provided that the DV Laws stipulates that parents, relatives, *Sangkat* and so forth can act as an arbitrator of the dispute, this issue is particularly serious. In fact, in the filed, the peaceful solution of the disharmony in the household and the maintenance of the relationship are promoted, rather than the timely protection of a victim. There is a tendency that a victim refuses to divorce because of the domestic violence.

To define the impediment of the victim protection as one of the objectives of the law is thus problematic. It is against the Declaration on Eradication of Violence against Women which read States 'should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination'. Accordingly, the stipulation that the Law has an objective to respect the traditional values should be deleted.

## **(2) Persons protected**

'Domestic Violence' under the DV Law refers to the violence among family and persons living under the roof of the house but does not include the violence from former spouse. However, the violence between the couple is not necessarily resolved by the mere divorce. Violence from former spouse could become a serious problem. Therefore, the DV Law should be amended so as to include the violence from the former spouse.

## **(3) The Article 8**

Article 8 of the DV Law states that acts of violence against spouse, children and a dependent which are conducted in good faith as the 'discipline' to teach the good custom and tradition, does not violate the principles of the United Nations Conventions on Human Rights and Child Rights are not included in 'domestic violence' under the Law. However, this Article justifies the domestic violence under the name of 'discipline'. It helps a perpetrator to get away from the punishment.

In the patriarchic society, acts of domestic violence have been conducted as the discipline and justified. The DV Law must stop such a history and must not permit any form of violence. Article 8 is contrary to Article 4 of the Declaration on Eradication of Violence against Women which reads 'States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination.' It should be deleted.

## **(4) Definition and responsibilities of the authority in charge**

The DV Law grants 'the authorities in charge' the responsibilities to prevent the domestic violence and to protect the victims. 'The authorities in charge' include a head of a village, a head of a commune, leaders in the region, the police and so forth.

In Cambodia, it is not easy, both physically and mentally, to get access to the Ministry of Women's Affairs and the police. In particular, in the rural village, to impose duties upon the leaders of the region for a woman to easily receive remedies is, it is argued, appropriate and

feasible with the actual situations in Cambodia.<sup>2</sup> However, there remain a risk that leaders in the conservative and traditional regions would worsen the situation by delaying the remedies and promote the reconciliation against the intention of a woman based upon the local customs and traditional values. Although there are the training and enlightenment programme as preventive measures, its effectiveness cannot be expected as the DV Law itself contains several problematic clauses. It follows that the issues of the problematic law should be resolved first by, for instance, the amendment.

Moreover, there is an issue concerning the definition of ‘the authority in charge’, the content of their responsibilities and measures. The Law has no clear provision. As a result, there occurs confusion in the field. Every authority has no perception that they are primarily responsible for the issue, thereby delaying the remedies for the victim. In addition, the victim themselves also does not know where to ask for remedies. They may lose the time for consultation or escape. In order to prevent such issues, the Law should be amended and the authority in charge for intervening the case and the protection of a victim should be clarified.

It was clear from the interview that the ambiguous provisions concerning the responsibilities of the authorities in charge causes confusion among practitioners in the field. Many argue that one of the reasons for ambiguity is the lack of concrete stipulation in the Sub Decree. However, at the time of the survey, there was still no consensus between the administrative authorities and private sector upon the desirable content of the Sub Decree.

Under such a circumstance, it is hard for women to get access to and receive remedy from the responsible authorities. To neglect this issue is contrary to the Beijing Action Platform which states that the Government should ‘take measures to ensure the protection of women subjected to violence, access to just and effective remedies’. Therefore, the clarification of the responsibilities of the ‘authority in charge’ by the Sub Decree is urgently necessary.

#### **(5) Amicable Reconciliation**

As Buddhism is established religion in Cambodia, there are many laws including the DV Law which touch upon the teachings of Buddhism. The influences of Buddhism upon the DV Law could be seen in Article 8 paragraph 2 as well as Article 26.

Under the Article 26 of the DV law, for the offences that are the mental/psychological or economic affected violent acts and minor misdemeanours, or petty crimes, reconciliation or

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mediation can be conducted with the agreement from both parties. Parents, relatives, the elderly, the members of commune councillors, monks can be selected as an arbitrator or a mediator. Their role to settle down the disharmony in the household based upon Cambodian good customs and traditions are anticipated.

However, in the region or household where the customs of discrimination against women and religious influences remained strongly, a woman who wishes to get divorced are not easily allowed by the people around her because the harmony in the family is given the top priority. It is likely that a victim will be forced to accept the unintended resolution. In addition, as she cannot resolve the problem of household within the family or the revenge from the spouse, she may become afraid of being labelled as a shame of the family. As a result, the victim herself may become tolerant of the domestic violence.

Article 26 is utterly problematic in that it stipulates that it is 'household members', not the parties, who can select an arbitrator. As Cambodian society puts too much emphasis upon the relationship in the family and the protection of honour of the family, the intentions of a victim is taken too light an approach. There is also a risk of inadequate consideration for the safety. Article 27 even provides that the household can request a judge who issues the Protection Order to attempt the reconciliation.

Thus, the provisions regarding the reconciliation and the mediation under the current DV Law are ones at which the intentions of the parties, in particular the women victim, are not easily reflected. Therefore, the Law should be amended in such a way that the victim can select an arbitrator.

#### **(6) No punishment for violation of the Protection Order**

There is no punishment for violation of protection order under the DV Law. The DV Law merely sets out that when the act of domestic violence violates criminal law, the offender is punished under criminal law. Article 18 states that the authorities in charge can arrest any perpetrators who are violating the court's protection orders but does not state any punishment or procedure after the arrest. The perpetrators will thus be released after the arrest and no sanction will be imposed. Therefore, there is no sanction for the case of violence affecting physical integrity, sexual aggression, and violation of protection order which are not the violation of criminal law. There should be some punishments for the violation of protection order to ensure the DV Law's effectiveness.

**(7) No Renewal for the Protection Order**

The DV Law provides that protection order is effective for six months, but nothing is mentioned after the six months period. Since there is a case that problem cannot be solved or the divorce cannot be finalized within six months, there should be provision for the renewal or re-issuance of the protection order.

## **VI. CONDITIONS OF THE RELEVANT LEGAL SYSTEM**

To fully implement the DV Law, it is necessary that the related law is inconsistent with the DV Law. However, support for development of the laws has not been completed, and the understanding of the laws and education for the judicial officials are not enough. This situation prevents the DV Law to be fully implemented. Below is the overview of the system of the relevant laws

### **1. Modern Cambodia**

Because of the civil war which lasted more than 20 years and caused changes of political regime several times, there has been a mixture of French legal system, socialist legal system, and common law system in Cambodia. Especially in the Khmer Rouge years, as all of then-existing legal system had been rejected, the confusion in Cambodia started to be accelerated. After Paris Peace Agreement was signed, several international actors assisted the development of the legal system. The civil law was drafted with support from Japan, criminal law from France and the DV law from Germany. As a result, although the judicial officials attempt to coordinate, the legal system of Cambodia is not unified and each law is not effectively implemented.

### **2. Overview of the Related Laws**

#### **(1) Criminal Law and Criminal Procedural Law**

France was responsible for developing the Criminal Law which came into force in 2010.<sup>3</sup> The DV Law does not lay down criminal penalty on domestic violence cases and violation of protection order. Therefore, an offender of domestic violence would be punished by the criminal law. Yet, the punishable acts will be confined only to those stipulated under the Criminal Law such as violence against person. France also drafted the Criminal Procedural Law which came into force in 2007. Both laws reflect strong influences of French legal system.

#### **(2) Civil Code**

Napoleon-oriented first civil code of Cambodia was promulgated in 1920 titled as “Civil Code of Cambodia”. After the collapse of Cambodia to French colonization, the Commission for the Reform of Civil Code was set up in 1956 and some revisions on the Code have been actually made. However, when Cambodia fell into the control of Maoist Khmer Rouge regime, the Code and other laws were no longer needed.

The new Civil Code, which was drafted with Japan’s assistance was adopted by the Parliament and came into force in December 2007. The new law is scheduled to be

applied in 20 December 2011. Regarding domestic violence, to get away from it, divorce is thought to be an option. The contemporary family law of Cambodia, known as Law on Marriage and Family which was promulgated on 26 July 1989, governs divorce. Please refer to later chapter of this report on this matter.

### **(3) Code of Civil Procedure**

Code of Civil Procedure in Cambodia was promulgated in July 2006 and has been for use from July 2007. Code of Civil procedure includes the rules for execution of Civil Code of Cambodia as well as its provisional remedies. At first, the DV Law was drafted without liaison and cooperation with Code of Civil Procedure. However, when people started to realize that protection order under the DV Law was somehow related to Civil Code and Code of Civil Procedure, the consistency of the DV Law and Code of Civil Procedure has been emphasized. As a result, the order protection under the DV Law was deemed to be based on the Code of Civil Procedure during the drafting process.

However, although the DV Law was approved in 2005, the Code of Civil Procedure was not enforced until 2007. Thus, there was a period when the DV Law existed but there is no procedure as to issuance of the protection order. After Code of Civil Procedure was promulgated, the court provided the training for civil procedures, and in 2008 the system started to function. Through this survey, such background for the delay of the protection order procedure was clarified.

### **3. The System and laws concerning local government**

Under the Article 126 and 127 of the Constitution of Cambodia, the territory of the Kingdom of Cambodia shall be divided into *Khet*, *Srok* and Commune, and *Kron*, *Khan* and *Sangkat*. *Khet* is composed of *Srok*, and *Srok* of Commune. *Kron* is composed of *Khan*, and *Khan* of *Sangkat*. Commune/*Sangkat* is the smallest division comprising villages. It has legal status to implement necessary policies in the local. It is the closest to the people and a fundamental local government. Villages are spontaneous settlements. There are 13,461 across the country. Head of villages selected by the people in the village will play a role as a link with Commune/*Sangkat*, voicing the views of the people. *Khet* and *Kron*, *Srok* and *Khan*, Commune and *Sangkat* have equal status, respectively. Administration at Commune/is governed by the Law on Commune, Sangkat Administrative Management, for which the Commune/*Sangkat* Council is responsible. Article 43 of the Law states the broad duties of Commune/*Sangkat* Council, and Article 47 provides that 'Roles functions and powers of a Commune/*Sangkat* administration provided in Articles 43, 44, 45 and 46 of this Law, may be dealt with in details by a sub-decree following

the proposal of the Minister of interior.’ At the survey, we heard views that the lack of clear sub decree on the responsibilities of the local government impedes the enforcement of the DV Law.

#### **4. Divorce Procedure under the New Civil Code**

##### **(1) Divorce under the Law on the Marriage and Family**

Before the new Civil Code was enforced in Cambodia, the law on the marriage and family had regulated the divorce. Article 40 provides that a husband and wife may agree to divorce by mutual consent. On the other hand, Article 39 states that a husband or wife may file a complaint for divorce if there are enough grounds which indicate that he or she cannot continue the conjugal cohabitation, and the ground for divorce includes cruelty and beatings, persecutions and looking down on the other spouse, and immoral behaviour, bad conduct.

The complaint for divorce shall be in writing and shall indicate the reasons for divorce and the adjudicating jurisdiction for divorce lies with the People's Provincial or Municipal Court where a defendant resides. Such complaint shall be filed by the complainant himself or herself directly with the People's Provincial or Municipal Court or to the People's Committee of the Commune or the Section in which jurisdiction the defendant resides (Article 42). It also provides that in the latter cases, where the complaint is filed with the People's Committee of the Commune or the Section, the People's Committee of the Commune or the Section must reconcile the case within 15 days of the receipt of the complaint. If the case cannot be reconciled, it shall be forwarded immediately to the People's Provincial or Municipal Court.

The People's Provincial or Municipal Court shall invite the complainant to come before the court, and, if appropriate tries to convince the complainant not to proceed further with the case, unless the Court finds that such complaint is based on serious circumstances. (Article 43)

If a complainant insistently requests a divorce, the People's Provincial or Municipal Court shall invite the husband and wife to come immediately before the court for reconciliation. In such case, the lawyers of the parties may not be allowed to listen to. (Article 45)

If after the first reconciliation, the complainant and defendant have not yet reached an amicable agreement, the People' Provincial or Municipal Court may reconcile for a second time. (Article 46)

##### **(2) The Reason for Divorce under the New Civil Code**

Article 978 of the new Civil Code sets out the ground of divorce as follows;

Husband or wife can bring a suit for divorce only in the following cases:

- 1) If the other spouse has committed an act of infidelity;
- 2) If he or she has been deserted without good reason by the other spouse;
- 3) If it has been unknown for a year or more whether the other spouse is alive or dead;
- 4) If the other spouse has been living apart contrary to the spirit of marriage for one year or more continuously; or
- 5) If the matrimonial relationship has otherwise broken down and there is no prospect of reconciliation.

Under the new Civil Code, the divorce by consent is not accepted. Where both parties to a marriage have agreed to divorce, they may petition the court for divorce; provided that the court may only grant a divorce after confirming that the parties really desire to dissolve the matrimonial relationship by divorce. (Article 979)

### **(3) Procedure for Divorce under New Civil Code**

Under the new Civil Code, a suit for divorce shall be filed at the court having jurisdiction where the petitioner resides. (Article 982, 1) At the same time, either party to a marriage may file a petition for divorce at the *Commune/Sangkat* council for the domicile or location of residence. (Article 982, 2) In such a case the *Commune/Sangkat* council may attempt conciliation during the period of 15 days following its receipt of the petition. If the conciliation is unsuccessful, the *commune* or *sangkat* council shall forward the complaint to the court immediately as if a suit has been filed. Article 984 addresses the attempt to compromise by the court, and provides that even where one of the parties is strongly demanding divorce, the court may recommend and attempt to persuade the parties to reach a compromise.

### **(4) Rule of Divorce under the New Civil Code**

Division of property in the new Civil Code stipulates that each spouse shall have the right to receive one half of the common property (Article 980 (2) b), and house work shall be deemed to have the same value as work outside the house (Article 980 (3)). Those provisions should protect women's right more than the ones in Japanese law.

However, the law on the marriage and family of Cambodia leaves significant authority of divorce procedures such as petitioning for divorce and organizing amicable reconciliation for a married couple to local leader to honour "good tradition". In addition, although a married couple want a divorce, the law promotes reconciliation. This is concerns on divorce procedure of Cambodia.

There are many drive-out divorces in Cambodia, and sometimes one spouse wants a divorce but the divorce will bring the other spouse great amount of difficulty. Therefore some regulations to prevent those situations are necessary. However, it will create significant risk for victims of domestic violence. This circumstance would continue under new Code of procedure which inherited the law on the marriage and family of Cambodia.

**(5) The Risk of Confusion between Divorce Procedure and Procedure for Domestic Violence.**

As explained above, the law on the marriage and family of Cambodia and new Civil Code leaves authority to Commune/*Sangkat* council to conciliate the couple. This is similar procedure to the intervention and reconciliation under the DV Law, which sometimes may worsen the domestic violence situation for the victims. While the Commune/*Sangkat* council may attempt reconciliation during the period of 15 days following its receipt of the petition for divorce under the Article 982 of new Civil Code, in the DV Law, head of a village, and Commune council may act as an arbitrator to solve the problems.

How does this system work? For instance, when a victim of domestic violence decides to divorce, the consultation will be provided by the Commune/*Sangkat* council. But if those councils do not understand the damage of domestic violence or their proper authority or commission, they may just recommend reconciliation to the DV victim who are left no choice but to give in. As we explain later, according to our survey, this situation has actually occurred.

## VII. PROBLEMS REGARDING ENFORCEMENT OF THE DV LAW

Does the DV Law which was implemented in 2005, working effectively to support women? We found out following problems according to the hearing with the persons concerned.

### 1. Intervention of the authorities

#### (1) Uncertainty of the responsibilities of the authorities in charge

As described above, the DV Law does not set out the clear authorization and responsibility for the authority in charge. We found out that, as a result, there is a confusion which prevents efficient intervention by authority in charge.

We heard many views anticipating the systemisation of the Sub Decree from the local government and the development of the Law concerning Commune from the NGOs. It was confirmed that many local government felt hesitation to intervene into the case due to the lack of the Sub Decree. Development of the Sub Decree to solve to problem is yet to be seen and its effectiveness is still uncertain.

Concerning this issue, the persons concerned in the government and the assisting organisations said:

- As the DV Law defines commune councillors, head of a village as well as police officials and judiciary police as authorities, it is unclear who has which authorization and responsibility. As a result, the victims would be sent around different authorities, and there might be a case where no authority will take responsibility.
- Local authorities do not know how to intervene the domestic violence situation under the DV Law. The guideline for the DV Law has been drafted, but still each governmental entity's authorization, responsibility and the way of intervention are unclear. Thus there is no useful guidance available.
- People who administrate the DV Law even do not understand their own authorization. For instance, when the protection order is issued, local government entities need to get involved, but their reaction varied from time to time depending on the person in charge.
- In addition, the administrative orders based on the Article 14 of the DV Law, what and how to do is unclear. Therefore, the Sub decree needs to be considered, but the Ministry of Home Affairs has not been working effectively, so sub decree cannot be issued.
- The lack of supervising, and follow-up systems.

The NGO who engages in protection of DV victims said,

- Local authorities do not fully understand the DV Law.

- The training relating to the DV law needs to be provided
- Local authorities are not willing to get involved with serious cases.
- The Commune law needs to be drafted for the recognition of the DV Law.

After the survey of HRN, the Ministry of Women’s Affairs and the Ministry of Interior discussed the Sub Decree. The purposed draft covered the interpretation of ‘authority in charge’, the procedure for and method of intervention and the method for the head of a village to issue an order. Article 14 of the DV Law merely refers to Articles 43, 48 and 49 of the Commune Law but the Commune Law contains no stipulation regarding these procedures. In Cambodia, there is no Administrative Law, therefore the amendment of the DV Law and the Commune Law is unfeasible. As a result, the formulation of the Sub Decree is yet to be realised. However, it is possible to legislate the procedural law as a complimentary law to the DV Law. Taking the views of those responsible for legal assistance and the speedy development of the legal system are necessary.

**(2) Lack of Understanding, Misunderstanding of local Cambodian Government officials in charge**

As discussed above, the confusion due to the lack of clear provisions of law, the inadequate training for the local authorities and misunderstanding of laws impedes the realisation and consolidation of the measure against domestic violence. According to the hearing of two governmental bodies conducted by our research team in Phnom Penh, we found out followings:

1) Vice governor of *Khan* in Phnom Penh (female)

She was introduced to us by the NGO as a ‘the authority who is eager and well-versed in the DV Law’. She clearly explained the current conditions of the training provided to the local residents and seemed eager to disseminate the DV Law. However, she did not seem to understand what authority she actually had. Moreover, she could not explain the content of the training she received.

She could not answer our questions regarding the concrete enforcement of the DV law. Her answers imply that she did not correctly comprehend the exercise of her authority. Concerning the order protection, only unclear answers were given.

2) Vice governor of area outside Phnom Penh (female)

The research team visited her without pre-notice and interviewed her.

She said she ‘would exercise the authority set forth by the Law’, but also said she did not know what kind of authority she would have. She further said, ‘In Cambodia, men have more power than women in the household, so women would not demur to their husbands. Those women would not understand the DV Law. I even do not understand the DV law although I have attended the trainings. The related law is confusing. I have lived since Khmer Rouge era and been experiencing financial difficulties. I cannot understand the DV Law correctly.’

Our research team has met several NGO representatives who are provide the training sessions concerning the DV Law for local government bodies. However, as those two hearing prove, the local government bodies do not fully understand their legal authorities yet. Although we conducted only two hearings, even the authority who is supposed to be ‘eager and well-versed in the DV Law’ could not give the answer showing full comprehension. It is hard to say that the DV Law has consolidated and the authorities have correct understanding.

### **(3) Non Exercise of Authority by Local Cambodian Government Body in Charge**

Also there is a case that although the local authority in charge faces serious domestic violence case, it will not exercise its authority. We heard the followings at the interview with the assisting organisations.

- Since the DV Law is new and is considered to be a new culture, local Cambodian Government officials are not familiar with it.
- Those government officials consider the domestic violence is the matter of household, so they tend to hesitate to intervene.
- They can handle small cases but not serious ones.

In addition, LOCADHO reported the following case.

A victim of domestic violence, who was with her child called LICADHO for help in the night. Her husband became violent and threatened to kill her and her child. Two members of LICADHO staff sent her and her child to the authority in charge to ask for protection. But the official of the authority in charge answered ‘It’s midnight. Please wait until tomorrow.’ LICADHO staffs responded ‘We can’t Wait. Are you making them sleep on the street? You have to issue protection order to evict the offender and prohibit the offender come near by the victim.’ It took an hour for the officials to act after LICADHO showed the laws to pursue.

#### **(4) Promotion of reconciliation due to confusion of divorce procedure and the authority of intervention under the DV Law**

As described already, the local authority can promote reconciliation when coping with divorce and must protect a victim when dealing with domestic violence. This is the contradiction between the two laws. We found out that the authorities tend to think that the measure under the Marriage Law and that of the DV Law is the same. Indeed, they tend to promote reconciliation.

Below is the interview concerning the perception and the operation of the law with the two authorities mentioned above.

##### 1) Vice governor of *Khan* in Phnom Penh

She has dealt with 6 domestic violence cases. Three cases were settled with reconciliation, one went to the court for divorce, two divorce by consent. She said there was no intervention and did not know how many petition for protection order has been filed. She further told that ‘reconciliation or petitioning for protection order was a choice of domestic violence victim, but since many women did not want to get divorced, they would choose to reconcile and not to go to prison.’

##### 2) Vice governor of area outside Phnom Penh

She told us that she was in charge of domestic violence cases and ‘her job is to persuade the couple to reconcile when domestic violence occurred.’ She thought it is the authority’s role to try to reconcile at first. ‘We attempt to reconcile three times, and if those attempts fail, the case goes to judicial decision.’ However, no provision under the Law on Marriage and Family, and the DV Law mandates such an attempt. It is apparent that wrong information has been spread around. The Article 26 of the DV Law provides that for the offences that are the mental/psychological or economic affected violent acts and minor misdemeanours, or petty crimes, reconciliation or mediation can be conducted with the agreement from both parties.

When local government, thus, do not understand the law and act upon their wrong interpretation, there is concern that the victims of the domestic violence will be forced to reconcile against their will. After the hearings, we found out that local government bodies were confused with the rational and system of the laws and they tend to reconcile the couple and try not to intervene under the DV Law. Although new Civil Code is enacted, if the misunderstanding and confusion of the DV Law continues, amicable reconciliation will be strongly recommended to the domestic violence victims to ‘preserve the harmony within the households’. If the victims are compelled to accept the reconciliation, it is serious problem.

### **(5) Ineffectiveness of Reconciliation**

Does reconciliation solve the problem? According to the ADHOC, 'We sometime try to mediate to reconcile the couple. But it is rare the reduction of violence is reported after the reconciliation. We need further measure for the men such as provision of anger control class or rehabilitation.' This shows the limitation of the reconciliation concerning domestic violence cases.

Although the DV Law was implemented and the couple reconciled based on the law, there is still domestic violence, thus the purpose of the law cannot be achieved. Rather, there will be concern that those victims are disappointed with the law and never seek for legal help again.

### **(6) The Role of the Ministry of Women's Affairs and the Police**

As discussed, the importance as well as confusion among local government bodies has been recognized, but we could not conduct enough hearings concerning the role of the Ministry of Women's Affairs and the police. We never heard during the interview that the Ministry of Women's Affairs were actively involved in the intervention of domestic violence cases.

According to Article 10 of the DV Law, the responsible person of the Ministry of Women's Affairs has the equal legal authority as that of the judicial police. Representing the victim, they can become a part and file a case against the offender. However, this article is vague and has limitations. It is hard for the responsible person to exercise their authority.

Although we can read from the text that the judicial police can file a suit in all cases, it is reasonable to interpret that they can do so only where it is in accordance with the Criminal Procedural Law. It follows that it is not clear for the Ministry of Women's Affairs' staffs that whether or not they can exercise its authority as judicial police on the cases which are not brought to court.

In addition, in order to exercise the authority, the staffs' capacity must be enhanced. Among those who are granted the authority as equal to the judicial police, only few people has received proper training on legal expertise (for instance, holding a bachelor degree). Moreover, as the Criminal Law and Criminal Procedural Law were recently amended, the university does not provide proper lectures. Therefore, even the staffs who have studied law before are required to be trained on the current laws.

However, due to the insufficiency of proper training, there are many staffs at the Ministry of

Women's Affairs who do not understand what the concrete content of the authority as judicial police is and how the system can function.

### **(7) Summary**

The case we heard from the LICADHO clearly show weaknesses of the DV Law which gives authorities and responsibility to the authority in charge.

Under the DV Law, the local government are imposed on several duties. However, there is no new authority employed. Only the small number of staffs is in the field. They have to work under the same payment and concurrently have other jobs. Under such a circumstance, it is hard to consolidate a system to deal with case which occurs in the midnight. Nevertheless, as they are close to the local people, they sometimes can stop the violence in the local. If the local authorities have correct understanding of the law and their duties and the operation of each system consolidates, we can expect the effective function of the system.

Furthermore, as domestic violence is family affair like divorce, it is settled down as divorce. However, the authority under DV Law is to intervene into the case to protect a victim. It is substantially different from reconciliation under divorce. If the perception that the intervention under the DV Law has different legal basis from reconciliation under divorce does not spread, domestic violence issue may become more serious.

Therefore, the training on the law for the administrative organisations, legal practitioners, NGOS, the staffs of the Ministry of Women's Affairs become more and more significant.

## **2. Protection Order**

Next, we would like to show the problems of the operation of the system, focusing on the protection order system currently introduced under the DV Law.

### **(1) The small number of protection order issued**

According to the Report on Data Collection and Monitoring of Violence against Women in Cambodia in 2010 of the Ministry of Women's Affairs, there is no data concerning the number of the protection order issued in 2009 as the statistic from the Ministry of Justice. The report mentioned 3 cases reported to the Civil Department of the Ministry of Justice, and 0 case in 2009. The Ministry of Women's Affairs gathered information showing that in 2008 and 2009, at least at 12 cases, the protection order was issued.

GTZ also suggested that in 5 years after the DV Law came in to force, the protection order was issued only 12 times. These show that the system is not fully utilised as an effective measure. If the protection order is not issued in a timely manner, the NGOs and the lawyers will think that it is not an effective measure and will stop making application for it eventually. In that case, the system will become completely useless.

### **(2) No Judicial Data Available**

Although there is a data-gathering system collecting data from the courts across the country, as mentioned above, there is no available data of the number of protection order issued. Moreover, the trend concerning the order (the number of applications, the number of issuance, the time required for issuance and so forth) is not clear. Such data will be of use when the manual of the protection order is to be created or the relevant laws are to be amended. Without the data, such work is now terminating.

### **(3) No Manual Concerning the Issuance of Protection Order**

At the time of the survey, there was no manual commonly used in all courts across the country. The requirements for the application or issuance, the standard time necessary for issuance were not clear, and the discretion of the courts played a large role. We heard that some courts, not all, have their own format for the application. It was confirmed that there is confusion between victims wishing to utilise the system and the supporting persons.

On 1 July 2011, under the collaboration between the Ministry of Women's Affairs and the Ministry of Interior, the formulation of the protect order formats under Article 23 of the DV Law was completed. There was an event organised for that.

It is said that the formats are now spreading to the judges in the country but it is impossible to evaluate at the present stage.

### **(4) No Enough Training for the Courts**

One of reasons why the protection order is not widely known is the insufficiency of the training provided to the judges and judicial officials. Further, there is no enough financial support for those training.

Although the Ministry of Women's Affair has created the training manual of the DV Law and provided nation-wide training to the judges and prosecutors in 2008 and 2009 among Cambodia, we cannot say that the knowledge of the DV Law among judicial officials is enough.

According to GTZ and Royal School of Judges and Prosecutors, the training of the DV Law is only provided one day in a year. It is impossible for the judges to understand the law correctly. At least they should arrange to place several well-trained judges who specialised in the DV law at the courts. They also told us that some judges strongly believed that domestic violence was the matter of households and it became obstacle to utilise the DV Law. Therefore, it is important that the gender training should be provided as well as the procedure and history of the DV Law.

#### **(5) Execution of the Protection Order**

Article 32 of the DV Law provides that after issuing the protection order, the prosecutors or the officials in charge regulated by laws shall take all actions to enforce the protection order in accordance with the defined procedures. The 'officials in charge' here is defined in the article 336 of the Code of Civil Procedure and means the execution court and the court execution officer. However, no execution system is in place right now. Instead, the Ministry of Justice issued the ministerial ordinance (*prakas*) to adopt the code of Civil Procedures. This ministerial ordinance gives authority to prosecutors to make judicial decision tentatively. It is required to establish more appropriate executive committee to handle those matters in the future.

#### **(6) Problems pointed out by NGO**

Our research team interviewed many NGOs who involved in the domestic violence cases and analysed the reasons and problems of the protection order system. Because of some misunderstandings, there were some unbelievable stories. They are described in the followings.

- 1) Form and submission of the petition for the protection order
  - There is no standard petition form. There is no manual for the petition form.
  - The petition is invalid because birth certificate or marriage certificate is missing
- 2) Issuance of protection order
  - A) No issuance of protection order because of the shortage of courts cost or missing of required documents, most of which were lost by the court
  - B) When the judge lost the documents, no further action will be taken
  - C) The period of time to issue protection order is not specified, and it takes long time for the issuance. It is because the code of civil procedure does not specify the time frame for a lawsuit.
  - D) The judges have too much discretion and some of them arbitrary make judgement.
  - E) The judges sometimes give the victim an advice to withdraw the case because the

protection order cannot be issued. The advice is made unofficially at a coffee shop.

- 3) The fee for a lawsuit
  - A) The fee for a lawsuit is expensive, and most victims cannot afford it (56,500 Riel for a court cost). Additionally, the cost for divorce will be 25 dollars (100,000 Riel) and others. Since the judge would not like to proceed without those fee payments, the cases will be delayed. The fee should be free.
  - B) If a victim would like to obtain legal assistance, they need to prove they are insolvent, which requires some paperwork from appropriate administrator and creates a burden on the victim.
- 4) Bribery
  - A) Some victims were demanded bribery at the court.
  - B) In addition to a court cost, bribery is necessary. The judges only proceed with the cases depending on the receipt of bribery.
  - C) After the issuance of protection order, bribery is required for the execution.
  - D) Bribery is handed over to the secretary outside of the court.

It is proved that there is a serious problem as there is no standard petition form, the cases are mishandled, and those petitions for protection order are not appropriately accepted. The fee for a lawsuit after the enactment of new Civil Code was set such that the petition fee for protection order is 5,000 Riel. It is problematic that not only NGOs are not properly trained, but also the courts misinterpret the DV law, and/or collect expensive court fees unfairly.

The bribery for the judge was also pointed out. It was a serious problem if the judge would not issue protection order nor proceed with the cases without the bribery. In addition, it was reported that since the new Civil Code did not set out the time frame for a lawsuit, the issuance of protection order would be delayed. It is common sense to make a decision for the cases promptly, but we need to make the relative parties aware of that.

NGOs suggested the followings;

- a) To clarify the timeframe for a lawsuit
- b) To impose administrative penalties for the bribery

### **3. Supporting System for the Victims**

#### **(1) Protection at the Shelters and Rehabilitation**

It is essential that shelters are provided for the victims so that they can escape from the violence and secure their safety. The therapy and rehabilitation for the victims also should be provided.

However, only Article 13 of the DV Law mentions the shelters and rehabilitation. It provides that ‘the authorities in charge shall intervene urgently by offering the appropriate assistance to the victims in accordance with their circumstances, especially providing the temporary shelter in which safety can be guaranteed and urgent medical assistance.’ Yet, the definition of authorities in charge is unclear and there is no subsidiary rules, this provision cannot be utilised effectively.

In addition, in the reality, there is no shelter which provides enough protection and safety for the domestic violence victims in Cambodia.

According to the Report on Data Collection and Monitoring of Violence against Women in 2010 published by the Ministry of Women’s Affairs, the Ministry of Health reported only 27 cases of domestic violence in 2009. This suggests that most of domestic violence victims did not received proper medical treatment from the government.

Moreover, as the authorities in charge and the concrete content of duties are unclear and not well-defined, the mechanism to give a victim shelter does not properly function.

Following is the interview with the NGOs conducted in March 2010.

- Ministry of Labour & Social Welfare provides a shelter in each city, but people leave the shelter in short period of the time because of harsh environment.
- NGO provides and manages shelters, not the government.
- The shelters run by NGO cannot accommodate everyone who wants to get in.
- Public shelters would not provide enough support and protection.
- When the victims request police and local authorities for shelters, they are not cooperative.

This shows that the system to give protection to a victim must be radically improved. In addition, the DV Law does not mention rehabilitation and counselling which are necessary for the victims after the move-out of the shelter. It is important for them to recover not only physically but mentally. Long term rehabilitation, mental counselling, job training are also required for the victims recover from the damages, escape from the violence and live independently.

## **(2) Access to the Protection and Legal Aid**

Most of the victims of domestic violence feel reluctant to utilise to system to seek for legal remedies under the DV Law. One of the reasons is that there are only few courts and specialist

such as lawyers in the area. Additionally, the legal system is inadequate. The victims who falls into economic predicaments give up and do not utilise the legal system.

The Ministry of Interior reported 127 cases of domestic violence in 2009. Although the trainings for police have been arranged, the police can grasp only part of the whole cases.

HRN also conducted the interview concerning the accessibility to the legal remedies system as following;

- Many areas in Cambodia are isolated villages where there is no police, lawyers, and the court near by.
- The victims of domestic violence probably know of the existence of the DV Law, but they do not know what kind of protection and remedies are available. They are also not familiar with the means of the access to those remedies and protection.
- Those women do not seem like they will petition for protection order. Also, as they are in financial difficulties, they cannot afford the fee for lawsuit and attorney fee, so do not have access to the rescue organizations.
- Although protection order is petitioned, it could be too late as the process takes too long

It is crucial that effective legal aid is not properly organized to save the victims. The legal aid in Cambodia only provides only the public defender for criminal cases, but does not provide any legal support for women and children to protect their human right. It is important to offer proper legal aid to the victims which s not assured right now. Most of the time, the victim of domestic violence cannot afford the fee to access the legal system for their protection. It is necessary to provide enough legal aid for the victims so that they can escape from the violence promptly.

#### **4. Other remedies and the judicial instrumentalities**

##### **(1) Criminal Penalty**

According to the NGO officials who dealt with the DV cases, the current situation for criminal penalties is followings:

- Only minor criminal penalty will be imposed. He will be confined for only a day or two days.
- Husbands are not afraid of criminal punishment. However, some police and local authorities said that imposition of criminal charge may deter them to commit domestic violence.

On the contrary, the police in Phnom Penh said, at the time of the survey, that the police

seriously cope with this issue from the perspective of victim protection. If an offender commits an act of violence for the second time, he/she will be punished. There was also a view saying that to persecute an act of domestic violence would have deterrent effect and contribute to prevention of such an act. The Circular concerning the 'Safe Commune' issued by the Ministry of Interior in 2010 suggested how to deal with domestic violence and the police are currently dealing with the issue in pursuant with it.

## **(2) Damages, and Financial Support**

How about damages concerning civil liability? The followings are the findings after the interview with NGO officials;

- There is a provision about the damages arising from tortuous acts in the Civil Code of Cambodia. However, in reality, many offenders cannot afford to pay those damages.
- The application of the Civil Provisional Remedies Act is problematic. In reality, many offenders cannot afford to pay those damages.
- The application of the Civil Provisional Remedies Act is problematic. Although the court orders the payment of damage to the offender, issuance of proclamation and execution take sometime. As a result, there are many cases that the offender transfers his asset and the victim are paid nothing.
- Victims cannot get any damage in most domestic violence cases. But if the domestic violence victim is hurt physically, the victim can seek for damages to her husband.
- The new Civil Code does not-guarantee the wife for the solatium at the time of divorce and it creates a problem. Due to the non payment of solatium, many women cannot divorce. However, if women have financial difficulties, their husbands pay for their living expense. It is not lump sum payment but periodical payments, which we think preferable.

The problem originated from misunderstanding and confusion of the law and the problem of administrating the law. For example, concerning the Civil Provisional Remedies Act, there is the clause about preservation and provisional garnishment and compulsory execution of the court order is allowed. However, the court and attorney do not utilise the system effectively.

Concerning the solatium, there is indeed no provision about solatium in the divorce section of the Civil Code just like Japanese Civil Code. However, financial support can be claimed under the provision of tortuous acts, but the judicial officials are not well informed. The enlistment activities for the judges and layers seem necessary.

The alimony can be sought, but it is not widely recognized in Cambodia. (Article 1040 of the Civil Code states that after divorce the parent shall have the obligation to share the cost of care of the child). However, the Article 76 and 77, which regulate the alimony after the divorce should be applied until appropriate law or regulation is implemented.

Some practitioners in Cambodia are even confused alimony with child support, and some even do not think alimony is available. Therefore, it is not clear how much alimony is available although the law permits it.

The victims of domestic violence should be fully compensated for the physical and mental damages they suffer. They also need alimony to live independently after the divorce. As the divorce is difficult decision for the victims because of social and historical reasons described before, proper financial aid is necessary to escape from the violence. The confusion about the legal system about alimony needs to be cleared and the system to provide necessary financial aid for those victims has to be established.

## **5. Conclusion**

It is clear from our survey that although five years have passed since the DV Law was into force, the organisations responsible for significant roles in the system still do not have sufficient legal expertise. The implementation of the system is yet effective. As seen in the confusion of the roles of local government in the reconciliation under the divorce and the domestic violence instance, the local government does not fully understand its role and clearly tend to conduct its duties with the misunderstanding.

Among the judges, there are those who do not correctly comprehend the DV Law and the relevant laws such as the Civil Procedural Law. The manner to deal with the issue is not established yet. Merely few protection orders have been issued. Many problems including delay, the loss of documentation, the request for cancellation, bribery, the request for cost without legal basis have been reported. Those involved in the issue such as lawyers and NGOs and legal practitioners have confusions about the DV Law and the relevant laws. They do not completely understand the laws. The problems become deeper when the courts cannot operate sufficiently correctly and effectively.

In addition to the DV Law, in recent years, the Civil Procedural Law, the Criminal Procedural Law and the Criminal Law have been legislated in Cambodia. The new Civil Law will be into

force soon. It is crucial to have adequate trainings on these laws and the comprehensive utilisation, as well as the DV Laws.

If the donors merely give legal assistance without organising the training such trainings, the human rights defenders in Cambodia may not be able to utilise the laws. To raise the access to justice of those seeking for legal remedies requires the continuous training for vital actors such as judges, lawyers, NGOs and so forth.

## **VII. ENGAGEMENTS OF THE GOVERNMENT, NGOs AND INTERNATIONAL ORGANISATIONS**

### **1. The Government**

#### **(1) The Ministry of Women Affairs**

The Ministry of Women Affairs is the expert governmental office with the objective to improve the position of women. It has the most profound engagement with the domestic violence issue. It has played a major role in the legislation process of the DV Law since 2002. After the law came into force, it is responsible for the implementation and the dissemination of the law.

In 2009, the Ministry established the National Action Plan to Prevent Violence on Women<sup>4</sup>, defining 2009-2013 as the significant period for promoting the implementation of the DV Law.<sup>5</sup> As the Ministry proceeded into the legislation under the auspice of GTZ, the influence of the latter was strong.

The Ministry of Women, as well as the Ministry of Interior, has been engaged in the activities on the drafting of the Sub Decree and the creation of the format of a protection order. It has been conducting various campaigns to combat violence against women with cooperation from the UNIFEM and the UNFPA. It also coordinates with other organisations to prevent violence against women.

#### **(2) The Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ)**

The GTZ is the international cooperation organisation under the German government. It has been granting technical assistance to the Ministry of Women Affairs to work towards the development policies to prevent domestic violence for instance the drafting of the DV Law. Moreover, it has made contributions to the implementation and the dissemination of the DV Law by conducting the enlightening campaigns in the local, organising trainings for police and staffs in the local government on legal expertise required for protection of victims as well as trainings for prosecutors and judges.

#### **(3) The Ministry of Interior**

Controlling the police, the Ministry of Interior has major authorities to enforce the DV Law, in particular, the establishment of the system regarding the intervention into the case. As mentioned above, it has engaged in the drafting of the Sub Decree and the creation of the format of a protection order.

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#### **(4) The Ministry of Justice**

The Ministry of Justice has been engaged in the legislation and the dissemination of the fundamental laws including the Civil Law, the Civil Procedural Law, the Criminal Procedural Law. It is also responsible for the function of the courts and the public prosecutors office. Although the legislation has been proceeded under the assistances of foreign countries (the civil law – related laws are assisted by Japan, and the criminal law – related law France), there still remains several issues concerning the comprehension and the utilisations of the laws by practitioners.

## **2. NGOs**

As one can see in the legislation process of the DV Law, the laws concerning gender policies and women in Cambodia has been proceeded by the lobbies from the NGOs and the ambitious human rights activists. Four of NGOs which have been leading such activities will be shown in the following section.

#### **(1) The Cambodian Human Rights and Development Association (ADHOC)**

The Cambodian Human Rights and Development Association (ADHOC) is an organisation founded by a group of former political prisoners two months after the signing of the Paris Peace Agreements on 23 October 1991. Under the concept of independence, non-partisanship, non-profit, and non-government, it has been widely engaging in enlightening activities concerning human rights, law and democracy.

Violence against women is regarded as one of the most important theme for activities along with human rights and land issue. Its primary objectives are, first, to disseminate information on prevention of domestic violence against women, second, to protect victims, and third, to eradicate impunity of perpetrators. It has been monitored and conducted researches on domestic violence, shared information and feedback, provided counselling for the victims, provided protection for the victims together with the government (escort the victims to shelters and hospitals) and provided mental and financial support for the victim so that they can reconcile with their families. In particular, the ADHOC has been active in the victim protection. In 2008, it intervened into 1,167 domestic violence cases, and provided protection for the victims and children.

#### **(2) Cambodia League for the Promotion and Defence of Human Rights (LICADHO)**

The LICADHO was a human rights group established in 1992. It based in Phnom Penh. The primary objectives are to promote the civil and political rights and to protect human rights in

Cambodia. Its main activities can be divided into seven categories, among which are the protection and the promotion of women's rights.

Regarding the activities of protecting and promoting rights of women, the LICADHO has been organising seminars on human rights for women, conducting the survey on violence against women and advocating on women's rights. Putting emphasis upon the advocacy activities, it conducted the sixteen-day campaign around the International Women's day with the objectives to reveal violence against women and raise public awareness. It also organised the seminars on the DV Law for the general public.

### **(3) Cambodia Women's Crisis Centre (CWCC)**

The CWCC is an NGO dealing with several instances of women's right. Their lawyers and paralegals deal with several cases on domestic violence and divorce. Stressing the significance of the training for the local government and police, it also actively engages in the activities.

### **(4) Legal Support for Children and Women (LSCW)**

The LSCW copes with many instances on women's rights. From the legal perspective, it has been monitoring the enforcement of the law and conducting advocacy activities based upon this. It also organises training for the local government.

## **3. International Organisations**

Many international institutions provide support in Cambodia. Regarding the project on violence against women, these include the UNFPA, the UNICEF, the UNDP, the UNIFEM, the IOM, the UNIAP. Their activities include

- to provide trainings and educate the relevant parties;
- to advocate through media;
- to conduct a research and collect data;
- to protect victims;
- to provide legal assistance;
- to provide job training and financial support for the victims
- to develop infrastructure

Nonetheless, there are issues on the continuity and the cooperation between the donors. Although there are many projects organised by the international organisations and the foreign government, most of them last approximately 2-3 years. When these short-period projects are completed, there is no follow-up or continuous engagement. This renders it hard to maintain

effectiveness of the activities. In fact, we heard the view pointing out the problem of the continuity of the activities. Therefore, the international organisations and the government should reconsider the implementation of the projects and contemplate the implementation of continuous projects. Moreover, in order to implement the effective assistance, the United Nations and the Donor organisations should share their information and strategies on resolution.

## **VIII. OBLIGATIONS OF CAMBODIAN GOVERNMENT UNDER INTERNATIONAL LAW**

Under international law, Cambodian Government has obligations to prevent violence against women, give just and effective remedies to a victim, assure the access to the judicial institutions, to persecute a perpetrator, and so forth. The following sections will confirm the description of violence against women in the international instrument and the obligations which Cambodian government must perform.

### **1. Right to Life (ICCPR)**

Article 6 paragraph 1 of the ICCPR states ‘Every human being has the inherent right to life. This right shall be protected by law, and no one shall be arbitrarily deprived of his life.’ As a State Party to the ICCPR, Cambodia is under an obligation to respect and protect the right to life. Further, it must enact a law with the objective to protect the right to life.

### **2. Freedom from torture (ICCPR and CAT)**

Article 7 of the ICCPR provides that ‘No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.’ Article 2 paragraph 1 of the CAT states that ‘Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.’ As it is a Party to both Treaties, Cambodia must make an effort to perform the obligations.

Professor Manfred Nowak, the U.N. special *rappoteur* on torture, suggested that some acts of violence against women may amount to ‘torture’<sup>6</sup>, in particular, where the legal enforcement institutions do not give an effective remedy although a State Party takes measure for legislation and implementation. As mentioned above, the current DV Law has accumulative issues including the definition of domestic violence (Art. 2) where the traditional values remain vividly, the provision regarding ‘a discipline’ (Art. 8) which links to the acceptance of acts of violence, the ambiguity of the legal enforcement institutions and the responsibilities, the inadequacy of the opportunity for the trainings of the persons concerned, the dysfunction of the protection order system and the lack of the punishment of those violating the protection order. At the present stage, the effectiveness of the current law cannot be anticipated. Some acts of domestic violence may even amount to ‘torture’. Therefore, the government should put more emphasis on the creation of an environment needed to eradicate domestic violence.

### **3. Right to safety of person**

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As suggested in the General Recommendations No. 19 of the CEDAW and the Declaration on Eradication of Violence against Women, violence against women violates the right to liberty and safety of person, the right to equal protection under the law, the right to equality in the family, the right to the highest standard attainable of physical and mental health, and the right to just and favourable conditions of work. Therefore, a State Party must take measures to improve the situation and provide remedies.

#### **4. Right to access to the effective remedies**

The ICCPR, the CEDAW, the General Recommendations No. 19 of the CEDAW, the Declaration on Violence and the Beijing Platform requests the government to take legal measures to eradicate violence against women and assure the effectiveness of each measure. As already explained, although there are legislations and other measures, the acts of domestic violence may amount to ‘torture’ without the effectiveness of such measures. Such a view reflects the position of the U.N. which requires not only the legal measures but also their effectiveness.

#### **5. The CEDAW and the CEDAW General Recommendations No.19**

Under the CEDAW, there is no stipulation generally prohibiting violence against women. However, the General Recommendations No. 19 clearly suggested that violence against women is a form of discrimination under the CEDAW, by stating ‘Gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men.’<sup>7</sup> It further made clear that eradication of violence against women is an obligation of State Parties by stating ‘The full implementation of the Convention required States to take positive measures to eliminate all forms of violence against women.’<sup>8</sup> It reaffirmed the obligation of the government to legislate and take measures to prevent violence, protect the victims and give remedies by saying ‘Under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.’<sup>9</sup>

Based upon the CEDAW General Recommendations No. 19, in order to comply with obligations under Article 2 of the CEDAW, all State Parties are under the following obligations (the term ‘discriminate’ must be superseded by the term ‘violence’);

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- To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women (Art. 2 para. b);
- To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination (Art. 2 para. c);
- To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation (Art. 2 para. d);
- To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise (Art. 2 para. e);
- To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women (Art. 2 para. f);

The CEDAW Committee held in the individual communications of Hungary and Austria that notwithstanding the legislation and the establishment of the relevant institutions regarding domestic violence, a State Party violates the CEDAW where the measures taken are not effectively implemented and damages including death of a victim spread.<sup>10</sup>

## **6. The Declaration on Violence**

Article 4 The Declaration on Violence, adopted by the United Nations General Assembly in its resolution 48/104 of 20 December 1993 provides ‘States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination. States should pursue by all appropriate means and without delay a policy of eliminating violence against women.’ In order to achieve this objective, it urges the State Parties to

- ‘- Exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons (Art. 4 para. c);
- Develop penal, civil, labor and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence; women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered; States should also inform women of their rights in seeking redress through such mechanisms (Art. 4 para. d);

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- Work to ensure, to the maximum extent feasible in the light of their available resources and, where needed, within the framework of international cooperation, that women subjected to violence and, where appropriate, their children have specialized assistance, such as rehabilitation, assistance in child care and maintenance, treatment, counseling, and health and social services, facilities and programmes, as well as support structures, and should take all other appropriate measures to promote their safety and physical and psychological rehabilitation (Art. 4 para. g);

- Include in government budgets adequate resources for their activities related to the elimination of violence against women (Art. 4 para. h);

- Take measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitize them to the needs of women (Art. 4 para. i)'

## **7. Beijing Declaration and Platform for Action**

In the Chapter IV 'Strategic Objectives and Actions D. Violence against Women' of the Beijing Declaration and Platform for Action enumerates what government should do as follows;

- Condemn violence against women and refrain from invoking any custom, tradition or religious consideration to avoid their obligations with respect to its elimination as set out in the Declaration on the Elimination of Violence against Women (Art. 124 para. a);

- Refrain from engaging in violence against women and exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons (Art. 124 para. b);

- Adopt and/or implement and periodically review and analyse legislation to ensure its effectiveness in eliminating violence against women, emphasizing the prevention of violence and the prosecution of offenders; take measures to ensure the protection of women subjected to violence, access to just and effective remedies, including compensation and indemnification and healing of victims, and rehabilitation of perpetrators (Art. 124 para. d);

- Promote an active and visible policy of mainstreaming a gender perspective in all policies and programmes related to violence against women; actively encourage, support and implement measures and programmes aimed at increasing the knowledge and understanding of the causes, consequences and mechanisms of violence against women among those responsible for implementing these policies, such as law enforcement officers, police personnel and judicial, medical and social workers, as well as those who deal with minority, migration and refugee issues, and develop strategies to ensure that the revictimization of women victims of violence does not occur because of gender-insensitive laws or judicial or enforcement practices (Art. 124 para. g);

- Enact and enforce legislation against the perpetrators of practices and acts of violence against women, such as female genital mutilation, female infanticide, prenatal sex selection and dowry-related violence, and give vigorous support to the efforts of non-governmental and community organizations to eliminate such practices (Art. 124 para. 1) It further urges the government including the local government, community organisations, NGOs, educational institutes, public and private sectors, enterprises and so forth to;

- ‘Provide well-funded shelters and relief support for girls and women subjected to violence, as well as medical, psychological and other counselling services and free or low-cost legal aid, where it is needed, as well as appropriate assistance to enable them to find a means of subsistence’ (Art. 125 para. a);

- ‘Provide, fund and encourage counselling and rehabilitation programmes for the perpetrators of violence and promote research to further efforts concerning such counselling and rehabilitation so as to prevent the recurrence of such violence’ (Art. 125 para. i)

## **IX. THE OPINION AND THE RECOMMENDATION OF THE CEDAW**

In 2006, the CEDAW Committee examined the reports on the implementation of obligations under the CEDAW submitted by Cambodian government. It subsequently revealed the Concluding Comment and the Recommendations.

The Committee commended on the establishment of the Ministry of Women’s Affairs and the National Council for Women. It, however, showed deep concern on the human rights of women in Cambodia and the eradication of discrimination, and called for development by the government, in particular, the proper application of laws through the education of legal practitioners. Following is the primary recommendation of the Committee to the government.

### **1. The general issues**

The Committee revealed a concern that the CEDAW is yet to be reflect in the domestic laws and judicial procedures notwithstanding the Constitution which “recognize and respect human rights as stipulated in” numerous human rights treaty (Article 31), clearly provides that “all forms of discrimination against woman shall be abolished” (Article 45) and confirms that superiority of treaties (paragraph 9).

The Committee, therefore, urged that the government should ensure that the CEDAW becomes fully applicable in the domestic legal system. It further recommended the government to create awareness about the CEDAW among judges, prosecutors and lawyers to ensure that the CEDAW is well known and used in judicial processes (paragraph 10).

## **2. Regarding the law concerning woman**

Taking into account the vague definition on “discrimination against woman” under Article 1 of the CEDAW, the Committee required the government to clarify the term in the domestic system. Further, it recommended the government to include sanctions in the civil and criminal codes for discrimination against woman and ensure that effective remedies are available to the victims (paragraphs 11 and 12).

## **3. Regarding the gender policy of the government**

The Committee is concerned that the gender perspectives are not adequately reflected in the programmes of the government and that the policy evaluation is insufficient (paragraph 13).

Accordingly, the Committee called on the government to enhance the mechanism to advance gender mainstreaming, implement the policy evaluation and report on the result (paragraph 14).

## **4. Regarding the DV law**

Although the Committee welcomed the enactment of the DV law, it indicated some problems including, for instance, the non-appliance of the law in case of violence from the former spouse (paragraph 15).

The Committee strongly urged the government to take comprehensive measures to cope with all forms of violence against woman. For instance, the government should raise public awareness through media and education program that violence is unacceptable. The government should train the judiciary, law enforcement officials, legal professionals, social workers and health providers on the DV law to ensure that the perpetrators are effectively prosecuted and punished with seriousness and speed. The number of female judges and law enforcement officials should be increased so that a victim can report cases without reluctance.

## **5. Regarding Cambodian culture and traditions**

The Committee is concerned that a violation of women’s rights are legitimized by the strong gender-role stereotyping, in particular that reflected in the traditional code of conduct known as *chbab srey* (paragraph 17).

The Committee urged the government to undertake a comprehensive assessment of the traditional code of conduct to identify those elements that discriminate against women. The government should refrain from disseminating and teaching those elements of the traditional code of conduct that discriminate against women, and instead undertake every effort to make the principle of equality of women and men better. Further, it calls on the government to

implement to the national campaign to work towards the elimination of stereotypes associated with men's and women's traditional roles in the family and in society (paragraph 18).

#### **6. Regarding the Marriage and Family Law**

The Committee expressed a concern about the lack of enforcement and an effective monitoring mechanism under the Marriage and Family Law. It is also concerned that traditional and cultural factors are preventing women from exercising the full enjoyment of their rights within the family, in particular the right to enter into marriage with free and full consent (paragraph 33).

The Committee, therefore, urged the government to widely disseminate information about the Marriage and Family Law and to eliminate the cultural and traditional factors that perpetuate discrimination against women, and to raise the minimum age of marriage for women and men to 18 years (paragraph 34).

## **X. CONCLUSION**

Cambodia is under obligations as a State Party to the CEDAW to take effective measures to eradicate violence against women. The mere establishment of the national legal system to cope with the issue is not sufficient. Cambodia will fulfill its obligations only after the system consolidating and effectively being implemented, and the individual women suffering from violence being protected and given remedies.

The Cambodian DV Law, however, has many legal issues. These include the existence of the justification of violence on the basis of a ‘discipline’, the lack of the punishment of a breach of the protection order and the unclear authorities and responsibilities of the local administrative institutions. Moreover, after being into force for more than five years, the implementation is still inadequate. This derives from the hesitation of the authorities to exercise their power due to the lack of clear stipulation on the responsibilities of the primarily responsible administrative institutions, the persisting conditions under which judges cannot speedily issue the protection order because there is not even a format of the order given under the DV Law and the reality that the protection order system is not often utilised because there are many misunderstandings about it.

Also there are problems concerning the training of judges, the inadequate attempt to effectively enforce the DV Law, and the late responses. In a fundamental level, although the basic laws were enacted thanks to the legal assistance, there is no full comprehension and utilisation of the laws. These being unsolved, the judicial system cannot play its role to protect human rights of the people.

Furthermore, the social resources to protect women such as the medical assistance and shelters are not fully established. There is no assistance system under the civil law. It is not easy for women to get access to remedies.

The government of Cambodia is required to contemplate its obligations in light of the CEDAW General Recommendation No. 19, the Declaration on Violence and the Beijing Action Platform, perform its obligations in good faith.

HRN deems it necessary to implement the recommendations elaborated at the beginning of the present report and urges the government of Cambodia, the international organisations and the aid organisations to implement the recommendations.



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