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Ending the Cycle of Impunity for Acid Crimes in Cambodia



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Cambodian Center for Human Rights

Cambodian Center for Human Rights (CCHR)

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Definitions and Acronyms

Acid Law	The Cambodian Acid Law
CASC	The Cambodian Acid Survivors Charity
CCHR	Cambodian Center for Human Rights
CCPC	The Cambodian Criminal Procedure Code, 2007
NGO	Non-governmental Organization
Report	This <i>Ending the Cycle of Impunity for Acid Crimes in Cambodia</i> Report
RGC	The Royal Government of Cambodia

1 Introduction

On 7 April 2012, a 23 year old woman suffered burns to 30 percent of her body after being doused with acid while she slept in her home on a rubber plantation in Siem Reap Province, in an attack reported to have been motivated by jealousy.¹ As of the date of this Report, the attack is the third reported acid attack in Cambodia since a new acid law intended to better control access to acid and more strictly punish perpetrators for attacks was passed in December 2011 (the “Acid Law”).² Despite the gravity of the crimes, the perpetrators in all three of the reported cases have yet to be arrested and tried. In January, a female garment worker was doused with acid in her home in Phnom Penh’s Russei Keo district,³ and in March a 42-year-old man died and a 19 year old women suffered severe burns after being doused with acid in Kompong Cham Province.⁴

In Cambodia a culture of impunity surrounds acid violence. In the majority of cases offenders escape trial and conviction for these heinous crimes. The advent of a new Acid Law has been seen as a means of curbing the problem of acid violence. However, the fact that the perpetrators of the three abhorrent acid crimes committed so far this year – of which we know of – continue to be at large emphasizes that for the new legislation to have an impact there needs to be a fundamental shift in the manner in which crimes are investigated and how acid cases are tried. Without this shift, the effect of the new law will be negligible and impunity will continue. The purpose of this Report is to assist the Royal Government of Cambodia (the “RGC”), its ministries, the police and the judiciary by examining the failings and obstacles that victims face at the reporting, investigating and trial stages of the criminal justice process that feeds the cycle of impunity that perpetuates the problem of acid violence.

Methodology

This Report provides an analysis of the situation of acid violence in Cambodia, specifically in relation to the criminal justice process. There is a dearth of research on acid violence in Cambodia. For the purposes of this Report, we have utilized the few situational reports that do exist. We have also used a number of media sources including *The Phnom Penh Post*, *The Cambodia Daily*, *Radio Free Asia* and *Voice of Democracy*. Much of the information referenced in this Report was collected through interviews both formal and informal conducted between October 2011 and 30 April 2012. Sources include representatives from non-governmental organizations (“NGOs”), acid attack survivors and legal advisers. The case studies contained in this Report were supplied from a review of media articles conducted by CCHR and from interviews conducted with acid survivors from the Cambodian Acid Survivors

¹ *The Cambodia Daily*, 10 April 2012, “Year’s Third Acid Attack Leaves Woman With Severe Burns”; *The Phnom Penh Post*, 10 April 2012, “Third acid attack of the year leaves victim in hospital”.

² On 18 May 2012 it was reported that a 26 year old man was badly burned by acid in Kampong Cham province in an accident caused when he slipped with a plastic jar he was storing acid in, causing the jar to break and douse his face and body. See *The Phnom Penh Post*, 18 May 2012, “Acid Law still not complete”.

³ *The Phnom Penh Post*, 2 March 2012, “Acid attacker still at large: police”.

⁴ *The Phnom Penh Post*, 12 March 2012, “Acid attack claims man’s life”.

Charity (“CASC”). References to these case studies will be made throughout the Report to illustrate the issues under consideration. CCHR has withheld the names of the survivors that were interviewed to protect their safety and has used pseudonyms, unless express consent to use their names and details was given to CCHR. All those interviewed were informed of the purpose of the interview, its voluntary nature, and the ways in which the information would be used. All interviewees provided oral consent to be interviewed.

2 Overview of Acid Violence in Cambodia

The issue of acid violence has for too long plagued Cambodian society. According to data gathered by CASC on people treated for acid burns, between 1979 and early 2012 there have been 297 acid related incidents involving 364 survivors.⁵ Over the years the number of attacks has varied from year to year, peaking at 40 attacks in 2000⁶, an increase that seemed to follow the much publicized acid attack of Cambodian karaoke singer Tat Marina in December 1999.⁷ The number of reported acid attacks fell by nearly half in 2011 according to data from CASC, to ten attacks injuring 16 people in 2011, down from 19 attacks injuring 36 people in the previous year.⁸ Some have argued that attention surrounding the new law to regulate access to acid and punish attackers, which was approved by the Senate in December 2011, may have led to decreases in attack, though the decrease may equally reflect underreporting.⁹ While there have been some decreases in the number of acid attacks in recent years, many consider the “dark number” – being the number of unreported attacks – to be at least as high as the amount of registered cases.¹⁰

In Cambodia, acid attacks are usually a consequence of, or a perceived means of, settling disputes with the majority of attacks resulting from family or personal relationships.¹¹ Emotions such as jealousy, anger and revenge appear to be strong motivational factors, with CASC noting that the majority of acid attacks result from hate or jealousy. For example “*one of the most prevalent reasons cited for attacks is revenge for sexual infidelity; the wife of an unfaithful husband, assaulting his mistress – or in some cases, the mistress attacking the wife of her lover*”.¹² Business and land disputes are other leading motivations, though in many cases the motivation is unclear and the perpetrator unknown.

SK says he does not know why he was doused with acid in the middle of the night in his house while he slept. He did not have any conflict with anyone. He thinks he was attacked because he had a girlfriend. He suspects that the attacker was someone who lives in his village.

⁵ Information received from CASC.

⁶ CASC and CCHR, May 2010, *Breaking the Silence: Addressing Acid Violence in Cambodia*, p. 42.

⁷ Avon Global Center for Women and Justice, the Committee on International Human Rights of the New York City Bar Association, Cornell Law School International Human Rights Clinic and the Virtue Foundation, 2011, *Combatting Acid Violence in Bangladesh, India and Cambodia*, p. 10.

⁸ *The Cambodia Daily*, 4 January 2012, “Number of Acid Attacks Falls By Nearly Half During 2011”.

⁹ *Ibid.*

¹⁰ See CASC, 2010, *Annual Report 2009*, available at:

www.cambodianacidsurvivorscharity.org/annual%20report2009.pdf.

¹¹ CASC and CCHR, *supra note 6*, p. 4.

¹² *Ibid.* p. 4

In Cambodia both men and women commit acid attacks although “reports suggest that the perpetrators are more often women than men”,¹³ with wives attacking their husbands mistresses or mistresses attacking the wives. There are many reasons given as to why acid is used for violent ends in Cambodia. It is noted that the ease with which it can be obtained, its low cost, ease with which it can be transported and used without attracting too much attention, especially since possession of it is perfectly legal, are key factors in its use. For many Cambodians acid is an important tool in every day lives, used in numerous industries such as the rubber trade. Acid is easier to buy than other deadly weapons like guns, and its effects can be equally devastating.¹⁴

Keo Meta was attacked by his wife in 2009 after she discovered that he had not gone to work at his job as a policeman but instead spent the night with his girlfriend. His wife bought the acid from a battery seller at the local market. He was left blind in both eyes. He wants those who sell acid to have permission from authorities before selling acid, with strict rules as to who can purchase acid.

In Cambodia, public perception towards acid survivors and stigma associated with acid violence play a powerful role in acid violence.¹⁵ There is a tendency for the public to view survivors as in some way deserving the attack as a result of some wrongdoing. This attitude serves to legitimize attacks and can contribute to their occurrence, as does the inertia in the criminal justice process surrounding these crimes, as will be discussed later in Chapter Four of this Report.

¹³ Ibid, p. 3.

¹⁴ Ibid, p. 8.

¹⁵ Ibid, p. 27.

3 Overview of the Culture of Impunity

“Impunity means the impossibility, de jure or de facto, of bringing the perpetrators of violations to account – whether in criminal, civil, administrative or disciplinary proceedings – since they are not subject to any inquiry that might lead to their being arrested, tried and if found guilty, sentenced to appropriate penalties, and to making reparations to their victims.” - United Nations, Set of principles for the protection and promotion of human rights through action to combat impunity, February 2005.

The issue of impunity is pervasive throughout the Cambodian justice system as a whole, not just in relation to acid violence crimes. When discussing impunity we mean the failure to bring perpetrators to justice. The United Nations Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity states that *“[i]mpunity arises from the failure by States to meet obligations to investigate violations, to take appropriate measures in respect of perpetrators particularly in the area of justice, by ensuring those suspected of criminal responsibility are prosecuted, tried and duly punished; to provide victims with effective remedies and ensure that*

*they receive reparations for injuries suffered.”*¹⁶

Impunity is the antithesis of due process and justice. The United Nations Declaration on the Basic Principles of Justice for Victims of Crime and Abuse of Power provides that *“victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress as provided for by national legislation.”*¹⁷ It further provides that *“judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal and informal procedures that are expeditious, fair, inexpensive and accessible.”*¹⁸

Before looking at the specific issues that affect access to justice in acid violence cases at the various stages of the criminal justice process, this Chapter will examine some overarching issues regarding impunity in Cambodia and acid violence.

Impunity in Cambodian Courts

The Cambodian judiciary’s lack of independence continues to be one of the most important factors preventing Cambodia from developing a fair, just and inclusive society, based on the rule of law. The September 2010 report by the Special Rapporteur for Human Rights in Cambodia, Surya Subedi, found that *“corruption seems to be widespread at all levels of the judiciary”*¹⁹ while the October 2010 resolution by the European Parliament described the

¹⁶ United Nations Economic and Social Council, 8 February 2005, “Set of principles for the protection and promotion of human rights through action to combat impunity”, E/CN.4/2005/102/Add 1, Principle 1, p. 7.

¹⁷ United Nations Basic Principles of Justice for Victims of Crime and Abuse of power, 29 November 1985, General Assembly Resolution 40/34, principle 4.

¹⁸ Ibid., principle 5.

¹⁹ Special Rapporteur for Human Rights in Cambodia, September 2010, “Report of the Special Rapporteur for Human Rights in Cambodia”, A/HRC/15/46, p.13.

judicial system as “*politically subservient*”.²⁰ Last year, a cousin of Prime Minister Hun Sen who was found guilty of corruption and sentenced in absentia to two and a half years imprisonment was walking free in Phnom Penh with the judge presiding over the case eschewing to issue an arrest warrant.²¹ The decision a clear example of the divide between the rich and well-connected and the poor and marginalized in Cambodia and justice in Cambodia.²²

Some of the most notorious acid attack cases in Cambodia reinforce the perception held by ordinary Cambodians that the judiciary is there to serve the rich and powerful. Lawyers for Brigadier General Chea Ratha, a national military police commander who in August 2009 successfully defended charges that she ordered a brutal acid attack on a relative of her estranged lover at the court of first instance, appealed to Cabinet Minister Sok An before her appeal court hearing seeking a favorable outcome, according to a letter obtained by *The Cambodia Daily*.²³ The defense for Chea Ratha wrote, “*I would like to request that Your Excellency Deputy Prime Minister please intervene in the case at the court to drop the charges against my client.*”²⁴ It is these acts that make ordinary Cambodians believe that the judiciary is not there to help the vulnerable and marginalized, but rather is there as a tool for the rich, powerful and well-connected to escape justice.

“They gave me no [justice] at all, but they gave the perpetrators...full protection.”
- Tat Marina²⁵

In relation to acid violence cases, impunity in the Cambodian courts can probably best be illustrated through one of the most notorious acid violence cases in Cambodia. In 1999, 15-year-old Tat Marina was eating noodle soup with her niece in a market in Phnom Penh when she was brutally attacked in broad daylight and doused with several liters of acid. Despite some 20 witnesses at the crime scene, the perpetrators were never arrested. It was widely considered that this was because the chief perpetrator was Khoun Sophal, wife of Svay Sitha, current Secretary of State of the Council of Ministers, who was Tat Marina’s ex-lover. Yet in 2011, just prior to a draft acid law being debated at the National Assembly, the government revealed – after a decade of silence – that the case had in fact secretly gone to court in 2001, unbeknownst to Tat Marina herself, and the perpetrator given, in absentia, a paltry one-year suspended sentence.²⁶ According to the 25 April 2001 decision of the Phnom Penh Municipal Court, the court convicted “*Khoun Sophal, 41, to one year in jail, and this jail*

²⁰ European Parliament, 21 October 2010, “European Parliament Resolution of 21 October 2010 on Cambodia, in particular the case of Sam Rainsy”, *Official Journal of the European Union*, C/70 E/10.

²¹ *The Cambodia Daily*, 30 November 2011, “Warrant for Cousin of Hun Sen Not Likely Soon”.

²² CCHR, 1 December 2011, “Media Comment: Failure to issue warrant for PM’s cousin indicative of culture of impunity in Cambodia”, available at: http://www.cchrcambodia.org/index_old.php?url=media/media.php&p=press_detail.php&prid=202&id=5 (last accessed 20 April 2012).

²³ *The Cambodia Daily*, 27 November 2009, “Lawyers Sought Sok An’s Help in Acid Attack Case”.

²⁴ As quoted supra 23, *The Cambodia Daily*, 27 November 2009.

²⁵ *The Cambodia Daily*, 4 November 2011, “Belated revelation on Acid Attack Verdict I News to Tat Marina”.

²⁶ *Ibid.*

term is suspended with a term of five years' probation starting from today's announcement for the premeditated attack on 5 December 1999."²⁷ Khoun Sophal has never seen the inside of a prison cell.

Som Ramsey was the mistress of Lim Sok Heng, a military colonel. Lim Sok Heng's wife attacked her in 2001 and poured one and a half bottles of acid over her head in front of witnesses. Lim Sok Heng and Som Ramsey had a child together, and while Som Ramsey was getting treatment in hospital, Lim Sok Heng and his wife took the 7-month-old baby. When Som Ramsey brought a case against the couple the judge ruled that Lim Sok Heng had acted out of understandable jealousy, dismissing her demand for the child to be returned. His wife was sentenced to two years in prison. Reflecting on her case Som Ramsey stated that "[t]he rich and the poor are completely different. Prison is only for poor people. But people like Lim Sok Heng and his wife can do whatever they want and get away with it."²⁸

The cases above, particularly with respect to the lenient sentences delivered, serves as apt examples of the culture of impunity that is so widespread in the Cambodian criminal justice system, particularly where the perpetrator is powerful, well connected or rich. They also show a precise failure on the part of authorities to not only protect the public from the commission of violent crimes - which in certain instances are tantamount to violations on the prohibition against torture and other cruel, inhuman and degrading treatment, and violations of the right to life - but a failure to take the appropriate measures to ensure justice. Chea Ratha for example remains at large despite the Court of Appeal sentencing her to 18 years in prison.²⁹ The prevailing view is that if the police and the authorities really wanted to apprehend someone, they would have resources, and use them, to arrest the alleged perpetrators, wherever he or she may be. The example of Heng Pov, former Phnom Penh police chief and Interior Ministry Secretary of State who was arrested in Kuala Lumpur and extradited to Cambodia where he remains in jail on numerous convictions of serious crimes including murder and attempted murder is a case in point.

The New Acid Law

Until recently the issue of impunity in relation to acid crimes was further reinforced by criminal legislation that fell short in dealing with acid related violence. The law contained no specific provisions that criminalized acid violence as an offense in its own right, and as a result other provisions were used to penalize acid violence in an inconsistent manner. For example, acid violence was often punished as a form of assault or intentional violence without taking into account the particularly cruel nature of acid attacks and resulting in extremely lenient sentences. In November 2011, following years of campaigning by NGOs and others, the National Assembly and the Senate passed a new acid law. The Acid Law specifically criminalizes acid violence, imposing harsher penalties on perpetrators than

²⁷ As quoted in *The Cambodia Daily*, 3 November 2011, "Records Reveal Conviction in 1999 Acid Attack".

²⁸ *The New York Times*, 22 July 2001, "Vengeance destroys faces and souls in Cambodia".

²⁹ In 2009 officials said that Chea Ratha was hiding out in neighboring Thailand. See *The Cambodia Daily*, 1 December 2009, "Acid Attacker Lying Low in Thailand, Official Says".

previously existed in criminal law. The Acid Law, for example, provides for sentencing provisions of up to 30 years in prison for acid related violence.³⁰ Furthermore, the law provides for a regulatory regime thereby making those who are involved in the sale and purchase of acid criminally liable for breaching conditions of licensing and for attacks that result as a breach of their conditions of license.³¹ The specifics of this regulatory regime, which it is assumed will include the procedure for applying for a license, the terms and conditions attached to licenses and the monitoring of licensing conditions, will only come into existence following the completion by the Ministry of Interior of sub-decree³² setting out the regulatory regime. The Acid Law provides for much needed victim support infrastructure in the form of medical treatment,³³ legal support,³⁴ and rehabilitation and protection measures,³⁵ though the precise form of this infrastructure is unclear.

The advent of a law dealing specifically with acid and the nuances of acid violence crimes, compared to other violent crimes, is a much welcomed development in Cambodia, representing an important tool in deterring future attacks, but also as being invaluable in seeking justice for victims and fighting impunity. However, to address the phenomenon of acid violence, those responsible must be held to account through effective implementation of the law otherwise the culture of impunity will continue as offenders escape trial and conviction. Since the Acid Law has come into force, we have not yet been able to evaluate its strengths, as those responsible for crimes that have occurred since its enactment remain at large. This Report thus represents an opportunity to assess and analyze the criminal justice process as a whole to identify improvements that are needed to ensure due implementation of the Acid Law and to end the cycle of impunity.

³⁰ See Articles 16 – 24 of the Acid Law.

³¹ See Articles 5 – 9, Article 14 and Article 17 of the Acid Law.

³² A sub-decree is a form of regulation, adopted by the Prime Minister and countersigned by the interested Minister. In terms of legal hierarchy between different legal norms in Cambodia, a sub-decree is subordinate to law, which needs to be promulgated by the King, following it being debated and passed by the National Assembly and the Senate.

³³ Articles 10 and 11 of the Acid Law.

³⁴ Article 11 of the Acid Law.

³⁵ Article 12 of the Acid Law.

4 Initiating a Complaint

Realistically, irrespective of the State's duty to prosecute and provide justice to victims of crime, initial investigations into acid attacks and their perpetrators are often reliant on the crime being reported to authorities. However, psychological issues such as fear of future attacks, particularly where the perpetrator remains at large, and financial constraints, such as the cost of medical treatment and legal support, prevent some victims from reporting attacks and are key contributing factors to the culture of impunity that is so prevalent in acid cases. This Chapter examines the key issues at the reporting stage that operate to prevent victims from initiating complaints and consequently contribute to the cycle of impunity.

Vulnerability of Survivors

A significant contribution to the culture of impunity that surrounds acid violence relates to the physical, emotional and psychological vulnerability of victims after an attack, which often causes victims not to pursue legal action. The severe nature of the injuries inflicted by acid burns means that survivors require prompt and full time care, as well as long and extensive treatment, which means physically there are usually unable to promptly instigate a complaint themselves and pursue a legal case.

From our interviews with survivors, many have expressed a fear of future attacks and reprisals should they seek legal action. The vulnerability of survivors is further exacerbated by the fact that more often than not, the perpetrator remains at large. Research shows that in many cases, survivors of acid violence have been harassed, have received threats of violence or have been intimidated or coerced into not filing a complaint. Fear of the perpetrator has made it very difficult in trying to get survivors to press charges.³⁶ Two sisters in one of the case studies reported in the 2010 *Breaking the Silence: Addressing Acid Attacks in Cambodia* report, received threatening phone calls from someone believed to have been involved in their attack, and subsequently did not file a complaint to the court for fear of reprisal from the perpetrators.³⁷ Threats and coercion to not report cases can be either aimed at the survivors themselves or at their families. The absence of a victim and witness protection scheme further contributes to survivors succumbing to the pressure of coercion from offenders and accepting compensation in return for dropping or not bringing charges.

The vulnerability felt by the survivors is further exacerbated by a lack of confidence in law enforcement agencies and the judiciary. Many survivors we spoke to distrust law enforcement agencies and feel the legal system will not offer them adequate protection or give them a favorable result. The complexities of legal proceedings and lengthy processes further act as barriers to justice for survivors, who often come from lower socio-economic backgrounds and generally lack an understanding of the legal process.³⁸ They are therefore

³⁶ Comment from Cambodian Acid Survivor Charity's Program Officer, Chhun Sophea, 18 November 2010, in the Taipei Times, available at: <http://www.taipetimes.com/News/world/archives/2010/11/18/2003488824/1>

³⁷ CASC and CCHR, *supra* 6, p. 40.

³⁸ *Ibid*, p. 19

easily convinced by perpetrators of the futility of pursuing a legal case and made to settle out of court.

The provisions in the Acid Law with regards to victim support, particularly the provision of legal support to victims of acid attacks, offers hope that some of the access to justice issues that currently serve to reinforce impunity may be resolved by the provision of legal support, though the precise nature of the legal support that will be made available is unknown because the Acid Law is vague on this point. This victim support is crucial in helping survivors obtain justice. Many survivors CCHR has spoken to had isolated themselves following the attack and it was only after years of medical and psychological treatment that they found the strength to consider filing a complaint. Unfortunately for some of these victims the statute of limitation had expired, leaving them with no recourse. Legal support provided for by law should hopefully allow survivors to understand the future ramifications of not filing a complaint.

Settling Out of Court

In many cases, threats, coercion and acts of intimidation succeed in forcing survivors to settle cases without submitting to the criminal justice system. For many, settlement is considered preferable to engaging with a court system that they do not understand and do not trust to dispense justice.³⁹ Settlement at this early stage also offers financial respite to survivors from growing medical costs. Medical costs involved in receiving treatment, plus the costs associated with pursuing a complaint, can be overwhelming for an acid survivor. Survivors have spoken of selling land or borrowing money to pay for medical treatment and/or to provide for basic provisions for their families. As such when perpetrators or their families offer to pay for treatment and give compensation if survivors do not file a criminal complaint, the financial pull to accept the offer is often too strong to refuse.

One of the hopes with the Acid Law is that provisions relating to State funded victim support, such as the provision of medical treatment, legal support and protection, rehabilitation and reintegration, will mean that financial constraints that previously played a role in the perpetuating the cycle of impunity will be eased, allowing for victims to pursue complaints without any financial burden. The vague provisions of the Acid Law, however, raise questions about the extent to which this will in fact be achieved, given that the law fails to elaborate on the type of medical treatment that will be made available to victims, the length of time such treatment will be freely available, the type of legal support that will be offered and the form of protection, rehabilitation and reintegration that will be available by the State.⁴⁰

³⁹ Ibid, p. 23

⁴⁰ See Articles 10 – 13 of the Acid Law 2011.

Following an argument in March 1998, Ran Samphors' husband attacked her with acid while she slept. Her husband was a goldsmith and the acid he used was left over from his work. She lost sight in both her eyes, and her face and body are full of scars. Ran Samphors' mother sold their land after Ran Samphors was attacked to pay for medical expenses, but Ran Samphors chose not to stay in the hospital for long as she knew it was costly and that they needed the money. She was forced to give away her second daughter as she could no longer afford to feed her. After the attack Ran Samphors' husband escaped abroad. He sent his cousin to negotiate a settlement with Ran Samphors. The cousin offered her a lump sum of US\$200 – 300 in compensation as well as regular instalments of compensation for her entire life. She was told that if she did not agree she would not get anything as she would not win her case in court. Faced with threats and intimidation, Ran Samphors accepted the settlement and received a letter with her husband's thumbprint guaranteeing the payment of compensation for her whole life. However, she says the compensation is not regular - sometimes she receives it, other times she does not.

Relationship Between Survivor and Perpetrator

A final and very difficult issue to consider when it comes to instigating complaints in relation to acid attacks is the relationship between the survivor and perpetrator. Due to the fact that a large percentage of acid attacks are in fact committed between husband and wife or between lovers, the survivor's relationship to the perpetrator of the attack often plays a part in the survivor's decision whether or not to file a complaint against them. From our research we have found that survivors quite often have become emotionally, financially and sometimes even physically dependent on their attacker, which can affect their decision not to file a criminal complaint.⁴¹ Sok Vicheth was attacked by his wife in 2009 after a fight in which he angrily told her that he would leave her, though he had no intentions of doing so. After the attack authorities wanted to arrest his wife but Sok Vicheth resisted the arrest saying that if they arrested her there would be no one to take care of him and their seven children. His wife has become the main breadwinner in the family and has looked after him since the attack.

Keo Meta and his wife argued frequently about the fact that he was in contact with many girls. One day in 2009 his wife discovered that instead of going to work Keo Meta went and met his girlfriend and stayed with her. When he returned home his wife threw acid on him. He is now blind in both eyes. He said that he did not press charges against his wife because he was worried about what would happen to his three daughters if his wife went to jail. He said that he would go to prison instead of his wife and let his wife look after the children. Keo Meta used to be a policeman and escorted VIPs but now he has lost everything, including his status. He says now the only thing he is afraid of is that his wife might leave him and find a new husband.

⁴¹ CASC and CCHR, 2010, *Breaking the Silence: Addressing Acid Attacks in Cambodia*, p.23

The circumstance where survivors find themselves dependent on the perpetrator is a peculiarity with regards to acid violence cases and one that is difficult to address. However, CCHR hopes that some of the difficulties with regards to this predicament will be addressed with the Acid Law. It is in these situations that the victim support provisions in the Acid Law take on an additional significance in that victims may now no longer be reliant on the offender for financial and physical support that previously prevented them from pursuing legal action. Ensuring a robust support system and remedies will enable victims to pursue legal action free of these constraints.

5 Investigation

Due and proper investigations into cases of acid violence is fundamental in ensuring prosecutions and ultimately justice and redress for victims. In order for a case to be successfully brought against a perpetrator, there needs to be thorough investigations, the appropriate collection of data, with the various parties involved in the investigatory stage - the police, the prosecutor and the investigating judge - collaborating in ensuring that justice is being served. This Chapter will examine some of the obstacles and failings in the criminal justice system that occur at the investigation stage.

Inertia in Investigation

The Criminal Procedure Code for Cambodia (the “CCPC”) provides for prosecutorial discretion in the initiation of criminal proceedings. Perceptions about acid violence can therefore have an effect in the manner in which acid crimes are investigated. Following the second acid attack of 2012 which left a 42 year old man, dead and a 19 year old woman severely injured in Kampong Cham province, the village chief Sieng Heng was reported to have said that the man had been known to abuse his wife and that if it turned out that his wife was responsible for the attack *“it’s because she couldn’t bear the physical and emotional abuse any longer.”*⁴² The implication from a village authority that the attack may be justified is an example of some of the social perceptions that authorities may have that operate to stymie thorough investigations into acid crimes.⁴³ Some survivors we spoke to also suggested that socio-economic status contributed to the lack of proper investigations into their cases.

Neang Netra did not file a complaint with authorities or with the court after being attacked in his house during the middle of the night in 2003. He had suspicions that the attacker was a man from his village who was jealous because Neang Netra had a girlfriend. However, Neang Netra did not know for sure that the person he suspected was the attacker and was afraid of filing a complaint against the wrong person. He notes however that the authorities did not pay any attention to his case. No investigation was ever undertaken by the police. He believes that because he is poor the authorities did not pay much attention to his case.

Neang Netra wants the government to push for and support investigations on acid violence cases. He wants the perpetrators to be arrested and brought to justice.

There have been a handful of incidents where police have responded quickly in investigating acid crime and arresting the perpetrators or have followed through to eventually arrest the alleged perpetrator. On 18 January 2011, a few hours after two women were doused with half a liter of acid as they were driving home, as a result of what is believed to have been a

⁴² *The Cambodia Daily*, 10-11 March 2012, “Couple Doused With Acid; Wife is Chief Suspect”.

⁴³ CCHR and CASC, *supra* note 6, p. 25.

small work dispute, police in Phnom Penh's Meanchey district arrested three suspects, who were subsequently charged by the Phnom Penh Municipal Court two days later.⁴⁴ There was also recently an example of police arresting an alleged perpetrator of an acid attack some three years after the attack. In June 2011 it was reported that a 36-year-old woman, Yim Maly, had been arrested by Phnom Penh police on suspicion of carrying out an acid attack on a woman in 2008. Yim Maly was thought to have fled to Vietnam in 2008 following the attack.⁴⁵

While the speedy arrest of the trio in January 2011 serves as a warning to perpetrators of acid crimes that they will be held to account, this case is not reflective of the general lengthy process that victims may have to endure before investigations are completed and any arrests carried out. Even where investigations are carried out, more often than not police state that they cannot make any arrests because they have not received warrants. In relation to the attack in January 2012, Chan Savuth, deputy police chief of Phnom Penh Russei Keo district, said in March 2012 he was still waiting for court officials to issue an arrest warrant for a suspect, having already submitted the requisite documents needed.⁴⁶ Even when it comes to issuing warrants following convictions, there are delays in receiving the necessary documentation to arrest convicted acid attackers (see Chapter Six for more information).⁴⁷

Much more needs to be done to ensure that investigations are conducted efficiently and effectively by all the actors in the investigation stage – from the police to the prosecutor to the investigating judge. The RGC should consider specific provisions within the law to provide for timely investigations and also to hold those investigating crimes to account for their failures to properly do so. In the context of acid crimes, there are examples of jurisdictions where the law makes investigations into acid crimes mandatory. In Bangladesh for example, the acid law specifically provides that investigation of any acid crime must be completed by a police officer within 30 days of being informed of the crime or being ordered by a magistrate.⁴⁸ Furthermore, there are sanctions against those whose actions adversely impact the conduct of investigations, with the law providing that legal action can be taken against the investigating officer collecting evidence or witness reports if it is felt that *"in order to save someone from liability of the crime [he/she] did not collect or examine usable evidence or made the perpetrator a witness or avoided an important witness in preparing his/her report."*⁴⁹ The RGC should consider amending the Acid Law to include provisions to combat the inertia within the investigation stage of the criminal justice process, such as providing that legal action can be taken against police and others involved in these cases where there has been negligence on their part in ensuring due and thorough investigations.

⁴⁴ *The Cambodia Daily*, 20 January 2011, "3 Arrested in First Acid Attack of 2011", and *The Phnom Penh Post*, 21 January 2011, "Court indicts three over city acid attack"; and *The Phnom Penh Post*, 24 January 2011, "Three charged over acid attacks".

⁴⁵ *The Phnom Penh Post*, 9 June 2011, "Woman nabbed 3 years after acid attack".

⁴⁶ *The Phnom Penh Post*, 28 March 2012, "Acid victim's wife seeks help".

⁴⁷ In the case of the May 2008 attack on Ya Soknim, following the November 2009 convictions of former military police commander Ms Ratha, Meas Mao and Seak Chandy for the attack, Phnom Penh police chief Touch Naruth stated he could not arrest the convicted acid attackers as his department had not received warrants for their arrests.

⁴⁸ Bangladesh Acid Crime Control Act, Article 11.

⁴⁹ Bangladesh Acid Crime Control Act, Article 13.

Lack of Proper Training

There appears to be a lack of proper training of officials which impacts upon the ability of the police to collect data and evidence needed for the purposes of prosecutions. Research has shown that police officers sometimes place the burden on the survivor to provide the necessary evidence. In the case of Ruas Romdual, who was attacked by her brother-in-law in 2009, she identified her perpetrator at the hospital and accused him of attacking her in front of a police officer. The police officer however refused to arrest him on the grounds that he did not have any evidence of the attack. Instead of arresting the alleged perpetrator and bringing him to the police station for questioning, the police officer told Ruas Romdual to bring the empty bottle of acid to the police station as evidence of the attack.⁵⁰

Such lack of training which results in inadequate investigations leads some survivors to incur expenses out of their own pocket to gather the necessary evidence needed to secure a prosecution. One victim, Van Sophea, spoke to CCHR about how her brother borrowed money to pay for her medical examination following an attack in 2000, which left her blind in both eyes. Following the completion of the independent medical examination, Van Sophea and her brother provided the evidence to the police only to be told that the evidence was not sufficient for her to bring a case. The police however failed to undertake any investigations on their own. She believes the police were incentivized not to act by bribes they were receiving from the perpetrator.

Lack of Cooperation From Potential Witnesses

Lack of cooperation from witnesses is another issue that impedes effective investigations. As in the case of victims, fear of reprisal, intimidation, threats and harassment all play a role in silencing witnesses and thus excluding important eye witness accounts that can be so crucial in securing a prosecution. In Ruas Romdual's case, there are a number of witnesses to the attack, including her sister, however none of them are willing to testify against the perpetrator for fear of reprisal. This includes an off-duty police officer and his wife who lived next door to where the incident took place. The off-duty police officer was reported to have called his office for assistance to try and catch the perpetrator after the attack, but the other officers failed to arrive on time and the perpetrator got away. The officer and his wife have so far refused to testify in any legal proceedings.⁵¹ The absence of a proper witness protection system plays a key role in the unwillingness of important witnesses to speak out and provide evidence that could help secure the conviction of perpetrators of acid violence.

Corruption

The problem of corruption, specifically of police taking kick-backs for not pursuing cases, was mentioned by some survivors during the course of our research. In some instances survivors spoke about the authorities failing in their duty to investigate acid crimes and apprehend offenders by facilitating out of court settlements. Several survivors who had filed a complaint stated that their respective investigations were slow due to the fact that they had not offered any bribes to the police officers. Ruas Romdual for example is not hopeful that

⁵⁰ The Avon Global Center for Women and Justice at Cornell Law School, *supra* note 7, p. 39

⁵¹ See the case summary in CASC and CCHR, *supra* note 6, p. 39

the system will bring her justice for the 2009 attack she endured because she does not have enough money to pay the police.⁵²

“When police hear about an acid attack they react, but it depends on the case...If there’s no benefit to them, they won’t investigate. This is a general issue of corruption of all cases. If you have no money, then police will just put it at the bottom of the pile.”⁵³

Van Sophea, who lost both her eyes and has problems with her ears following an attack in 2000 by her neighbour’s wife, who mistakenly thought she was having an affair with her husband, spoke to CCHR of how instead of conducting due and thorough investigations into attack, police in Battambang helped orchestrate the payment of compensation. Van Sophea believes that the perpetrator bribed the police so they would pressure Van Sophea to drop the complaint her brother was helping her to pursue and settle the matter out of court. As a result she agreed to a one off payment of 15,000 Baht (USD\$475) and 5,000 Baht (USD\$159) per year thereafter until 2014. The settlement is administered through the police and as such Van Sophea has said that she gives the police 500 Baht (USD\$15) each year to ensure that she gets her settlement installments.

⁵² The Avon Global Center for Women and Justice at Cornell Law School, supra note 7, p.40

⁵³ As quoted from a human rights lawyer in Cambodia in Ibid, p. 41.

6 Trial and Judgment

Once investigations have been carried out and a criminal case is brought against a perpetrator, it is up to the courts and the judicial system to ensure the due prosecution of the alleged perpetrator and the implementation of an appropriate punishment. This is important not simply in terms of providing justice for the victims, protecting the public at large and reinforcing the rule of law, but also as a deterrent for others to not commit similar attacks.⁵⁴ In an example of the mutually reinforcing role of impunity in showing people that acid can be a successful weapon, a senior Interior Ministry official noted that the decision by the Phnom Penh Court of First Instance to drop charges against Chea Ratha in May 2009 marked the third time the court had cleared her of an acid crime.⁵⁵ This Chapter examines key issues in the trial and punishment stages of an acid case and their implication on the justice dispensed for survivors of acid violence.

Prosecutorial Inertia

Given the obstacles faced by victims in bringing forward a case to the trial stage, it perhaps comes as no surprise that according to CASC, as of 2011, 90% of acid violence cases have not gone to court.⁵⁶ As discussed in the previous chapters, the CCPC provides for prosecutorial discretion in the initiation of criminal proceedings, thus even if investigations are conducted by the police, the prosecutor has complete discretion as to whether or not to bring forward a criminal case. This prosecutorial discretion, combined with social perceptions of acid violence, can affect the number of cases that are brought to trial. The role of the prosecutor is thus fundamental in ensuring due process, justice and redress for survivors. This was emphasized in the case of a man in Sihanouk province who was told that the Court of Appeal would not entertain his appeal against the acquittal of the alleged perpetrators of an acid attack against him because the provincial deputy prosecutor of Sihanouk province, where the attack took place, did not appeal.⁵⁷ The deputy prosecutor stated that he did not file an appeal because there was insufficient evidence, which was the reason the suspects were acquitted in the first place.⁵⁸ Pursuant to Cambodian law, only the prosecutor can appeal on facts, whereas civil parties – the victims – can only appeal in relation to their interests, i.e. the level of compensation afforded to them etc. Since the prosecutor had no reason, in his determination, to appeal on the facts, the acid attack survivor was left with no recourse.

Of those cases that have gone to court, the manner in which the trial has been conducted is a matter of concern and reinforces impunity. Evidence is not necessarily examined appropriately for example. As discussed earlier on in this Report, trials are quite often held in absentia so there is no opportunity to properly question the perpetrator or in some cases

⁵⁴ CCHR and CASC, *supra* note 6, p. 11

⁵⁵ *The Cambodia Daily*, 3 September 2009, "Acid Attack Family Speaks of Fear and Intimidation". It should be noted that the Court of Appeal subsequently found her guilty, a decision which was upheld by the Supreme Court.

⁵⁶ http://zeenews.india.com/news/world/cambodian-lawmakers-approve-law-on-acid-attacks_739966.html

⁵⁷ *The Cambodia Daily*, 14 March 2012, "Appeal Court Declines to Hear Acid Attack Case".

⁵⁸ *Ibid.*

to even get evidence from the victim. Furthermore, perceptions that those in power will not be prosecuted or punished for their actions remain all too real. Tat Marina never had an opportunity to face her attacker in court. In fact, as mentioned earlier on in this Report, she was not even made aware that a court had convicted the woman who attacked her and her accomplices until 10 years later.⁵⁹ Convicted in absentia, Khoun Sophal was sentenced to a one year suspended jail term. Following the conviction, the warrant for her arrest was duly cancelled and she has remained at large.⁶⁰

In May 2008, a warrant was issued for Chea Ratha, the former National Military Police Deputy Chief of Staff General, for her alleged role in the acid attack of her ex-lover's aunt, Ya Soknim, allegedly committed with the help of several accomplices. The attack took place in 2008, when two of Chea Ratha's bodyguards allegedly immobilized Ya Soknim and poured acid on her face and chest. Despite overwhelming evidence, including a recorded telephone conversation threatening Ms. Soknim, Chea Ratha was not arrested and managed to flee the country, and was subsequently acquitted of all charges by the Phnom Penh Municipal Court. The Court of Appeal however overturned the acquittal sentencing Chea Ratha and her five accomplices to between 15 and 18 years in prison. Judge Sivutha said more than enough evidence existed to prove that Ms. Ratha acted as a ring leader in the attack and that another defendant poured the acid on Ms. Soknim, while a third defendant acted as the getaway driver: *"the statements of two witnesses are the same as the victim's claims and prove Meas Mao was the attacker...Meas Mao and Seak Chandy carried out the crime, and without orders from Chea Ratha they would not have had motivation to commit it."*⁶¹ On 6 October 2010, the Supreme Court upheld the conviction.⁶² Despite this sentence, the group remains in hiding, Chea Ratha having disappeared since the attack, and it is probable that she will never serve her sentence.⁶³

Punishment and Redress

Convictions

In addition to the convictions of Khoun Sophal and Chea Ratha in absentia, there have been some other reported cases where survivors have received justice. On 22 June 2011, the Phnom Penh Municipal Court convicted three people for their involvement in the January acid attack of two women. Hav La, the instigator of the crime, was sentenced to three years imprisonment. Hav La's husband, Ne Phan Nith, and her brother in law Ne Phan Neth were found guilty of intentional violence and given four and three-year prison sentences respectively. The importance of the Acid Law is emphasized by this guilty verdict and the low prison sentences handed out to the perpetrators and the instigator. At the time of this case the Acid Law was not in effect thus only the relatively light sentences for intentional violence were applied.⁶⁴ The Acid Law recognizes that the effects of acid attacks go beyond mere

⁵⁹ *The Cambodia Daily*, supra note 25.

⁶⁰ Documentation made available by the court.

⁶¹ *The Cambodia Daily*, 28-29 November 2009, "Court Overturns Acquittals in Acid Attack".

⁶² *VOA Khmer*, 6 October 2010, "Supreme Court Upholds Acid Attack Verdict", available at:

<http://www.voanews.com/khmer-english/news/Supreme-Court-Upholds-Acid-Attack-Verdict-104427959.html>
(last accessed 7 May 2012).

⁶³ *Ibid.*

⁶⁴ *The Cambodia Daily*, 23 June 2011, "Phnom Penh Court Sentences 3 in Acid Attack".

‘assault’, which should further ensure justice for survivors by providing for sentencing measures that are proportionate to the injury sustained.

It is equally important however that the nuances that can be associated with acid violence cases do not supersede the survivor’s right to justice and redress. On 9 June 2011 the Kampong Cham Provincial Court sentenced a 25-year-old woman to three years of probation instead of two years in jail for dousing a mother and her two children with acid. The probationary sentence was granted on account that the perpetrator had injured herself during the attack and required treatment.⁶⁵ Whilst a perpetrator should not be denied medical attention on account of his/her involvement in an attack, questions of justice and redress for victims must equally not be superseded.

Enforcement of punishments

When judgements are handed down, a fundamental issue in the cycle of impunity is the lack of enforcement of punishments. The fact that some of these cases are tried with the defendant in absentia make the chances that the perpetrators will actually see the inside of a jail cell extremely unlikely. In the case of Chea Ratha and her accomplices specifically, almost a month after her conviction by the Appeal Court 2009, Phnom Penh Municipal Police Chief Touch Naruth said his force had not received the latest arrest warrants.⁶⁶ Pursuant to the CCPC, there is judicial discretion when it comes to issuing an arrest warrant following the conviction of an accused who is absent from the trial.⁶⁷ Thus yet again discretion in the criminal justice system plays a role in enforcing impunity. The impact of this discretion in a judicial system that is susceptible to bribes and is considered to lack independence is significant. The lack of arrest warrants being issued at both the investigating stage and then again following conviction perpetuates the cycle of impunity and is perceived by victims as being reflective of a judicial system in Cambodia that seems to favor the rich and the powerful.

The actual receipt of compensation by survivors also remains a substantive issue when it comes to impunity and seeking redress. The provision of compensation is of particular importance in light of the fact that following attacks survivors are often unable to provide for their family, especially when they have had to pay medical and legal costs, and thus fall into destitution. While the court may order a perpetrator to pay compensation, to enforce a court award, the survivor must initiate civil proceedings at their own expense.⁶⁸ Many simply cannot afford to do so.

⁶⁵ *The Cambodia Daily*, 9 June 2011, “Woman Gets 3 Years’ Probation for Acid Attack”.

⁶⁶ *The Cambodia Daily*, 1 December 2009, “Acid Attacker Lying Low in Thailand, Official Says”.

⁶⁷ Article 353 of the Code of Criminal Procedure of the Kingdom of Cambodia

⁶⁸ Ministry of Justice and United Nations Development Programme Cambodia, “Pathways to Justice: Access to Justice with a focus on poor, women and indigenous people”, p. 85.

In 1994, Chok Cheta was attacked by a female colleague at the restaurant where he worked because she was angry that he had won a karaoke contest. The attack left him blind in both his eyes and has caused him to lose hearing in his right ear. He filed a complaint following the attack and the attacker was duly arrested. Chok Cheta sat through an initial trial at the Phnom Penh Municipal Court followed by an appeal at the Court of Appeal before hearing the verdict that the woman that had doused him in acid was to be punished to three years in prison and ordered to pay compensation of four bars of gold.

To this day however Chok Cheta has not received any compensation. He does not know if the perpetrator even served her prison term. His wife left him shortly after the attack so he has been living with his elderly mother and has been forced to beg for money in order to survive.

The Acid Law has the potential to play an important role when it comes to compensation by providing legal support, medical treatment as well as protection, rehabilitation and reintegration of survivors.⁶⁹ With regards to legal support, survivors should be able to use the support provided for under the Acid Law to pursue civil cases to claim compensation owed to them by perpetrators. With regards to medical treatment, the failure of the Acid Law to set out in detail the specifics of this support, particularly in relation to long term restorative surgeries that may be needed years after the attack raises particular difficulties. Given that there were suggestions during the National Assembly Debate on the Acid Law by the Ministry of Interior spokesperson that medical treatment would not be for life, the question of compensation remains fundamental as a means of ensuring justice and redress for survivors.

⁶⁹ See Articles 10-12 of the Acid Law.

7 Conclusions and Recommendations

The advent of the specific criminal legislation dealing with acid violence and its related consequences has been heralded by many as an important step in combating the commission of these heinous and brutal acts of violence, and a crucial legislative step in tackling the culture of impunity that surrounds acid violence. On paper the Acid Law includes important provisions that could have a significant and positive effect in breaking the cycle of impunity, such as more stringent punishments. Furthermore, as discussed in the Report, the provisions in the Acid Law with regards to the State providing medical treatment and legal support can eliminate financial constraints that previously may have forced survivors to settle for out of court settlements.

Ultimately, the success of the Acid Law in breaking the cycle of impunity and ending acid violence in Cambodia depends on due implementation of the law and ensuring that the criminal justice system supports proper investigation, prosecution and redress for the commission of acid related crimes. The Acid Law will have no effect in combating violence and the impunity that accompanies it if survivors continue to feel vulnerable, and their fear of retaliation or reprisals prevents them from instigating claims. The Acid Law will have no effect in combating violence and the impunity that accompanies it if police and authorities do not conduct due and proper investigations and ensure the security and safety of witnesses. The Acid Law will have no effect in combating violence and impunity if investigatory and prosecutorial discretion is tainted by societal prejudices associated with victims of acid violence. The Acid Law will have no effect in combating violence and impunity if costs associated with medical care and bringing a legal case effectively bar survivors from benefitting from the full force of the law, forcing them to settle for inadequate, and unreliable, compensation. The Acid Law will have no effect in combating violence and impunity if the judiciary fails to ensure that proper conditions are placed on judgments that guarantee that those convicted serve time and provide victims with appropriate redress.

All actors in the criminal justice system – police officers, prosecutors, court officials – have a key role in ending the cycle of impunity associated with acid violence and ensuring the effective punishment of perpetrators. To this end CCHR makes the following recommendations to the RGC, the judicial system, the Ministry of Interior and the Ministry of Justice:

Filing a complaint

- The RGC should issue a sub-decree clarifying the provisions of the Acid Law that provide for medical treatment and legal support to acid survivors so that survivors are aware of the redress available to them by the State and are not swayed by financial constraints by perpetrators to settle for poor out of court settlements.
- The provisions of the above-mentioned sub-decree clarifying legal support should specifically provide that expert medical testimony and legal aid will be provided to survivors before and during a legal case, and that such support will be free of charge

and will be provided in a timely manner. It should also ensure that legal support will be provided in relation to both criminal and civil cases.

- In order to alleviate fears that victims and witnesses may have with regards to their security and safety should they file a complaint with police, or provide evidence in relation to acid attacks, the RGC, Ministry of Interior and Ministry of Justice should ensure that victim and witness protection exists at all stages of the criminal justice process.
- Costs of medical evaluations should be subsidized by the RGC under the provisions in the Acid Law that provide for legal support. Furthermore, the police and the court should recognize medical evaluations regardless of the doctor or the institute producing them, provided that the doctor or institute are appropriately licensed and registered to practice.

Investigations

- The RGC should consider an amendment to the Acid Law similar to that found in the Bangladesh law with regards to the timely manner in which investigations into acid crimes are made, and duly punish police officers, prosecutors and members of judiciary who are negligent in their investigation or impede the justice process, such as by trying to secure an out of court settlement with financial benefit for themselves.
- The Ministry of Interior should ensure that police forces are appropriately trained to investigate acid cases effectively and expediently.
- The Ministry of Interior should provide training to police forces on the implementation of the Acid Law as well as training on victim and witness support, and gender sensitivity.

Prosecution

- The Ministry of Justice together with the Ministry of Interior should provide training to prosecutors and other court officials on the implementation of the Acid Law.
- The Ministry of Justice together with the Ministry of Interior should publish guidance on the Acid Law to judges to ensure that they understand the sentencing provisions and proportionality with regards to sentencing and the injury inflicted.

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