

January 2012

Punishment fitting the crime: Effectively punishing and combatting acid violence in Cambodia through the creation and enforcement of a law



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Cambodian Center for Human Rights

Cambodian Center for Human Rights (CCHR)

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Acknowledgement

This report *Punishment Fitting the Crime: Effectively punishing and combatting acid violence in Cambodia through the creation and enforcement of a law* (the “Report”) was funded by a grant from the United States Department of State. The opinions, findings and conclusions stated herein are those of the author and do not necessarily reflect those of the United States Department of State.

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Definitions and Acronyms

Acid Law	The Cambodian Acid Law, passed on 4 November 2011 and promulgated in December 2011, a copy of which is available in Appendix I of this Report
Acid Report	<i>Breaking the Silence: Addressing Acid Attacks in Cambodia</i> by CASC and CCHR, May 2010
ASF	Acid Survivors Foundation
Avon Foundation	Avon Global Center for Woman and Justice at Cornell Law School
Cambodia	Kingdom of Cambodia
CASC	Cambodian Acid Survivors Charity
CCHR	Cambodian Center for Human Rights
CCPC	The Code of Criminal Procedure in the Kingdom of Cambodia, 2007
Constitution	Constitution of the Kingdom of Cambodia
Domestic Violence Law	Law on the Prevention of Domestic Violence and Protection of Victims, 2005
ICCPR	International Covenant on Civil and Political Rights, 1966
LICADHO	Cambodian League for the Promotion & Defense of Human Rights in Cambodia
Mol	Ministry of Interior
MoIME	Ministry of Industry, Mines and Energy
NACCF	Bangladesh National Acid Control Council Fund
Penal Code	The Criminal Code of the Kingdom of Cambodia, 2010
Report	This report on The Acid Law
RGC	Royal Government of Cambodia

Introduction

On 18 January 2011, two men on a motorbike attacked two women in Phnom Penh by pouring half a litre of battery acid on them.¹ One victim received burns to her face, eyes and her body; the other ended up with less severe burns to her arm and leg. The two women were attacked over a dispute with a female colleague, who allegedly ordered the assault. Four days later, the two perpetrators and the initiator of the crime were charged with intentional violence plus aggravating circumstances under Articles 217 and 218 of the Penal Code.² On 22 June, the Phnom Penh Municipal Court convicted Hav La to three years in prison for masterminding the attack. Hav La's husband, Ne Phan Nith, and her brother-in-law, Ne Pahn Neth, were given four and three-year prison sentences respectively.³ The victims will serve a life-sentence of physical and psychological trauma and pain.

The case noted above was the first documented acid attack case of 2011 and is an illustration of the continued scourge of acid violence in Cambodia. In the first half of 2011, the Cambodian Acid Survivors Charity (CASC) recoded six attacks and three accidents, involving a total of 15 victims. The CASC, the leading acid survivors' charity in Cambodia, registered 28 attacks in 2009, resulting in injuries to 33 individuals.⁴ Last year there was a drop in the number of registered attacks with 19 acid attacks being recorded, however, there was an increase in the number of victims with 40 people injured.⁵ One-third of the people injured in attacks are unintended victims, being coincidentally near to the intended victims during the attack.⁶ Although the figures of registered attacks have been fluctuating over the years, it is important to remember that the "dark number"⁷ – being the number of unreported attacks - remains unknown. CASC estimates the "dark number" to be at least as high as the amount of registered cases.⁸ The fact that some victims are poor, live in remote areas, are unaware of the possibility to press charges, do not know how to seek help from a non-governmental organization ("NGO"), and fear intimidation by the perpetrator, contributes to the tendency amongst victims to leave attacks unreported.

The Royal Government of Cambodia ("RGC") has begun taking positive steps to combat this horrific phenomenon and has identified that legislative action is imperative to stop the commission of these heinous crimes. Since 2010, a special committee has been working on

¹ Cheng Sokhorn and Zsombor Peter, "3 Arrested in First Acid Attack of 2011", *The Cambodia Daily*, 20 January 2011; Khy Sovuthy and Zsombor Peter, "Suspects in Acid Attack Questioned Yesterday", *The Cambodia Daily*, 21 January 2011; Mom Kunthear, "Court indicts three over city acid attack", *The Phnom Penh Post*, 21 January 2011; Mom Kunthear, 'Three charged over acid attacks' *The Phnom Penh Post*, 24 January 2011.

² Ibid.

³ Khy Sovuthy, "Three Tried for Alleged Phnom Penh Acid Attack", *The Cambodia Daily*, 11-12 June 2011; Khy Sovuthy, "Phnom Penh Court Sentences 3 in Acid Attack", *The Cambodia Daily*, 23 June 2011.

⁴ Cambodian Acid Survivors Charity (CASC), *Annual Report 2009*, available at: <http://www.cambodianacidsurvivorscharity.org/annual%20report2009.pdf>.

⁵ CASC, *Annual Report 2010*, available at: <http://www.cambodianacidsurvivorscharity.org/annual%20report2010.pdf>, p. 4.

⁶ CASC and Cambodian Center for Human Rights (CCHR), *Breaking the Silence: Addressing Acid Attacks in Cambodia* (CASC and CCHR; Phnom Penh, Cambodia, May 2010), p. 3.

⁷ Jan van Dijk, Irene Sagel-Grande and Leo Toornvliet, *Actuele Criminologie* (Sdu Uitgevers, Den Haag 2006).

⁸ Result of interview conducted with members of CASC in [November 2010]. See also CASC 2010 Annual Report, *supra* note 5, p. 5.

a new law, which was approved by the Council of Ministers⁹ and debated before the National Assembly on 2 November 2011. The law was passed on 4 November 2011, and came into force in December 2011.¹⁰ The law contains a number of positive provisions which are needed to address acid violence in relation to criminalization of acid violence, appropriate sentencing for perpetrators, regulation of the sale, purchase, distribution and transportation of acid, and victim support. However, some of its provisions are vague, incomplete or require the issuing of further sub-decrees, directives or implementation guidance in order to ensure to aid the effectiveness of the law in curbing acid violence.

The purpose of this Report is to provide a comprehensive analysis of the acid law that was passed by the National Assembly, assessing its strengths and its weaknesses. In so doing, the Report analyzes acid laws around the world, considering how “good” acid laws, those that effectively deal with the problems and issues surrounding acid violence, and “bad” acid laws, those that fail to effectively deal with the crime, are formulated. In this regard we have found four recurrent themes with regards to acid legislation in other countries. These are (i) the criminalization of acid violence; (2) regulation of sale, distribution, possession and transportation of acid; (3) prosecution and punishment; and (4) victim support. The Report uses these benchmarks to analyze and assess the acid law for Cambodia, and provides recommendations to the RGC as to amendments that should be made to the law, the content of sub-decrees and directives that should be implemented to supplement the law and support its implementation once it is promulgated.

In this introduction, CCHR provides contextual background on the issue of acid violence in Cambodia. The introduction also includes a brief overview of the current legal framework regarding acid violence. In Section Two, CCHR analyses domestic acid law in other jurisdictions according to the four themes outlined above. In Section Three, we examine the acid law for Cambodia against the four themes outlined above, noting its strengths and proposing recommendations to strengthen the provisions of the law and its implementation.

1.1 Acid Violence in Cambodia

In *Breaking the Silence, Addressing Acid Attacks in Cambodia*,¹¹ a report written by CASC and CCHR (the “Acid Report”), it was noted that whilst acid violence is a phenomenon in a number of developing countries, localized factors play a strong role in attacks. Generally speaking, 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 relationship problems.¹² 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.”¹³ The Acid Report also noted that

⁹ Mary Kozlovski and Mom Kunthear, “Ministers approve acid draft”, *The Phnom Penh Post*, 29 August 2011.

¹⁰ Mom Kunthear, “Acid law expected to pass”, *The Phnom Penh Post*, 4 November 2011.

¹¹ CASC and CCHR, *supra* note 6.

¹² *Ibid.*, p. 4.

¹³ *Ibid.*

business and land disputes are other leading motivations for acid attacks, as the example of the case at the beginning of this Report has illustrated. In Cambodia the number of attacks against men is commensurate to the levels of reported attacks against women. Both men and women commit acid attacks although *“reports suggest that the perpetrators are more often women than men.”*¹⁴

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, the 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. Acid is far easier to buy than other deadly weapons like guns, and its effects can be equally devastating.

In Cambodia, a culture of impunity surrounds acid violence with the majority of cases resulting in the perpetrator failing to be brought to justice. Impunity is “mutually reinforcing”,¹⁵ and operates to encourage others minded to commit similar acts. With perpetrators continuing to escape prosecution it is likely that acid violence will increasingly be socialized as an acceptable manner to settle disputes. It is therefore imperative that appropriate legislation and mechanisms are in place to ensure that perpetrators are brought to justice, and that these equally operate as effective deterrents to stop the perpetuation of such crimes.

1.2 Current Legal Framework

Currently in Cambodia the legal framework does not deal sufficiently with acid related violence. There is barely any regulation controlling or restricting access to acid. Thus, whilst the Ministry of Industry, Mines and Energy (“MoIME”) issues licences relating to the importation of acid, and imposes regulation and restrictions on this, there are few constraints on the sale of acid once it is imported. Essentially the law is silent with regards the ability to buy, sell, transport or store acid.

The current criminal legislation also falls short in dealing with acid violence. The Penal Code fails to give specific effect to the classification of acid violence as a criminal offence punishable by law,¹⁶ and there are no specific references to the criminalization of the sale, distribution or possession of acid without a licence or letter of certification. Whilst the Penal Code does not specifically address acid attacks, it does provide for sentencing for crimes of *“torturous and barbarous acts”* and intentional violence when the act results in a maiming or permanent disability of the victim, as would likely apply in cases of acid violence.¹⁷ However, the sentence for such an act is limited to 5 to 10 years imprisonment.

¹⁴ Ibid., p. 3.

¹⁵ Ibid., p. 16.

¹⁶ Articles 27 – 28 and Articles 47-8, Articles 199 – 201 of the Penal Code, mention violence and use of weapon but do not specifically deal with acid violence

¹⁷ Article 223 of the Penal Code.

The Acid Report suggests that in Cambodia acid violence is still not commonly perceived as a criminal offence which would invoke the duty of the State to intervene, much in the same way that domestic violence has traditionally been viewed.¹⁸ The Law on the Prevention of Domestic Violence and the Protection of Victims 2005 (the “Domestic Violence Law”) has made significant strides in criminalizing domestic violence and clearing up any ambiguity surrounding the criminal nature of the violence – and the on-going debate regarding domestic violence being seen not as a familial affair, but a criminal offence that requires intervention to ensure protection for the victims and the public at large. However, the Domestic Violence Law has shortcomings when it comes to dealing with acid violence as it would only apply to family members throwing acid on other family members, thus it does not apply to people who throw acid at victims who are not related to them.¹⁹

¹⁸ CASC and CCHR, *supra* note 6, p. 17.

¹⁹ See Law on the Prevention of Domestic Violence and the Protection of Victims 2005 (adopted 16 September 2005, entered into force 24 October 2005).

2. Key Provisions of Acid Laws

For our comparative research, we have considered law and draft law in other countries that suffer from acid violence. Particular attention is given to Bangladesh which introduced regulation specifically to address acid violence back in 2002.²⁰ Examining the strengths and weaknesses in acid laws in other jurisdictions is essential to gain an understanding of the types of provisions that are needed to make the Cambodian acid law as effective as possible. As recommended in the Acid Report,²¹ and as also reflected in the recent Avon Foundation Report on combatting acid violence in Bangladesh, Cambodia and Pakistan,²² any law must adopt a multidisciplinary approach to acid violence. This section comprises a compilation of our research in which we present factors that we consider make a “good” acid law and those that make a “bad” acid law. As noted in the introduction, our analysis is based on four categories: (1) criminalization of acid violence; (2) regulation for the transport, sale and possession of acid; (3) prosecution and punishment of the perpetrator; and (4) victim support. Each of these will be examined in turn.

2.1 Criminalizing Acid Violence

Any acid law must recognize that acid, or any other corrosive substance, when used in the acts of throwing, pouring, or any other means of administering that are intended to cause grievous bodily harm, disfigurement or death to an individual, is a weapon and is being utilized as such. The law should take into account the extreme damage that these weapons can cause, and attribute their use in this fashion with an accordingly serious place in the law.

In criminalizing acid violence, an extensive definition of ‘acid’, which encompasses all corrosive substances and chemicals that can potentially be employed to the ends described above must be included. For example, Article 2(b) of the Acid Control Act Bangladesh defines acid as “*any kind of thick, fluid or mixed ingredients of sulphuric acid, hydrochloric acid, nitric acid, phosphoric acid, carboic acid, battery fluid (acid), chromic acid and aqua-regia and other corrosive items determined as acid by the government.*”²³ The strength of this definition lies in the fact that it is extensive in its scope whilst leaving room for new corrosive substances to be added to the list in the future, should it be required.

The nature of acid attacks is such that in many instances the person committing the act is not necessarily the instigator of the attack, as the example at the beginning of this Report

²⁰ See Bangladesh Acid Control Act and the Acid Crime Control Act.

²¹ CASC and CCHR, note 6, p. 36.

²² Avon Global Center for Women and Justice at Cornell Law School and the New York City Bar Association, ‘Combating Acid Violence in Bangladesh, Cambodia and India’ (2011), available at: <http://www.lawschool.cornell.edu/womenandjustice/Launch-event-Avon-Global-Center-report-on-acid-violence-in-Bangladesh-Cambodia-and-India.cfm>.

²³ Article 2(b) of the Bangladesh Acid Control Act 2002.

evidences. It is thus crucial that any acid law criminalizes the acts of any co-perpetrator, instigator and/or accomplice.²⁴

Criminalization of acid violence, whilst an important step in the effort to combat such crime, must be viewed as part of a holistic approach to acid violence. Any law must be accompanied by appropriate infrastructure and process to support criminalization. Bangladesh is a good case study in this regard.²⁵ Three years after the implementation of the Acid Law in Bangladesh in 2002, reported incidents of acid violence in Bangladesh continued to be above 300 each year, though attacks have since steadily decreased by 15 to 20% each year.²⁶ A number of reasons have been given for the lack of initial significant improvement in acid violence following criminalization. First of all, there is a lack of trained law enforcement agents who are capable of conducting adequate investigations in acid attacks. Overburdened police are unable to carry out their investigation duties properly. This results in many cases not being brought to trial and impunity remaining rife. The reflections from Bangladesh are imperative to take note of in that they confirm that criminalization in and of itself is not enough. Supporters of a new Acid Law in Pakistan are already holding the challenges of implementation into account.²⁷ Thus, in addition to bringing into effect law relating to acid violence, the RGC needs to ensure that the necessary infrastructure and implementation is in place if legislation is going to have any real effect in combating the commission of these heinous acts of violence.

2.2 Regulating Sales, Distribution and Possession of Acid

As noted in the Acid Report, *“without proper regulation of acid sellers and purchasers, and proper enforcement of the law, any regulatory system will fail to have any preventive effect.”*²⁸ Establishing and imposing regulation on access to acid and other hazardous substances is an important step in the prevention of acid violence.²⁹ In Cambodia, the MoIME is already responsible for issuing licences for the importation of acid and imposes regulations and restrictions on this process. However, there is no licensing regime at the moment that covers the sale of acid once it is imported.

A licensing and regulatory system are found in both the Bangladesh law and Pakistan draft law as a means of preventing easy access to chemicals by people who have no business using them in the hope that by controlling the supply chain the use of acid as a means of settling disputes will reduce.³⁰ As noted above, since introducing a law that includes

²⁴ The Bangladesh Acid Crime Control Act 2002 provides in Article 7 that *“If someone helps others to commit any crime under this Act and because of this help the crime is committed or an attempt to commit the crime is made, the accomplice will receive the same penalty as the perpetrator.”*

²⁵ Lisa M Taylor ‘Saving Face: Acid Attack Laws after the U.N. Convention on the Elimination of All Forms of Discrimination against Women’ *Georgia journal of international and comparative law*, Vol. 29 (2000-2001), pp. 395 - 426.

²⁶ Saira Rahman ‘Shattered Reflections, Acid Violence and the Law in Bangladesh’ *Asian Human Rights Commission*, 22 August 2005, available at: <http://www.hrsolidarity.net/mainfile.php/2005vol15no03/2429/>; and Avon Foundation, supra note 21, p.12.

²⁷ Natalie Orenstein ‘Acid attack victim inspires Pakistani legislation’, *Newsdesk*, 8 June 2010, available at: <http://newsdesk.org/2010/06/acid-attack-victim-inspires-pakistani-legislation/>, accessed 15 December 2010.

²⁸ CASC and CCHR, supra note 6, p. 8.

²⁹ Lisa Taylor, supra note 24.

³⁰ The Bangladesh law provides for a licensing regime for the import and production of acid, and its transport, storage, sale and utilization, see Article 16 of the Bangladesh Acid Control Act.

regulation of acid sale and distribution, the rate of acid attacks in Bangladesh has decreased approximately 15% - 20% each year.³¹

Any licensing regime must include a requirement for the production, import, transportation, storage, sale and use of acid, and punish any unlicensed activity. In addition the law should include provisions that deal with waste management to control the possible damage by acid or ingredients mixed with acid from waste or industrial units. Licences should be granted for a finite period of time in order to allow the relevant licensing authority to ensure that the licensee is complying with the conditions in the licence, particularly during the renewal process. Sellers should be required to record the names and addresses of all buyers.³² This is important from an investigation perspective for when acid attacks occur, part of the police investigation should be to determine where the perpetrator obtained the acid and an examination of records is crucial part of this investigation.

Any licence should be subject to cancellation or suspension if any conditions of the licence are violated³³ and equally, as will be discussed in further detail below, suitable penalties should be imposed for the production, import, transport, stocking, sales and utilization of acid without licence.³⁴ Bangladesh provides for a criminal punishment against those who *“produce, import, transport, stock, sell or use or possess acid without implementing the regulations made under this [Acid Control] Act, or fulfilling the conditions of the licences.”*³⁵ Article 36 of the Bangladesh Acid Control Act includes a jail sentence of three to 10 years and a fine for production, import, transport, stocking sales and utilization of acid without a licence. Violations of the conditions of licence are subject to imprisonment for at least a year and/or a fine.

It is important however that any licensing regime is comprehensive but not overly unwieldy in its application. Bangladesh has adopted a licensing system which commentators have stated *“is quite cumbersome; many who use acid in their everyday lives considering it to be impractical.”*³⁶ In spite of the enactment of the new law, and the reduction in acid violence, the experience in Bangladesh has been that it is still very tough to restrict the sale of acid. The failure to comply with licensing requirements has been attributed to a lack of knowledge of the law and a reluctance to pay the application fee.³⁷ As a result, it is difficult to find the source of the acid used during attacks and thus to prosecute the supplier. Second, it is easy to disguise the reason for requiring acid by proposing legitimate excuses. Furthermore, commentators have noted that *“covering up the real supply of acid in their records is an effortless task for suppliers, and as bribery is common in Bangladesh, acid is easy to obtain.”*³⁸

³¹ Avon Foundation, supra note 21, p.12.

³² Article 22 of the Bangladesh Acid Control Act provides that *“All licence holders will maintain all information regarding acid, i.e., production, import, transportation, hoarding, sale, use, purchase-according to the provisions described in the regulation”*.

³³ See Article 6A(1) of Draft Acid Control and Acid Crime Prevention Act, Pakistan.

³⁴ Articles 17 – 20 of the Bangladesh Acid Control Act.

³⁵ See Article 36 of the Bangladesh Acid Control Act.

³⁶ CASC and CCHR, note 6, p. 10. See also Articles 16 – 22 of the Bangladesh Acid Control Act for further details on the licensing process.

³⁷ Avon Foundation, note 21, p. 29.

³⁸ Keerthi Bollenini, *“Gender based violence in public spaces: acid throwing”*, Cequin Center for Equity and Inclusion, 2010, http://cequinindia.org/pdf/Special_Reports/Acid%20Throwing.pdf, accessed 15 December 2010.

The issues with regards to regulating acid are compounded in Bangladesh with an absence of a bespoke monitoring team to control acid use and sale. The absence of a monitoring team has meant that whilst there is an extensive system of regulation, acid continues to be sold without question – essentially making the regulation redundant as the police fail to check whether users are licenced. Monitoring is essential to prevent the development of a black market for acid and should be based on inspections and investigations carried out by a specialized unit trained in this area that is dedicated to ensuring that individuals and businesses are complying with the rules and regulations.³⁹

2.3 Prosecution and Punishment

Effectively prosecuting and punishing perpetrators of acid attacks is an important part of preventing future attacks. The laws that CCHR has examined give invaluable insight into how acid violence should be prosecuted and the scope of appropriate punishments in respect of these crimes.

(a) Prosecution

Reports on acid violence around the world indicate that all too often there is a failure to prosecute acid violence.⁴⁰ This inevitably results in victims having to pursue legal justice independently, which can be problematic as survivors usually suffer from long-term psychological trauma that can hinder their ability to take legal action. Legal costs, which will be discussed in further detail later in this Report, are also an issue, particularly given the financial expenses involved in treating acid burns and scars. Effective criminal prosecutions are incredibly important to end impunity and to act as a deterrent against the commission of these crimes.

The Bangladesh Acid Crime Control Act specifically provides that the investigation of any crime must be completed by a police officer within 30 days of being informed of the crime or being ordered by a magistrate.⁴¹ If the investigation is not completed in this time, an extra 30 days in total is given for investigation. The speedy investigations are in place to ensure that acid victims get justice as quickly as possible, particularly the financial and medical help, and compensation, they need going forward. Whilst the Cambodian law should consider this positive obligation on the part of the state to investigate acid crimes, the Ministry of Justice and police board must ensure that officers are able to carry out thorough and proper investigations. The success of any prosecution is intrinsically linked to the quality of the investigation and as such it is vital that there are trained police and adequate resources to carry out speedy investigations. To incentivize proper investigation it is interesting to note that the law in Bangladesh expressly provides 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*

³⁹ Saira Rahman, Sazzad Hussain and Kaneez Fatema, *“Ending Impunity to Acid Violence and Rape”*, Odhikar, 7 May 2007.

⁴⁰ See Avon Foundation Report, *supra* note 21.

⁴¹ Article 11 of Bangladesh Acid Crime Control Act.

*made the perpetrator a witness or avoided an importance witness in preparing his/her report.”*⁴² The inclusion of such provisions could be an important provision for victims in building the trust and faith in the law and the system that implements it so that they cooperate fully to ensure that perpetrators are held to account.

(b) Punishment

Clear and consistent punishments are needed to ensure that victims do not remain vulnerable to those who have perpetrated the crime. It is important to recognize that the effects of acid violence go beyond mere assault; the repercussions are felt in all aspects of life and can last for indefinite durations. Therefore, sentencing measures should be proportionate to the level of injury sustained. The punishment should take into consideration the extent, depth and range of physical injuries which are inflicted by the crime,⁴³ the permanent damage that is caused, including in terms of health, loss of livelihood and earnings, social status, and psychological trauma. Any punishment should also take into account the premeditated and calculated nature of the crime.

In addition, there should be equivalent punishment levied against those who aid and abet the crime, and any third parties to the crime who have ordered or arranged its perpetration. Thus, all persons involved in the crime should be prosecuted, including the instigator of the crime, and the penalties imposed should be commensurate to that of the perpetrator of the crime.⁴⁴

2.4 Victim Support

Any acid law needs to recognize the life changing effect that such a crime has on victims. The inclusion of provisions that support victims’ needs are thus key tenets of any successful acid legislation. The law must account for the on-going, short-term and long-term, medical, psychological, legal and financial needs of the victim.

The provision of any sort of support raises the question of how that support will be funded. One manner in which this can be done is through the creation of a national acid fund. In Bangladesh, the Bangladesh Acid Control Act creates an independent fund called the National Acid Control Council Fund (the “NACCF”) to *“procure funds to fulfil the goal of creating public awareness about the bad effect of the misuse of acid and its dangerous aspects and to provide treatment and legal assistance to the acid victim and to rehabilitate them.”*⁴⁵ Funds to be deposited in the NACCF include government grants, grants from foreign governments, grants from local authority, grants provided for by organizations and/or individuals and funds from other sources. Such a mechanism is crucial in order to provide victims of acid violence with the necessary care and support they require. The funds

⁴² Ibid., Article 13.

⁴³ The maximum sentence in Bangladesh for causing death by acid is the death penalty or life imprisonment with hard labour and an additional fine of maximum 100,000 Taka, Bangladesh Acid Crime Control Act 2002, Article 4.

⁴⁴ CASC and CCHR, note 6, p. 18. Article 7 of the Bangladesh Acid Crime Control Act provides that those aiding and abetting will receive the same penalty as the perpetrator.

⁴⁵ Bangladesh Acid Control Act, Article 10.

are also used to create public awareness of the effects of acid. This is an example of how any acid law needs to be holistic in its approach, not simply dealing with the effects of acid violence, but also the symptoms. The goal of raising awareness of the reality of acid violence must be included in the law. This also has the added benefit of supporting victims against discrimination and stigmatization. In a country like Cambodia where acid crimes continue to be prevalent, it is fundamental that any acid law includes some kind of government-sponsored initiative aimed at raising awareness about the impact and consequences of acid violence.

(a) Medical Support

Legislation in other countries has dealt with the state's obligation to provide medical support for victims, with provisions providing, for example, for the government to subsidize the cost of medical evaluations. Examples of medical support for the victim can be found in the Acid Crime Control Act and the Acid Control Act of Bangladesh. Article 29(1) of the Acid Crime Control Act provides that *"any victim of a crime committed under this [Acid Crime Control] Act can be examined by a government hospital or a private hospital recognized by the government for this purpose or a health center run by a voluntary organization"*. The use of the word *"can"* in this provision however is vague and has resulted at times in victims not being able to access appropriate medical care. Article 14 of the Bangladesh Acid Control Act states that an authorized officer can suggest in writing to the District Committee of the National Acid Control Council⁴⁶ to arrange necessary treatment when a person has been affected by acid and urgently requires treatment to bring him or her back to 'normal life'. Again, whilst the principle of providing medical support for victims in the law is there, vague and subjective terminology, such as 'normal life', could result in victims not getting the help they need, particularly in the absence of any process of appealing the decision. Looking at the Bangladesh example it is clear that provisions in the Cambodian law dealing with medical care should clearly and expressly state that victims are entitled to medical care and this has to be provided for. Furthermore, it is paramount that the law obliges the government to ensure that public healthcare professionals have a basic level of training to treat acid wounds. This is fundamental as improper treatment can cause more harm than good.

(b) Legal Support

Legal support is another fundamental aspect of dealing with acid violence, particularly in relation to the fight against impunity. Many victims do not have sufficient access to justice, with poverty and lack of knowledge of the legal system stymieing their ability to bring charges and seek justice. It is thus important that any law implemented in Cambodia accounts for the shortcomings in access to justice to end impunity.

⁴⁶ The Bangladesh Acid Control Act provides that a District Committee of the National Acid Control Council is in every district. It is to be made up of a deputy commissioner, superintendent of police, civil surgeon, officer for women's affairs and NGO representatives, to name but a few. Its responsibilities include the implementation of the policies of the Council regarding the control of production, transportation, deposit, sale and utilization of acid, awareness raising and implementation of policies regarding treatment and rehabilitation. See Articles 7 – 8 of the Bangladesh Acid Control Act.

Legal aid is crucial in this regard. The Bangladesh law for example provides that “*any acid victim or someone on his behalf can apply to [the] District Committee for legal aid.*”⁴⁷ Whilst the option for legal aid to any acid victim is provided for under the Bangladesh law, no strict rules are set out regarding a lawyer always having to be appointed, prompting some commentators to argue that “*the law is just like a dead law.*”⁴⁸ The Cambodian law should implement a similar provision with regards to legal aid but should make it mandatory for a lawyer to be appointed in these cases.

Victim protection is equally an important aspect of legal support and ensuring effective prosecution. Many survivors have expressed a fear of future attacks including reprisal for seeking legal action that contributes to the culture of impunity. The issue of the perpetrator remaining at large because they have not been apprehended or have paid bail exacerbates this feeling. The absence of a government victim and witness protection program is, for example, considered to be one of the main obstacles to getting victims justice in Bangladesh.⁴⁹ Any acid law in Cambodia must therefore include appropriate and stringent rules for bail in relation to acid attacks given the psychological effects on survivors and the intimidation, harassment, threats and coercion that survivors often receive from offenders and the offender’s family after the perpetration of the crime,⁵⁰ whilst also providing for victim and witness protection during the trial, as appropriate.

⁴⁷ See Article 15(1) of the Bangladesh Acid Control Act.

⁴⁸ Comment from Salma Ali, Bangladesh National Women Lawyers' Association, in Roland Buerk, “Bangladesh’s acid attack problem” *BBC News*, 28 July 2006, available at: <http://news.bbc.co.uk/2/hi/5133410.stm>, accessed 16 January 2011.

⁴⁹ Comment from Dr. Salma Ali, executive director, Rehana Sultana, Director of Legal Aid, & Towhida Kohnder, Bangladesh National Woman Lawyers Association as quoted in Avon Foundation, *supra* note 21, p. 31.

⁵⁰ CASC and CCHR, *supra* note 6, p. 21. See also Article 15 of the Bangladesh Acid Crime Control Act.

3. The Acid Law for Cambodia

The acid law for Cambodia was passed by the National Assembly on 4 November 2011 and promulgated into law in December 2011 (the “Acid Law”). A copy of this law, translated by CCHR staff, is included in the Appendix of this Report.

The law is aimed at regulating and controlling all kinds of concentrated acid that can cause harm to persons and to prevent violence from concentrated acid.⁵¹ Generally speaking the law has many positive aspects that lay down the framework for an acid law that covers a number of important areas. However, there are gaps in the law that need to be addressed. This section of the Report examines the acid law against the principles discussed in the previous section to assess its strength in preventing and cracking down on all aspects of acid violence and its consequences.

3.1 Criminalizing Acid Violence

The Acid Law has strong provisions that criminalize acid violence. Under the Acid Law the definition of “Concentrated Acid” includes *“acid, raw material and substances containing acid in any form whether in liquid form or solid form and containing pH equal or less than 3 that cause damage on health and life of another person, as listed in the annex of this law.”*⁵² Acid listed in the annex of the Acid Law includes hydrochloric acid, nitric acid, hydro bromic acid and chloric acid. The definition, like the definition in the Bangladesh law, importantly includes scope for the list to be changed by sub-decree. This is significant as it provides for the list to be expanded for new acids in the advent of new discoveries and new technology creating new substances.

The Acid Law differentiates between intentional killing, unintentional killing, torture and cruel acts, intentional injury and unintentional injury by use of concentrated acid. Intentional killing is punishable with 15 to 30 years in prison. Life imprisonment may be imposed if the attack was pre-meditated or acid had been used as torture before or at the time of the killing. Unintentional killing due to carelessness or violation of obligations is subject to 1 to 5 years imprisonment and a fine. Intentional violence is punishable by 2 to 5 years in prison and a fine, however, if the intentional violence leads to permanent disability the prison term may be from 5 to 10 years. If it leads to the unintentional death of the victim, the prison term is from 10 to 20 years. Injury caused by carelessness or violation of an obligation is punishable by 1 month to 1 year in prison and a fine. Where concentrated acid is used for torture and cruel acts, the sentence can range from 10 to 20 years in prison. This is increased to 15 to 25 years if the act causes disability, and 20 to 30 years if it leads to the unintentional death of the victim or causes the victim to commit suicide. In relation to of unintentional death, intentional and unintentional injury and torture and cruel acts, additional sentences under the Penal Code can also be imposed.

⁵¹ See Articles 1 and 2 of the Acid Law.

⁵² See Article 4 of the Acid Law.

Importantly, the Acid Law specifically provides that legal entities can be declared to have criminal responsibility in relation to unintentional death or injury caused by negligence or carelessness, or as a result of the violation of its obligations of security⁵³ and be subject to one or more additional sentences under Articles 209 and 238 of the Penal Code which includes dissolution, prohibition against operating one or more activities and closure of the establishment which was used to commit the offense. Whilst it is commendable that the law includes this level of criminal responsibility, where the legal entity in question has been negligent and/careless with the manner in which it has kept, sold or distributed acid which has resulted in the death or injury of a person, the law or the sub-decree governing the regulatory regime (see below for further details) should include an express provision suspending any operating licence granted to the legal entity in question for a fixed period of time at the very least, rather than leaving it to the discretion of the judge under the Penal Code.

Whilst the Acid Law includes important improvements in the sentencing provisions compared to those found under the Penal Code that are reflective of the severity of the act, we are concerned by the low level of sentencing in relation to intentional violence leading to permanent disability. The sentence fails to reflect the level of physical and mental trauma suffered by victims and the fact that acid survivors live with permanent disfigurement for the rest of their lives, long after sentence has been served. This punishment also fails to provide adequate retributive justice for the perpetrator and fails as a deterrent measure against the use of acid violence.

Furthermore, we are concerned that unlike earlier drafts which expressly provided that co-perpetrators, instigators and accomplices will receive the same punishment as the offender, the Acid Law is silent with regards to the penalties to be imposed on any co-perpetrator, instigator and/or accomplice. As the case at the beginning of this Report highlighted, the nature of acid attacks is complex. Quite often the person who commits the act of throwing acid is not the person instigating the crime. It was argued during the debate at the National Assembly that the provisions of the Penal Code will apply in these instances. Whilst the Penal Code does include provisions with regards the treatment of co-perpetrators, instigators and accomplices,⁵⁴ it is unclear why this has not been included specifically in the Acid Law so as to reflect the nuances of crimes involving the use of acid. The Penal Code for example provides that instigators may only be punished if the act is carried out or attempted. It is unclear where the line for attempt is drawn - does it have to be when the acid is thrown or is the purchase of acid for the purposes of the crime enough? To not expressly consider these points with regards to acid violence specifically may result in a failure to provide appropriate justice to the victims of acid violence.

The Acid Law does not differentiate between victims. Thus, a perpetrator who has acid attacked an adult will receive the same punishment as a perpetrator that has acid attacked a child. We believe that it is important to differentiate between victims when giving weight to

⁵³ See Articles 15, 18, 22 and 24 of the Acid Law.

⁵⁴ See Articles 26, 28 and 29 of the Penal Code.

punishments. An acid attack on a child can have more devastating affects, in that not only will the child require ongoing medical treatment for the rest of his/her life, in much the same way as an adult victim, it also affects a child's growth, and physical and psychological development.

Recommendations

- The Acid Law should be amended to provide for stricter sentences with regards to intentional violence causing disability to reflect the lifetime of physical and mental trauma that such attacks can cause for victims.
- The Acid Law should give stricter punishments where the victim is a child.
- Guidance to the implementation of the Acid Law should be drafted by the Ministry of Interior which includes an explanation that co-perpetrators, instigators and accomplices should receive the same punishment as the attacker and to elaborate on what is meant for an attack to be 'attempted' for the purposes of punishing an instigator of an acid attack.
- With regards to legal entities, the Acid Law should expressly include a provision suspending their licence should the legal entity in question be found to have criminal responsibility in relation to the unintentional killing or unintentional violence.
- In addition to criminalization under the law, the RGC and the Ministry of Interior must ensure that there are properly trained police to undertake the adequate investigations regarding acid violence.

3.2 Regulating Sales, Distribution and Possession of Concentrated Acid

It is suggested that the widespread and unregulated use and the relatively low cost of corrosive substances in Cambodia have resulted in acid becoming a choice weapon for settling disputes.⁵⁵ Research also shows a correlation between the incidence of attack and the availability of acid.⁵⁶ For instance, the Acid Report found that in Kampong Cham province, where acid is widely available due to its use in the process of making rubber; there is a relatively high rate of acid related crimes compared to other provinces.⁵⁷ Proper regulation and strict management regarding the use of acid which covers all areas of the acid economy is thus fundamental to reducing the number of acid attacks, particularly in these regions.

Article 3 of the Acid Law states that the scope of the law applies to all aspects of the importing, producing, transporting, distributing, buying, selling, storing and using of concentrated acid, though is silent with regards to acid waste disposal, which can equally be

⁵⁵ See CASC and CCHR, *supra* note 6, p. 8.

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*, p. 8.

used for the purposes of acid violence, and does not include any provisions on labelling. Considering reports in May 2011 of two men in Kampot mistakenly drinking acid, these are an important aspect of preventing acid related injuries.⁵⁸

The Acid Law goes on to provide a loose framework for a regulatory regime, stating that unless a person or a legal entity has a licence or letter issued by the concerned ministry or responsible authority of the RGC, they shall not be allowed to import, transport, distribute, buy, sell, store or use acid.⁵⁹ The law specifically provides that the issuance of licences to import, export, produce, or dilute concentrated acid is under the competence of the MoIME.⁶⁰ The licensing or permission letter for concentrated acid which are used in the health sector will be under the competence of the Ministry of Health.⁶¹ The formats and conditions of selling, buying, storing, distributing, transporting, packaging, possessing and using of all kinds of concentrated acid will be provided for by a sub-decree. It is unclear which government agency or department will be responsible for the issuing of licences in relation to the transportation, distribution, buying, selling, storage or use of acid which do not fall within the remit of the MoIME or Ministry of Health. There is no further information with regards to this sub-decree and/or its enactment. Following the Acid Law coming into force, physical persons or legal entities running businesses related to concentrated acid without permission were required to fill out a form requesting permission to run businesses legally.⁶² The Acid Law however fails to state when this needs to be done by, and given that the provisions of Article 14 regarding penalties for using concentrated acid without license or permission (see below) do not come into force until the sub-decree is passed, there appears to be a gap in the law.

In the absence of any details on the sub-decree, it is unknown what sort of conditions will be placed on obtaining or renewing a licence. With regards to the conditions of licenses, the Acid Law simply says that those granted permits must use the concentrated acid in accordance with its purpose and has respect for technical standards and the highest level of security.⁶³ It is unclear what technical standards are being referred to but these should be, at a minimum, industry standards that are drafted by experts. Compliance with Occupational Safety and Health standards for example should be a compulsory component of regulation.⁶⁴ The granting and maintenance of licenses should be contingent on adherence to these standards. The Acid Law is also silent as to how long a licence will be granted for and it is assumed these will be covered in the sub-decree. It is vital that the regulatory regime includes conditions of licence which provide that licences are issued for a finite period, subject to renewal and will only be renewed following a review process which determines that the licence holder continues to meet the relevant criteria for a licence, including adherence to technical standards and security. This is important to control corrupt practices. The regulatory regime must also ensure that licences cannot simply be transferred

⁵⁸ Faine Greenwood, "Acid Attacks: A Cambodian Curse, Too", 16 June 2011, available at: <http://thefastertimes.com/cambodia/2011/06/16/acid-attacks-a-cambodian-curse-too/>.

⁵⁹ See Articles 5 and 8 of the Acid Law.

⁶⁰ See Article 6 of the Acid Law.

⁶¹ Ibid.

⁶² Article 26 of the Acid Law.

⁶³ Article 8 of the Acid Law.

⁶⁴ See CCHR and CASC, *supra* note 6, p. 10.

or assigned from business to business or individual to individual. Any change of control or ownership must result in the re-issuing of a licence. Furthermore, it is important that lists of purchasers are required to be kept by law. This can be an invaluable source for the police in any investigation.

Whilst details of the regulatory regime are scant, the Acid Law does contain important provisions with regards to penalties for not having a licence. The penalties are determined in relation to the quantity of concentrated acid found and differ depending on whether acid is held by a person or legal entity.⁶⁵ The Acid Law in Article 14 includes penalties of fines and confiscation for those operating without a licence. Any physical person who does not have a licence or permission letter with quantity under 500 millilitres is subject to fines of 500,000 riels to 1,500,000 riels and confiscation of the acid, whereas legal entities are subject to fines from 5,000,000 riels to 10,000,000 riels. For quantities exceeding 500 millilitres, the physical person is subject to 3 months to 2 years imprisonment and a fine of 2,000,000 riels to 10,000,000 riels and confiscation of the acid, whereas legal entities will be fined 10,000,000 riels to 50,000,000 riels. With regards to legal entities, they can receive additional punishments under Article 168 of the Penal Code for operating without a licence or permission letter, which include dissolution, confiscation of materials which are used to commit the offence and banning from pursuing one of several activities. Fundamentally, as noted above, pursuant to Article 26 of the Acid Law, these provisions will not come into effect until after the sub-decree has come into force. It is therefore vital that the sub-decree is drafted and brought into force as soon as possible to ensure that all areas of society and the economy that encounter acid are appropriately regulated and controlled to prevent acid violence.

When it comes to implementation of this regulatory regime, in the absence of the Acid Law providing for a specific monitoring team to check licences and permissions, it is unclear how these provisions will be enforced. Experience in Bangladesh has demonstrated that without proper regulation and proper enforcement of the law, any regulatory system will fail to have any preventative effect.⁶⁶ It has been noted that despite a system of regulation, “sales and distribution are ill regulated, not implemented and not monitored.”⁶⁷ Thus, in addition to having the Acid Law and the sub-decree, the Ministry of Interior must work to design a means of monitoring the various processes of production, importation, transportation, sale and usage to ensure effective implementation. This system should include spot inspections and investigations.

Recommendations

- The sub-decree dealing with the licensing regime for those producing, transporting, distributing, buying, selling, storing and using acid should be shared with relevant stakeholders, civil society and experts prior to enactment, so as to ensure that the regulatory system has preventative effect.

⁶⁵ See Article 14 of the Acid Law.

⁶⁶ CCHR and CASC, *supra* note 6, p. 11.

⁶⁷ ASF – Pakistan, *Situational Analysis Report*, p.8.

- The licensing regime must include clear conditions for holding licences or permission letters, which should include the following:
 - Eligibility to hold a licence should be dependent on compliance with industry standards, as determined by experts, Occupational Health and Safety standards, the maintenance of records of purchasers, suppliers etc.
 - Licences should be of finite duration and subject to renewal. This ensures that there are periodic checks on licence holders and their records.
 - In the event of an individual or legal entity breaking the terms of the licence the licence should be suspended immediately and only reinstated following a period of 'rehabilitation' and further investigation by the relevant monitoring authority.
- The Ministry of Interior should establish a monitoring team that is designated to follow up on licence applications and licence compliance to ensure the effectiveness of the regulatory regime. Monitoring should take the form of random inspections, with penalties for those who have violated conditions.

3.3 Prosecution and Punishment

As noted above, the Acid Law contains more stringent penalties of imprisonment or life imprisonment for acid offenses that disable a victim for life than exist under current criminal law and which are more reflective of the nature of the crime. In the case that the offense leads to the victim's death and that this has been premeditated, the perpetrator may get up to life imprisonment. Currently sentences imposed under the Penal Code for intention to cause harm range from 2 – 5 years, making the victim a possible target for further retaliation once the attacker gets out of jail. It is hoped that these longer prison terms will not only act as a sufficient deterrent and punishment for those who have committed the attack but will also serve to encourage victims to seek legal redress without fear of retaliation. As discussed above however, the absence of criminalizing and punishing the actions of instigators, co-perpetrators and accomplices under the Acid Law remains a cause for concern.

The Acid Law also fails to differentiate between types of perpetrators. For example, a perpetrator who has acid attacked an adult will receive the same punishment as a perpetrator that has acid attacked a child. As discussed above, we believe that it is important to differentiate between victims when giving weight to punishments. Similarly, we consider that the Acid Law should differentiate between types of perpetrators, applying less severe sentences where the perpetrator is underage.

The Acid Law includes penalties for physical persons and legal entities, with or without licences or permission, who are careless or not careful enough in controlling their operations which results in injury, disability or death of another. These penalties include imprisonment for physical persons, and fines for both physical persons and legal entities. These provisions however fail to mention anything with regards to cancellation or suspension of a licence as part of the penalty. Such provisions are necessary so that offenders are not simply able to

resume their activities having paid their fine or served their prison term, and are required to go through appropriate examination by the relevant authority. With regards to the provisions relating to penalties for the absence or misuse of a licence, and bearing in mind the Bangladesh experience noted in Section Two of this Report, it is concerning that the law as currently drafted does not establish a specific monitoring team to ensure due enforcement of the regulatory regime. The absence of such a regime is considered to be largely responsible for the shortcomings in the regulatory regime in Bangladesh. It is paramount that such a team is established either under the Acid Law.

Unlike the Bangladesh Law, the Acid Law does not contain any provisions with regards to the manner in which investigations and prosecutions of acid crimes are carried out. It is important however in order for there to be effective prosecutions that claims of acid violence are immediately and appropriately investigated, and as such the Acid Law should include provisions about the timely manner in which cases are investigated and brought to trial. In order to do so, the police should be properly trained on issues relating to the investigation of acid violence, evidence collection and victim and witness support in this regard.

Recommendations

- The Acid Law should be amended to differentiate between types of perpetrators and types of victims.
- The Acid Law should be amended to criminalize and punish the actions of any co-perpetrator, instigator and accomplice, who should receive the same punishment as the offender.
- The MoI should ensure that police forces are appropriately trained to investigate acid cases effectively and expeditiously. This includes having appropriate training on victim and witness support as required during an investigation.
- As recommended above, the MoI should ensure that a monitoring team is established to investigate due enforcement of the regulatory regime that will be implemented under the sub-decree.
- Investigations into acid crimes should be conducted in a timely manner and brought to trial expeditiously.

3.4 Victim Support

As noted in Section Two of this Report, any Acid Law must deal with the repercussions of acid violence on the lives of the victim and deal sufficiently with both the short and long term effects of acid attacks.

The Acid Law does not provide for any national committee, such as a National Burns Center, to oversee the implementation of the law, particularly in relation to victim support. It is therefore unclear which authority is responsible for the provisions regarding medical and legal support that are mentioned in the law and which will be discussed in further detail

below, though protection, rehabilitation and reintegration of victims into society are under the competence of the Ministry of Social Affairs, Veterans and Youth Rehabilitation, though it is unclear from the law what form this protection, rehabilitation and reintegration will take.⁶⁸ Will it include physiotherapy and occupational therapy so that survivors can learn to live with their disabilities and adapt to their circumstances? Will it include vocational and skills training so that survivors can regain independence and become active members of society again?

The law also does not include any provision with regards to creating public awareness about the effects of the misuse of acid and its dangerous aspect. The RGC and the relevant ministries should consider including a provision as found in the Bangladesh Acid Control Act that creates an independent fund to “*procure funds to fulfil the goal of creating public awareness about the bad effect of the misuse of acid and its dangerous aspects.*”⁶⁹ Raising awareness about the dangers of acid is paramount to the overall objective of preventing all aspects of acid related violence. A holistic approach by the RGC to the problem of acid violence must include a requirement on the part of the state to improve education in relation to the impact of acid and assisting Cambodian society to understand non-violent methods to settle disputes. This will also operate to reduce the stigma that Cambodian society currently attaches to victims of acid violence.

(a) Medical Support

The Acid Law includes an obligation on the part of the responsible or relevant authority to immediately bring the victim to the closest health center, state-owned hospital or other state-owned health institution, which must provide support and treatment to the victim free of charge.⁷⁰ Whilst the recognition of the medical support that victims need is to be commended, questions remain as to whether the state health departments are the appropriate place for victims of acid violence to be sent. Acid injuries are particularly susceptible to infection and certain treatment can result in more harm than good. It is therefore important that any referral to a health department facility is to one where the doctors are trained to deal with acid related injuries and that criteria are set in the law as to the types of facilities that acid victims are to be sent to for medical treatment.

The Acid Law provides that a specialized committee established by the Ministry of Health will undertake the identification of the level of disability of the victim of a concentrated acid attack.⁷¹ It is fundamental that those who make up the specialized committee involve doctors who have a specialization in acid injuries and that such committee is established quickly following the promulgation of the Acid Law. Whilst the establishment of such a committee will help in the necessary determinations regarding medical care, it is fundamental that treatment is delivered quickly. It is equally important that victims do not go without treatment while waiting for the committee to act. Immediate care should not be

⁶⁸ Article 12 of the Acid Law.

⁶⁹ Article 10 of the Bangladesh Acid Control Act.

⁷⁰ Articles 10 and 11 of the Acid Law.

⁷¹ Ibid.

dependent on any committee; rather the committee should be concerned with ensuring ongoing and sustained treatment for victims. It is unclear if this committee will just be based in Phnom Penh with members travelling around the country or whether there will be provincial offices. It is important that these aspects are taken into consideration to ensure that the victims get the necessary help they need as quickly as possible. The Acid Law is vague as to whether such medical treatment and rehabilitation will be available in both the short term and the long term. During the debate at the National Assembly it was implied that lifetime of care and treatment were not foreseen and that medical treatment and rehabilitation would be available only in the short-term. It is fundamental that long term medical treatment is available as many acid survivors require a lifetime of surgeries and treatment.

Whilst the Acid Law speaks of medical support and treatment in relation to victims, there is no mention of treatment for perpetrators, accomplices etc. Quite often during attacks there is splash-back, and as a result the perpetrator(s) also sustain injuries from acid. To not provide state care for the perpetrator(s) is to give them additional punishment from those that will be imposed on them by law. Furthermore, failing to provide state medical care to perpetrators can also affect the prosecution of acid violence cases. For example, in a case in Kampong Cham where the perpetrator was injured by splash-back, the court issued a probationary sentence with house arrest to allow the perpetrator to receive medical treatment. This can have a devastating affect on acid victims – keeping them vulnerable to the original perpetrator of the crime and discouraging them from bringing forward cases. By providing for state care and a system where that care can be provided while perpetrators serve time for their crimes is important for the psychological well-being of victims. Notwithstanding, a perpetrator should face the full force of the law; he/she should not receive any reduction in his/her punishment as a result of injuries sustained from “splash back”; however, neither should he/she be subjected to additional punishment as a result of the law’s failure to provide for medical treatment of perpetrators.

(b) Legal Support

The Acid Law states that the government shall provide legal support to victims of concentrated acid attacks.⁷² Whilst this attempt to address issues related to access to justice is commendable, it is unclear what is meant by “provide legal support”. Does this include access to a specific pool of lawyers, or funding for a lawyer? There are fundamental shortcomings with legal aid in Cambodia which may mean that victims of acid violence will continue to struggle to get legal help when they need it with a shortage of financial and human resources resulting in a shortfall of legal aid lawyers to help those in need.⁷³ The RGC and relevant ministries should again consider amending the Acid Law to include a provision, much like that found in the Bangladesh Law, whereby a state fund is set up where funds are

⁷² Ibid.

⁷³ A 2006 report by the RGC’s Council for Legal and Judicial Reform for example found that there was “no comprehensive legal, institutional and policy framework at the national level to guide the provision and regulation of legal aid services.” For more information see, Council for Legal and Judicial Reform, *Legal Aid in Cambodia: Practices, Perceptions and Needs* (Phnom Penh: Council for Legal and Judicial Reform, December 2006), p. 10.

deposited which can be used for legal assistance. Revenue generated from licensing, for example, could be deposited into this fund and be used for legal fees.

Other than a questionable reference to legal support, which it is assumed means legal representation, the Acid Law is silent with regards to other forms of legal support victims of acid violence may need. As noted at the beginning of this Report, one of the biggest problems with regards to acid violence is impunity for perpetrators. A main cause of impunity is that victims are fearful of reprisals should they seek legal action. As such it is fundamental that the Acid Law includes provisions with regards to victim and witness protection. The Penal Code contains provisions aimed at combating intimidation of victims or interference with judicial proceedings by increasing the sentencing for certain crimes where interference occurs. Article 316 of the Code of Criminal Procedure of the Kingdom of Cambodia²⁰⁰⁷ (the “CCPC”) furthermore provides for measures such as closed hearings, screens and video testimony to protect victims. However, specific provisions in the Acid Law are needed. As found in the Domestic Violence Law, the law must recognize that protection of victims is necessary if perpetrators are to be brought successfully to justice.

The dynamics with familial relationships that quite often arise in acid violence related cases further complicates prosecutions. As noted in the Acid Report, Article 5 of the CCPC provides that *“criminal jurisdiction can also receive complaints from government officials or other public agents who are authorized under separate laws.”* Thus, there is the potential for an established officer empowered under this Article to forward complaints to the Royal Prosecutor. Furthermore, Articles 17 to 19 of the CCPC provide that organizations dealing with the elimination of all forms of sexual violence, domestic violence or violence against children; associations for eliminating all forms of kidnapping, human trafficking and commercial sexual exploitation; and associations for eliminating all forms of racism and discrimination can take part as plaintiffs in civil actions relating to stated offences relating to their expertise. The Acid Law should echo these provisions to encourage the participation of expert NGOs in these trials. Such a provision *“would operate to encourage criminal complaints by acid victims and counteract any prosecutorial inertia.”*⁷⁴

Recommendations

- The RGC should pass a separate prakas establishing a national fund to procure funds to create public awareness about acid violence and through which to provide treatment and legal assistance to acid victims. Revenue generated from licensing could be used to support the fund. If a prakas is not passed, at the very least the RGC in cooperation with other organizations, should develop public awareness and education campaigns with regards to the Acid Law and the effects of acid. These should mobilise the mass media and also involve schools.
- The Ministry of Social Affairs, Veterans and Youth Rehabilitation should by way of prakas set out a plan with regards to its programme for support, rehabilitation and reintegration of victims into society under Article 12 of the Acid Law. Such

⁷⁴CASC and CCHR, supra note 6, p. 25.

programme should include not only physiotherapy and occupational therapy but also vocational and skills training.

- The law should establish local committees who are responsible for implementing the law with regards to treatment, rehabilitation and legal support, and monitoring the provision of these services to ensure that there is a clear chain of authority when it comes to the victim support and that medical and legal support is provided as quickly as possible.
- The RGC should pass a circular clarifying the types of facilities and medical centre victims should be referred to.
- The Acid Law should be amended to make clear that medical treatment and rehabilitation services are provided to include emergency treatment as well as long-term medical care. Furthermore, such treatment should be made available to victims and perpetrators alike.
- Provision must be made for the inclusion of victim and witness protection in acid trials.

4. CONCLUSION

The Acid Law includes many provisions which are needed for a successful acid law: criminalization of acid violence; regulation of the sale, purchase, distribution and transportation of acid; appropriate punishment and prosecution of perpetrators; and victim support. However there are still gaps in the law that need to be addressed by either amendments to the law or through the enactment of supplementing sub-decrees, prakas, circulars and directives to ensure that the legal regime that is put in place to address the problem of acid violence is effective in ensuring the prosecution of perpetrators, the protection of victims, appropriate regulation of the production, sale and purchase of corrosive substances and rehabilitative measures. The recommendations made in Section Three of the Report are made in order to assist the RGC in the construction of a solid law that effectively tackles the problems of acid violence, taking lessons from other jurisdictions.

Whilst a comprehensive acid law is fundamental in combating the prevalence of the heinous act of acid violence, as noted throughout this Report, in order to address the problem of acid violence, legislation must be accompanied by proper enactment and implementation. On 8 June 2011, 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.⁷⁵ Without going into the fact that existing sentencing provisions are unpalatably low and fail to reflect the nature of the crime, the sentence shows a worrying lack of a proper application of the law in existence, in this instance the Penal Code. Most significantly it is an important reminder that any acid legislation enacted will only truly be effective with a proper system of implementation and the due application of the law by the courts. The verdict raises the question as to the extent to which the law will be duly applied by the justice system.

The situation in countries like Bangladesh where there is acid legislation has shown that without a proper system of implementation, the impact of legislation on acid crime may be negligible. Thus in addition to the specific recommendations being made with regards to the Acid Law, it is fundamental that the RGC adopts a holistic, multidisciplinary approach to acid violence, which considers how the law will be implemented in order to prevent acid violence and effectively prosecute those who commit acid crimes. Whilst controlling and regulating access, including deterrence through criminalization of acid violence, as is found in the Acid Law, is important, the appropriate infrastructure needs to be in place, like a regulatory authority that monitors the sale, regulation and possession of acid, a police force that conducts proper investigations and social reform that also addresses public attitude and *“lessen[s] the social power that these attacks wield.”*⁷⁶ To achieve these ends collaborative efforts from various government institutions, the police authorities and NGOs are needed to ensure the appropriate support network is in place to actualize the law into practice.

⁷⁵ Cheng Sokhorng, “Woman Gets 3 Years’ Probation for Acid Attack”, *The Cambodia Daily*, 9 June 2011.

⁷⁶ CASC and CCHR, *supra* note 6, p.36.

5. Appendix –Acid Law

Law on Regulating Concentrated Acid *Unofficial Translation done by CCHR*

CHAPTER 1 General Provisions

Article 1

This law aims to set out to manage and control all kinds of Concentrated Acid that cause harm to the health and life of persons.

Article 2

The objective of this law is to sets out the provisions to prevent, curb, and crackdown on the offences that are committed by using all kinds of Concentrated Acid causing damage to the health and life of persons.

Article 3

This law applies to the production, dilution, importing, exporting, packaging, transporting, carrying, distributing, buying and selling, storing, and using of all kinds of Concentrated Acid that cause damage to the health and life of persons in the Kingdom of Cambodia.

Article 4

Concentrated Acid, in this law, includes acid, raw material and substances containing acid in any form, whether liquid or solid, and contain pH equal or less than 3 (three) causing damage to the health and life of persons, as listed in the annex of this law, except Sulfuric Acid in liquid form (solution) and with a condensation or density of less than 33% that is used to fill batteries. The annex to this law can be amended by the passing of a Sub Decree.

CHAPTER 2 Competence to Manage Concentrated Acid

Article 5

There shall be license or permission letters or provisions from other laws and standards to produce, dilute, import, export, pack, transport, carry, distribute, sell, buy, store and use of all kind of Concentrated Acid.

Article 6

The issuing of licenses or permission letters that relate to the importing, exporting, producing, or diluting of all kinds of Concentrated Acid is under the competence of Ministry of Industry Mines and Energy.

For Concentrated Acid that are listed in the annex and used in health sector, the issuing of licenses or permission letters shall be under the competence of Ministry of Health.

Article 7

The form of license and the conditions attached for the purposes of selling, buying, storing, distributing, transporting, packing, carrying and using of all kinds of Concentrated Acid will be set out in a Sub Decree.

Article 8

Any Physical Person or Legal Entity with a license permit to use all kinds of Concentrated Acid shall use those Concentrated Acids according to the stated purpose of use and has to respect the Technical Standards and the highest level of security.

Article 9

All kinds of Concentrated Acid which are listed in the annex of this law are permitted to be used for the purposes of serving the, health, agriculture, handicraft, technology, science, scientific research, experiment and testing industries, and other sectors that can be benefited for economic and social interests, and for any other lawful activities only.

CHAPTER 3

Protection of the Victims of Concentrated Acid Attack

Article 10

If there is a victim of an attack in which Concentrated Acid is used, the relevant authority must immediately bring the victim to the nearest health center, state-owned hospital or any other state-owned health institution.

Article 11

Health centers, state-owned hospitals or any other state-owned health institutions shall provide support and treatment to the victims of Concentrated Acid free of charge.

Identifying the level of disability of the victim(s) of an attack using Concentrated Acid shall be under the competence of a specialized committee established by the Ministry of Health and in accordance with the Criminal Procedure Code.

The government shall provide legal support to the victims of attacks where Concentrated Acid is used.

Article 12

The protection, rehabilitation, and reintegration of victims of Concentrated Acid attack back into society shall be under the competence of Ministry of Social Affairs, Veterans, and Youth Rehabilitation.

Article 13

The government encourages the contribution from the public, associations, national and international non-governmental organizations and the private sector to provide support to victims of Concentrated Acid attack.

CHAPTER 4

Penalties

Article 14

Producing, diluting, importing, exporting, packing, transporting, distributing, selling, buying, storing and using any kind of Concentrated Acid without a license or permission letter, or with no respect to other laws and standards, are punished as below:

1. If the amount of Concentrated Acid is under 500 (Five Hundred) Milliliters, a monetary fine of 500,000 (Five Hundred Thousand) Riel to 1,500,000 (One Million Five Hundred Thousand) Riel and the confiscation of the Concentrated Acid.
2. If the amount of the Concentrated Acid is more than 500 (Five Hundred) Milliliters, a monetary fine of 1,500,000 (One Five Hundred Thousand) Riel to 10,000,000 (Ten Millions) Riel and the confiscation of the Concentrated Acid.

Article 15

Legal entities may be pronounced to be criminally responsible pursuant to Article 42 (Criminal Responsibilities of Legal Entities) of the Penal Code for offences provided in Article 14 above.

If the amount of Concentrated Acid is under 500 (Five Hundred) Milliliters, Legal Entities are liable to pay a monetary fine of 5,000,000 (Five Millions) Riel to 10,000,000 (Ten Millions) Riel.

If the amount of Concentrated Acid is more than 500 (Five Hundred) Milliliters, Legal Entities are liable to pay a monetary fine of 10,000,000 (Ten Millions) Riel to 50,000,000 (Fifty Millions) Riel.

Legal Entities might face one or more additional penalties pursuant to Article 168 (Additional Penalties Applicable to Legal Entities) of the Penal Code.

Article 16

The act of intentional killing by using Concentrated Acid is punishable by imprisonment of 15 (Fifteen) years to 30 (Thirty) years.

The act of intentional killing is punishable by life imprisonment if the above mentioned offence is committed with:

1. Plan in advance or ambush.

2. Torture or cruel acts before or during the killing.

For the above mentioned offence, the additional penalties stated in Article 206 (Additional Penalties: Categories and Duration) of the Penal Code could be declared.

Article 17

Acts that could unintentionally cause death to others due to carelessness or negligence or the violation of security obligations and standards that are prescribed in relation to the management of Concentrated Acid are punishable by between 1 (One) year to 5 (Five) years in prison and a monetary fine of 2,000,000 (Two Millions) Riel to 10,000,000 (Ten Millions) Riel.

For the above-mentioned misdemeanor, the additional penalties stated in Article 208 (Additional Penalties: Categories and Duration) of the Penal Code could also be declared.

Article 18

Legal entities may be pronounced to be criminally responsible according pursuant to Article 42 (Criminal Responsibilities of Legal Entities) of the Penal Code for offences provided in Article 17 above.

Legal Entities are punished to a monetary fine of 20,000,000 (Twenty Millions) Riel to 50,000,000 (Fifty Millions) Riel, and one or more additional penalties that are stated in Article 209 (Additional Penalties Applicable to Legal Entities) of Penal Code.

Article 19

Torture and cruel acts using Concentrated Acid that are committed on any person are punishable by an imprisonment from 10 (Ten) years to 20 (Twenty) years.

These acts are punishable by imprisonment of 15 (Fifteen) years to 25 (Twenty Five) years if the above mentioned offence results in the loss of any organs or causes the permanent disability of the victim.

These acts are punishable by imprisonment of 20 (Twenty) years to 30 (Thirty) years if the above mentioned offence causes the death of the victim without any intention to kill or leads to the suicide of the victim.

For the above mentioned offences, the additional penalties stated in Article 216 (Additional Penalties: Categories and Duration) of the Penal Code could be declared.

Article 20

Intentional Violence committed on another person by using Concentrated Acid is punishable by an imprisonment of 2 (Two) years to 5 (Five) years and a monetary fine from 4,000,000 (Four Millions) Riel to 10,000,000 (Ten Millions) Riel.

These acts are punished by an imprisonment of 5 (Five) years to 10 (Ten) years if the above mentioned offence results in the loss of any organs or causes the permanent disability of the victim.

These acts are punishable by an imprisonment of 15 (Fifteen) years to 25 (Twenty Five) years if the above-mentioned offences causes death to the victim without any intention to kill or leads to the suicide of the victim.

For the above mentioned offences, the additional penalties stated in Article 229 (Additional Penalties: Categories and Duration) of the Penal Code could also be declared.

The attempt to commit the misdemeanor stated in the paragraph 1 of this Article shall be punishable the same as if the offense had been committed.

Article 21

The acts that lead to the injury of another, unintentionally or due to carelessness or negligent or the violation of security obligations pursuant to laws and standards required in the management of the Concentrate Acid, are punishable by imprisonment of 1 (One) month to 1 (One) year and a monetary fine of 200,000 (Twenty Thousand) Riel to 2,000,000 (Two Millions) Riel.

These acts are punishable by imprisonment of 6 (Six) month to 3 (Three) years if the above mentioned offences results in the loss of an organ or causes the permanent disability of the victim.

For the above mentioned misdemeanor, the additional penalties stated in Article 237 (Additional Penalties: Categories and Duration) of the Penal Code could also be declared.

Article 22

Legal entities may be pronounced to be criminally responsible pursuant to Article 42 (Criminal Responsibilities of Legal Entities) of the Penal Code for offences provided in Article 21 above.

Legal Entities are punishable to a monetary fine of 5,000,000 (Five Millions) Riel to 20,000,000 (Twenty Millions) Riel and one or more additional penalties stated in Article 238 (Additional Penalties Applicable to Legal Entities) of Penal Code.

Article 23

The production of food by using Concentrated Acid in violation of the Technical Standards are punishable by imprisonment of 1 (One) year to 5 (Five) years and a monetary fine of 2,000,000 (Two Millions) Riel to 10,000,000 (Ten Millions) Riel.

Article 24

Legal entities may be pronounced to be criminally responsible pursuant to Article 42 (Criminal Responsibilities of Legal Entities) of the Penal Code for offences provided in Article 23 above.

Legal Entities are punished to a monetary fine from 20,000,000 (Twenty Millions) Riel to 50,000,000 (Fifty Millions) Riel and one or more additional penalties stated in Article 168 (Additional Penalties Applicable to Legal Entities) of Penal Code.

CHAPTER 5

Transitional Provisions

Article 25

When this law comes into force, Physical Person or Legal Entities which are running any business related to Concentrated Acid without permission or who plan to run the business related to d Acid shall be required to ask for permission to run this business legally.

Article 26

The provisions stated in Article 14 of this law will come into force following the Sub Decree stated in Article 7 of this law becoming available.

CHAPTER 6

Final Provision

Article 21

From the date this law comes into full force and effect, any existing provisions of law that contradict this law shall be invalid.

Royal Palace, Phnom Penh, 21 December 2011

Royal Signature and Royal Stamp
Norodom Sihamoni

Having proposed to His Majesty the King to sign

Prime Minister

Signature

Samdech Akeak Moha Sena Badey Techo Hun Sen

Having requested to Samdech Akeak Moha Sena Badey
Techo Hun Sen, Prime Minister of the Kingdom of Cambodia

Deputy Prime Minister, Minister of Interior

Signature

Sar Kheng

No. 1079 ChorLor
For Copying and Distribution
Phnom Penh, 20 December, 2011
First Deputy Secretary General of the Royal
Government

Signature
Soy Sokha

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