

2020 Report on

Gender-Based Violence against Indigenous Women in Three Provinces of Cambodia



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Contents

| | |
|--|-----------|
| Executive Summary | 3 |
| 1. Introduction | 8 |
| 1.1. Context | 8 |
| 1.2. Objectives | 10 |
| 1.3. Methodology | 10 |
| Protection measures | 11 |
| Challenges of the Monitoring Project | 12 |
| 2. Legal and Policy Framework and Justice System in Cambodia | 13 |
| 2.1. Definition of gender-based violence | 13 |
| 2.2. International human rights law relevant to Indigenous Women in Cambodia | 13 |
| 2.3. Legal and policy framework on gender-based violence relevant to Indigenous Women in Cambodia | 14 |
| National laws | 14 |
| National policies | 15 |
| 3. Justice system in Cambodia | 16 |
| 3.1 Formal justice system | 16 |
| 3.2. Traditional legal systems and conflict resolution mechanisms | 17 |
| 4. Findings and Analysis | 21 |
| 4.1. Overview of persons interviewed and cases reported | 21 |
| 4.2. Trends, prevalence and situation of gender-based violence against indigenous women | 23 |
| Cases reported to authorities | 23 |
| Who were the victims/survivors? | 26 |
| Who were the perpetrators? | 26 |
| 4.3. Wrongful gender-stereotyping on the root causes of gender-based violence against indigenous women | 28 |
| 4.4. Child and forced marriages in indigenous communities | 31 |
| 4.5. Stigma and marginalization of the survivors of gender-based violence | 33 |

| | |
|--|-----------|
| 4.6. Access to justice by the victims/survivors | 36 |
| Formal Justice System | 36 |
| Arrest and Prosecution of the Alleged Perpetrator | 36 |
| Filing of a complaint | 38 |
| Status of Rape Cases | 39 |
| Traditional methods of dispute resolution | 42 |
| 4.7. Accessibility and responsiveness of support mechanisms to protect survivors | 45 |
| Medical services including psycho-social counseling | 45 |
| Financial and material support | 47 |
| 4.8. Efforts for prevention and elements which hinder prevention | 48 |
| 5. Conclusions and Recommendations | 52 |
| 5.1. Conclusions | 52 |
| 5.1.1. Trends and situation of gender-based violence against indigenous women | 52 |
| 5.1.2. Wrongful gender-stereotyping on the root causes of gender-based violence against indigenous women | 53 |
| 5.1.3. Stigma and marginalization of the survivors of gender-based violence | 54 |
| 5.1.4. Applicable laws and gaps | 55 |
| 5.1.5. Access to justice by the survivors | 56 |
| 5.1.6. Accessibility and responsiveness of support to and protection of the survivors | 57 |
| 5.2. Recommendations | 59 |
| 5.2.1. Actions necessary to address root causes/ prevent gender-based violence | 59 |
| 5.2.2. Actions necessary to strengthen responses to gender-based violence against indigenous women | 62 |

Executive Summary

The research on this subject was undertaken following the reports received from civil society organizations and other stakeholders working with the community about an increase in cases of gender-based violence against indigenous women. Sporadic incidents of sexual violence including rape had been reported in the past but their frequency was limited. Domestic violence is common among the indigenous community, with local authorities reporting multiple cases in their villages. Survivors and their families are reporting to local authorities cases of rape, including incestuous rape, attempted rape, rape followed by the killing of the victim, as well as cases of sexual harassment. Despite consistent reoccurrence, a standardized and comprehensive data on the number of cases of gender-based violence does not exist, as different government institutions have their sources of information. There is no compilation of data, disaggregation by ethnicity or central registry.

The study indicates that the root causes of gender-based violence, including sexual violence, are unequal power relations between men and women in the public and domestic spheres, which are perpetuated by discriminatory social norms, poverty, and a dysfunctional and sexist rule of law. Poverty is also a root cause in Cambodia and contributes to the continued existence of gender-based violence. However, awareness on these root causes and measures to prevent such violence seems to be low, including among provincial and local authorities. Likewise, persistent discriminatory gender and racial stereotypes among various stakeholders appear to hinder effective responses and prevention measures. In order to effectively prevent and respond to gender-based violence against indigenous women in Cambodia, it would be crucial to develop a fair and clear understanding of the root causes among all stakeholders and to address discriminatory stereotypes against indigenous women.

Survivors of gender-based violence have reported that they are stigmatized and marginalized. While prevention measures are put in place by authorities, the survivors themselves also seem to blame themselves, suggesting changes in women's behavior, rather than holding perpetrators accountable for their actions. As noted by the Committee on the Elimination of Discrimination against Women in its 2019 concluding observations, social and cultural stigma is a barrier to access to justice. Interviews with survivors also suggest that stigma has negative effects on survivors' mental health and hinders their education and social life.

The legal and policy framework in Cambodia has some gaps and should be amended to ensure compliance with Cambodia's international human rights obligations. Existing laws are also not always correctly and consistently implemented.

The study further found that there is a lack of effective guidance from higher authorities to local authorities when advice is sought. It is worrisome that some cases are settled at the commune/district judicial police posts without referring them to courts. There is also a lack of support for survivors and their families who are not able to pursue a criminal case and go to court without financial and legal assistance. This limits access to justice for survivors and families of victims/survivors.

The documented cases demonstrate that traditional dispute resolution measures do not use a victim/survivor-centered approach, and instead focus on what is believed to be for the good of the community. This was because the perpetrators were asked to pay compensation instead of facing legal consequences for their acts.

Some racial stereotypes still exist, which indicate biases and discrimination against indigenous persons based on generalizations, which in turn demonstrate a lack of understanding of indigenous tradition and culture.

Support to survivors of gender-based violence needs to be strengthened and improved, so that they receive comprehensive services, including medical and psycho-social assistance, livelihood assistance, skills training and legal aid. It is encouraging that the police have added police posts in villages so that it is easier for survivors or their families to report cases of gender-based violence. It is also encouraging that police have requested more training so that they can better understand gender, and further assist communities.

Summary of recommendations:

Actions to address root causes/ prevent gender-based violence

Recommendations for the Royal Government of Cambodia

1. The Royal Government of Cambodia should conduct further studies on gender-based violence against indigenous women and thoroughly analyze reasons behind the apparent increase in cases, and the involvement of members of the same household in many cases.
2. The Royal Government of Cambodia should work with women's rights organisations, human rights organisations, organisations of indigenous peoples, and relevant members of the United Nations Country Team to design comprehensive training programmes for public officials to address the root causes of gender-based violence, including domestic violence and intimate-partner violence.
3. The Royal Government of Cambodia should introduce awareness raising programmes on these issues to ensure gender sensitive responses for public officials and communities by non-governmental and community-based organizations, including organizations of indigenous women, and should cooperate with them to ensure that it is conducted at a large scale, particularly in geographic areas that the Government does not cover due to resource constraints.
4. The Royal Government of Cambodia should facilitate for a better understanding of the culture and traditions of indigenous communities among non-indigenous authorities which it would help them better assist indigenous communities.
5. The Royal Government of Cambodia should put in place a mechanism that provides disaggregate data by age, sex and ethnicity, particularly in provinces housing indigenous communities. Collection, management and use of data on gender-based violence should apply a human rights-based approach, adhering to the principles of participation, data disaggregation, self-identification, transparency, privacy and accountability.
6. The Royal Government of Cambodia should continue its work on the prevention of child marriages, including its cooperation with local and international organizations on this issue.
7. The Royal Government of Cambodia should amend the existing legal framework and introduce laws on discrimination against women, expand the definition of sexual harassment and review and amend the Domestic

Violence Law as recommended by the Committee on the Elimination of Discrimination against Women.

8. The Royal Government of Cambodia should take measures to ensure that the legal framework is adequately applied in all cases of gender-based violence, in line with international human rights norms and standards, to ensure accountability for perpetrators and justice for survivors, including through continuing the provision of legal aid and undertaking public education campaigns on the fundamental freedoms and human rights and on how to file complaints of sexual and gender-based violence cases.

Recommendations for Development Partners and the International Community

1. Support civil society organizations to conduct further studies into gender-based violence against indigenous women.
2. Support the Royal Government of Cambodia in designing comprehensive training programmes and awareness-raising initiatives to address the root causes of gender-based violence.
3. Support the Royal Government of Cambodia to comprehensively and consistently collect data on gender-based violence across government agencies and ministries, disaggregate data by age, sex and ethnicity and create a plan to achieve complete disaggregation of data within five years.
4. Support the Royal Government of Cambodia to prevent child marriages particularly child marriage among indigenous communities. The interventions programmes should target both boys and girls so that they are less likely to be married before age 18 years old, and girls are less likely to have children during their teenage years.
5. Support the Royal Government of Cambodia to amend the legal framework to ensure compliance with its international human rights obligations.

Actions necessary to strengthen responses to gender-based violence against indigenous women

Recommendations for the Royal Government of Cambodia

1. Take all necessary and appropriate measures to implement recommendations of the Committee on the Elimination of Discrimination against Women made in its 2019 Concluding Observations.¹

¹ CEDAW/C/KHM/CO/6.

2. Take all necessary and appropriate measures to implement recommendations of the Committee in the Elimination of Racial discrimination made in its 2020 Concluding Observations.²
3. Progressively allocate both financial and human resources to provide services for survivors of gender-based violence and make them more accessible to indigenous survivors, taking into account the need to be sensitive of language barriers and indigenous culture.
4. Take measures to ensure that the legal framework is adequately applied in all allegations and cases of gender-based violence, in line with international human rights norms and standards, to ensure accountability for perpetrators.
5. Design comprehensive training programmes and awareness-raising initiatives for public officials to effectively respond to allegations and cases of gender-based violence, in line with the national and international legal framework.
6. Promote that national and local authorities are more sensitive to the traditions and culture of indigenous communities and take steps to foster a greater understanding between indigenous communities and non-indigenous persons, to eliminate discriminatory stereotypes and discrimination.
7. Improve coordination between all authorities involved in addressing gender-based violence so that services can be more accessible to survivors, including indigenous survivors, and perpetrators are brought to justice.
8. Include indigenous languages in the police hotline to make it easier for indigenous women to report cases of gender-based violence.

Recommendations for Development Partners and the International Community

1. Continue to support the work of both international and national non-governmental organizations to address gender-based violence.
2. Support the work of indigenous organizations, who are in a unique position to push for change within indigenous communities.
3. Support organizations that provide psycho-social counseling to expand their services to indigenous women.

² CERD/C/KHM/14-17.

1. Introduction

1.1. Context

The Constitution of the Kingdom of Cambodia states that “all forms of discrimination against women shall be abolished”.³ It further provides equal rights between men and women and prohibits exploitation in employment. Article 38 prohibits any kind of physical abuse. The Cambodian Criminal Code and the Criminal Procedure Code provide protection from all forms of violence against women and girls. Cambodia has also introduced specific legislations such as the Law on Prevention of Domestic Violence and Protection of Victims (2005) and the Law on Suppression of Human Trafficking and sexual Exploitation (2008)⁴.

The Constitution does not provide an official definition of indigenous peoples or explicit protection of the rights of the indigenous groups. However Article 32 provides a guarantee of equality before the law and equal protection before the laws and the same rights for all Cambodians regardless of their race, colour, sex, language, beliefs, religions, political tendencies, birth origin, social status, resources and any position".

There are 24 different groups of indigenous peoples in Cambodia, comprising an estimated 250,000 to 400,000 individuals or 2-3 per cent of the total population.⁵ They reside in 16 provinces and around 455 villages nationwide. Cambodian indigenous peoples have maintained close connections to their lands, forests, rivers and other natural resources.⁶ They have different cultures, traditions, beliefs and languages, and their livelihoods are highly dependent on nature and land.⁷ This report covers three provinces, Monduliri, Ratanakiri and Stung Treng, with five separate indigenous groups: Bunong, Jarai, Kachak, Kreung and Prov.

The indigenous people and their rights are recognized by the Cambodian Constitution and national laws. For example Article 23 of the 2001 Cambodian Land Law states that:

³ Article 45 of the Constitution of the Kingdom of Cambodia.

⁴ The Royal Government of Cambodia. Royal Kram NS/RKM/0208/005 on the Suppression of Human Trafficking and Sexual Exploitation, Phnom Penh, 2008.

⁵ Indigenous People in Cambodia, International Working Group for Indigenous Affairs, 2019, available at <https://www.iwgia.org/en/cambodia.html>.

⁶ Phath.M., & Sovathana.S.(2012). Country Technical Note on Indigenous People's Issues, Phnom Penh, 2012, pp.2-4.

⁷ Manual on Collective Land Title, OHCHR, Ministry of Rural Development, Ministry of Land Management, Urban Planning and Construction, Ministry of Interior. The 24 groups are Raang, Saauch, Suoy, Kachak, Thmaun, Mil, Kraol, Kavet, Lun, Khaonh, Phnong, Khe, Samre, Kroeng, Charay, Tompuon, Stieng, Kuoy, Chorng, Kavet, Roder, Por, Prov and Spung.

“An indigenous community is a group of people that resides in the territory of the Kingdom of Cambodia whose members manifest ethnic, social, cultural and economic unity and who practice a traditional lifestyle, and who cultivate the lands in their possession according to customary rules of collective use.”

Despite constitutional and legal safeguards, the interviews conducted in the course of preparing this report indicated that indigenous women face difficulties to access education, health care, adequate housing, participation in cultural life, and exercising rights related to land and natural resources. Many of them are living in poverty, and the lack of income, language barriers and discrimination prevent indigenous women from enjoying their rights.⁸ Indigenous children living in remote areas usually have to travel long distances to get to school, and because of the increased incidences of gender-based violence, indigenous girls and their families have expressed fear about traveling on their own. UN figures from 2018 note that schools nationwide lack drinking water, sanitation and hygiene,⁹ issues that also affect indigenous women. In a report by Klahaan Organization and OHCHR, an indigenous woman reported that she had to convince her parents to allow her to continue studying in higher/tertiary education, as “her parents ...believed that education was a privilege for boys rather than girls to enjoy.”¹⁰ Another indigenous woman noted that, in her experience and that of her female relatives, they do not perceive education as a factor that could help improve the family’s living conditions or help provide food to help them survive.¹¹

In a 2009 study on indigenous women and political participation, indigenous women said they were not able to have meaningful participation in governance or political affairs. Their roles in traditional leadership shrank, and they were not adequately represented in formal authorities, such as commune councils. Indigenous commune councilors reported that they were marginalized, and their roles were limited to issues considered as “women’s issues” (leading the committee for women and children) simply because they were women.¹² Indigenous women have also faced criminal charges in relation to protecting their land.

⁸ Interview with an indigenous woman lawyer, 22 September 2020.

⁹ WHO and UNICEF Joint Monitoring Programme for Water Supply, Sanitation and Hygiene, Estimates on water, sanitation and hygiene services in schools in Cambodia, updated August 2018 and cited in the Submission by NGO-CEDAW, Shadow Report for the 74th Session of the Committee on the Elimination of Discrimination Against Women (CEDAW), September 2019.

¹⁰ Klahaan/OHCHR, Exploring the Links Between Women’s Economic and Social Rights and Violations of Land and Housing Rights in Cambodia, 2019.

¹¹ Comment from indigenous woman lawyer, 09 December 2020.

¹² Maffil, M., & Hong, S. (2009). Promoting Political Participation of Indigenous Women in Cambodia. Phnom Penh: Heinrich Boll Foundation.

While two previous studies related to indigenous women¹³ did not find sexual violence as a common phenomenon among the indigenous communities (with some caveats pointed out by CARE Cambodia), the study was carried out. However, in the past five years, members of the Cambodian Indigenous Women’s Working Group (CIWWG), now known as Cambodia Indigenous Women’s Association (CIWA)¹⁴, observed an increase in sexual and other types of gender-based violence in their communities. They gathered data from community and media reports and interviews with local authorities and families of victims/survivors of gender-based violence¹⁵ that showed at least 25 cases of gender-based violence against indigenous women occurred in Kratie, Mondulakiri, Preah Vihear, Ratanakiri, and Stung Treng between 2015 and 2020.

1.2. Objectives

This study has **three key interrelated objectives**:

- a. To identify cross-cutting issues and patterns of gender-based violence against indigenous women;
- b. To analyze data collected to assess the effectiveness of local authorities’ and the justice sector’s responses to these cases; and
- c. To assist survivors of rape and victims/survivors’ families to obtain legal representation and gender-responsive public services.

1.3. Methodology

This research adopted a qualitative approach, through which it sought to provide a description of the experiences of gender-based violence survivors and/or victims’ immediate families in seeking justice through indigenous traditional resolution mechanisms and the formal justice system.

A monitoring team of 22 individuals was established to collaborate with OHCHR, CIWA and Klahan. The monitoring team consisted of a representative of

¹³ Maffil, M., & Hong, S. (2009). Promoting Political Participation of Indigenous Women in Cambodia. Phnom Penh: Heinrich Boll Foundation, and Perez Pereiro, A., Lopez Cortina, J., Breogan Consulting, “Adolescent Fertility & Early Marriage Among Indigenous Communities in Northeastern Cambodia”, CARE Cambodia, 2018, pp. 31-32. Both studies noted that sexual violence against indigenous women was rare.

¹⁴ CIWA, formerly called CIWWG, is a grassroots organization formed entirely by and with members who are all indigenous women working in the private sector, in non-governmental organizations and government.

¹⁵ CIWWG, The Report on Rape and murder in Ratanakiri Province from 2017-2019, Phnom Penh 2019.

Klaahan, a representative of CIWA and 20 indigenous persons from six indigenous communities.¹⁶ OHCHR was represented by a technical advisor.

As a first step, the monitoring team received dedicated training on documenting gender-based violence, which focused on the principle of do no harm and the integration of a gender-sensitive approach while conducting monitoring work. Klaahan and the technical advisor, with participation from an OHCHR staff member and a non-governmental organization working on combatting sexual violence and trafficking in Cambodia, conducted the training.

This report is based on 54 interviews conducted by the monitoring teams between August and October 2020, including victims/survivors of rape, attempted rape, sexual harassment and domestic violence; the immediate relatives of victims/survivors; local authorities; traditional leaders and non-governmental organizations (NGOs). Interviews were conducted in three provinces of Cambodia (Monduliri, Ratanakiri and Stung Treng) and with an international NGO in Phnom Penh. As noted in page 7 above, the research also took into consideration a desk review of available publications, policies and literature.

After due consideration of potential risks for victims/survivors and victims/survivors' relatives, establishing contact with intermediaries, such as commune/village chiefs, became fundamental for the monitoring teams so they could establish contact with victims' immediate families and survivors.

The CIWA team, who had preliminary information of gender-based violence cases, identified the survivors, victims' immediate families and indigenous traditional leaders who consented to collaborate in this monitoring. The intermediaries at each commune in the target districts also referred some cases to CIWA.

In Ratanakiri Province, the monitoring teams met with the Provincial Police, staff from the Department of Women's Affairs and officials from the Court of First Instance, as this province had the most reported cases of gender-based violence.

Protection measures

The monitoring teams identified risk factors throughout the monitoring process and took measures to mitigate them. For example, each interview was conducted at a safe location agreed by the interviewers and interviewee.

¹⁶ The monitoring teams representing CIWA came from six indigenous ethnicities namely Bunong, Jarai, Kreung, Kuy, Prov and Tampuan.

Interviews were only conducted during daylight hours so that the teams and the persons interviewed did not have to travel at night.

Furthermore, to facilitate a comprehensive discussion and make sure that nuances were not misunderstood or lost, interviews with indigenous peoples were conducted in local languages. Khmer and English were used with provincial authorities and international and national NGOs. Khmer and indigenous languages such as Bunong, Jarai, Kreung and Prov were used with local indigenous authorities, survivors/victims' immediate relatives and traditional leaders.

Prior to conducting each interview, interviewees were informed about the objectives, process and how the information shared with the team would be used. Each interviewee received a consent form and was given sufficient time to read and sign before starting the interview and the recording. None of the interviewees is referred to by name within the report to maintain confidentiality and encourage respondents to speak freely.

Challenges of the Monitoring Project

Cases documented in this report are from three provinces in Northeastern Cambodia, Mondulkiri, Ratanakiri and Stung Treng that occurred between 2015 and 2020. In some cases, local authorities did not allow the monitoring teams to access survivors and victims/survivors' immediate families due to the public health measures to respond to the COVID-19 pandemic or due to the lack of information about the project from higher authorities. Despite these challenges, the researchers managed to gather a sufficient number and quality of interviews. In addition, the discrepancy of gender-based violence data presented to the monitoring teams by different key stakeholders made the analysis difficult. There was no repository of disaggregated data and different government institutions had different statistics, with varying sources of information and different methodologies, and there was no coordination between the institutions. For this reason the team took note of all the figures provided, but could not produce a definitive number of cases of gender-based violence.

In addition, there is little available literature on traditional resolution mechanisms used by indigenous communities in Cambodia. This report relies on two sources from 2007 and 2015, and information collected during key informant interviews with relevant stakeholders.

2. Legal and Policy Framework and Justice System in Cambodia

2.1. Definition of gender-based violence

Gender-based violence is a human rights violation. It may constitute a violation of the rights to life, security and physical and mental integrity, freedom from torture and cruel, degrading and other ill-treatment, equality and freedom of discrimination. It can also constitute a violation of the right to the highest standard of health. According to the Committee on the Elimination of Discrimination against Women, “Gender based violence is violence that is directed against any person because of that person's sex, gender identity or sexual orientation or affects a group disproportionately based on their gender identity. It includes acts that inflict physical, sexual, mental, and/or financial harm or suffering, threats of such acts, coercion and other deprivations of liberty.” The Committee has stated that the prohibition of gender-based violence against women is considered customary international law. Some forms of gender-based violence include rape and other forms of sexual violence, forced and child marriage, domestic violence and marital rape, and female genital mutilation.¹⁷

2.2. International human rights law relevant to Indigenous Women in Cambodia

Several international human rights treaties ratified by Cambodia are relevant to the protection of individuals against gender-based violence, notably the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child. Cambodia also voted in favor of the adoption of the United Nations Declaration on the Rights of Indigenous Persons (UNDRIP).¹⁸ Cambodia has ratified the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).

Article 31 of the Cambodian Constitution guarantees the application of these treaties in the country. In 2007, the Cambodian Constitutional Council ruled that human rights treaties ratified by Cambodia are part of domestic law and should be applied by judges in the courts.¹⁹

¹⁷ See CEDAW General Recommendation No. 35, CEDAW/C/GC/35, 26 July 2017.

¹⁸ <https://www.ohchr.org/en/issues/ipeoples/pages/declaration.aspx>.

¹⁹ <https://cambodia.ohchr.org/en/rule-of-law/overview>.

2.3. Legal and policy framework on gender-based violence relevant to Indigenous Women in Cambodia

National laws

There are no legal provisions relevant to gender-based violence specific to indigenous peoples in Cambodia. In terms of sexual violence, the 2009 Criminal Code prohibits and penalizes rape (Articles 239-245), indecent assault (Articles 246-248), indecent exposure (Articles 249), sexual harassment (Articles 250-252) and procuring persons for prostitution (Articles 284-295). The 2005 Domestic Violence Law defines domestic violence and details the responsibilities of relevant authorities in preventing and dealing with cases. In addition, the 2008 Law on Suppression of Human Trafficking and Sexual Exploitation, which prohibits trafficking and sexual exploitation through prostitution, pornography and indecent acts.

The definition of sexual harassment under Cambodian law is quite narrow and applies only to workplace situations.²⁰ It does not criminalize sexual harassment in public spaces among strangers, nor does it take account of workplace harassment perpetrated by junior staff or peers.²¹ The 2005 Domestic Violence Law does not provide a complete definition of domestic violence,²² as it does not include acts of stalking and threats of physical, mental, emotional, financial or sexual harm. The law provides a narrow definition of domestic violence. For example, the law excludes partners (married or not or even former partners) and family members who do not live in the same house and does not recognize how domestic violence can target children, LGBTQI persons, persons with disabilities and domestic workers. It allows for the “discipline” of spouses and children.²³

In its concluding observations, the Committee on the Elimination of Discrimination against Women recommended that the Royal Government of Cambodia review the Domestic Violence Law, and amend its provisions to “define, prohibit and criminalize all forms of gender-based violence, including domestic violence and marital rape, to facilitate the process of obtaining protection orders and to ensure that victims/survivors of domestic violence

²⁰ Art. 250 states: “Sexual harassment” shall mean the abuse by one person of the authority conferred by his or her functions against another person for the purpose of applying pressure repeatedly in order to obtain sexual favours.

²¹ Bunn, R., “Broken System: The Plight of women workers in the Cambodian Garment Industry”, 2020.

²² See Articles 2-8 of the 2005 Domestic Violence Law.

²³ Dr. Pung Chiv Kek, PowerPoint presentation entitled “The gaps in the current Domestic Violence Law: results and findings of the NGO working group on amending the Domestic Violence law” dated 29 March 2019.

have access to effective remedies and that perpetrators are held accountable[.]”²⁴

While marital rape is not expressly mentioned in the Domestic Violence Law, it has been argued that the term “sexual aggression” used in the law should be considered to cover marital rape.²⁵ Article 239 defines rape as “any act of sexual penetration with a sexual organ or an object committed against another person of either sex by violence, coercion, threat or by being opportunistic.” As it does not specify the type of perpetrator or victim, it can be argued that it applies to spouses. However, there is no evidence that this has ever been successfully argued before Cambodian courts. There is also no express definition of marital rape in the Criminal Code.

Lastly, Article 948 of the Civil Code of Cambodia prohibits child marriage, by setting the age of 18 as the age at which men and women may marry, and the age of 16 as the youngest age at which parents or guardians may consent to a marriage.

Cambodia’s national legislation does not prohibit discrimination, including on the basis of gender. The Committee on the Elimination of Discrimination against Women has stated that “It remains concerned, however, that there are no provisions in the Constitution that define direct and indirect discrimination against women, and that the Penal Code prohibits only certain forms of direct discrimination, such as denial of access to goods, services or employment. The Committee also notes that recently amended laws have not effectively addressed inequalities between men and women, and regrets the lack of gender impact assessment when adopting or revising legislation.”²⁶

National policies

The Royal Government of Cambodia has established guidelines and policies such as the 2017 Media Code of Conduct for Reporting on Violence Against Women; the 2016 Referral Guidelines for Women and Girl Survivors of Gender-Based Violence; the 2014-2018 Second National Action Plan to Prevent Violence Against Women (NAPVAW 2); and the 2014-2018 Neary Rattanak IV Strategic Plan for Gender Equality and Empowerment of Women. While not directly addressing the situation of indigenous women, these policies and guidelines also

²⁴ CEDAW, Concluding observations on the sixth periodic report of Cambodia, 12 November 2019, CEDAW/C/KHM/CO/6, para. 24(b).

²⁵ Van der Keur, D. Legal and Gender Issues of Marriage and Divorce in Cambodia, *The Cambodia Law and Policy Journal*, Volume 3, December 2014, <http://cambodialpj.org/article/legal-and-gender-issues-of-marriage-and-divorce-in-cambodia/>.

²⁶ CEDAW, Concluding observations on the sixth periodic report of Cambodia, 12 November 2019, CEDAW/C/KHM/CO/6, para. 8.

apply to indigenous women. COVID-19 delayed the finalization of Neary Rattanak V and NAPVAW 3, but the latter was launched in January 2021.

NGO-CEDAW, in its 2019 shadow report to the Committee on the Elimination of All Forms of Discrimination against Women, pointed out that the policies tend to focus on short term activities, with limited financial and geographic scopes based on external funding, and that these policies needed long-term funding from the national budget. The report also pointed out that publicly accessible, gender-disaggregated data should be collected to measure the effectiveness of the implementation of these policies.²⁷

3. Justice system in Cambodia

3.1 Formal justice system

Civil society organisations in Cambodia have noted that in addition to the need to amend certain laws, there are also concerns with the effective implementation of existing laws in cases of gender-based violence. They have noted that few cases of gender based violence are prosecuted, and that very few protection orders by the authorities have been granted in the past years.²⁸

Moreover, legal aid is difficult to access in Cambodia, particularly in remote areas, as most lawyers are based in the capital. Moreover, there are no specific legal provisions that guarantee victims/survivors of gender-based violence access to free legal aid. Women and indigenous persons are under-represented in the justice sector. There are few women lawyers, judges and prosecutors.²⁹ As of November 2019, among a total of 300 judges in all courts and judicial institutions (excluding trainees), 46 were women, and among 166 prosecutors in all courts and institutions (excluding trainees), 25 were women, which represents approximately 15 per cent in either profession. These numbers have only slightly increased since 2013, when there were 14 per cent women judges and 10 per cent women prosecutors.³⁰ As of March 2021, from a total of 2,369 lawyers, there are 1,795 men and 574 (or approximately 24 per cent) women.³¹ In general, indigenous people also remain under-represented in the judicial and legal sectors. There is only one indigenous person holding the position of judge or prosecutor, and a couple of courts clerks. However, as of 2020, there are eight

²⁷ Submission by NGO-CEDAW, Shadow Report for the 74th Session of the Committee on the Elimination of Discrimination against Women (CEDAW), September 2019.

²⁸ Joint NGO Submission, Shadow Report for the 74th Session of the Committee on the Elimination of Discrimination against Women (CEDAW) on Access to Justice, 09 September 2019.

²⁹ Ibid.

³⁰ Submission by The Cambodian NGO Committee on CEDAW (NGO-CEDAW) for the 74th session (21 October to 8 November 2019) of the Committee on the Elimination of Discrimination Against Women (CEDAW)

³¹ <https://www.bakc.org.kh/index.php/en/2020-02-02-04-06-24>.

indigenous lawyers, five of whom are women, and indigenous organizations are encouraging more indigenous youths to study law.

Courts of First Instances are located in the provincial capitals, and most indigenous communities reside in rural areas far from the provincial capital. The distance and the quality of roads between villages and the provincial capital, therefore, limit the access of indigenous women to courts. In addition, until April 2020, the only appeal court in the country was located in Phnom Penh, which posed additional problems for indigenous women who live in distant provinces and pursue cases at the appeal level. As additional appeal courts were established in 2020, access to justice for indigenous should be addressed to certain extent in Battambang and Tbong Khmum,³² which cover provinces where indigenous communities reside, and in Sihanoukville.³³ Aside from the costs and time connected to having to travel to the courts, challenges of child and elderly care, which predominantly fall on women,³⁴ also tends to affect the ability of indigenous women victims/survivors of gender-based violence to be involved in lengthy court proceedings.

3.2. Traditional legal systems and conflict resolution mechanisms

A study commissioned by UNDP in 2007 explained that unlike the formal legal system, traditional customary law in Cambodia is not written down and proceedings are not documented. At the heart of traditional law is the need to maintaining community solidarity. As it is considered essential to maintain harmony, resolving conflicts aims to have the parties reach an agreement to compensate the injured party and penalize the guilty one.³⁵ This is different from the formal legal system, which applies existing laws to individuals.

There is tension between traditional system and the formal legal system when crimes are involved. Under Cambodian law, the judicial police should investigate crimes, and alleged perpetrators should be prosecuted and tried in courts, which

³² David, S. (2 April 2020). Two of three new appeal courts start hearings - Khmer Times. Retrieved 19 September 2020, from <https://www.khmertimeskh.com/708511/two-of-three-new-appeal-courts-start-hearings/>.

³³ David, S. (7 September 2020), Preah Sihanouk Appeal Court in full service – Khmer Times. Retrieved 19 September 2020, from <https://www.khmertimeskh.com/50761092/preah-sihanouk-appeal-court-in-full-service/>.

³⁴ A United Nations study made in 2013 looked at gender roles and found that 82 per cent of men and 93 per cent of women who participated in the study believed that women's essential role is caring for the home and preparing meals for her family. A United Nations study made in 2013 looked at gender roles and found that 82 per cent of men and 93 per cent of women who participated in the study believed that women's essential role is caring for the home and preparing meals for her family. Fulu, E., Warner, X., Miedema, S., Jewkes, R., Roselli, T. and Lang, J. (2013). *Why Do Some Men Use Violence Against Women and How Can We Prevent It? Quantitative Findings from the UN Multi-country Study on Men and Violence in Asia and the Pacific*. Bangkok: UNDP, UNFPA, UN Women and UNV.

³⁵ Backstrom, M., Ironside, J., Paterson, G., Padwe, J., & Baird, I. (2007). *Indigenous Traditional Legal Systems and Conflict Resolution in Ratanakiri and Mondulkiri Provinces, Cambodia*. Bangkok: UNDP.

are the only institutions authorized to determine a defendant's guilt or innocence. Accordingly, indigenous communities are asked by the authorities to report all crimes to local authorities and the police, so the formal legal system may handle them.

Minor conflicts such as disputes within families and between community members may be resolved by a *kra srok*³⁶, an elder, usually male with grandchildren, who is considered by the community to have knowledge, wisdom, talent and experience. The *kra srok* symbolizes peace in the village but has no ability and no recognition to impose any legal authority and to force

villagers to behave in such a way unless he is summoned to do so. Even in such case, he will do so on a 'consulting status' than as an unquestioned unilateral decision-maker."³⁷

The 2007 UNDP commissioned study noted that "...traditional legal systems of the different indigenous groups are broadly similar though certain differences exist among the different groups and even between villages." In general, the traditional resolution of disputes follows the following procedure:

1. The person who feels to have been wronged makes a claim against the person considered to be responsible by either going to that person directly or, in cases believed to be more serious, engaging a mediator/investigator to look into the accusations and attempt to reach a mutually agreed settlement.
2. If the mediator cannot get the parties to reach a solution, the parties can then go to adjudicators (who can be one or more persons the parties ask to resolve the issue).
3. In the Jarai, Kachak and Tampuan systems, it is the elders, who are sometimes women, who hear the findings of the mediator/investigator, and the decision is made by a majority of the elders.
4. Either party can appeal the case to another adjudicator or elder, or to a higher level authority if they do not agree with the elders' decision.³⁸

Most resolutions involve payment of fines to the injured parties, or the guilty party may be ordered to work for the victim as punishment. Both the injured

³⁶ This is the Tampuan term; other indigenous groups have different names for this title.

³⁷ Bourdier, F., 2015. Indigenous Peoples In ASEAN: Cambodia. [online] Chiang Mai: Asia Indigenous Peoples Pact (AIPP) Foundation, pp.12-13, available at https://aippnet.org/wp-content/uploads/2020/02/10-Asean-study_Cambodia_15_July_2015_Final.pdf.

³⁸ Backstrom, M., Ironside, J., Paterson, G., Padwe, J., & Baird, I. (2007). Indigenous Traditional Legal Systems and Conflict Resolution in Ratanakiri and Mondulakiri Provinces, Cambodia . Bangkok: UNDP at pp. 25-26.

and the guilty parties sometimes have to contribute to reconciliation ceremonies, and mediators and adjudicators sometimes receive payments.³⁹

An indigenous woman lawyer commented on the traditional dispute resolution measures of the Bunong in cases involving gender-based violence. She explained that the community elders enforced long-standing rules, designed to protect the community, prevent future unacceptable behavior, and prevent spirits from being angered by this behavior. She said that if a woman is raped, the family will first inform other family members, and as this type of information usually cannot be hidden, it soon becomes known to the elders.

In a recent case in Mondulkiri, a father who allegedly raped his daughter has been detained by the authorities in a prison. However, according to the customary laws of the community, the family must compensate the community for the father's wrongdoing. With the father in prison, it became the responsibility of the survivor and her mother to arrange for a ritual to appease the spirits and compensate the community. In addition, in this case, the elders asked the survivor to leave the village. She added that in some cases, the survivor herself decides to leave the village out of shame.

The customary practices may be, and in some cases, are amended, but this requires the community to agree on the specific changes. For example, in cases involving accidental death or death from illness, traditionally, only the immediate family is allowed to attend to the body. However, in a community in Ratanakiri, the community agreed that non-family members could assist in attending to the body and in organising a collection so the family could obtain the materials necessary for the relevant ritual.

In some areas, elders/traditional leaders do not assume their responsibilities when cases of gender-based violence occur. For example in in Stung Treng, where the entire community was aware that a father had been abusing his daughter, which was not accepted Bunong customary laws, the elders were afraid of the man, who was known to be aggressive, so they took no action. Traditionally, elders are supposed to resolve disputes, but recently, their influence has diminished, and they only handle religious ceremonies and rituals.

There have also been conflicts between traditional dispute resolution mechanisms and the Khmer administrative and legal procedures, which have

³⁹ Ibid, at p. 23. See also Bourdier, F., 2015. Indigenous Peoples In ASEAN: Cambodia. [online] Chiang Mai: Asia Indigenous Peoples Pact (AIPP) Foundation, pp.12-13, available at https://aippnet.org/wp-content/uploads/2020/02/10-Asean-study_Cambodia_15_July_2015_Final.pdf.

weakened traditional leadership. An indigenous woman⁴⁰ noted that “our traditional leader does not have much influence nowadays because our village chief⁴¹ has told our community to report all disputes to him instead of reporting to our traditional leaders if we want to have public order and development in the community. Everyone followed his instructions because he is a government officer.” These statements were supported by a 2015 study commissioned by the Asia Indigenous Peoples Pact which noted that villagers are requested to speak with the village and commune chiefs when it comes to difficult or sensitive conflicts, as “[m]any of these modern elected village heads constitute the indispensable link to external forces like the police and the provincial court.”⁴²

The CARE Cambodia study⁴³ mentioned previously stated that change in traditional practice is possible. The study cited resources that indigenous communities have that can help them deal with change: “a vast storehouse of oral literature and religious culture that gives them the symbolic vocabulary to reinterpret new events in terms that can be easily assimilated and indigenized [...]; systems of local law and conflict resolution which have changed very quickly in response to their changing circumstances, so that the traditional system may now deal with disputes [...] that would not have existed a few decades ago [and] a clear understanding that more change will be necessary and that Indigenous children born today will need a different skill set for survival from that of their parents.”

The study maintained that “Indigenous notions of authenticity do not revolve around a static series of practices, but rather, an evolving system of norms and obligations that permits each generation to achieve a level of social harmony like that of the previous generation. [...] Indigenous people do not expect change to stop. Rather, they seek to be able to develop the tools and competencies necessary to ensure that their children can one day successfully live their lives while also doing things ‘the right way’.”⁴⁴

This view is supported by the Independent Expert in the field of cultural rights, who said “What is particularly needed at the community level is the

⁴⁰ She said this when she attended a training workshop in Ratanakiri on CEDAW and gender-based violence organized by NGO-CEDAW with the lead-trainer from Klahaan in October 2020.

⁴¹ A village chief is part of the official administrative system, not elected by the community, but appointed by the commune council. Art. 22, Sub-Decree on Decentralization of Power, Roles and Duties of the Commune Council, 1 April 2002.

⁴² Bourdier, F., 2015. Indigenous Peoples In ASEAN: Cambodia. [online] Chiang Mai: Asia Indigenous Peoples Pact (AIPP) Foundation, pp.12-13, available at https://aipnet.org/wp-content/uploads/2020/02/10-Asean-study_Cambodia_15_July_2015_Final.pdf.

⁴³ Perez Pereiro, A., Lopez Cortina, J., Breogan Consulting, “Adolescent Fertility & Early Marriage Among Indigenous Communities in Northeastern Cambodia”, CARE Cambodia, 2018

⁴⁴ *ibid.* pp. 39-40.

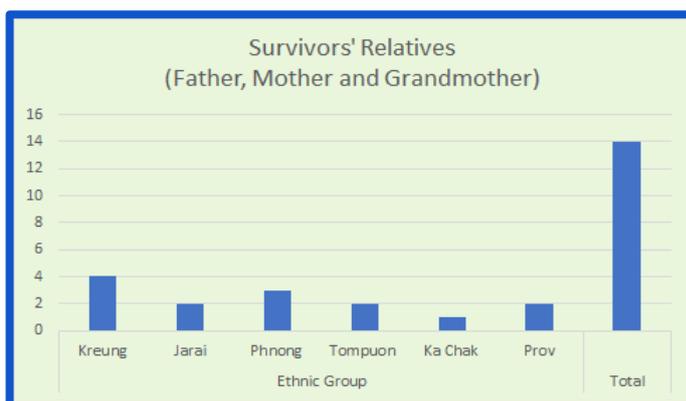
reinforcement of positive elements of culture while raising awareness of the oppressive nature of certain practices pursued in the name of culture through a process of “cultural negotiation” involving families, intellectuals and community leaders. Such a process can create the space for new interpretations to arise and for developing good cultural practices, in particular those that can foster the implementation of universal human rights in various cultural contexts.”⁴⁵

4. Findings and Analysis

4.1. Overview of persons interviewed and cases reported

CIWA monitoring teams interviewed five different groups of persons: local authorities, survivors, victims/survivors families, witnesses and traditional leaders.

- Ten female **survivors** were interviewed, ranging in age from 11-53. One was Bunong, three were Jarai, five were Kreung, and one was Prov.



- Fourteen **survivors' relatives** were interviewed, six men (mostly fathers) and seven women (mothers or grandmothers). There were three Bunong, two Jarai, one Kachak, four Kreung, two Prov and two Tompuon.

- Nineteen **local authorities** were interviewed: 15 Village Chiefs, three Deputy Village Chiefs and one commune council member. Of the 15 village chiefs, 12 were men and three women. There were two women Deputy Village chiefs and one man. The commune council member was a man. The Jarai were the most represented, with five local authorities, two of them women. (See table for figures)

The local authorities were interviewed because they deal most closely with indigenous communities, including settling disputes. Aside from having offices near the communities, many of those interviewed are indigenous persons who

⁴⁵ Report of the independent expert in the field of cultural rights, Ms. Farida Shaheed, (A/HRC/14/36, 22 March 2010) para. 36, citing the Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk (E/CN.4/2004/66), para. 55 (b).

have a greater understanding of the culture and traditions, even if, unlike traditional leaders, they were not chosen by the community but were either elected or, in the case of village chiefs, were appointed by commune authorities. Moreover, commune and village authorities have the responsibility to implement the Village-Commune Safety Plans, which include preventing trafficking in women and children, child labor and domestic violence.⁴⁶

- Seven **traditional community leaders** (men) were interviewed⁴⁷: three Jarai, two Kreung and two Tampuan. Traditional leaders are selected by the community.



Traditional community leaders have an important role within their communities, as indicated in the table.⁴⁸ With regard to gender-based violence, traditional community leaders described their role as follows:

1. Guiding the community members, promoting women’s rights and that of vulnerable groups, and telling men not to commit violence against women;
2. Cooperating with authorities to disseminate information on gender-based violence;
3. Providing advice to the youth and women;
4. Helping protect the community, society and people in the village;
5. Preventing drug use; and
6. Attending to problems involving gender-based violence, listening to the matter and settling the dispute between the both parties.

⁴⁶ Village Commune Safety Plan, Ministry of Interior, 16 August 2010, English translation. [https://sithi.org/admin/upload/law/Village%20Commune%20Safety%20Policy%20\(Eng\)%20-%202010.pdf](https://sithi.org/admin/upload/law/Village%20Commune%20Safety%20Policy%20(Eng)%20-%202010.pdf) accessed on 3 January 2021. It should be noted that civil society has noted that these Village Commune Safety Plans have the potential to limit freedom of expression and assembly and can affect vulnerable groups like sex workers.

⁴⁷ While both men and women can become elders, there are usually more men chosen as elders than women. There have been recent projects, however, that promote indigenous women leadership, particularly in the protection of natural resources. See Hufstedar C., “Women Taking the Lead in Cambodia”, 28 March 2019. <https://www.oxfamamerica.org/explore/stories/women-taking-lead-cambodia/>.

⁴⁸ The roles of traditional leaders are: Taking care of the community, guiding/ leading the community, build community unity; Preserve community land; Pray for village; Help solve problems in the community; Reminding community about indigenous culture; Organizing religious ceremonies; Facilitating necessary works for the community; and Malaria treatment volunteer.

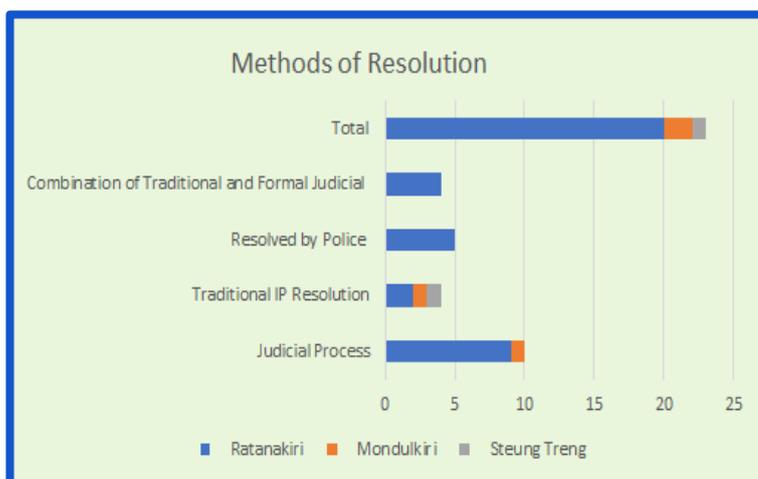
- **Provincial authorities:** With the assistance of OHCHR, the interviewers were able to secure meetings with representatives from the Ratanakiri Provincial Police Commissariat, the Ratanakiri Provincial Department of Women’s Affairs, and the President and Chief Prosecutor of the Ratanakiri Court of First Instance .

The table below provides a summary of the cases of rape, attempted rape and sexual harassment mentioned by local authorities interviewed and how they were resolved. A majority of the cases were resolved through the formal judicial process, with cases reported to local authorities and law enforcement, and referred to the provincial court. The police, who mediated between the victims/survivors and the perpetrators without sending the case to the court, resolved five cases. Others were resolved through traditional processes or through a combination of both traditional processes and formal judicial processes.

4.2. Trends, prevalence and situation of gender-based violence against indigenous women

Cases reported to authorities

There is no central repository of complaints of gender-based violence and data on these complaints has not been disaggregated by ethnicity. The monitoring team gathered figures from different governmental departments and local authorities on the number of gender-based violence cases that had been reported to them. This information is presented below.



The staff of the Anti-Trafficking and Juvenile Team of the Ratanakiri Provincial Police Commission said that the figures of domestic violence cases are difficult to document, as they are usually not reported to them and are resolved through mediation at the local level. Since 2017, there have been fewer than 15 cases of rape of girls aged 15 and younger. These cases mostly happened between relatives when the parents left children with family members. Fourteen of the

15 cases were resolved by following the legal proceedings and the perpetrators are serving their sentence in prison.⁴⁹ The data is not disaggregated by ethnicity.

According to the Provincial Department of Women's Affairs, the authorities are aware of 492 cases of gender-based violence in Ratanakiri happened between 2015 and 2020, which include 412 cases sent to the court; and 42 cases of rape, with three cases of rape and murder. Of the 42 rape cases, the authorities resolved 22 and the parties resolved 20 without resorting to formal justice mechanisms. There were 450 cases of domestic violence, of which 60 were resolved through mediation/traditional procedures. The data is not disaggregated by ethnicity.

Department staff added that it is difficult to consolidate information on cases of rape and domestic violence, for lack of a single specific reporting channel. For those who live near the commune police, the victims might report cases to them directly for their resolution or referral to higher authorities. Others report to the Department of Women's Affairs or go directly to the provincial court. The Department can only confirm the cases they have documented, and which are only reported by the commune councilors in charge of women's issues.⁵⁰

Department staff shared that in Ratanakiri province, the lack of disaggregated data compiled by one authority and kept in one place makes it difficult to have a clear idea of the exact number of cases of gender-based violence against indigenous women. This is likely occurs in other provinces, including in those with indigenous populations. This lack of information on the scope of the problem of gender-based violence in general, and in particular affecting indigenous women, and affects the ability to address it by designing effective and timely solutions.

Of the 19 local authorities interviewed, 16 local authorities said that they had either directly received reports (15) of gender-based violence, and one had heard of a report made to higher authorities. They mentioned cases of rape, sexual harassment and domestic violence, but not all of the interviewed authorities specified the number of cases or types of cases received.

Eleven of the 19 authorities reported one case of rape in their villages (11 cases total). Four authorities reported having two cases (eight cases in total) in their village, while one authority reported four cases in their village. One of the

⁴⁹ Interview with the Anti-Trafficking and Juvenile Team of the Ratanakiri Provincial Police Commission, 25 August 2020, Banlung, Ratanakiri.

⁵⁰ Ibid.

authorities who reported a case of rape in their village in 2020 noted that there are usually two to three cases of gender-based violence in their village every year. Three of the authorities had no information.

According to local authorities, the incidence of rape and murder is rare, as only three out of the 19 authorities interviewed reported hearing about cases of rape and murder. In one case, the victim died a year after the rape, from injuries caused by the rape. Thirteen authorities said there were no cases of rape and murder in their jurisdictions, and the remaining three authorities said they had no information. Only one case of rape and murder was reported by the victim's relative, which would seem to confirm the authorities' statement.

With regard to sexual harassment, ten local authorities said there were no cases, or they had no information about them. There was one case of alleged sexual harassment involving an individual man taking and sharing of photographs of an individual woman while she was taking bath in her private home without her consent. The definition of sexual harassment in the Criminal Code applies only to workplace situations, contributing to a lack of understanding by local authorities of the different types of gender-based violence.

According to the information provided by local authorities, domestic violence seems to be the most prevalent form of gender-based violence in these indigenous communities. Eighteen of the 19 local authorities said that there were cases of domestic violence in their villages. Only one local authority said they had no information. Three local authorities said there was one case; one authority said there were two cases; three authorities said there were four cases; one said there were six cases; five said there were ten cases; one said there were 15 cases; and three said there were "many cases" without specifying the number.

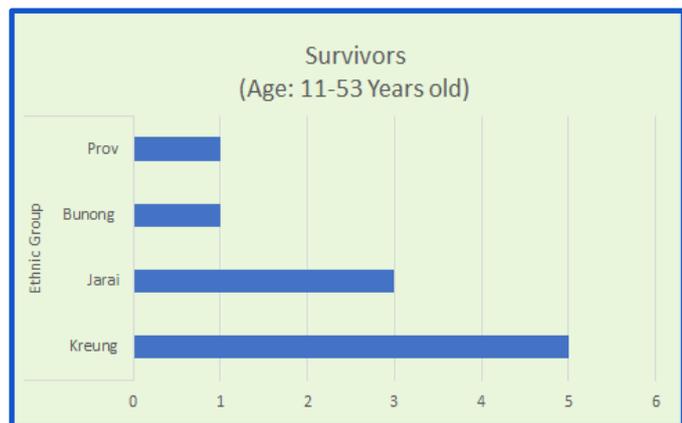
One authority noted: "There was an increase in domestic violence cases in 2019, but there is some reduction in 2020. Some people died because of some reasons such as having no mental health support while the family still face repeated violence. Although there are some villagers or relatives reporting the case instead of the victims, the solution was only negotiating with the perpetrator to stop committing violence again. In some families, the domestic violence has decreased after the victims reported to the authorities."⁵¹

⁵¹ Ibid.

Some local authorities could not provide exact numbers of gender-based violence in their villages, which is concerning. This could be due to a lack of knowledge, skills and resources, both in terms of finance and guidance, in documenting these types of cases. It also appears that not all local authorities address cases of domestic violence following the legal process, as at least one said they dealt with these cases through “negotiation” rather than through the legal processes as mandated by the Domestic Violence Law and the Criminal Code.

Who were the victims/survivors?

Ten female victims/survivors interviewed ranged from ages 11-53 years old, demonstrating that female victims of gender-based violence can be of any age, which requires a child-sensitive approach when the survivors are children. The survivors interviewed for this study came from four indigenous groups, Bunong, Jarai, Kreung and Prov. Seven of the survivors mentioned that they had been raped. One survivor stated she had been raped, and the perpetrator had attempted to kill her. Another survivor said she was a victim of attempted rape, while another one mentioned she was a victim of sexual harassment, as the perpetrator had taken photographs of her while she was sleeping and had shared them with others.



Who were the perpetrators?

Initial information provided by CIWA, and other indigenous and non-indigenous NGOs working with indigenous communities indicated that perpetrators of sexual violence were mainly “outsiders”, or non-indigenous persons who were not part of the community. However, from the interviews conducted, it appears that many perpetrators were, in fact, indigenous men from the same community, some of whom were related to the survivor (uncle, stepfather or cousin), with a few non-indigenous perpetrators rather than outsiders as initial information seemed to suggest.

A representative of a locally based indigenous organization reported having heard of rape cases committed by relatives of the survivor/victim. She said there were cases where the perpetrators are not identified and could not be arrested,

but the cases where perpetrators are identified usually involve relatives or other persons known to the community. However, due to lack of evidence and witnesses, suspects are not often arrested or charged.⁵²

PLAN International Cambodia said they had received reports of incestuous rapes of children, but due to confidentiality issues, could not provide detailed information about the cases. In 2019, there were many reported cases of incestuous rapes, with at least one case every month. Before 2019, it was five or six cases in total. They further said the number of cases being resolved outside the court system had decreased, as local authorities and the community understand why they need to report these cases. As of October 2020, they had not received any report of incestuous rapes.⁵³

The survivors were asked if they could identify the perpetrators. One survivor could not identify the perpetrator, but the other survivors named them. Five perpetrators were related to the survivors. Two of these five were their cousins, one was the survivor's stepfather, and two were unspecified relations. One was also the survivor's neighbor and another was the brother of a local government official. Four were not relatives of the survivors. One perpetrator was the survivor's boyfriend. Two perpetrators were non-indigenous; one of them married to an indigenous relative of the survivor. The other non-indigenous man was a stranger. The last non-relative was a friend of the survivor's father who worked nearby and it is not clear whether he is indigenous or non-indigenous.

The survivors' relatives who were interviewed noted that in two cases, perpetrators were unidentified. In six cases, however, the perpetrators were relatives (direct relations like biological father, uncle, cousins or stepfather). In three cases, the perpetrators were from the same village where victims/survivors lived (one was a survivor's boyfriend). In two cases, perpetrators were non-indigenous, although one man had married an indigenous woman and lived in the same village as the survivor. The other non-indigenous man was a stranger, not from the village.

The analysis of these interviews indicates that gender-based violence against indigenous women is a mix of domestic violence, intimate partner violence and rape committed both by indigenous and non-indigenous men, as well as gender-based violence (mostly rape) committed outside of the household by indigenous

⁵² Interview with a female staff member from an indigenous organization and member of CIWA, 24 August 2020, Banlung, Ratanakiri.

⁵³ Interview with the management of PLAN International Cambodia, 13 October 2020, Phnom Penh, Cambodia.

and non-indigenous men. Among the cases referred to in the interviews, the majority of perpetrators were indigenous men known to the victims/survivors.

4.3. Wrongful gender-stereotyping on the root causes of gender-based violence against indigenous women

A 2018 CARE Cambodia study noted that in population centers such as Ta Veang (Ratanakiri) and Sen Monorom (Mondulkiri), there was a perception among non-indigenous Cambodians that indigenous women would agree to have sex if compensated (with either cash or gifts). This was reportedly a common perception among non-indigenous men involved in the taxi trade who offered to help find indigenous women for sex. The CARE study noted, “we should be hesitant to accept this as a generalized phenomenon, but should also be aware that these claims about the sexual availability of indigenous women are made, accepted, and may be contributing to negative gender stereotypes about Indigenous peoples.”⁵⁴

A member of an indigenous organization in Ratanakiri stated that they believed the rapes were connected to migration and drug use. It was their perception that men were using drugs to stay awake and work harder either at illegal logging or at rubber plantations.⁵⁵

Staff from the Provincial Department of Women’s Affairs believed the causes of gender-based violence were excessive alcohol consumption on the part of the perpetrator and child/early marriages. They identified the root causes, particularly of domestic violence as related to poor education. Furthermore, they perceived that most families do not seem to be able to discuss issues of concern, and instead use force to resolve conflict. The third root cause mentioned by them was poverty, as most of the perpetrators seem to be from poor families.

In the opinion of staff from PLAN International, abusers commit child rape because they are under the influence of alcohol, have low education and/or watch pornography. They blamed parents for not taking good care of their children, and leaving them with relatives while they were at their fields, farms or forest. They added that this is also the case for non-indigenous parents. They suggested, as a preventive measure, that children not be allowed to go out on their own. They also heard of reports that non-indigenous men rape indigenous

⁵⁴ Perez Pereiro, A., Lopez Cortina, J., Breogan Consulting, “Adolescent Fertility & Early Marriage Among Indigenous Communities in Northeastern Cambodia”, CARE Cambodia, 2018, pp. 31.

⁵⁵ Interview with the management of indigenous organization, 24 August 2020, Banlung, Ratanakiri.

women and girls and such perpetrators are “newcomers to the area”. They confirmed the existence of a stereotype that indigenous women would have sex for payment, and that the taxi drivers usually talked to each other about this issue. They perceived that usually, at least for child marriages, the sex was consensual.⁵⁶ This may reflect stereotype based on ignorance of existing laws and a reflection of the reality. The age of legal consensual sex in Cambodia is 15.⁵⁷ The Civil Code forbids marriage under 18 unless one of the parties is over 18 and the other is 16 and has parental permission.⁵⁸ However, many Cambodian girls marry young, including before 16, indicating weak enforcement of the law. Despite a decline in child marriage in general in recent years⁵⁹ Mondulkiri and Ratanakiri, where minority groups are living, have the highest rate of marriage of women before 18, i.e., 36 per cent of women aged 20-24 married before 18.

The interviews conducted with local authorities, survivors, their families and traditional elders mentioned similar factors for gender-based violence. Local authorities noted that the perpetrators’ use of drugs and/or alcohol as the main factor. Other suggested factors contributing to sexual violence were unemployment or poor livelihood, lack of education, new immigrants, jealousy, lack of participation in educational meetings, perpetrators not listening to the authorities, and the perpetrators’ sexual desire. These factors put the blame on the perpetrators.

Other identified factors seem to blame the victims. These include women going out to school, to plantation fields, passing through rubber plantations and/or quite forest alone, friendship with strangers or ‘bad people’, refused to participate in flirtatious acts from potential perpetrator, wearing revealing clothes, walking long distances on quiet roads and that indigenous women are emotionally weak and generous. For fear of sexual violence, indigenous women are afraid to travel alone and usually travel in pairs. It is worth noting that most non-indigenous women and girls in the provinces also experience this situation. One local indigenous organization noted that its female staff, and the female community members it works with, are now advised not to travel alone.⁶⁰ Based

⁵⁶ Interview with the management of PLAN International Cambodia, 13 October 2020, Phnom Penh, Cambodia.

⁵⁷ The age of consent in Cambodia is 15 regardless and is determined by Article 8, of Chapter 4 (Debauchery) of the Law on Suppression of the Kidnapping, Trafficking, and Exploitation of Human Beings, which has been specifically enacted to prohibit sex with children under 15. The law prohibits "debauchery" with a child under 15, and this term (the original Cambodian word is *anacha* has been interpreted by courts to forbid any form of sexual conduct (both consensual and non-consensual; both 'ordinary' sex and paid sex) with a child under 15.

⁵⁸ Art. 948 of the Civil Code (2007).

⁵⁹ UNICEF, A statistical profile of child protection in Cambodia, 1 March 2018, <https://www.unicef.org/cambodia/reports/statistical-profile-child-protection-cambodia>

⁶⁰ Interview with the management of an indigenous organization, 24 August 2020, Banlung, Ratanakiri.

on these comments made by the respondents, indigenous women's freedom of movement is therefore restricted in these three provinces.

The local authorities seemed to understand that perpetrators needed to be held accountable, and people should be educated so these crimes are not committed. There seems to be lack of adherence to laws as the law prohibits rape, cases are still mediated and resolved outside of the courts without resorting formal justice. The sporadic awareness raising they conducted local indigenous group and international organizations was intended for women and men in the community, so they would be more aware of the laws prohibiting and penalizing these offenses.

Contrary to many of the perceptions documented, which place blame on personal behaviors, the root causes of gender-based violence often lie in the social structure. It has been noted that those living in poverty generally face disproportionate high risks of gender-based violence. A 2019 global study on the linkage between economic security and gender-based violence found that: "Globally, economically insecure individuals tend to live in locations with more conflict, fewer support services, and weaker legal systems. At the same time, economic insecurity or chronic poverty makes individuals and households themselves more likely to experience acute stress and resort to risky coping strategies that increase the risk of gender-based violence."⁶¹ This was also highlighted in the 'RESPECT women: preventing violence against women' framework, launched in May 2019, by the World Health Organization, with UN Women, the Office of the High Commissioner for Human Rights, the United Nations Development Programme and the United Nations Population Fund. The RESPECT framework, aimed primarily at policy-makers, introduces seven strategies (the initials of which make the word RESEPECT) to combat violence against women. It includes P for 'Poverty reduced', which refers to "strategies targeted to women or the household, whose primary aim is to alleviate poverty."⁶² Poverty also plays a role in hindering victims' access to justice in cases of gender-based violence. The Ratanakiri provincial police noted that women usually do not use legal procedures, not because of shame, but mostly because of their economic situation. It is the man who generate income, and if he is imprisoned, the family loses its income. This also happens within

⁶¹ Peterman A., Roy S. and Ranganathan M., How is economic security linked to gender-based violence? New insights from the Sexual Violence Research Initiative Forum 2019, 02 December 2019. <https://www.ifpri.org/blog/how-economic-security-linked-gender-based-violence-new-insights-sexual-violence-research> accessed on 5 January 2021.

⁶² WHO, Sexual and reproductive health: RESPECT women: preventing violence against women, available at <https://www.who.int/reproductivehealth/topics/violence/respect-women-framework/en/> accessed on 05 January 2021.

indigenous communities, where traditional leaders play mediation roles. People in indigenous communities in remote areas are mostly laborers who work on farms and plantations. If the husband is arrested, the household loses a laborer and income.⁶³

The perceptions local authorities had of victims/survivors and perpetrators reflect the perceived gender roles and gender stereotypes on men and women's behaviors in the Cambodian society, as inscribed in the Chbab Srey, a traditional code of conduct for women, which sets out how Cambodian girls and women should behave if they desire to be recognized/labelled as "proper" women. Although the Chbab Srey was forged over a century ago, and some of its passages have been removed from the school curriculum since 2017, it still has invisible yet real influence and has been quietly passed down from one generation to the next at the household level.

The perceptions presented by many of the stakeholders interviewed indicate that there is still a lack of understanding of the true root causes of sexual violence, particularly rape, and the persistence of discriminatory gender and racial stereotypes held by all parties. Factors that increase the risk of violence, such as drugs and alcohol, are instead identified as the cause. The root cause of gender-based violence, including sexual violence, are unequal power relations between men and women in the public and domestic spheres, which is perpetuated by discriminatory social norms, poverty and a dysfunctional and sexist rule of law. This has created a double standard about men and women's behaviors and their ability to make decisions, particularly those relating to their self-determination, freedom of movement and sexual reproductive health and rights. Until all stakeholders understand this, it will be difficult to effectively prevent and respond to such violence.⁶⁴

4.4. Child and forced marriages in indigenous communities

The Provincial Department of Women's Affairs acknowledged the issue of early marriages. The Department noted that even during the COVID-19 pandemic, between March and August 2020, there were eight to nine cases of marriages between 13 and 14-year-olds. All of them involved indigenous youths. The Department added that indigenous peoples did not seem to care about or be aware about the law, as they did not register the marriages and only carried out

⁶³ Ibid.

⁶⁴ See CEDAW General Recommendation No. 35 on Gender-Based Violence against Women, CEDAW/C/GC/35, para. 19, p. 6.

traditional ceremonies.⁶⁵ There are no official statistics on the prevalence of child marriages.

Child marriages occur in rural areas of Cambodia, with a higher percentage happening in Mondulakiri and Ratanakiri provinces. A 2018 study conducted in Ratanakiri province found that 11 per cent of girls aged 12 to 17 years were married, and 19 per cent of these girls were between the ages of 15 and 17.⁶⁶

PLAN International Cambodia has found the following reasons for its occurrence in Cambodia:

- Local traditions that are gender-biased and based on the belief that girls should marry before they pass the age of 20, as men do not marry “old ladies”.
- Economic reasons, girls’ financial reliance on men.⁶⁷ It is also a way to acquire labour in families. The girls’ parents want their daughter to marry so the husband can help with the family farm.⁶⁸
- Pre-marital sex and adolescent pregnancies. In order to prevent adolescent from engaging in premarital sex and teen pregnancy, some parents would arrange for their marriage despite their young ages. While knowledge about protected sex and contraception is very limited among Cambodian children, premarital sex remains socially unaccepted and considered inappropriate and those involved usually stigmatized and made to feel ashamed of themselves.

In 2017, the United Nations Children’s Fund (UNICEF) and PLAN International Cambodia supported the Ministry of Women’s Affairs in creating a Provincial Action Plan to Prevent Child Marriage and Teenage Pregnancy in Ratanakiri.⁶⁹ Non-Timber Forest Products, a Cambodian NGO working in Ratanakiri province, with the support of Oxfam through the Child’s Rights Coalition, is conducting a project entitled “Girls Voice” which aims to prevent child marriages in Ratanakiri.⁷⁰ The project targeted three districts in Ratanakiri. It has three main objectives involving different actors in the communities. First, local authorities are to use their positions to prevent early or child marriages in their

⁶⁵ Interview with representatives of the Ratanakiri Department of Women’s Affairs, 25 August 2020, Banlung, Ratanakiri.

⁶⁶ Taing R, “Addressing child marriage in Cambodia”, interview with Mr. Ye Kimthan of PLAN International Cambodia, Khmer Times, 28 August 2020.

⁶⁷ Ibid.

⁶⁸ This was a common practice in northeastern provinces such as Kratie, Ratanakiri, Mondulakiri and Stung Treng.

⁶⁹ “Girls Not Brides -- Ending Child Marriage in Cambodia”, Chan K. and Ream R., 10 March 2017, available at <https://unicefcambodia.blogspot.com/2017/03/by-chan-kanha-and-ream-rin-romas-is.html>.

⁷⁰ “Awareness of Child Clubs about impacts of child marriage”, Bin, S., 6 August 2020, available at <http://www.ntfp-cambodia.org/awareness-of-child-clubs-about-impacts-of-child-marriage/> accessed on 7 October 2020.

communities. Second, parents/family members become aware of the impact of child marriage and then change how they raise their children. Third, children and youth become aware of their rights and the impact of child marriage on their lives.

Child marriages and forced marriages are considered harmful practices by the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child.⁷¹ Child marriages are considered forced marriages because children are unable to consent.⁷² States have the responsibility to ensure that these harmful practices are eliminated. The Committee on the Elimination of Discrimination against Women specifically notes that “States parties to the Convention on the Elimination of All Forms of Discrimination against Women are also obliged to take all appropriate measures, including temporary special measures (art. 4(1))¹⁴ to ‘modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either sexes or on stereotyped roles for men and women’”.⁷³

4.5. Stigma and marginalization of the survivors of gender-based violence

The feelings of the survivor, and the way that communities view her after the violence demonstrate stigma. The victim is judged, shamed, blamed or pitied because of what happened to her. She is seen to be of less value. “Stigma associated with sexual violence is not only the expression of individual values, beliefs or attitudes; it is the forceful expression of social norms that are cultivated within a given society through the behaviours and actions of groups of people and institutions. It arises from socially and culturally constructed norms around gender inequality, and expectations or perceptions of the role, behaviours and responsibilities of the traditional gender binaries in society, such as that women and girls are the holders of virtue and honour for a family...”⁷⁴ It should be noted that many of these indigenous communities have relatively small populations, where everyone knows each other. Given the small sizes of

⁷¹ Joint general recommendation/general comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices, CEDAW/C/GC/31-CRC/C/GC/18, 4 November 2014, Section 6.2, paras. 19-21; https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fGC%2f31%2fCRC%2fC%2fGC%2f18&Lang=en.

⁷² Ibid.

⁷³ Ibid para. 30.

⁷⁴ Lawyers and Doctors for Human Rights, “Understanding Gender, Gender-Based Violence and Stigma in Syrian Communities” October 2018, pp. 8-9. <http://ldhrights.org/en/wp-content/uploads/2018/12/LDHR-Gender-gender-based-violence-and-Stigma-Mapping-Report-FINAL.pdf>. The quote is from the definition section of the report, and would apply to Cambodia and other countries, not solely to Syria.

these communities, the stigma caused by gender-based violence would therefore seem to have greater effects, particularly when the perpetrator's family is part of the same community. As noted by the Committee on the Elimination of Discrimination against Women in its 2019 concluding observations, social and cultural stigma is also a barrier to access to justice as it prevents women and girls from filing complaints related to gender-based violence.

Three survivors said that they were treated kindly by community members, although one said that the wife of the perpetrator was angry with her. The other survivors noted that there was a change in how they were treated. One said that while she was pitied, she was also teased by some villagers. Two other survivors said that the perpetrator's relatives insulted them and said bad things about them, such as that the survivor was someone who liked to go out late at night and liked to drink. One of these survivors said children of her age accused her of agreeing to have sex because she wanted money. Three other survivors said community members and people their own age blamed them for the rape and looked down on them. The remaining survivor said that the community laughed at how the issue had been resolved through compensation. In this case, there was an issue with the amount of compensation, and the perpetrator's family refused to pay the requested amount.

The traditional leaders/elders concurred that that survivors are viewed differently after the incident. One Kreung elder from O Chum, Ratanakiri, said the victim may lose their honor and feel ashamed; she is looked down upon and people speak ill of her. An elder from O Yadav, Ratanakiri, said that the survivors often become shy, fearful, lack confidence and feel insecure. Another elder from the same district agreed, noting that the survivor receives "many bad words from neighbors." A Kreung elder from Kon Mom said that the community pity the survivor, and give her support and advice. A Tampuon elder from Lumphat District, Ratanakiri says that the community "should encourage the victims and support them."

The police were not aware of any family experiencing threats or discrimination after reporting rape. They believed there was not much discrimination in the community because the villagers have sympathy for the survivor. The police collaborate with partners, refer survivors for counseling and create a

reintegration plan into the community. Whenever survivors return to their villages, they receive a warm welcome.⁷⁵

In contrast, the representatives of the Provincial Department of Women's Affairs said they were aware of discrimination against women and girl survivors. They noted that survivors seem to be traumatized and suffer from depression and they feel shame/embarrassment. Some did not want to go to school or see their neighbors, as they knew people were aware of the rape. The representatives claimed that their department always encouraged the families to support the survivor and advised the survivors to move on. The Department Chief said that stigma is strong even in non-indigenous society. The sentence "she was raped" has a negative connotation, as it means the woman is not pure anymore, which is discouraging for the survivors of rape.⁷⁶

Local authorities, survivors, their families and traditional elders from Mondulkiri, Ratanakiri and Stung Treng confirmed what the Provincial Department of Women's Affairs said in the paragraph above. They noted a difference in how survivors and their families are treated after the survivors/victims have suffered from gender-based violence. The reactions of the community range from pity, to looking down on the survivor to blaming her. In some cases, relatives of the perpetrator who live in the same community go out of their way to bully or harass the survivors. There is a need to change the communities' attitudes and behaviours toward the survivors.

More work needs to be done on reintegration of survivors into society and greater understanding of their needs and situation. Additional psychological assistance needs to be provided to survivors and their families to help them deal with the trauma. It is disconcerting that the Provincial Police believed there was no discrimination against survivors. It calls into question reintegration plans they assist in designing if differences in treatment are not recognised. Some officials and survivors' families seemed to view "pity" as a positive reaction, without understanding that, even if it is not bullying or blaming the victim, pity is a form of discrimination, as it indicates that the community views the survivor differently after she has been raped or abused. How a survivor is treated after they experience gender-based violence could also affect other survivors, and deter them from reporting what happened to them.

⁷⁵ Interview with the Anti-Trafficking and Juvenile Team of the Ratanakiri Provincial Police Commission, 25 August 2020, Banlung, Ratanakiri.

⁷⁶ Interview with representatives of the Ratanakiri Department of Women's Affairs, 25 August 2020, Banlung, Ratanakiri.

4.6. Access to justice by the victims/survivors

The research team asked about the actions taken under existing laws and regulations after receiving reports of gender-based violence. Most said they took some form of action using either the formal legal system, the traditional indigenous dispute resolution method, or a combination of both as detailed below.

Formal Justice System

Local authorities said they submitted cases to higher authorities, usually commune authorities and the judicial police. They also tried to find the perpetrator. Local authorities were then asked if they had followed up on cases referred to higher authorities. Four local authorities did not answer the question. Four others said they did not follow up. One authority explained that most of the cases had been settled at the commune police post through mediation and negotiation rather than the formal legal system.

Three local authorities said they had followed up, but noted that higher authorities had not taken any action to resolve the cases. One said that while two cases of sexual harassment had been referred to the court, no summons against the perpetrators had been issued yet. Another said that while the person who informed them about the case had brought the case to higher authorities, it was only the village chief who continued the investigation.

Following up with higher authorities usually meant that the local authorities checked on the case for up to a year. They also collected new information and forwarded it to higher authorities. A few actively tried to work with higher authorities to investigate and to help resolve the case.

There appears to be a lack of follow-up and effective response from higher authorities to the local authorities who refer cases to them. The fact that some cases are settled at the commune police post is also worrisome; the judicial police are mandated to forward cases to court, and should not resolve cases on their own. This limits the survivors and families of victims' access to justice.

Arrest and Prosecution of the Alleged Perpetrator

According to local authorities, in seven cases, perpetrators were arrested, while in 11 cases, no arrests were made.⁷⁷ In some cases, local authorities did not explain why arrests were not made.

⁷⁷ One case had multiple perpetrators, of which one was arrested and two escaped.

The following are some of the reasons given for failure to arrest:

- the victim's family believes they do not have the power or resources to have the perpetrator arrested due to the ;
- the victim did not point out who the perpetrator was because of language impairment she could not speak the Khmer language ;
- the perpetrators were not arrested since the complaint did not include their names or addresses.
- The perpetrator escaped;
- the perpetrator was not arrested because he compensated the victim's family and paid the authority with USD 3,000;
- the authorities sent the victim's body to the police post for examination, but there was no clear evidence of rape or sexual violence;
- the perpetrator is the victim's relative and the family did not want him arrested; and
- following the filing of a complaint in court, the court is responsible for arresting the perpetrator.

Seven relatives of survivors said that the perpetrator had been arrested. One noted that in his relative's case, there was more than one perpetrator (three were indigenous and one was non-indigenous), and only one had been arrested. Four noted that the perpetrators were arrested and still in jail. One said the perpetrator had been convicted by the court and sentenced to 15 years imprisonment. Another said the perpetrator had been arrested but had already been released. A third said while the perpetrator had been arrested, they were not sure if he was still in jail.

Five relatives said the perpetrators had not been arrested. In one case, the relative said this was because the survivor had decided to resolve the case via traditional means. In two cases, the perpetrators escaped before they could be arrested. In two cases, the relatives did not provide information on why the perpetrators had not been arrested. Two relatives did not respond.

The failure to arrest perpetrators demonstrates weaknesses in the investigation process of the judicial police and of local authorities who are unable to identify perpetrators and do not seem to make any efforts to find them once they have left the area. There is a lack of coordination between commune police posts and provincial police in sharing information about perpetrators and requesting their arrests. There is also a lack of support for survivors and victims/survivors' families who are not able to pursue the filing of a criminal case and go to court without external assistance, both financial and in terms of legal aid. The

coordination between judicial police and the provincial court, in particular the prosecutor's office, should be improved. Failure to arrest and establish accountability through formal justice system contributes to traditional resolution measures, where negotiation and financial compensation replace arrest, prosecution and conviction.

Filing of a complaint

Under Cambodian law, criminal complaints may be filed by the victim of a crime, their immediate family or by the judicial police. The judicial police have the responsibility to arrest the alleged perpetrator and bring them to court for the prosecutor to determine if charges should be filed. The prosecutor reviews all the evidence collected by the judicial police and decides to either authorize detention and send the charges on to an investigating judge, or find insufficient evidence to hold the defendant and/or file charges. The investigating judge then conducts an investigation, including interviewing witnesses, including the victim, and determines whether a full trial should be held. The victim may file a civil action when the case is before the investigating judge. If a full trial is held, the survivor, along with other witnesses will be called to testify.⁷⁸

Nine out of the ten survivors said they had filed complaints with the village chief, commune authorities, and/or the police post and the court. In one case, the victim's family had filed the complaint to the local police post but then decided to accept compensation of USD 3,000 under traditional dispute settlement mechanism. So far, they have only received USD 1,500 of the promised compensation. One survivor did not file the complaint and decided to follow the traditional means of resolution by asking for compensation directly from the perpetrator, but he did not confess or agree to pay compensation.

Two survivors said the authorities had not taken any action on their complaints. The other eight said some actions had been taken. One survivor said that the authorities came to her village, and while the perpetrator was arrested, he claimed he would not stay in jail for long, because he had paid USD 6,000 to the authorities. She further claimed that the village chief and police chief seemed to have negotiated with the perpetrator, without the participation of the survivor.

One other survivor complained that while the local authorities took action on her complaint, provincial authorities were not as active, and there were constant delays.

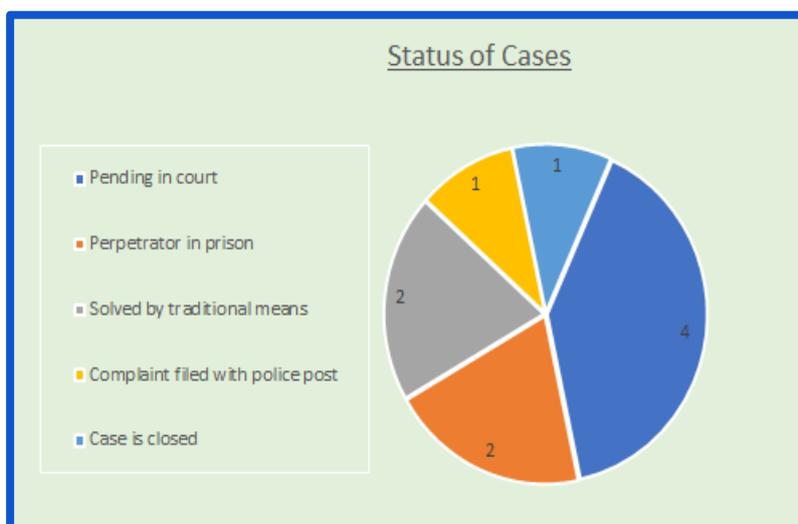
⁷⁸ Criminal Procedure Code of the Kingdom of Cambodia, 2007, Arts. 4-6; see also Arts. 13-15 on Civil Actions.

Three survivors gave the following reasons for not filing complaints: fear of the perpetrator, fear that they would be pitied and it would bring pain, lack of knowledge about who to ask for help, fear that she could not win the case because the perpetrator had more money and because she could not speak Khmer properly.

Status of Rape Cases

According to the survivors, five perpetrators were arrested and five perpetrators remain at large. One survivor noted that while the perpetrator was arrested, they were not sure if the perpetrator was still in jail.

One of the court cases is at the investigation stage. The three other cases are pending, but the stage is unclear. In three cases, the perpetrator was convicted by the court, and the case is closed. In two cases, the police posts took charge of the case, and the police solved one case through negotiation and compensation. The remaining case was resolved by indigenous elders through traditional means (negotiation and compensation).



One survivor noted that the case was settled both by the court system and traditional means. The court system ruled that the perpetrator be imprisoned, and under the Jarai traditional resolution system, the perpetrator had to sacrifice a buffalo in the survivor's village.

Three survivors said they had relatives who had witnessed the incident. Two said they had case files, but one did not know where it was being kept. The remaining five said they had no witnesses or evidence to support their complaints.

Survivors were asked how they felt about the result of their case. Some were satisfied with the results because the perpetrator was imprisoned. One survivor was satisfied with the perpetrator's imprisonment but said she was upset because the villagers knew that she had been raped. Another survivor expressed fear that the perpetrator could hire someone to harm her when she was by herself.

Two survivors were not satisfied with the ruling of their cases. Another did not agree with the eight-year sentence the perpetrator had received. She believed that the perpetrator should have received a life sentence for all the times he had physically and mentally harmed her. The third survivor said she was not satisfied, but did not provide an explanation.

Relatives of survivors said that four cases were sent to and resolved by the court. One relative explained that the case went to court because the perpetrator's family did not agree to settle it traditionally. The other cases are still pending. One relative noted that the case was still pending at court but had already been resolved through traditional practices.

Three relatives said the case was yet closed. One relative believed that for the case to move forward, it would need support from NGOs and other stakeholders. He said he and his family felt hopeless and unhappy because there were four perpetrators, and only one was arrested. He added that if the three remaining perpetrators were arrested, they would have much more hope.

Three relatives expressed satisfaction with the result of the case. One stated that “the case has a good achievement, the victim is happy with the result, and it was done in line with the legal framework.” The other said, “the victim received justice, and is happy and satisfied with the result.” The father of one survivor said he did not want to have any more quarrels with the perpetrator, as they were relatives, and they did not want to have any more hatred, anger or resentment.

The authors met with the President (Chief Judge) and the Chief Prosecutor of the Ratanakiri Provincial Court. Both stated that they were new to the court, and were therefore not very familiar with the numbers of cases of gender-based violence against indigenous women. The President of the Court said that he was aware that there were cases of domestic violence. He said it was difficult to provide figures because the cases were not classified as domestic violence, violence against women or rape and murder (they were classified as acts of violence, murder or manslaughter). He was also not aware of indigenous cases in particular, as data gathered by the court is not disaggregated. He noted that most indigenous persons were still straightforward and genuine in sharing information during hearings. He said that non-indigenous parties were more likely to play around with words and were trickier to deal with. He said there seemed to be many cases of gender-based violence, and he suspected this was

because indigenous persons are not well-informed about the law, or do not concern themselves about the law. According to him, they tend to resort to traditional practices, and it is easier for them to use violence to sort out their issues. He added he did not think indigenous persons were afraid of the police. If they commit crimes like illegal logging or transportation of illegal logs and the police try to stop them, indigenous persons do not run away. Instead, they confront the police with knives and axes, while non-indigenous criminals run away.⁷⁹

The Chief Prosecutor said he could not provide data on cases and suggested that the authors ask the Ministry of Justice. He noted that for indigenous persons, the language barrier is a challenge, especially as there are many different indigenous languages in Ratanakiri. The court is trying to accommodate them, including through court staff who speak the language, or by looking for a translator or relative to translate. He raised the point of traditional practices, such as the early age of sexual engagement, which is illegal even if consensual. He believes that because it is a traditionally accepted practice, indigenous persons do not file a complaint, so, in his view, the prosecutor cannot take any action. He tied this to poor education. He thought the role of judicial police should be to educate about activities that are against the law. As a prosecutor, he did not consider the education of communities within his mandate. He noted the challenge in law enforcement to ensure compliance of traditional practices with national laws and international human rights obligations. He said he had experienced difficulties when he tried to access an indigenous community unofficially, without using his position as Chief Prosecutor. The indigenous community demanded rituals and offerings before they would let him visit.⁸⁰

Most of the survivors and their families said that local authorities were responsive, and took immediate action after they had reported the incident. However, they, and even some of the local authorities, said that there were delays and a lack of action on the part of higher authorities, particularly those at the provincial level. Moreover, there have been two cases where the district police resolved cases themselves, which is against the procedures laid out in the Cambodian Criminal Code and Cambodian Criminal Procedure Code. There is also a lack of support for survivors and victims/survivors' families who are not able to file a criminal case and go to court without external assistance, both

⁷⁹ Interviews with the President of the Court and the Chief Prosecutor, Ratanakiri Provincial Court, 25 August 2020, Banlung, Ratanakiri. The President of the Court asked for a written request for statistics, which the authors submitted to the Court Administrator. However, no statistics were received.

⁸⁰ Ibid.

financial and legal. Legal advice is not always readily available. The Provincial Police noted that some NGOs provide legal assistance to survivors.⁸¹

As survivors are the complainants in criminal cases, it is the prosecutor who represents them in court. However, there seems to be a lack of coordination between survivors and the court, as survivors, their families and some local authorities have noted that they do not know at what stage their court cases are, and some have complained about the apparent lack of progress in the case. This lack of knowledge about the status of their cases, coupled with the lack of legal aid demonstrates one of the barriers to access to justice identified by the Committee on the Elimination of Discrimination against Women, the “limited access to information on the mechanisms and procedures for seeking remedies for violations of the rights of women and girls, especially in rural areas.”⁸²

Racial stereotypes were also mentioned by court officials, implying that indigenous peoples are naïve, uneducated and unwilling to follow the law because of their traditional and cultural beliefs. Stereotypes indicate biases and discrimination against indigenous persons based on generalizations, which in turn demonstrate a lack of understanding of indigenous tradition and culture. Discrimination against indigenous peoples is expressly prohibited under Article 2 of the United Nations Declaration on the Rights of Indigenous People which states that “Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.” The Cambodian Constitution also prohibits discrimination.

Traditional methods of dispute resolution

Local authorities said they sometimes used traditional methods of dispute resolution. They advised the perpetrator to stop committing gender based violence because it is not a good example for the next generation and advised the parties to attend awareness-raising meetings. One local authority said he fined the perpetrators and sent some of them to the police post to settle the case. Others explained that they try to resolve minor cases at the community level, by sacrificing a pig or chicken. If the case cannot be solved at the community level, it is sent to the police post, higher authorities and the provincial court. One explained that a case was solved following traditional

⁸¹ Interview with the Anti-Trafficking and Juvenile Team of the Ratanakiri Provincial Police Commission, 25 August 2020, Banlung, Ratanakiri.

⁸² See CEDAW General Recommendation No. 35 on Gender-Based Violence against Women, CEDAW/C/GC/35, para. 10(b).

methods (recalling the soul through a traditional ceremony) with the victim's agreement when the parties had limited money. It should be noted that a guideline on the limited use of mediation as a response to violence against women is being developed by the Ministry of Women's Affairs with technical assistance from UN Women, Australian Aid and Women's Peace Makers. The draft version which obtained by the research team indicated that there are only cases of petty crime and civil disputes allowed for mediation, and cases involved physical violence shall be resolved in the court of law.⁸³

Elders were asked to describe how the traditional resolution process is conducted in specific cases. The elders described that it is process that involves both parties, which involves negotiation or mediation, and compensation for the 'wrong' through a small fine (either in cash or in-kind) and/or a spiritual ceremony that could include the sacrifice of an animal (chicken or pig) and an offering of wine.

When both parties are indigenous, the usual way of resolving a case in the traditional manner involves negotiating between the parties to reach an agreement on the type and amount of compensation. This is not always easy, as it can take time, can be difficult to coordinate, can be difficult to reach an agreement on the compensation, and sometimes the perpetrator is unable to pay. One elder noted that these types of resolutions are usually not documented, but the perpetrators "promised that no such case happens again in the future." Compensation usually includes a pig, rice wine, money for the survivor and her family and a religious ceremony where the community prays for a better situation.

In cases where the perpetrators are not from the same community, elders said they usually involve the local authorities as mediators, or file complaints with the local authorities, because they do not always know the identity of the perpetrator, and do not know how to find them. One elder noted that it was difficult to use different languages in the traditional resolution process. Another said that these cases are challenging because the perpetrators do not agree to come and solve the problem.

Two elders from Ratanakiri said that domestic violence cases were usually resolved by traditional means, though another elder noted that they could not "interfere" in some domestic violence cases, as it was the "internal affair" of the

⁸³ The Ministry of Women's Affairs. The 5th Draft Version of The Guideline on the Limited Use of Mediation as a Response to Violence against Women, 2020.

couple. One elder said that all cases were resolved through the formal legal process. One other elder said he had no information.

When asked how involved survivors are in the traditional process, one elder said he had no information, as the cases were not resolved according to traditional means. Two elders said that the survivor had filed complaints with the local authorities, so no traditional processes were involved.

Of the remaining four elders who said that the cases had been resolved through traditional methods, two said that the survivors were involved in the process. One elder said that in a domestic violence case the elder coordinated with the couple, and provided traditional education. The survivor then agreed to receive financial compensation. Another elder said that the survivor attended the ceremony in the village (sacrifice of a buffalo to pray for a better situation for the community) and that additional support had been provided to the survivor from NGOs.

Two other elders said that it was the families of the victim/survivor who were involved in the case. In one case the perpetrator paid USD 2,000.

Another elder said they would impose a traditional prohibition and tell the parties not to be friendly with each other. An elder from O Yadav district said they could still get the non-indigenous perpetrator to pay compensation, but would also send the case to the local authorities. A third elder said that they would have to conduct a ceremony, and the non-indigenous perpetrator would have to provide a pig or chicken and some money for the ceremony.

Elders were asked if survivors or their families could use both the traditional and legal processes to resolve a case. One elder said he did not know about this. Two elders said that when the survivor was not satisfied with the result of the traditional resolution process, or if the parties could not agree on the compensation to be paid, the survivor then went to court.

The others indicated that the survivor or their family is permitted to use Khmer legal procedures, in some cases, had used those rather than traditional processes. In some cases, the legal procedures had not been used because the perpetrator had not yet been found. A Tampuon elder said that gender-based violence cases could not be resolved in the traditional manner and had to be sent to the local authorities.

As noted previously, the clash between traditional resolution measures and the individual rights of women needs to be addressed. A survivor-centered approach is generally incompatible with the community-centered approach of traditional resolution. Awareness-raising on women's rights and gender sensitivity, in particular addressing discriminatory social norms is necessary. Efforts to address this imbalance should be led by indigenous communities themselves, including by CIWA, who are in a unique position as indigenous women from the community and advocates for women's rights and can approach women's rights and legal aid organizations for support.

4.7. Accessibility and responsiveness of support mechanisms to protect survivors

Medical services including psycho-social counseling

Two local authorities said they had ensured the victim/survivor received medical treatment or a forensic examination, in a case where the victim had died.

Three survivors stated that they had not received any medical treatment or examination after the incident. One survivor explained that because it was attempted rape, she was not examined. This indicates that there is a lack of understanding on the part of the authorities and the survivor of the investigation process. Three other survivors did not answer this question. The remaining four survivors said they had been taken to the hospital to receive treatment and had been provided copies of the medical reports as well.

Five of the survivors said they had not received any assistance, such as counseling, medical assistance, material assistance, shelter or education. One survivor did not respond to this question. One survivor had received one year of mental treatment provided by an NGO and another said they had received psychological support.

Nine relatives of the victim/survivor said either a medical or a forensic examination had taken place, with one relative explaining it was through the help of an NGO that this examination occurred. Two of these nine said they had not received copies of the findings, and one explained that the information had been submitted directly to the court and the police. Three relatives said no medical or forensic examination had been done and three did not answer the question. One relative explained that no examination had been made because it was a case of sexual harassment where the perpetrator had taken photographs but had not touched the survivor.

In terms of health services for the survivor, the police said they have the responsibility to help the victim go to the hospital, and make health service referrals, but they do not have the budget to support survivors. They collaborate with the six hospitals in Ratanakiri to support rape survivors, both underage and adults. The physical examination is free, and if there are injuries, the hospitals offer treatment services. The police coordinate with NGOs to help survivors obtain medical assistance.⁸⁴ The Provincial Department of Women's Affairs said that when cases are reported to them, they help the survivors access medical services.⁸⁵

The police said that the hospitals in Ratanakiri provided counseling support, and mentioned that the Department of Social Affairs had a counseling project mainly for children. They also coordinated with NGOs, who came to the province to meet the survivors and take them for treatment and assistance.⁸⁶

A staff member of the Department of Women's Affairs said that she tried to counsel survivors, but has had no formal training or background in this field. The Department has no specialized counselors, so she goes and supports the survivors, talks with the family and survivors, offering them to move on and forget what happened. She gave an example of a seven-year-old girl who was raped by her neighbor. The girl was traumatized and hated her parents for failing to protect her, and did not want to live with them anymore. She moved in with her grandparents. This case required a lot of consultation, as the child did not want to communicate. She said the parents still have obligations toward the child. The staff member of the Department of Women's Affairs acknowledged the need for support for capacity building in terms of counseling skills and techniques. At the moment CARE only works in three of the eight districts and the Department of Women's Affairs would like PLAN to expand its target sites to six districts.⁸⁷

PLAN has been very active in Ratanakiri province, on issues involved child marriage and gender-based violence. It provides services and support like medical assistance and psychological counseling. It is also setting up community social workers with the help of Social Services of Cambodia, who will also provide counseling. It has set up special health services for children so they can

⁸⁴ Interview with the Anti-Trafficking and Juvenile Team of the Ratanakiri Provincial Police Commission, 25 August 2020, Banlung, Ratanakiri.

⁸⁵ Interview with representatives of the Ratanakiri Department of Women's Affairs, 25 August 2020, Banlung, Ratanakiri.

⁸⁶ Interview with the Anti-Trafficking and Juvenile Team of the Ratanakiri Provincial Police Commission, 25 August 2020, Banlung, Ratanakiri.

⁸⁷ Interview with representatives of the Ratanakiri Department of Women's Affairs, 25 August 2020, Banlung, Ratanakiri.

talk with health providers privately about particular health issues (e.g. sexually transmitted infections).⁸⁸

While local authorities, some survivors and their families reported that they were able to access medical assistance after the rape, not every survivor received medical assistance. A few survivors said that when they had gone through medical examinations, they had not been given copies of the medical reports, instead, these documents were given directly to the authorities or law enforcement. Also, psycho-social counseling is not perceived to be widely available. There is reliance by authorities on civil society. Some survivors and their families noted that they had not received any counseling or assistance with trauma. Staff from the Provincial Department of Women's Affairs said that they provided counseling themselves, even without having formal training in psychology and dealing with trauma.

Improved medical and psychosocial services are essential to comply with CEDAW recommendations, the International Covenant on Economic, Social and Cultural Rights, and with Article 24(2) of the United Nations Declaration on the Rights of Indigenous Persons, which states that "Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right."⁸⁹

Financial and material support

A few survivors reported receiving assistance, such as motivational support from the community, mats, blankets, mosquito nets, clothes, food items and a small amount of money.

The grandfather of one of the survivors said no assistance was received and the male relative of another survivor said no institution assisted them. He added that assistance was required for the education and technical training of the survivor. The mother of one survivor did not answer the question.

The other relatives said the survivors had received assistance from NGOs, individual donors and the community. The NGOs provided food, small items (such as mats, groceries and toys) as well as small amounts of money. Individual donors contributed money in varying amounts. Lastly, the community provided some motivational support. Relatives noted that the support was welcomed, but

⁸⁸ Interview with the management of PLAN International Cambodia, 13 October 2020, Phnom Penh, Cambodia.

⁸⁹ See CEDAW General Recommendation No. 35 on Gender-Based Violence against Women, CEDAW/C/GC/35, para. 46.

more was needed, as in one case, the family of the child survivor had no money to send her to school. In another case, the survivor became pregnant as a result of the rape and needed financial and social support.

In the absence of support from the State, NGOs have taken on the responsibility to assist survivors. The provincial police, provincial Department of Women's Affairs, local authorities, survivors and their families have said that NGOs have provided both humanitarian assistance and counseling to survivors. Many government authorities (national, provincial and local) work with NGOs to provide support to survivors.

The police reported difficulty collaborating with NGOs and the Department of Social Affairs on material assistance. The police work more on legal proceedings, while the Department of Women's Affairs provides skills training to survivors to help them earn money. The police added that even if their team identifies opportunities for the survivor to move away from the community and receive training (for skills and livelihood), the survivor's parents do not always allow this.⁹⁰

Support provided to survivors seems to be mostly immediate support like food, a small amount of money and skills training. Support should consider the long-term needs of survivors, such as psychological counseling. Provincial authorities and NGOs noted that women are generally financially dependent on their husbands, and therefore hesitate to file complaints for fear that their family will lose income. The need for additional income through additional labor has been identified as a reason for child marriages. More livelihood support for women is needed to help them obtain financial security and not have to rely on the persons who may be abusing them. However, a better understanding of indigenous culture and family dynamics within the culture is necessary to design appropriate and acceptable long-term support, particularly skills and livelihood training.

4.8. Efforts for prevention and elements which hinder prevention

Many of the efforts to prevent gender-based violence contain discriminatory gender stereotypes and seem to put the responsibility for rapes on the victims/survivors, rather than the perpetrators. Instead of holding perpetrators accountable for their criminal acts, or demanding more effective law

⁹⁰ Interview with the Anti-Trafficking and Juvenile Team of the Ratanakiri Provincial Police Commission, 25 August 2020, Banlung, Ratanakiri.

enforcement, many have resorted to using a protectionist approach to deal with the situation. This is an act of indirect discrimination against women and girls as it places restrictions on women and girls' autonomy and mobility and places the responsibility on women to avoid rape and other forms of gender-based violence, which only serves to perpetuate the victim-blaming culture in the community. Given Cambodia's highly patriarchal society and culturally ingrained social norms on women's roles as evidenced by the Chbap Srey, it may be difficult for all actors to understand the adverse effects of the intersection between culture and discriminatory social norms and behaviors that favor men, with the patriarchal view of women as having a subordinate status to men. Poverty may also lead to power imbalances that can lead to violence against women and girls. To effectively prevent and respond to gender-based violence, it is crucial for all actors to understand the structural root causes and the importance of transforming discriminatory social norms and stereotypes.

Twelve of the local authorities provided suggestions that involved awareness-raising/education of communities. Some authorities said the training should be provided by the Provincial Department of Women's Affairs and the police or NGOs. The awareness-raising should be about: laws against gender-based violence, sex trafficking, domestic violence and the use of drugs and alcohol. One local authority said that people should be educated not to behave like the perpetrators. Five authorities suggested that women should be told to only travel at certain times, inform their families when they go out, and not to travel alone. Two authorities said women should be warned not to trust strangers. Four authorities said that villagers have to report gender-based violence to the local authorities, and two added that villagers should cooperate with authorities. Other suggestions were: women should be involved in commune meetings, perpetrators should be arrested, indigenous people should mobilize themselves to have more solidarity and help each other, a youth group should be created, proper counseling should be given to survivors and Buddhist rules on rape should be followed.⁹¹ Only one local authority did not answer this question.

⁹¹ The five Buddhist precepts which have equal value and importance are:

1. Refraining from harming living beings/practicing loving-kindness
2. Refraining from taking the non-given/practicing generosity
3. Refraining from committing sexual misconduct/practicing contentment
4. Refraining from false speech/practicing truthful communication and
5. Refraining from intoxicants/practicing mindfulness

It should be noted that most indigenous communities practice their own religion and not Buddhism.

See also Klahaan, "Water & Oil? A Study of Feminism and Buddhism in Cambodia", December 2020, p. 37.

The most common suggestion given by survivors on how to prevent gender-based violence involved modifications of women's behaviour, such as not walking alone on quiet streets, to be cautious and not trust men, including boyfriends or stepfathers, and making sure their doors could be locked. Elders and authorities must educate women and youths about these crimes and self-defense and protection; elders should encourage girls to listen to their parents. Villagers should protect their children and not let them travel far away. Three survivors did not have any suggestions. Four survivors had no advice to share with other survivors of gender-based violence. Two survivors said that women should not walk alone or on quiet streets. Three survivors said not to trust strangers or people in general. Other survivors encouraged all survivors to be strong, forget the past, to only think about good things and continue learning to avoid people from teasing them in the future.

Survivors' families provided advice for other survivors and their families. These included behavioural advice, such as not trusting people, knowing how to protect themselves and teaching children not to go out alone, as well as encouragement such as being strong, not be shy or sad, and to continue learning. Four relatives did not provide an answer.

Article 22(2) of the UN Declaration on the Rights of Indigenous Peoples says that States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and protection and guarantees against all forms of violence and discrimination. To a certain extent, in Ratanakiri this provision has been complied with. For example, the provincial police in Ratanakiri said that provincial leadership is paying attention to awareness-raising of legal knowledge, especially among indigenous communities, that rape is a crime and should be prosecuted.⁹²

Representatives from the Anti-Trafficking and Juvenile Team of the Ratanakiri Provincial Police Commission said that beginning in 2019, the police had increased their presence at the villages. In the past, the geographical distance made it difficult for police to work on gender-based violence. They were not able to get information, as the indigenous communities live in areas that are far and remote, and could not report cases. Now, however, the police at the village level can receive information and look into these cases. Previously, when rape occurred, indigenous communities used traditional resolution methods, forced marriage, and compensation to address the crimes. Now indigenous

⁹² Interview with the Anti-Trafficking and Juvenile Team of the Ratanakiri Provincial Police Commission, 25 August 2020, Banlung, Ratanakiri.

communities have begun reporting these cases to the authorities and the survivors are receiving assistance.⁹³

The current hotline for people to report cases of gender-based violence currently has two levels, provincial and district, headed by the district police chief. More people using the hotline compared to the previous system of having an anonymous complaint box. The Anti-Trafficking and Juvenile Team has four groups standing by on rotation to manage the hotline. There are two deputy district police officers ready to intervene immediately after a call is received.⁹⁴ While the existence of a hotline is encouraging, one local NGO noted that the hotline does not take into account indigenous languages and needs to be more accessible and acceptable to indigenous communities.

The Provincial Department of Women's Affairs staff said that a Provincial Gender Network had been established in Ratanakiri, in which relevant departments and NGOs meet three times a year to discuss gender issues. At this meeting, they share information about their work and discuss possible areas of collaboration. Department staff noted that while they were aware of the training on rape conducted by the police for indigenous communities, they were not involved in it as co-trainers or facilitators. They also noted that there would always be different figures for cases of gender-based violence, saying that while the police rely on people filing reports, their department worked directly with communities, and have information from them.⁹⁵

In Ratanakiri, coordination between government agencies responsible for addressing gender-based violence needs improvement. One government institution mentioned difficulties in collaborating with another institution and NGOs to obtain material assistance for survivors. Training on gender-based violence for indigenous communities is conducted only by police, without the involvement of the Department of Women's Affairs. Last, there is no single channel that gathers data on gender-based violence, which leads to different statistics on cases from different agencies.

Police have all received some form of training on gender, but are still looking for partners to support the provision of more mainstreamed training. There are 50 police stations in Ratanakiri, and all have had some training on child protection,

⁹³ Ibid.

⁹⁴ Ibid.

⁹⁵ Interview with representatives of the Ratanakiri Department of Women's Affairs, 25 August 2020, Banlung, Ratanakiri.

gender, domestic violence and rape. Mainstreaming gender in all aspects of policing is the vision of the provincial commissariat.⁹⁶

PLAN is trying to work with communities to map where the greatest risks are so that the community can develop mitigation activities to minimize these hazards. There are child representatives in each village, pre-school teachers and parent groups who have received training from PLAN. In Ratanakiri, PLAN is strengthening the Child Protection Network, which is community based, as well as the Children's Clubs. They stress the importance of reporting cases to authorities for them to take action. PLAN also provides shelter if the child does not want to go back to their home and skills/livelihood training. They put up posters and billboards at the district and provincial levels about reporting abusers and sending them to jail. They stress that child rape cannot be subject to compensation or resolved outside the formal court system.⁹⁷

5. Conclusions and Recommendations

These conclusions are made on the basis of interviews with 54 stakeholders and 23 cases of gender-based violence in three provinces in Cambodia.

5.1. Conclusions

5.1.1. Trends and situation of gender-based violence against indigenous women

While it has not been possible to confirm a trend and pattern of gender based violence against indigenous women for lack of consistent, comprehensive and disaggregated data on gender based violence, there is an apparent increase in cases of gender-based violence against indigenous women compared to the period before 2015 based on qualitative information collected. Domestic violence is common, with local authorities reporting multiple cases in their villages. Cases of rape, including incest rape, attempted rape, rape and murder and sexual harassment are being reported to local authorities by survivors and their families. No clear figures exist on the number of cases, as different government institutions have their sources of information, and data has not been compiled, disaggregated by ethnicity, or kept in one place. There is also an apparent lack of knowledge, skills and resources to document these cases.

⁹⁶ Interview with the Anti-Trafficking and Juvenile Team of the Ratanakiri Provincial Police Commission, 25 August 2020, Banlung, Ratanakiri.

⁹⁷ Interview with the management of PLAN International Cambodia, 13 October 2020, Phnom Penh, Cambodia.

The information initially provided by CIWA, other indigenous and non-indigenous NGOs that work with indigenous communities was that perpetrators of gender-based violence were mainly “outsiders”, or non-indigenous persons who were not part of the community. However, from the interviews conducted for this study, it appears that many perpetrators are indigenous men from the same community, some of whom are related to the survivor. Only a few perpetrators were non-indigenous.

Child marriages continue to be a concern, as Ratanakiri and Mondulkiri provinces have the highest incidences of child marriage in Cambodia. Action is being taken on this issue by the Ministry of Women’s Affairs, working with national and international NGOs.

None of the provincial authorities interviewed had data on gender-based violence disaggregated by indigenous and non-indigenous. Considering that Ratanakiri province has a relatively large indigenous population, the data should be disaggregated to allow for the development of more effective and tailored ways of assisting indigenous communities to address gender based-violence, thereby applying a human rights-based approach to data.⁹⁸ This also applies to other provinces with indigenous populations. As indigenous people in Cambodia form only a small percentage of the total population, the situation of indigenous women is even more likely to be overlooked, if no specific data covers them.

5.1.2. Wrongful gender-stereotyping on the root causes of gender-based violence against indigenous women

The interviews conducted with all respondents cited similar perception of root causes, including the perpetrators’ use of drugs and/or alcohol as one of the main factors. Other factors perceived and cited were unemployment, poor livelihood, lack of education, new immigrants, jealousy, force, lack of participation in educational meetings, perpetrators not listening to the authorities and the perpetrators’ uncontrolled sexual desire. These factors put the blame on the perpetrators. However, other identified factors seem to blame the victims. These include women going out alone, making friends with strangers or ‘bad people’, fighting back against the perpetrator, wearing revealing clothes, walking long distances on quiet roads and that indigenous women are emotional and generous. Many of these perceptions indicate persistent and discriminatory gender and racial stereotypes held by all parties.

⁹⁸ See OHCHR, A Human Rights Based Approach to Data - Leaving No One Behind in the 2030 Agenda for Sustainable Development available at <https://www.ohchr.org/EN/Issues/Indicators/Pages/documents.aspx>.

Poverty is one of the root causes of gender-based violence in Cambodia and contributes to its continued existence. Women usually do not use legal procedures or report gender-based violence, mostly because of their economic dependency on men. It is the man who usually brings in the money, and if he is jailed, the family loses its income. This also happens within indigenous communities, where most community members are laborers who work on farms and plantations. If the husband is arrested, the household loses a laborer and income.

The perceptions presented by many of the stakeholders interviewed indicate that there is still a lack of understanding of the true root causes of sexual violence, particularly rape, and the persistence of discriminatory gender and racial stereotypes held by all parties. Factors that increase the risk of violence, such as drugs and alcohol, are instead identified as the cause. Unequal power relations between men and women in the public and domestic spheres, which are perpetuated by discriminatory social norms, poverty, and a dysfunctional and sexist rule of law are the root causes of gender-based violence, including sexual violence. This has created a double standard about men and women's behaviors and their ability to make decisions, particularly those relating to their self-determination, freedom of movement and sexual and reproductive health and rights. Until all stakeholders have a fair and clear understanding of this, it will be difficult to effectively prevent and respond to gender-based violence.

Some local authorities seemed to understand that perpetrators also need to be held accountable, and people should be educated not to commit these acts. The awareness-raising they conducted was intended for women and men in the communities, so they would be more aware of the laws prohibiting and penalizing these offenses.

5.1.3. Stigma and marginalization of the survivors of gender-based violence

It is disconcerting that the Ratanakiri Provincial Police believe there is no discrimination against survivors. It calls into question reintegration plans they should help design if differences in treatment are not perceived as such. Some authorities and survivors' families seemed to view "pity" as a positive reaction, without understanding that, even if it is not bullying or blaming the victim, pity is a form of discrimination, as it indicates that the community views the survivor differently after she has been raped or abused.

Survivors of gender-based violence often face discrimination from others in the community; they face pity, blame and insults, and are not protected from the

perpetrator's relatives. Their families and local authorities note that after the incident, survivors behave differently, become shy, quiet and feel ashamed. The feelings of the survivor, and the way that communities view them after the incident demonstrate stigma. Many of these indigenous communities have relatively small populations, where everyone knows each other. Given their small sizes, the stigma caused by gender-based violence seems to have greater effects, particularly when the perpetrator's family is part of the same community. As noted by the Committee on the Elimination of Discrimination against Women in its 2019 concluding observations, social and cultural stigma is a barrier to access to justice as it prevents women and girls from filing complaints related to gender-based violence. The statements made in the interviews also suggest that stigma also has negative effects on survivors' mental health and hinders their education and social life.

5.1.4. Applicable laws and gaps

There are certain gaps in the legal and policy framework designed to address gender-based violence. The definition of sexual harassment under Cambodian law is quite narrow and seems to apply only to workplace situations. The 2005 Domestic Violence Law does not have a complete definition of domestic violence, as it omits particular acts and threats of physical, mental, emotional, financial or sexual harm, and does not include stalking. It also has a limited definition of who could be affected by domestic violence, omitting partners and family members not sharing a household, as well as violence directed at LGBTI persons, children and others. It allows for the "discipline" of spouses and children. There is also a need for legislation containing specific provisions related to indigenous women, as no such laws exist.

As recommended by the Committee on the Elimination of Discrimination against Women in its 2019 concluding observations, the Government should review the law on domestic violence, and amend its provisions to "define, prohibit and criminalize all forms of gender-based violence, including domestic violence and marital rape, to facilitate the process of obtaining protection orders and to ensure that victims/survivors of domestic violence have access to effective remedies and that perpetrators are held accountable[.]"⁹⁹

The Committee on the Elimination of Discrimination against Women noted that "there are no provisions in the Constitution that define direct and indirect discrimination against women, and that the Penal Code prohibits only certain

⁹⁹ CEDAW, Concluding observations on the sixth periodic report of Cambodia, 12 November 2019, CEDAW/C/KHM/CO/6, para. 25(b)

forms of direct discrimination, such as denial of access to goods, services or employment. The Committee also noted that recently amended laws have not effectively addressed inequalities between men and women, and regrets the lack of gender impact assessment when adopting or revising legislation.”¹⁰⁰

5.1.5. Access to justice by the survivors

There appears to be a lack of follow-up and effective response from higher authorities to the local authorities who refer cases to them. The fact that some cases are settled at the commune or district police posts is also worrisome. The judicial police are mandated to forward cases to court, and should not be resolving cases on their own. This limits the victims/survivors’ and/or their families access to justice.

The failure to arrest perpetrators demonstrates weaknesses in the investigation process of the judicial police and of local authorities who are unable to identify perpetrators and do not seem to make any efforts to find them once they have left the area. There is a lack of coordination between commune police posts and provincial police in sharing information about perpetrators and requesting their arrests. The coordination between judicial police and the provincial court, in particular the prosecutor’s office, should be improved.

There is also a lack of support for survivors and victims/survivors’ families who are not able to pursue the filing of a criminal case and go to court without external assistance, both financial and legal. There also seems to be a lack of coordination between survivors and the court, as survivors, their families and some local authorities have noted that they do not know at what stage pending court cases are, and some have complained about the apparent lack of progress in the case. These are some of the barriers to access to justice identified by the Committee on the Elimination of Discrimination against Women, who noted the “limited access to information on the mechanisms and procedures for seeking remedies for violations of the rights of women and girls, especially in rural areas.” To remove this barrier to access to justice, the Committee on the Elimination of Discrimination against Women recommended the Government to “[d]isseminate information on the available mechanisms and procedures.”¹⁰¹

In some cases, there is a conflict between the rights of the survivor and the cultural rights of indigenous persons in general, as illustrated by the cases that

¹⁰⁰ Ibid, para. 8.

¹⁰¹ CEDAW, Concluding observations on the sixth periodic report of Cambodia, 12 November 2019, CEDAW/C/KHM/CO/6, paras. 10(b) and 11(c).

are resolved by traditional means, where perpetrators pay compensation to end the case, without facing legal consequences for their actions. Traditional resolution measures do not use a survivor-centered approach, and instead focus on what is believed to be good for the community. Perpetrators may remain in the village where the victims reside. In addition, there are times when traditional resolution measures can infringe on the rights of the survivor, and further harm her. An example of this is asking the survivor to leave the village so that the entire community will not face bad luck caused by the serious harm done to the survivor.

Some court officials mentioned racial stereotypes, implying that indigenous peoples are naïve, uneducated and unwilling to follow the law because of their traditional and cultural beliefs. Stereotypes indicate biases and discrimination against indigenous persons based on generalizations, which in turn demonstrate a lack of understanding of indigenous tradition and culture. The Cambodian Constitution and Article 2 of the United Nations Declaration on the Rights of Indigenous Persons expressly prohibit discrimination against indigenous peoples. While the intention of non-indigenous authorities may not be malicious, additional understanding of the culture and traditions of indigenous communities would help them to better assist these communities. Doing so would comply with Article 15(2) of the United Nations Declaration on the Rights of Indigenous Persons on the responsibility of states to combat prejudice, eliminate discrimination and promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

5.1.6. Accessibility and responsiveness of support to and protection of the survivors

Medical examinations and psychosocial counseling are not consistently provided, and survivors or their families do not always receive the results of their examinations. NGOs often take the lead in providing psychosocial support. Staff from the Ratanakiri Provincial Department of Women's Affairs stated that they provided counseling, even without having formal training in psychology and dealing with trauma.

Improved medical and psychosocial services are essential to comply with the Committee on the Elimination of Discrimination against Women's recommendations and with Article 24(2) of the United Nations Declaration on the Rights of Indigenous Persons which states that 'Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical

and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.”

Support provided to survivors seems to be mostly immediate support like food, small amounts of money and some skills training. Support does not seem to consider the long-term needs of survivors, such as psychological counseling. Provincial authorities and NGOs noted that women are generally financially dependent on their husbands, and therefore hesitate to file complaints for fear that their family will lose income. The need for additional income through additional labor has also been identified as a reason for child marriages. More livelihood support for women is needed to help them obtain financial security and not have to rely on the persons who may be abusing them. However, a better understanding of indigenous culture and family dynamics within the culture is necessary to design appropriate and acceptable long-term support, particularly skills and livelihood training.

It is encouraging that the police have added police posts in villages so that it is easier for survivors or their families to report cases of gender-based violence. It is also encouraging that police have requested more training for themselves, so that they can better understand gender concepts, and further assist communities.

Many of the suggestions to prevent gender-based violence contain discriminatory gender stereotypes and seem to put the responsibility for rape on the victims/survivors, rather than the perpetrators. Instead of holding perpetrators accountable for their criminal acts, or demanding for more effective law enforcement, many have resorted to a protectionist approach, based on discriminatory gender stereotypes. This is an act of indirect discrimination against women and girls as it places restrictions on women and girls’ autonomy and mobility and places the responsibility on women to avoid rape and other forms of gender-based violence, which only serves to perpetuate the victim-blaming culture in the community. Given Cambodia’s highly patriarchal society and culturally ingrained social norms on women’s roles in society, as evidenced by the Chbap Srey, it may be difficult to explain the adverse effects of the intersection between culture, discriminatory social norms and behaviors that favor men. Poverty may also lead to power imbalances that can lead to violence against women and girls. However, until this is understood by all the actors, it will be difficult to effectively prevent and respond to gender-based violence.

The increased use of the hotline for people to report cases of gender-based violence is encouraging, but it needs to be more acceptable and accessible to indigenous communities, such as by including indigenous languages.

Coordination between government agencies responsible for addressing gender-based violence needs improvement. In Ratanakiri, one government institution mentioned difficulties in collaborating with another institution and NGOs when it came to obtaining material assistance for survivors. Training on gender-based violence for indigenous communities is conducted only by police, without the involvement of the Department of Women's Affairs. Lastly, there is no single channel that gathers data on gender-based violence, which leads to different statistics on cases from different agencies.

5.2. Recommendations

5.2.1. Actions necessary to address root causes/ prevent gender-based violence

Recommendations for the Royal Government of Cambodia

1. Conduct further studies on the incidences of gender-based violence against indigenous women, with a focus on reasons for the apparent increase in cases, and why many of the cases involve members of the same household.
2. Provincial and local authorities, including judicial police officers, the judiciary and indigenous communities require a deeper understanding and training on the root causes of gender-based violence. The Royal Government of Cambodia should work with women's rights organizations, human rights organizations, organizations of indigenous peoples, and relevant members of the UN Country Team to:
 - a. Design a Training Needs Assessment for all potential participants to determine levels of understanding of the issues.
 - b. Design basic modules on:
 - i. The legal framework and protection mechanisms relevant to gender-based violence;
 - ii. Recognising existing unequal gender relations and how to address them;
 - iii. Identifying and addressing discriminatory social norms and gender- stereotyping;
 - iv. Identifying and addressing other factors that facilitate

gender-based violence, including structural causes such as poverty, lack of access to education, lack of enjoyment of sexual and reproductive health and rights and racial discrimination, among others; and

- v. Eliminating judicial gender stereotyping.
- c. Conduct training of trainers who can go to remote communes to provide training;
- d. Ensure that training is not heavily reliant on written materials and lectures. An interactive and participatory teaching approach is essential.
- e. Ensure that training for communities is conducted in relevant indigenous languages.
- f. Provide additional training on sexual and reproductive health and rights and bodily autonomy.
- g. Regularly monitor the effectiveness of training.

Once these concepts are fully understood, it will be easier for the Royal Government of Cambodia, at all levels, to design appropriate interventions to prevent and address gender-based violence. It will also be easier to obtain the support of indigenous communities for these interventions.

3. The Royal Government of Cambodia should support the provision of awareness-raising on these issues by non-governmental and community-based organizations, including organizations of indigenous women, and should cooperate with them to ensure that training is widespread, particularly in geographic areas that the Government does not cover due to resource constraints.
4. The Royal Government of Cambodia should comprehensively and consistently collect data on gender-based violence nationwide across government agencies and ministries and disaggregate data by sex and ethnicity, particularly in provinces with indigenous communities, and create a plan to achieve complete disaggregation of data within five years. Collection, management and use of data on gender-based violence should apply a human rights-based approach, adhering to the principles of participation, data disaggregation, self-identification, transparency, privacy and accountability.
5. The Royal Government of Cambodia should continue its work on the prevention of child marriages, including its cooperation with local and international organizations on this issue, and ensure more consistent application of the legal provisions in this regard.

6. The Royal Government of Cambodia should amend the legal framework in accordance with the Committee on the Elimination of Discrimination against Women's recommendations. This includes:
 - a) Introducing laws on discrimination against women.
 - b) Expanding the definition of sexual harassment in the Criminal Code to include harassment that occurs outside the workplace, and that harassment by junior staff or peers at the workplace are included.
 - c) Amend the Law on Domestic Violence "to define, prohibit and criminalize all forms of gender-based violence, including domestic violence and marital rape, to facilitate the process of obtaining protection orders and to ensure that victims/survivors of domestic violence have access to effective remedies and that perpetrators are held accountable[.]"¹⁰²
7. The Royal Government of Cambodia should take measures to ensure that the legal framework is adequately applied in all cases of gender-based violence, in line with international human rights norms and standards, to ensure accountability for perpetrators.
8. The Royal Government of Cambodia should facilitate for a better understanding of the culture and traditions of indigenous communities among non-indigenous authorities which it would help them better assist indigenous communities.

Recommendations for Development Partners and the International Community

1. Conduct or support civil society organizations to conduct further studies into gender-based violence against indigenous women, with a focus on the reasons behind the apparent increase in cases, and the involvement of members of the same household in many cases.
2. Support the Royal Government of Cambodia in designing comprehensive training programmes and awareness-raising initiatives to address the root causes of gender-based violence.
3. Support the Royal Government of Cambodia to comprehensively and consistently collect data on gender-based violence, particularly in provinces with indigenous communities, and disaggregate data by sex and ethnicity and create a plan to achieve collection and complete disaggregation of data within five years.
4. Support the Royal Government of Cambodia to prevent child marriages.
5. Support the Royal Government of Cambodia to amend the legal

¹⁰² CEDAW, Concluding observations on the sixth periodic report of Cambodia, 12 November 2019, CEDAW/C/KHM/CO/6, para. 25(b).

framework relevant to gender-based violence to ensure compliance with its international human rights obligations.

5.2.2. Actions necessary to strengthen responses to gender-based violence against indigenous women

Recommendations for the Royal Government of Cambodia

1. The Committee on the Elimination of Discrimination against Women in its 2019 concluding observations, provided recommendations on actions to be taken by the Royal Government of Cambodia. The recommendations address different aspects of women's rights. The recommendations on access to justice and gender-based violence include to:
 - a. "Develop a comprehensive legal aid scheme with sustainable, long-term funding from the national budget and [...] ensure effective access to courts and tribunals by all women, particularly rural women, indigenous women, women belonging to ethnic minority groups and women with disabilities;
 - b. Eliminate the stigmatization of women and girls who submit complaints about violations of their rights by raising awareness among the general public on human rights;
 - c. Disseminate information on the mechanisms and procedures to seek remedies for violations of the rights of women and girls, particularly in rural areas;
 - d. Strengthen the gender responsiveness and gender sensitivity of the justice system, including by increasing the number of women in the judiciary and providing systematic capacity-building to judges, prosecutors, police officers and other law enforcement officials on the Convention on the Elimination of all Forms of Discrimination against Women, as well as on the Committee's concluding observations, its jurisprudence under the Optional Protocol and its general recommendations;
 - e. Take specific steps to strengthen the independence and impartiality of the judiciary and ensure that cases of gender-based discrimination and violence against women, including domestic violence and rape, are thoroughly investigated, perpetrators are prosecuted and adequately punished and victims are provided with remedies; and
 - f. Strengthen measures to combat corruption, including by adopting and implementing effective disciplinary measures to hold

government officials accountable, to restore women's trust in the justice system."¹⁰³

2. The Royal Government of Cambodia should make services for survivors of gender-based violence more accessible to victims/survivors, including indigenous survivors, taking into account the need to be sensitive of language barriers and indigenous culture including by:
 - a. Ensuring legal services, medical services, psychosocial counseling and others are available in locations closer to where survivors are located.
 - b. Progressively allocating financial and human resources to provide these services.
 - c. Ensuring that indigenous women can access these services in their indigenous languages.
 - d. Including the long-term needs of survivors, such as psychosocial counseling and livelihood support.
3. Take measures to ensure that the legal framework is adequately applied in all allegations and cases of gender-based violence, in line with international human rights norms and standards, to ensure accountability for perpetrators.
4. Further dialogue led by indigenous communities to adapt a victim-centered approach when using traditional dispute resolution mechanisms in cases of gender-based violence.
5. Design comprehensive training programmes and awareness-raising initiatives for local authorities to effectively respond to allegations and cases of gender-based violence, in line with the national and international legal framework.
6. The Royal Government of Cambodia should take steps to foster a greater understanding between indigenous communities and non-indigenous persons, to prevent prejudice and discrimination. This can be done through cultural exchanges, exposure trips or immersion programs.
7. The Royal Government of Cambodia should raise awareness on women's rights and gender sensitivity in indigenous communities, in particular addressing discriminatory social norms. These efforts should be led by indigenous communities.
8. The Royal Government of Cambodia should foment coordination between all authorities involved in addressing gender-based violence so that services can be more accessible to survivors, including indigenous survivors. Coordination between different commune, district and

¹⁰³ CEDAW, Concluding observations on the sixth periodic report of Cambodia, 12 November 2019, CEDAW/C/KHM/CO/6, para. 11.

provincial police posts should be improved, so that perpetrators who escape the jurisdiction of one police post may be arrested by other police posts and taken to court for prosecution. Coordination between local and provincial authorities should also be improved to facilitate access to information for survivors about pending court cases.

9. The police hotline should include indigenous languages to make it easier for indigenous women to report cases of gender-based violence.

Recommendations for Development Partners and the International Community

1. Continue to support the work of both international and domestic non-governmental organizations to address gender-based violence.
2. Support the work of indigenous organizations, who are in a unique position to push for change within indigenous communities.
3. Support organizations that provide psychosocial counseling to expand their services to indigenous women.
4. Support the Royal Government of Cambodia to:
 - a. Progressively allocate both financial and human resources to provide services for survivors of gender-based violence and make them more accessible.
 - b. Improve coordination between all authorities involved in addressing gender-based violence so that services can be more easily provided to survivors, and perpetrators are brought to justice.
 - c. Ensure that national and local authorities are more sensitive to the traditions and culture of indigenous communities and take steps to foster a greater understanding between indigenous communities and non-indigenous persons, to prevent prejudice and discrimination.
 - d. Include indigenous languages in the police hotline to make it easier for indigenous women to report cases of gender-based violence.