

ACHIEVING JUSTICE FOR THE SURVIVORS OF ACID VIOLENCE IN CAMBODIA

“Maybe if I had the whole money, the court would have followed up by law and keep her in prison.”¹

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1 Acid burn survivor DR. In this article acid burn survivors are identified by their initials to maintain their privacy and safety.

2 The author previously worked for the Cambodian Acid Survivors Charity and has relied heavily on experiences, data and research acquired and provided by that organisation. However, any opinions expressed in this article are solely those of the author and do not necessarily represent the views of the Cambodian Acid Survivor’s Charity.

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I. INTRODUCTION

On August 5, 2012, three months after their divorce, after repeated requests to take him back and threats to take away their children, 49-year old BS waited for his former wife, NS, to leave the home of a friend she was visiting. The moment NS came out, BS threw battery acid over her, causing severe burns to her face, neck, chest, back, shoulder and right eye. She will have to live with the scars of this attack for the rest of her life. BS was arrested the next day and held in pre-trial detention until the start of his trial. In January 2013, the Phnom Penh Municipal Court sentenced BS to five years imprisonment and the payment of a 10 million riel (\$2,500) fine to the State for using intentional violence with acid. The sentence imposed on BS is the maximum allowed for the crime he was charged with, “intentional violence” under article 20 of the Law on the Management of Strong Acid (the “Acid Law”).

Two years ago on January 11, 2012,³ the Acid Law entered into force. It was designed to justly cope with a recurring phenomenon that has had a disastrous effect on many lives in Cambodia: attacking people by throwing acid on them. Acid attacks are a pre-meditated form of violence that leaves victims physically, socially and emotionally scarred.⁴ Acid attacks usually don’t kill, but always lead to severe

3 The law was passed on November 4, 2011 and promulgated by King Norodom Sihamoni on December 21, 2011.

4 See generally Cambodian Acid Survivors Charity (“CASC”) website, at www.thecasc.org.

injuries and suffering from continuous physical pain, economic struggle, social isolation and depression.⁵

The BS prosecution can be described as remarkable for several reasons. First, the fact that the perpetrator was arrested was in itself quite exceptional. The time span of the entire process from attack until verdict took place was also relatively short. Finally, this was the first case of acid violence in which the suspect was charged and prosecuted under the new law.

In Cambodia, the survivors of acid violence usually don't see the prompt trial, sentencing, and imprisonment of their attacker. In most cases the suspect is never arrested, let alone convicted. Survivors are left with permanent physical and mental scars and no hope for justice and legal redress. A report published in 2010 by the Cambodian Acid Survivors Charity ("CASC"), in cooperation with the Cambodian Center for Human Rights ("CCHR"), highlights four major problems contributing to the prevalence of acid violence in Cambodia: access to acid, impunity for perpetrators, lack of post-emergency services and public perception.⁶ This article will explain all four issues, but will focus primarily on the "culture of impunity" surrounding acid violence in Cambodia. Data from CASC indicates that perpetrators are rarely brought to justice. Of the 41 legal cases CASC has been involved in during the last three years, only 11 have reached a final court verdict.⁷ Reasons can be found at all levels of the criminal justice process why perpetrators are not held accountable. As a consequence, survivors of acid violence are unlikely to have their attackers prosecuted and to obtain redress in the Cambodian courts. The quest for justice is difficult, sometimes even impossible.

This article focuses on the challenges acid-burn survivors face when trying to find justice. It looks into the phenomenon of acid violence, including its causes and possible consequences. Furthermore, it examines the current state of the legal system in Cambodia and its effect on acid-attack survivors' search for justice. Specific attention is given to the new Acid Law, an Acid Sub-decree⁸ that entered into force at the end of January 2013, and their impact to date.

5 See J. Welsh, *It Was Like Burning in Hell: A Comparative Exploration of Acid Attack Violence*, 32 CAROLINA PAPERS ON INT'L HEALTH, UNC GLOBAL 3 (Fall 2009), available at http://cgi.unc.edu/uploads/media_items/it-was-like-burning-in-hell-a-comparative-exploration-of-acid-attack-violence.original.pdf.

6 See CASC & CCHR, *Breaking the Silence: Addressing Acid Attacks in Cambodia*, at 36 (May 2010).

7 Data from CASC's legal unit. A final verdict means that a case cannot be further appealed (either because the time for appeal has passed or because the highest court in Cambodia, the Supreme Court, has issued a verdict).

8 Sub-decree on the Formalities and Conditions for Strong Acid Control, 13 OFFICIAL GAZETTE 1487 (Feb. 19, 2013) [hereinafter "Acid Sub-decree"]. An unofficial translation from Khmer to English was used for the analysis of this Sub-decree.

2. ACID VIOLENCE — A HISTORICAL SUMMARY

Acid violence is not a problem unique to Cambodia. Acid attacks against individuals are frequently reported in countries including India, Pakistan, Bangladesh, Nepal, Iran, Iraq, Uganda and Colombia.⁹ There have also been reports of individual incidents in the United States (“U.S.”), United Kingdom (“U.K.”), Germany, Russia, Belgium and Canada.¹⁰ Judging from the increasing number of reports of acid violence, it may seem this is a recent or new phenomenon. However, reports detailing the use of acid in a violent manner date back to at least the 18th century.¹¹ First manufactured on an industrial scale in England around 1750 when sulphuric acid became easily available in Europe and the U.S., people soon began using it for violent purposes.¹² There is a quote from a Glasgow periodical from the 1830s saying: “*The crime of throwing vitriol [sulphuric acid] has, we grieve to say, become so common in this part of the country, as to become almost a stain on the national character.*”¹³ However, by the mid-twentieth century acid attacks in Europe and the U.S. had almost completely disappeared. In contrast, reports of acid violence in other parts of the world, such as Asia and the Middle East, have increased since the late twentieth century.¹⁴

Acid violence and acid attacks are deliberate assaults on individuals or groups, often committed with the intention to maim, permanently disfigure, hurt, torture or kill the intended victim(s) and to cause extreme physical and mental suffering. The effects of acid violence can be devastating. Acid attacks usually do not lead to the death of the victim but always lead to immediate injury and excruciating pain, while longer-term consequences can include permanent disfigurement, scarring,

9 See Arturo Wallace, *Colombia Acid Victims Seek Justice As Attacks Spread*, BBC, May 30, 2012, available at <http://www.bbc.co.uk/news/world-latin-america-18246717>.

10 Chris Boyette, *Police: NY Man Attacks Daughter with Acid*, CNN, Sept. 2, 2012, available at <http://edition.cnn.com/2012/09/02/us/new-york-acid-attack>; Ciara Leeming, *Salford Acid Attack May Be Racially Motivated*, THE GUARDIAN, 26 Mar. 26, 2012, available at <http://www.guardian.co.uk/uk/2012/mar/26/salford-acid-attack-racially-motivated>; AFP, *Two Arrested in Rhineland Acid Attack*, Dec. 31, 2012, available at <http://www.thelocal.de/national/20121231-47057.html#.URiOWPL74zk>; CNN staff, *Russia's Bolshoi Ballet Director May Lose Sight after Acid Attack*, CNN, Jan. 23, 2013, available at <http://edition.cnn.com/2013/01/18/world/europe/russia-ballet-acid-attack>; Peter Allen, *Acid Victim Testifies Against Married Lover*, DAILY MAIL, Mar. 12, 2012, available at <http://www.dailymail.co.uk/news/article-2113939/Patricia-Lefranc-Acid-attack-victim-arrives-testify-married-lover.html#axzz2KZPWgunl>; David Trifunov, *Acid Attack in Canada Puts Woman into Coma*, GLOBAL POST, Aug. 29, 2012, available at <http://www.globalpost.com/dispatch/news/regions/americas/canada/120829/acid-attack-canada-tanya-st-arnaud-coma>.

11 See Welsh, *supra* note 5, at 21-25 (providing further information on acid violence in the past).

12 See L.V. Anderson, *Throwing Vitriol: When Did People Start Using Acid as a Weapon?*, SLATE, Feb. 4, 2013, available at http://www.slate.com/articles/news_and_politics/explainer/2013/02/history_of_acid_violence_when_did_people_start_throwing_vitriol.html.

13 *Execution of Hugh Kennedy*, 3-4 THE REFORMER'S GAZETTE 332 (Muir, Rowan & Co. 1831), available at http://books.google.com.kh/books?id=jDrhIzL32vwC&pg=RA1-PA332&redir_esc=y#v=onepage&q=vitriol&f=false.

14 See Anderson, *supra* note 12.

pain and medical complications. In addition to medical and physical consequences, survivors and their family can be affected by a lifetime of social and mental problems and suffering.¹⁵ Attacks are usually committed as “a revenge attack for a perceived wrong doing.”¹⁶ Welsh states that there can be several explanations for acid attacks, including easy and cheap availability of acid, traditional perceptions of women, changing gender roles, media influences, feelings of shame or loss of face or honour, and the desire for revenge or retribution.¹⁷

Acid attacks are committed in both public and private places by throwing, spraying or pouring acid on victims’ faces and/or bodies. Examples include perpetrators throwing acid through open windows, breaking into houses at night and pouring it over their sleeping victims, and throwing it from moving motorbikes or at crowded places like markets. The face is usually targeted, with acid then dripping or running down the victim’s neck and chest to the rest of the body. Attacks are easily committed in public places such as markets and restaurants as acid does not necessarily look like a weapon; it is transparent like water and can seem harmless in a plastic bottle, making it inconspicuous to approach a victim while holding it. Also, acid attacks are “easy” to commit as the actual throwing of the acid does not make a sound and victims often do not immediately register what happened. Victims often initially think that hot water was poured on them before they come to the horrible realisation that it is acid. Furthermore, when an attack is committed in a public place it is easy for perpetrators to quickly disappear in the crowd or on a waiting motorbike.

2.1. Medical Consequences

When acid first makes contact with skin it gives a warm sensation similar to being in contact with hot water, but this soon turns into an increasingly painful burning feeling. If acid is not washed off with water immediately it will burn through the skin; melt away flesh, muscles and nerves; dissolve bone; and eventually lead to organ failure. Because of the soft tissues in the face, acid will quickly destroy eyes, eyelids, ears, lips, noses and mouths. Victims will be in agony until acid is washed away. After about 5 seconds of contact superficial burns will appear and 30 seconds of contact will result in full-thickness burns. Victims will actually suffer the most physical pain from superficial wounds rather than deeper burns, as deeper burns destroy the nerve cells. The more diluted or less concentrated the acid that is used in the attack, the less severe the damage will be to the skin and body.¹⁸

15 See *Breaking the Silence*, *supra* note 6, at 6.

16 Interview with Mr. Ziad Samman, CASC Project Manager.

17 See Welsh, *supra* note 5, at 2. Motivations behind acid violence are further explained below.

18 See *Breaking the Silence*, *supra* note 6, at 5.

In the immediate aftermath of an attack, victims are at risk of a multitude of medical conditions. Inhalation of acid vapours may cause breathing failure due to a reaction to the poison or the swelling of the lungs and airways. For weeks after an incident victims are at risk of infection from the open wounds, which can result in death if not treated with proper cleaning techniques and antibiotics. Furthermore, burned skin will die and turn black, resulting in severe scarring.

A major threat for victims of acid burns is the lack of quality and accessible medical care. In many developing countries victims of acid attacks do not have access to adequate healthcare and need to travel great distances to reach the nearest hospital or health centre, whereas acid burn treatment must commence without delay.¹⁹ Most government hospitals and private clinics in Cambodia do not offer the treatment acid burn survivors need, or provide the wrong treatment due to limited training and knowledge of burns, sometimes worsening the condition of the patient and the wounds. In Cambodia, there are only three hospitals that have a burn unit, all of which are located in Phnom Penh.²⁰ Due to the lack of nearby medical facilities in Cambodia, survivors travel to Vietnam to receive proper treatment — if they have the financial means. Another problem is the lack of long-term specialised follow-up care. At the moment CASC, in cooperation with the Children’s Surgical Centre²¹ (“CSC”), is the only facility in Cambodia providing specialised medical follow-up for acid burns.²² CASC has heard of people turning to traditional healers for treatment (possibly because they cannot afford proper medical care), applying rubber on wounds, and covering wounds with banana leaves, leading to severe infection. The lack of required medical knowledge, expertise and equipment can result in a worsening of victims’ condition and even death.

Acid burns can have serious long-term or even lifelong health consequences for survivors. These can include permanent blindness, partial visual impairment, hearing problems, loss of facial features, permanent scarring, contractions and deformities, mental suffering and handicaps.²³ According to the World Health Organisation (“WHO”), most burn injuries result in long and expensive hospital stays.²⁴ According to Dr. Ronald Hiles — a leading surgeon with more than twenty-five years of experience operating on acid burns — dead, burned skin should be removed within four or five days of an attack or new skin growth could cause

19 See P. Chatterjee, *Campaigns Against Acid Violence Spur Change*, 89 BULL. WORLD HEALTH ORG. 8 (2011).

20 These are Preah Kossamak, Calmette Hospital and the Sihanouk Hospital Centre of Hope.

21 See www.csc.org for more information on the Children’s Surgical Centre.

22 See Interview with Dr. Vanna, doctor at the Children’s Surgical Centre.

23 See *Breaking the Silence*, *supra* note 6, at 5.

24 See M. Peck, J. Molnar & D. Swart, *A Global Plan for Burn Prevention and Care*, 87 BULL. WORLD HEALTH ORG. 802 (2009).

lumps and deformities. In cases where the skin around the neck and armpit areas is burned, it must be removed to make movement possible in those areas. These types of physical impairments and lumps could hamper mobility and function and lead to handicaps.²⁵

Survivors of acid burns may require several staged surgical procedures over an extended period of months or years to prevent further damage and disabilities and to increase normal function.²⁶ Moreover, survivors often need on-going physical therapy to keep scar tissue flexible and elastic and improve movement. Survivors will also need skin grafts and pressure garments specifically tailored to their bodies. If the victim is a child, the consequences are even more severe. Because children are still growing they will need more staged operations than adults. Scars and skin grafts don't grow with the child — leading to problems with movement.²⁷ These necessary long-term operations cause survivors to pay high costs for medical care for years. Unfortunately, as Dr. Hiles explains, “*even with the best medical care, operations and post-surgery care the full restoration of facial features and movement is almost impossible.*”²⁸

Acid violence can also lead to nonphysical consequences, such as severe mental problems and psychological trauma.²⁹ Some survivors will need psychological help to cope with the trauma they have suffered. Survivors can suffer from post-traumatic stress, resulting in nightmares, anxiety, stress and depression.³⁰ Other symptoms include phobias or panic disorders, eating disorders, low self-esteem and substance abuse or neglect.³¹ These all require appropriate care provided by trained social workers and psychologists.

2.2. Non-Medical Consequences

Acid burns also affect survivors financially — particularly those from a lower-economic status. Survivors could become disabled to a degree where they are no longer capable of performing labour or are unable to find employment, as some employers refuse to hire people with disabilities. This will then affect their economic and financial situation.³² In cases where the main breadwinner (often the husband/father) is attacked, a whole family could suddenly be without anyone to provide for it. This could lead to the wife/mother being forced to take over the supporting role. According to a WHO report, when people of a lower-economic

25 See *id.*

26 See *Breaking the Silence*, *supra* note 6, at 5.

27 Interview with Dr. Ronald Hiles.

28 *Id.*

29 See *Breaking the Silence*, *supra* note 6, at 5.

30 See Peck, *supra* note 24, at 802.

31 See Welsh, *supra* note 5, at 20.

32 See *Breaking the Silence*, *supra* note 6, at 7; H. Shah, *Brutality by Acid: Utilizing Bangladesh as a Model to Fight Acid Violence in Pakistan*, 26 Wis. INT'L L.J. 1172, 1174 (2008-09).

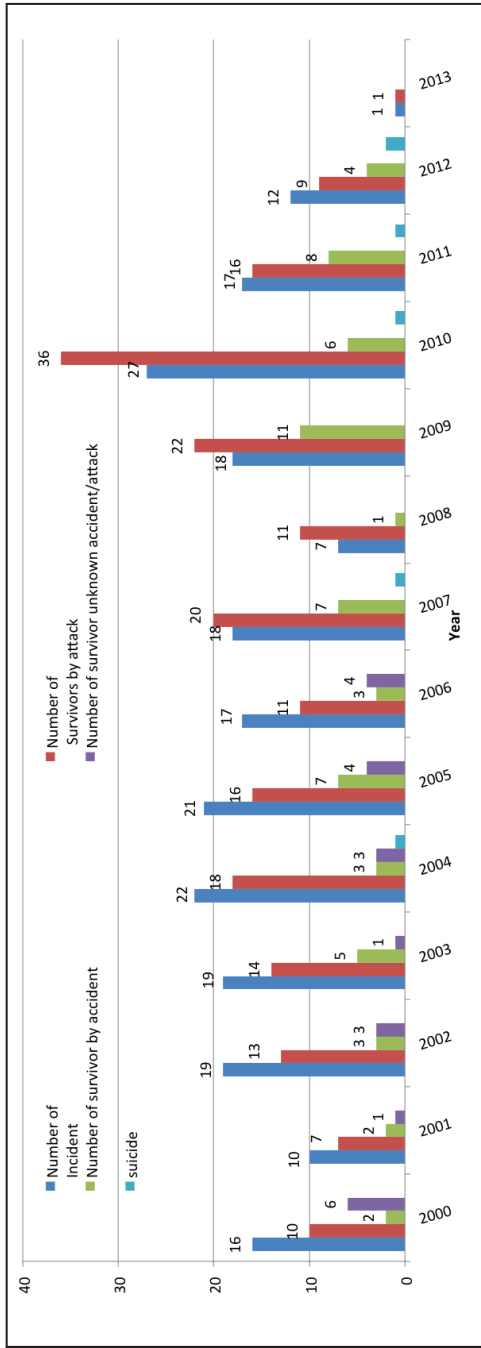


Figure 1. Number of incidents and survivors between 2000 and present. Courtesy of the CASC.

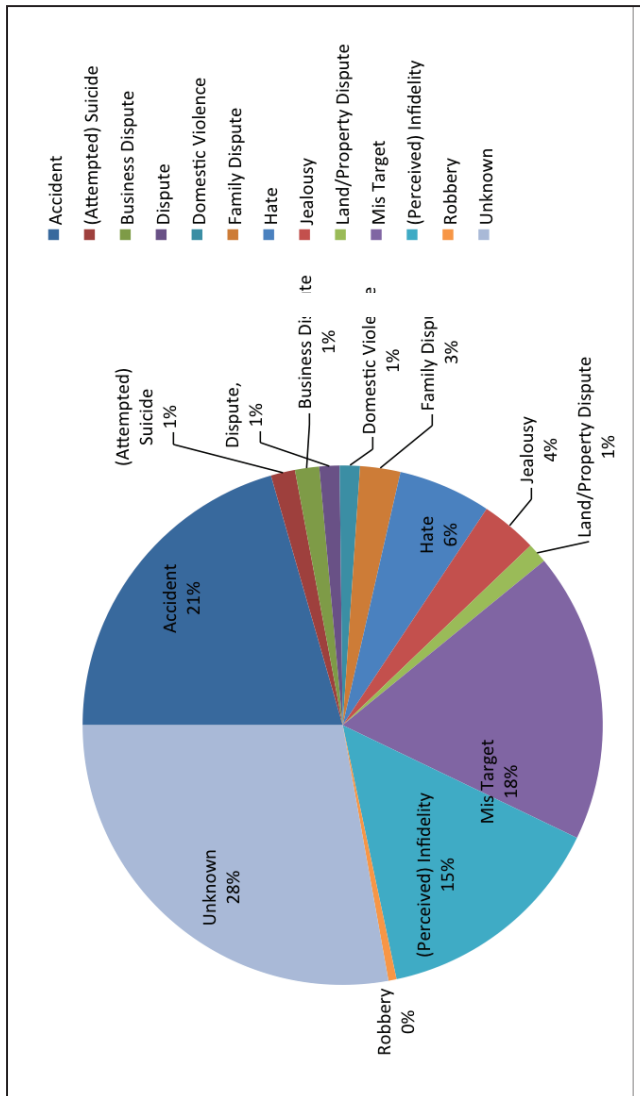


Figure 2. Motivations behind acid-related incidents. Courtesy of the CASC.

status receive burn injuries, their economic status deteriorates after recovery.³³

Disfigurement causes more than economic ramifications. It can also lead to social rejection, stigmatisation and exclusion from communities — even the survivor’s family network.³⁴ In some cases, communities reject the victim due to the physical disfigurements and handicaps, increasing his or her suffering, and leading to further social and economic marginalisation.³⁵ One example is CC, a Cambodian who was attacked with acid in 2008, leaving her blind and severely disfigured. Her neighbours don’t talk to her and call her “ghost.”³⁶ Likewise, in Bangladesh the scared faces of acid burn survivors are seen as a bad omen. As Bangladeshi society bases the “value” of a girl on her ability to “marry well,”³⁷ when an acid attack disfigures girls’ face and body, reducing their chance to marry, they become worthless in society’s opinion — and sometimes even to their family.

According to Ziad Samman, CASC Project Manager, family is the primary support network for acid burn survivors in Cambodia. A family’s willing to help will make a crucial difference for the recovery of a survivor. Unfortunately, in some cases survivors are seen as a burden to the family, either financially or socially, and the support system will fail, negatively impacting the survivor’s future. One female survivor wanted to have a restorative operation provided by CASC and CSC to improve her mobility. However, her family refused to give its permission out of fear that it would have to take care of her during the rehabilitation process. The mental suffering and social stigma of survivors may be two of the reasons perpetrators choose acid to wound their victims.

2.3. NGO Involvement

In many developing countries NGOs play a central role in supporting victims and combating acid violence, especially when governments are unable or unwilling to do so.³⁸ CASC, for example, is the only organisation in Cambodia that is specifically dedicated to assisting victims of acid violence and their relatives. CASC was established to respond to the lack of services and medical care available

33 See Peck, *supra* note 24, at 802.

34 See *id.*

35 See Shah, *supra* note 32, at 1187; D. Otis, *Healing Burns, Treating Physical and Mental Scars at the Cambodian Acid Survivors Charity*, SOUTHEAST ASIA GLOBE, Mar. 2013, at 44.

36 Interview with acid burn survivor CC.

37 Sital Kalantry & Jocelyn Getgen Kestenbaum, *Combatting Acid Violence in Bangladesh, India and Cambodia*, Avon Global Center for Women and Justice and Dorothea S. Clarke Program in Feminist Jurisprudence. Paper 1 at 22, available at http://scholarship.law.cornell.edu/avon_clarke/1 (Jan. 2011).

38 See Welsh, *supra* note 5, at 43.

for acid burn survivors.³⁹ CASC provides four services: medical and psychological treatment; vocational training and social reintegration; legal assistance and advocacy for legal reform; and awareness raising, research, education and advocacy to eliminate acid violence.⁴⁰ All services provided to survivors of acid attacks and accidents are free of charge.

Worldwide, only a handful of national organisations exist that are dedicated to preventing acid violence and supporting the survivors of acid-related incidents. The most prominent ones are the Acid Survivors Foundation (“ASF”) Bangladesh, ASF Pakistan, ASF Uganda, ASF India, and Burns Violence Survivors Nepal (“BVS”).⁴¹ Globally, there is only one organisation that focuses specifically on acid violence: the Acid Survivors Trust International (“ASTI”).⁴² The fact that there are only a few national organizations and only one international organisation specifically working on this issue illustrates the lack of attention that is given to the phenomenon of acid violence. According to Chatterjee, before 1999 there was little attention paid to acid violence, but since the establishment of the ASF acid violence is increasingly featured on the political agenda.⁴³ Nevertheless, not much research has been done on this topic. Articles mostly focus on individual attacks, neglecting the underlying reasons behind acid violence and the difficult legal process acid burn survivors face.⁴⁴

3. ACID VIOLENCE IN CAMBODIA — FOUR CONTRIBUTORY FACTORS

A variety of factors contribute to the occurrence of acid-related incidents in Cambodia. Social, cultural, situational and even practical reasons may lead to acid being selected for an attack. However, not every incident is an attack and a significant number of acid-related injuries are caused by accidents. This section examines the scope of the problem and discusses factors leading to accidental or deliberate incidents with acid.

39 CASC was created by CSC, a health care facility providing free medical care to acid burn survivors. However, as a centre for general rehabilitative surgery, CSC was not able to meet the non-medical needs of acid burn survivors. Recognizing the need to assist acid burn survivors’ efforts to recover and reintegrate into society, CSC created CASC to address the long-term physical, emotional social and economic needs of acid burn survivors.

40 For more information on CASC’s work, see <http://www.thecasc.org>

41 For more information about these organisations, see <http://www.acidsurvivors.org> (Bangladesh); <http://acidsurvivorspakistan.org> (Pakistan); <http://www.acidsurvivorsug.org> (Uganda); <http://www.asfi.in> (India); <http://www.bvsnepal.org.np> (Nepal).

42 For more information on ASTI, see <http://www.acidviolence.org>

43 See Chatterjee, *supra* note 19, at 7.

44 See Welsh, *supra* note 5, at 5-6.

3.1. Statistics

CASC keeps a database of all recorded incidents in Cambodia involving acid that is updated with new cases and new information about older incidents. The first registered attack occurred in 1964 in Phnom Penh. At the time of writing, a total of 318 incidents and 401 individuals have been registered. This number includes 14 victims whose injuries were fatal and six (attempted) suicides. Of the adult victims, 160 are male and 176 are female. In addition, there are 29 boys and 32 girls under 13 known to CASC who have been injured by acid.⁴⁵

Most registered incidents — 224 — happened in the 2000s.⁴⁶ It has been difficult for CASC to obtain data from previous decades. There is no government department or organisation that has been consistently recording acid-related incidents. In fact, the Royal Government of Cambodia (RGC) approaches CASC with requests for information and statistics regarding acid violence and accidents.

CASC has classified acid-related incidents into 13 specific categories: “accident,” “(attempted) suicide,” “business dispute,” “dispute,” “domestic violence,” “family dispute,” “hate,” “jealousy,” “land/property dispute,” “miss target,” “(perceived) infidelity,” “robbery,” and “unknown.”⁴⁷

As the data shows, there is a considerable group of incidents (27%) in which the motive (and in many cases the perpetrator) is “unknown.” Moreover, in 42% of the “unknown” cases it has not been possible to determine if the incident was an attack or an accident due to insufficient information obtained through third parties, newspapers or officials and the impossibility of contacting the survivor or his/her relatives.

A considerable percentage of incidents have been accidents. Of all survivors registered at CASC, 20.7%, obtained their injuries because of an accident. The high number of accidents and their causes show that acid is not only commonly present in households and many workplaces, but also that many people do not know how to handle this substance in a safe and appropriate manner. Acid is often transported improperly, placed within easy reach of children, and not properly labelled. As Samman states: “[P]eople need to know how to handle this dangerous substance. People do not recognize the extent of what this substance is capable of.”⁴⁸

Poor storage and transportation is a leading cause of accidents. Of the 61

45 All data mentioned comes from CASC records. In the CASC database, only people of 13 years and under are classified as children. Although the legal age of adulthood in Cambodia is 18, due to local customs, traditions and culture, it was decided to define as children those who have not yet entered puberty. To ensure correspondence with CASC data, this article also classifies persons under 13 as children and those above 13 as adults.

46 In 16 incidents it is unclear in which year the incident happened.

47 These are the categories used by CASC in the Acid Burn Survivors Database.

48 Interview with Mr. Ziad Samman, CASC Project Manager.

survivors who were injured in a private setting, 26% obtained injuries as a result of poor acid storage or transportation. Acid is stored in public places, in defective containers, in plastic bags or plastic water bottles. In at least seven cases someone mistakenly thought a bottle contained water and drank it, causing severe internal burns. There have been incidents of parents storing acid in plastic water bottles and children mistaking it for drinking water, people disposing acid with garbage where a child found it and obtained burns while playing with it, people transporting acid in plastic bags and getting involved in traffic accidents causing the bag to burst open on them, and people placing acid next to their bed and knocking it over while sleeping. Of all the accidents reported, 74% happened in a private setting and 25% happened during work activities or in a work environment. Most accidents, and the lifelong consequences of it, could have been prevented if proper safety and health standards had been followed.

In addition to attacks and accidents there are two more categories of incidents involving acid. Although the number is low in comparison with the two other categories, (attempted) suicides with acid also occur. According to available data, four people have committed suicide by drinking acid, while two others attempted to commit suicide but survived their attempt.

Acid is a liquid, leading it to splash around uncontrollably when thrown, injuring everyone in the near vicinity. As a result, a percentage of acid violence survivors are represented by so-called “miss targets.” Although miss targets occur during attacks they are examined in this section because the victims were not deliberately attacked. Regarding adult survivors, the percentage of miss targets is almost 20%, the highest percentage after the “unknown” category. The number of miss targets is high because acid does not discriminate. As discussed above, acid attacks are sometimes carried out in public and crowded places such as markets, which can result in multiple individuals being hit. When multiple people are driving on the same motorbike, a common sight in Cambodia, if acid is thrown at one person the other passengers will most likely be splashed with acid as well. There are several examples of attacks that led to a high number of miss targets. In March 2007 in Kampong Chhnang, a woman was the intended victim, but an additional five people who were nearby were also injured. In another case, a man tried to help when his mother was attacked with acid and his daughters suffered burns because they were sleeping next to her. By carrying the victims to the hospital the man also came in contact with acid and received burns to his neck, arms and torso. Tragically, despite his immediate response, his mother and one of his daughters died shortly after the attack as a result of their extensive injuries.

Adults do not account for all victims. Children are also victimised by acid

violence and acid-related incidents. The height number of children known to have sustained injuries because of acid — 61 — does not necessarily mean that children are being deliberately attacked. A considerable amount of children have obtained their injuries as a result of a miss target. In fact, miss targets disproportionately affect children. Acid splashes on them when it is thrown towards the intended victim, leaks on them when they are being held by a target, or falls on them when they are sleeping in the same bed as a target.

Of the 61 child victims, only one child was purposely doused with acid. All other children who have acid burns were either injured in an accident (41%), as a miss target (44.3%) and or for unknown reasons (13.1%). The only child who was deliberately attacked is 3-year old PRU. The perpetrator, his mother's former partner, ambushed his mother in their house, doused her with acid, then grabbed the boy and poured the remaining acid over his legs, scarring both of them for the rest of their lives.

There are also examples where a child was being held by an intended victim or was sitting on the same motorbike as an intended victim and the child's presence did not prevent the perpetrators from carrying out their crime. One example is now seven-year-old BC, who was three years old and sitting in front of her mother when her mother was doused with acid by two perpetrators. BC sustained severe injuries and burns to her head, face, neck and back, and will have to undergo many operations as she continues to grow.

An important point regarding the statistics of acid-related incidents is the high number of incidents that go unreported. According to Samman, it is difficult to speculate about the accurate nature and scope of acid-related incidents, but based on the experiences of an outreach missions, the currently registered cases could make up only 20% of the real number of incidents a year.⁴⁹ There are several reasons why incidents, both accidents and attacks, go unreported: people do not know who or what organisation to contact, they live in remote areas with little or no access to medical help and officials, they are ashamed and feel that they deserved what happened to them, they fear reprisals by the perpetrator, they lack the financial resources to seek medical care or they believe that they can treat the injuries themselves. Furthermore, because there is no official acid burn recording system in place, health providers will record burn injuries, but neglect to indicate the cause of these burns, thereby making it difficult to compile complete data.⁵⁰ Underreporting of incidents does not only happen in Cambodia; researchers estimate that in all countries where acid violence occurs its true extent is far greater

49 Interview with Mr. Ziad Samman, CASC Project Manager.

50 *Id.*

than what is currently documented.⁵¹ Underreporting not only leads to a false understanding of the scope of the problem; it also means that many survivors are not receiving suitable care.

3.2. Access to Acid and Its Consequences

The ease of access to acid in Cambodia undeniably has an impact on the number of acid attacks that occur.⁵² Acid is widely available and commonly used. Sulphuric acid is used in motorcycle batteries and in homes to produce electricity, hydrochloric acid is used at rubber plantations, and nitric acid is used for jewellery fabrication.⁵³ Acid is also used to dye garments and tan leather. One litre of acid costs approximately one dollar and is sold at markets and motor repair shops, making it not only easy to obtain, but also an inexpensive material that is legal to possess.⁵⁴ As the CCHR states, acid is something that people can acquire without attracting any attention.⁵⁵ Due to the wide availability and the many uses for acid in Cambodia, there are many families who have acid present in their homes or at their workplaces, making it an accessible and “easy” choice of weapon when one wants to harm another person.

Although acid is easily accessible, there is a major lack of awareness of its harms. Samman explains that in some cases perpetrators do not necessarily understand the consequences of acid, especially in cases of acid violence within the family unit.⁵⁶ One example is a woman who threw acid on her husband, thereby permanently blinding him. EK threw acid on her husband because he had a girlfriend. In an interview she explained that someone had told her that “acid will destroy the beauty”; she thought that meant he would become less attractive, but didn’t realise that it would happen because of extensive burns and scarring. EK stated that she did not realise the acid would burn, because “*when held [it] is not hot, hot water feels hot.*” She said that had known the effects of acid on a person’s face and eyes she would have never used it.

On the other hand, a large number of people do understand the effects of acid on skin — severe burns and deformities, immense pain and a lifetime of suffering — and select it as a weapon to achieve a desired effect. In a society where status is mostly still decided by appearance, and where peoples’ worth may depend on their

51 See Chatterjee, *supra* note 19, at 7; Welsh, *supra* note 5, at 31-32; S. Shackle, *Acid Attacks: “I Couldn’t Look at Myself, Let Alone Let Others Look at Me,”* NEW STATESMEN, Apr. 15, 2013, available at, <http://www.newstatesman.com/samira-shackle/2013/04/acid-attacks-i-couldnt-look-myself-let-alone-let-others-look-me>.

52 See *Breaking the Silence*, *supra* note 6, at 8. Email interview with CCHR staff.

53 See *id.* at 5.

54 See *id.* at 8.

55 Email interview with CCHR staff.

56 Interview with Mr. Ziad Samman, CASC Project Manager.

beauty, having deformities can be a death-sentence. As discussed above, individuals are judged and sometimes rejected by their families due to their acid injuries. In most countries, disfigurement can lead to a life as a social outcast. Several authors point out that acid is used precisely because it usually does not kill but disfigures.⁵⁷ It has been determined that in Bangladesh, Pakistan, and India men will attack women or girls with acid due to the social stigma survivors acquire after being burned.⁵⁸ Cohan draws a comparison between acid violence targeting women and honour killings, stating that acid attacks, like honour killings, are premeditated acts intended to “devalue” the victim. He claims that destroying someone’s appearance is used to disgrace the victim and family.⁵⁹

Although acid violence is usually seen as a premeditated act that is carefully planned and executed because someone has to buy the acid and then approach the intended victim, there are cases in which acid has been used in a fit of anger or passion. For example, a woman who threw acid on her husband told CASC’s legal staff: “*We were fighting and I was holding acid to change the battery, I got so mad at him that I threw it, but I didn’t do it because it was acid. If I was holding a knife I would have chopped [stabbed or hit] him with it.*”⁶⁰ Although this is likely a less common incident, the possibility that acid is not always purposely used, but becomes a weapon because it is readily available, must be acknowledged.

3.3. Perpetrator Impunity

Awareness that perpetrators of acid violence are seldom arrested and/or punished could also be a reason for the prevalence of attacks. This is not only the case in Cambodia. Other countries and authors note that in many cases perpetrators go unpunished.⁶¹ Reasons for this impunity include a lack of laws that provide for the possibility of prosecution and punishment, corruption, and lack of resources. Welsh states that impunity for perpetrators and instigators can teach others that some people deserve to be attacked with acid, and that perpetrators are not punished because their conduct is an appropriate reaction.⁶² According to Gollogly, due to the lack of serious repercussions in the past, acid violence is perceived as an acceptable means to solve disputes.⁶³ This leads to social acceptance of acid violence and perpetuates a culture of impunity.

57 See Chatterjee, *supra* note 19, at 7.

58 See Kalantry & Kestenbaum, *supra* note 37, at 3.

59 See J. A. Cohan, *Honour Killings and the Cultural Defense*, 40 CAL. W. INT’L L.J. 177, 198 (2010).

60 Interview with EK and CC, perpetrators of acid violence.

61 See Kalantry & Kestenbaum, *supra* note 37, at 4; Shah, *supra* note 32, at 1174.

62 See Welsh, *supra* note 5, at 53.

63 See J. Gollogly, S. Von Vath & A. Malmberg, *Acid Attacks in Cambodia: Serious Reminders of Personal Conflicts*, 2:4 ASIAN BIOMEDICINE 329, 333 (Aug. 2008), available at <http://abm.digitaljournals.org/index.php/abm/article/viewFile/197/116>.

Although in most countries acid violence is a type of gender violence,⁶⁴ I am of the opinion that acid violence in Cambodia is in fact not gender violence but “another” form of violence. This view is shared by Samman, who states that attacks are “*another shape and form of violence*[.]”⁶⁵ Acid violence in Cambodia cannot be associated exclusively with gender-based violence because women are not the only victims. A large number of acid burn survivors in Cambodia are in fact male. Men make up around 40% of all acid violence victims in Cambodia — demonstrating a marked difference between Cambodia and other countries where mostly women are attacked.⁶⁶ Moreover, when compared to other countries, there appears to be more motivations behind acid attacks than gender violence, for instance business disputes, property disputes and family problems. The CCHR agrees that Cambodia differs from most other countries based on the fact that the number of victims are almost evenly divided between males and females.⁶⁷

To partially explain the cause of acid violence in Cambodia towards both men and women, attention must be paid to Cambodia’s history and cultural and social norms. Cambodia is a country that has suffered from three decades of war, which has left not one family unaffected. In April 1974 the Communist Party of Kampuchea (CKP, commonly known as the Khmer Rouge) took power, renamed the country Democratic Kampuchea, and in their attempts to establish a complete agrarian society adopted policies that cost the lives of millions of Cambodians — either by execution or due to extensive forced manual labour combined with food shortages.⁶⁸ In January 1979, Vietnamese forces ousted the Khmer Rouge, leading to a period of occupancy by Vietnam and ongoing hostilities, especially along the Thai border regions. After the signing of the Paris Peace Agreements in 1991, the United Nations, through the United Nations Transitional Authority in Cambodia (UNTAC) mission, administered the first elections in decades, but the Khmer Rouge refused to disarm leading to tensions and renewed attacks.⁶⁹ Although the FUNCINPEC Party of Prince Ranariddh won the May 1993 election, it did not have a strong majority and was forced to form a coalition with the Cambodian People’s Party (“CPP”) headed by Hun Sen.⁷⁰ The new government did not bring

64 See, e.g., Welsh, *supra* note 5, at 54; Shah, *supra* note 32, at 1182, 1195; Kalantry & Kestenbaum, *supra* note 37, at 1-3, 16-17.

65 Interview with Mr. Ziad Samman, CASC Project Manager.

66 See CASC database. The fact that in most cases women are the victims of acid attacks has resulted in literature almost exclusively focusing on female victims while disregarding male victims of acid violence.

67 Email interview with CCHR staff.

68 See S. HEDER, SEVEN CANDIDATES FOR PROSECUTION: ACCOUNTABILITY FOR THE CRIMES OF THE KHMER ROUGE, 3 (Documentation Center of Cambodia, Phnom Penh 2004).

69 See J. BRINKLEY, CAMBODIA’S CURSE, THE MODERN HISTORY OF A TROUBLED LAND 73 (Black Ink 2011).

70 See *id.* at 79-85.

immediate peace to Cambodia, with Khmer Rouge members continuing to commit attacks and the two ruling parties fighting among themselves. This situation cumulated in a “coup d’état” by Hun Sen in July 1997, through which he took full control of the government.⁷¹ He has remained Prime Minister since that time.⁷²

These wars and periods of conflict have not only reduced the number of men in comparison with the number of women,⁷³ but also resulted in a considerable number of Cambodians experiencing violence and death — possibly contributing to a society in which violence is perceived as acceptable.⁷⁴ A report on domestic violence in Cambodia identifies childhood experiences with violence as a significant risk factor for experiencing more violence later in life.⁷⁵ Interview evidence indicates that there are many Cambodians who as children were taught that violence should be used to resolve conflicts and later have a more tolerant attitude toward using violence to resolve conflicts.⁷⁶ According to this report, 30% of men and 26% of women say that acts like acid throwing can sometimes be acceptable.⁷⁷ Such childhood experiences could thus be part of the reason why people sometimes choose to attack with acid instead of using a less violent manner of conflict resolution.

The general view in Cambodia seems to be that if someone has wronged you, you may retaliate or take revenge in some form.⁷⁸ When combined with a lenient view toward the acceptability of violence to resolve conflict, acid becomes an easily obtained, affordable weapon that works very effectively if the goal is to “win” a fight or destroy someone’s life. From this perspective, acid is used primarily to take revenge on rivals or to settle scores, and not as a form of violence intended to hurt women specifically.⁷⁹

In conclusion, it is my opinion that in Cambodia acid attacks are not general committed as a form of gender violence, but due to a combination of factors that result in both female and male victims. These factors include the availability and accessibility of acid, (lack of) awareness of the effects of acid, and social and psychological issues.

71 See *id.* at 122-29.

72 The CPP prevailed electorally in 1998, 2003, 2008, and (controversially) in 2013.

73 See D. de Walqui, *Selective Mortality During the Khmer Rouge Period in Cambodia*, 31 *POPULATION & DEV. REV.* 351, 358 (June 2005).

74 See Welsh, *supra* note 5, at 13.

75 See Partners for Prevention (P4P) (an interagency initiative of UNDP, UNFPA, UN Women and UNV in Asia and the Pacific), *Deoum Troung Pram Hath in Modern Cambodia: A Qualitative Exploration of Gender Norms, Masculinity and Domestic Violence*, at 11, 30-31 (Phnom Penh 2010).

76 See *id.* at 39.

77 See *id.* at 78.

78 See Welsh, *supra* note 5, at 60.

79 See *Breaking the Silence*, *supra* note 6, at 1.

3.4. Public Perceptions

As discussed above, of all registered acid incidents, almost 63% were confirmed attacks, and the other incidents were accidents, suicides, or it is unknown whether they were deliberate attacks or accidents. A confirmed attack means that CASC was able to confirm (through survivor and witness statements, evidence and other documents) that the survivor was deliberately attacked with acid, either directly by a perpetrator or through an ordered assault.

The general perception among Cambodians appears to be that when someone is attacked with acid it must have something to do with infidelity or jealousy, such as extra-marital affairs, lovers' quarrels or romantic rejection. Another perception is that when a woman is attacked she must have been someone's mistress or extra-marital girlfriend.⁸⁰ Although it is true that these issues make up a portion of the attacks, the CASC has been able to distinguish seven additional motivations, showing that infidelity and jealousy are certainly not the only reasons for acid violence. In fact, for at least 26% of survivors, CASC's data confirms that they were not attacked due to jealousy or infidelity. Other reasons for attacks include disputes about ownership or land borders, rivalling families, competition between businesses, and burglaries. In one reported case, a man attacked his sister-in-law after she criticised him for selling his daughter. Thus, although jealousy and infidelity-related reasons make up a considerable portion of all acid attacks in Cambodia, they are not the only motives for this crime.

Another common perception in most countries where acid violence occurs is that victims must have done something wrong to deserve such a fate, for example because of faults in a previous life.⁸¹ The victim is blamed for what has happened to them. An example is a case where a 42-year old man and his 19-year old girlfriend were doused with acid while they were sleeping. The man's wounds were so severe that he succumbed to them. According to a report, the village chief commented that perpetrator was supposedly abused by the man, which could be seen as justifying the act.⁸²

There is another interesting difference between Cambodia and other countries where acid violence occurs: In a majority of registered cases in Cambodia the perpetrator is female. According to the data, at least 141 of all survivors (including intended victims and miss targets) were attacked by a woman or a woman ordered the attack.⁸³ Comparatively, at least 67 survivors were attacked by men or the attack was ordered by a man. Not counting the unknown cases, this means that in 67.8%

80 See *id.* at 4.

81 See Welsh, *supra* note 5, at 60, *Breaking the Silence*, *supra* note 6, at 4.

82 See CCHR, *Ending the Cycle of Impunity for Acid Crimes in Cambodia*, at 13 (May 2012).

83 Due to the way the statistics have been kept this number also includes "miss targets."

of cases the perpetrator or instigator behind an attack is female. This is interesting because in other countries the overall majority of perpetrators is male.⁸⁴ It is difficult to make solid statements accounting for this difference as there has never been a formal study on female perpetrators. Explanations can only be speculations. Samman affirms this, but says that in (perceived) infidelity cases one motivation for a female attacker wounding her partner may be to make him dependant as a means of gaining power and forcing him to stay with her.⁸⁵

In cases where women are the perpetrators or instigators behind an attack, revenge for (perceived) infidelity or jealousy is not necessarily the only motivation. Although romantic revenge might be the trigger, there can be other root causes. An important issue to note is that in Cambodian society many women are economically and socially dependant on their husbands.⁸⁶ Not having a partner can mean financial insecurity. If a wife finds out that her husband has a girlfriend whom he might be financially supporting, disfiguring the girlfriend with acid to break up the relationship could be seen a means to secure the wife's and her children's financial situation and social position. In this way, gender inequality could be a factor in acid attacks. An example from May 2005 illustrates this. A woman discovered that her husband had a girlfriend of eight years, and after repeatedly warning him to break off the relationship she decided to buy acid. One night the husband visited his girlfriend and when he came back home, he and his wife got into an argument and she threw the acid at him. Her explanation during an interview is interesting: "*It is not ok to have girlfriends. It would be ok if he went to prostitutes, but having a girlfriend is not ok.*"⁸⁷

Thus, compared to other countries in which acid attacks occur, in Cambodia there are differences both in the gender of victims and the gender of perpetrators. Not only is the number of male victims of acid violence higher in Cambodia than it is in other countries, but also there are more female perpetrators.

84 See Chatterjee, *supra* note 19, at 7.

85 Interview with Mr. Ziad Samman, CASC Project Manager.

86 This is due to attitudes and social and gender structures. Men have a higher social status than women, influencing gender relations and structures. Men are seen as the primary financial caretakers and supporters of the family while women are responsible for taking care of the children and the household. From an early age, Cambodian women and girls are taught to be obedient to the family and husbands, and that women's main task in life is to be a good wife and mother. This is especially the case in the rural and more remote provinces. This perception of the role of women often results in girls having less access to education, and therefore less access to opportunities that will allow them to provide for their own livelihoods. This results in women being dependant on their husbands to provide for them and their children.

87 Interview with and acid-violence perpetrator, November 2012.

4. CAMBODIA'S LEGAL SYSTEM: PROSPECT OF ACHIEVING JUSTICE FOR ACID VIOLENCE SURVIVORS

The following section examines Cambodia's legal system, the specific laws and regulations addressing acid violence, and the specific problems acid burn survivors face in their search for redress.

There are many acid burn survivors who have had to wait years for their case to reach even the trial stage or are still waiting for their case to be prosecuted. When KS discovered that her brother-in-law had sold her three-year old niece, she confronted him and demanded that he ensure the child be returned to her mother—KS's sister. Her brother-in-law responded by throwing acid in her face, permanently and severely disfiguring her. KS was attacked in early 2009, but as of yet no trial has been held. In fact, although KS filed a complaint in November 2009, not until August 2010 was the case sent to the competent court in Siem Reap.⁸⁸ With the help of CASC, KS met with the President of the Court in September 2012 and CASC's legal unit was informed in November 2012 that the trial would start shortly. This is the last heard from the court regarding KS's case, and it is not clear what further action the court has taken.

Sadly, this example is not an exception. Data from CASC indicates that of the 41 cases it has been working on during the last three years, only 11 cases have reached a final verdict. Why does it take relatively long for acid burn survivors to have their cases prosecuted and tried? Can the Acid Law make a difference in that regard, or is more needed to guarantee that justice is served to the victims of acid violence? These questions are addressed below.

4.I. Legal Process in Cambodia

Many human rights organisations, legal professionals and international organisations have long commented on the state of the legal system in Cambodia.⁸⁹ For example Human Rights Watch (“HRW”) has been very critical of the Cambodian justice system, calling it “partisan” and comprised of “politically controlled judges.”⁹⁰ HRW has also said that Cambodia's politics and government are “plagued with endemic corruption and politically motivated application of laws[,]” and

88 Victims of crimes can file complaints. Cambodian Code of Criminal Procedure (*as adopted* Aug. 10, 2007), art. 6. However, filing a complaint does not mean that a criminal prosecution will be started — the prosecutor makes this decision.

89 See, e.g., CCHR, *Briefing Note: Judicial Reform* (Feb. 2013); Bridget Di Certo, *Justice in the Dock*, SOUTHEAST ASIA GLOBE, Feb. 2013, at 25.

90 See Human Rights Watch, *Cambodia: Obama Should Publicly Denounce Rights Abuses* (Nov. 18, 2012), available at <http://www.hrw.org/news/2012/11/18/cambodia-obama-should-publicly-denounce-rights-abuses>.

highlighted an “absence of judicial independence[.]”⁹¹

In 1992, the UN created the UNTAC mission as a transitional authority in Cambodia to supervise and control the first democratic elections in decades. UNTAC enacted several laws intended to develop a framework for Cambodia’s judicial system in conformity with international standards.⁹² The hope was that this would encourage change in Cambodian institutions, in particular those institutions responsible for the administration of justice. However, judicial reform has been slow in Cambodia. For years NGOs, state donors, and international organisations have asked for increased effort from the RGC. The Cambodian government has agreed, yet no major changes to the prevailing culture have taken place. Reform is required to professionalize the police force, ensure the independence of prosecutors and judges, stop far-reaching corruption, and end the culture of impunity.⁹³

4.2. The Law on the Management of Strong Acid (2012)

In theory the criminal justice system in Cambodia works as follows. After a crime has been committed, the police are notified. The police then launch a thorough investigation. After their investigation is finalised the police inform the prosecutor from the competent court. The prosecutor then starts an investigation and presents his or her findings to the court.⁹⁴ A chief judge then appoints an investigative judge and a trial judge.⁹⁵ The investigative judge conducts a judicial investigation, which consists of interviewing victim(s), witness(es), and the perpetrator if possible, as well as collecting evidence. After the closure of the investigation, the investigative judge composes a report including a recommendation to either prosecute or dismiss the case. This report is send back to the prosecutor and to the trial judge.⁹⁶ The case will then either be closed or the trial judge will set a date for a trial to commence.⁹⁷ Notably, after a criminal verdict only the prosecutor and the convicted person are allowed to file an appeal; victims acting as civil parties can only appeal the civil matter of the case (i.e. reparations awards).⁹⁸ An appeal of the verdict must be lodged within one month.⁹⁹ After an appeal, cassation can be

91 Human Rights Watch, *Statement to the UN Human Rights Council on Cambodia* (Sept. 28, 2011), available at <http://www.hrw.org/news/2011/09/28/statement-un-human-rights-council-cambodia>.

92 See Di Certo, *supra* note 89, at 25.

93 See generally Human Rights Watch, *Tell Them That I Want To Kill Them* (Nov. 13, 2012), available at <http://www.hrw.org/node/111246/section/5>.

94 Cambodian Code of Criminal Procedure, *supra* note 88, arts. 43-44.

95 *Id.* art. 51.

96 *Id.* arts. 246-47; Asia Regional Cooperation to Prevent People Trafficking, *Gender, Human Trafficking and the Criminal Justice System in Cambodia*, at 47-48 (Dec. 2003).

97 Cambodian Code of Criminal Proceedings, *supra* note 88, art. 250.

98 *Id.* art. 375.

99 *Id.* arts. 381-82.

requested from the Supreme Court.¹⁰⁰

In January 2012 the Acid Law entered into force. This law criminalised acid violence and established regulations governing the criminal liability of individuals and legal entities. In January 2013 the RGC adopted the Sub-decree on the Formalities and Conditions for Strong Acid Control (the “Acid Sub-decree”), further detailing regulations on the transport, sale, purchase and storage of strong acid.

Until the entry into force of the Acid Law, criminal legislation in Cambodia failed to include provisions specifically criminalising incidents in which acid is used as a deliberate weapon. Before its adoption, acid-related crimes were prosecuted under general provisions of the Cambodian Criminal Code. Moreover, no regulations concerning the sale, purchase, storage or transportation of acid were in place. Existing laws did not recognize the specific needs of acid burn survivors, the seriousness of the crime committed, or include adequate provisions regarding punishment for crimes in which acid is used. According to Gollogly, when cases of acid violence were prosecuted they were assigned to the family law courts instead of criminal courts, because acid violence was primarily associated with family issues¹⁰¹ — thereby denying this conduct’s criminal aspect. The NGO community believed that a law regulating acid might discourage perpetrators from resorting to acid violence. As a result, several NGOs, most notably CASC and the CCHR, lobbied the RGC to create this law. According to the CCHR, “[O]ne of the key ways to address acid violence is by enacting strong legislation that includes appropriate sentences and fines for perpetrators of acid violence.”¹⁰²

The Acid Law makes the intentional killing another human being with acid punishable by 15 to 30 years imprisonment, which can be increased to life if the attack was an ambush or the perpetrator tortured the victim before or during the killing.¹⁰³ Torture and other cruel acts while using acid is punishable by 10 to 20 years, increased to 15 to 25 years if the act leads to permanent disability, and 20 to 30 years if the torture leads to the unintentional death or suicide of the victim.¹⁰⁴ Intentional violence using acid is punishable by two to five years, increased to five to 10 years if the intentional violence leads to permanent disability, and 15 to 25 years if the intentional violence leads to the unintentional death or suicide of the victim.¹⁰⁵ The Acid Law also stipulates that the government will provide for acid

100 *Id.* arts. 417-20.

101 See Gollogly et al., *supra* note 63, at 333.

102 Email interview with CCHR staff.

103 Law on the Management of Strong Acid (*as adopted* Jan. 11, 2012) [hereinafter Acid Law], art. 16.

104 *Id.* art. 19.

105 *Id.* art. 20.

victims' medical care, legal support and protection.¹⁰⁶ It is, however, not clear how this will take place in practice. Although the Acid Law was enacted in December 2011, Cambodians have little awareness of its existence, and even less awareness of its provisions. According to the CCHR, a large-scale awareness program must be created to ensure that the public is well informed.¹⁰⁷

The creation of this law and its formal recognition of the phenomenon of acid violence is a positive step. In theory, people can now be held criminally accountable specifically for acid violence. Samman notes that the Acid Law is in fact quite progressive, as there are not many countries with such specific legislation.¹⁰⁸ Nevertheless, implementation of the law will be a struggle. For the law to have any effect, prosecutors, judges, and government officials must actively apply the law and enforce it by consistently sentencing perpetrators, thus showing that there will be no impunity for acid violence. However the Cambodian legal system is malfunctioning, not only with regard to acid-related laws — consistent implementation of any law is a problem in Cambodia.¹⁰⁹

4.2.1. The Sub-decree on the Formalities and Conditions for Strong Acid Control.

The Acid Sub-decree was created to support the implementation of the Acid Law and to provide specific regulations on topics it addresses. According to the decree, it “*aims to determine the formalities and conditions for sale, purchase, storage, transportation, package, bringing along and use of strong acid of all types.*”¹¹⁰ Provisions include the following: sellers and distributors must have a location to sell strong acid that is authorized by administrative authorities and can only sell to customers who provide appropriate documentation. They are required record all information on purchases and customers, and must correctly pack and store acid in safe bottles or containers with warning labels in Khmer, and a certificate of origin.¹¹¹

Purchasers of acid must be at least 18 years old and have documents stating the professional occupation that requires the use of acid and the purpose of buying acid, and keep the invoice ready to be inspected during transport.¹¹² Warehouses where acid is stored must be far from downtown, have a safety system, have a fire prevention and extinguishing system, record all acid present, and fully comply with

106 *Id.* arts. 10-12.

107 Email interview with CCHR staff.

108 Interview with Mr. Ziad Samman, CASC Project Manager.

109 See *Asia Regional Cooperation to Prevent People Trafficking*, *supra* note 96, at 43.

110 Acid Sub-decree, *supra* note 8, at 1488.

111 *Id.* arts. 6, 10 at 1489-90.

112 *Id.* art. 7 at 1489.

technical standards on storage of chemicals.¹¹³ Transportation of acid must occur in accordance with specific technical standards, only strong acid that is properly packed may be transported, and transport of acid of 1,000 or more kilogram strength is not allowed through populated areas.¹¹⁴

Although the Acid Sub-decree is a step towards reducing the number of acid-related incidents, the text is vague on certain points and more clarification is needed. For instance, Article 8 states that warehouses should be “far” away from downtown, but in practice how “far away” is far enough? Moreover, it is stated that an “expert police unit” will verify the compulsory fire prevention and extinguishing system, however no such unit currently exists. Who will establish this unit and how will it be trained?

The Acid Sub-decree states that the safety protection system, the means of transport, and disposal of acid should be in accordance with “technical standards,” but does not specify these standards or what is expected of sellers and purchasers of acid. Moreover, it is unclear how this provision will impact the likely high number of small vendors in the provinces, especially the most rural areas of Cambodia. Is it realistic to expect local vendors to know about these regulations? Will they be capable of adhering to the new safety standards, for instance the installation of a fire prevention and extinguishing system? If not, what are the consequences? Laws are only strong if they are implemented and enforced consistently. For the Acid Sub-decree to have any real effect, authorities must deal appropriately with persons who do not comply with the regulations. Due to these open questions, although the Acid Sub-decree is an improvement, it has flaws that could jeopardize its effect in practice.

Remarkably, the Acid Law and the Acid Sub-decree regulate only substances deemed “strong” acid, excluding sulphuric acid with a density below 33%. However, sulphuric acid is one of the most common acid substances because it is used in batteries.¹¹⁵ Even though it is a diluted acid it can still cause burns. Excluding a commonly available type of acid creates a risk that the problem will shift and the use of battery acid in attacks will increase. Moreover, as battery acid is commonly used, excluding it from storage and transport safety regulations will reduce their effectiveness in preventing accidents.

4.3. The General Obstacles Preventing Victim Justice

Cambodia’s criminal justice system has many problems, but impunity is at the forefront. According to journalist David Brinkley, the word that describes

113 *Id.* art. 8 at 1489-90.

114 *Id.* art. 9 at 1490.

115 *See Breaking the Silence*, *supra* note 6, at 5.

Cambodia's legal system is "impunity."¹¹⁶ Violators of the law, including human rights protections, more often than not walk free in Cambodia, frequently without ever being arrested or a trial being held. Brad Adams of HRW notes that this is the case "no matter how egregious their acts.". He asserts that Cambodians find it difficult to have faith in the justice system because "instead of protecting rights, Cambodia's judiciary is used to suppress dissent and undermine justice."¹¹⁷ Several problems contributed to this dysfunctional legal system.

4.3.1. Lack of Judicial Autonomy.

One cause of impunity is the apparent lack of independence of the judiciary. This is a serious concern. Many NGOs indicate that the Cambodian judiciary is not an independent institution, but in fact a "puppet" of the Cambodian government because there is no real separation of powers. The government has a major influence on the judiciary and uses this power to persecute government critics and human rights defenders.¹¹⁸

One example of the lack of a separation of powers between the RGC and the Cambodian justice system is the fact that Dith Munthy, the chief justice of the Cambodian Supreme Court, is a member of the ruling CPP's Permanent Committee of the Central Committee and the party's six-person Standing Committee.¹¹⁹ This can be seen as a breach of the *trias politica*. According to Transparency International, an international organization that tracks corruption, in 2011/2012 the independence of the Cambodian judiciary from outside influences was ranked 96 out of 142 countries assessed.¹²⁰ According to Transparency International's Global Barometer 2013, 60% of people in Cambodia think that the judiciary is affected by corruption,¹²¹ a worrying result. The judiciary is influenced by external powers instead of being an impartial and neutral institution. Political leaders use their position and power to compel judges and prosecutors to make decisions favourable

116 See Brinkley, *supra* note 69, at 112-13.

117 Human Rights Watch, *Cambodia, 15 Years On, No Justice in Grenade Attack* (Mar. 29, 2012), available at <http://www.hrw.org/news/2012/03/29/cambodia-15-years-no-justice-grenade-attack>; Human Rights Watch, *Cambodia: Shame Courts Undermine Rights* (Dec. 27, 2012), available at <http://www.hrw.org/news/2012/12/27/cambodia-sham-court-cases-undermine-rights>.

118 See Frontline Defenders, *2013 Annual Report, Global Trends in 2012 for Human Rights Defenders*, at 10 (2013); Human Rights Watch, *Cambodia: Escalating Violence, Misuse of Courts* (Feb. 2013), available at <http://www.hrw.org/news/2013/02/01/cambodia-escalating-violence-misuse-courts>.

119 See Human Rights Watch, *Country Summary: Cambodia* (Jan. 2012), available at http://www.hrw.org/sites/default/files/related_material/cambodia_2012.pdf.

120 Transparency International, *Judicial Independence Index (2011-2012)*, available at <http://www.transparency.org/country/#KHM>

121 Transparency International *Global Barometer 2013*, available at <http://www.transparency.org/gcb2013/country/?country=cambodia>

to their interests.¹²² Political interference in judicial matters makes it problematic for judges and prosecutors to properly perform their duties. As HRW states “it would take a brave judge to defy the ruler of a *de facto* one party state.”¹²³

A notorious recent example of political interference in the judiciary was the prosecution of radio station owner Mam Sonando, an outspoken human rights defender and activist. During the eviction of villagers from their land at the behest of a rubber company, authorities opened fire on a group of villagers who refused to leave their homes, resulting in the death of a young girl. In the aftermath, Sonando, who was not present during the eviction, as well as a few villagers who were, were arrested for alleged participation in a secessionist movement seeking independence from Cambodia.¹²⁴ At trial, Sonando was convicted and sentenced to 20-years imprisonment; on appeal this was turned into a suspended sentence and he was released — most likely due to strong criticism by international organisations. Yet no one has been investigated or held accountable for the death of the girl.¹²⁵ According to the CCHR this demonstrates that laws in Cambodia are not applied equally and how the Cambodian government will use its power to achieve politically convenient results in court.¹²⁶ Using the courts to intimidate and threaten human rights defenders with prosecutions and imprisonment is a serious form of juridical harassment.¹²⁷

One reason for the lack of judicial independence is the lack of security of tenure for judges and prosecutors. The government can remove judges or decide to keep them in service, as judges are governed by civil service rules. As a result, judges whose decisions do not conform to government wishes could possibly have a shorter judicial career than those who comply.¹²⁸ The Cambodian government, however, insists that the judiciary is fully independent and impartial.¹²⁹

With help from the UN and foreign donors, three draft laws intended to increase judicial independence were drafted but have yet to enter into force.¹³⁰

122 See Cambodian League for the Promotion and Defense of Human Rights, *Human Rights 2012: The Year in Review*, at 11 (Feb. 2013); World Justice Project, *Rule of Law Index 2012–2013*, at 73 (2012).

123 Human Rights Watch, *Khmer Rouge Trial is Failing Cambodian Victims of Pol Pot's Regime* (Nov. 23, 2011), available at <http://www.hrw.org/news/2011/11/23/khmer-rouge-trial-failing-cambodian-victims-pol-pots-regime>.

124 See CCHR, *Briefing Note*, *supra* note 89, at 3–4.

125 See K. Hodal, *Cambodian Activist Mam Sonando to Be Freed in Days*, *GUARDIAN*, Mar. 14, 2013, available at <http://www.guardian.co.uk/world/2013/mar/14/cambodian-activist-mam-sonando-freed>.

126 See CCHR, *Briefing Note*, *supra* note 89, at 3–4.

127 See Frontline Defenders, *supra* note 118, at 4.

128 See CCHR, *Briefing Note*, *supra* note 89, at 4.

129 See *Di Certo*, *supra* note 89, at 25.

130 See *id.* In September 2013, Prime Minister Hun Sen made a new pledge to pass the three long-awaited laws in early 2014. Kevin Ponniah, *Judicial Reform Pledged by PM*, *PHNOM PENH POST*, Sept. 26, 2013, available at <http://www.phnompenhpost.com/national/judicial-reform-pledged-pm>.

These fundamental laws would regulate the status of judges and prosecutors, the organization of the court system, and the membership of the Supreme Council of Magistracy, which appoints and disciplines judges.¹³¹ It is hoped that the enactment of these laws would bring positive change to the Cambodian judiciary by establishing more boundaries between executive and judicial powers.

4.3.2. Corruption and Lack of Resources and Knowledge.

Closely related to the lack of judicial independence in Cambodia is the high level of corruption. It is a widely accepted fact that corruption has roots in every layer of the Cambodian society and Cambodian institutions. In the legal system the widespread corruption manifests itself in perpetrators paying off judicial or police officers to escape prosecution or a non-guilty verdict and thus enjoy impunity for crimes committed. In 2013, 65% of respondents in a Transparency International survey indicate that they had paid bribes to the judiciary; 65% also reported that they had paid bribes to the police.¹³² Police officials, judges and prosecutors are seen as corrupt, willing to accept bribes and instructions from those with executive power.¹³³

Individuals with links to political figures often enjoy impunity, even those accused of serious offences, due to their connections or their own position of authority.¹³⁴ Every year Transparency International publishes the Corruption Perception List. The 2013 edition places Cambodia at the bottom of that list at number 160 of 177 countries, meaning that Cambodia's public service is seen as one of the most corrupt in the world — and the most corrupt among Association of Southeast Asian Nations (ASEAN) members.¹³⁵ Examples of corruption can include asking victims to pay fines before their case will be prosecuted or accepting bribes to acquit suspects. HRW states that “for too long, prosecutors and judges have been used as an instrument for protecting those enjoying the patronage of powerful Cambodian authorities,”¹³⁶ and calls for an end to this impunity.

Another challenge facing the Cambodian judicial system is the lack of experience and training of the Cambodian police force and the judiciary. For a

131 See CCHR, *Briefing Note*, *supra* note 89, at 3; *Report of the Special Rapporteur on the Situation of Human Rights in Cambodia*, Surya P. Subedi, ¶ 15, U.N. Doc. A/HRC/24/36 (Aug. 5, 2013); *Report of the Special Rapporteur on the Situation of Human Rights in Cambodia* Surya P. Subedi, ¶¶ 19-29, U.N. Doc. A/HRC/15/46 (Sept. 16, 2010).

132 Transparency International Global Barometer 2013, available at <http://www.transparency.org/gcb2013/country/?country=cambodia>.

133 See Di Certo, *supra* note 89, at 25.

134 See CCHR, *Briefing Note*, *supra* note 89, at 2.

135 Transparency International Corruption Perception Index 2013, available at <http://www.transparency.org/country#KHM>.

136 Human Rights Watch, *Cambodia: Investigate Government Cover-Up* (Dec. 22 2012), available at <http://www.hrw.org/news/2012/12/22/cambodia-investigate-government-cover>.

case be successful in court (i.e. lead to a conviction), strong evidence is necessary. However, this is not always available due to a lack of resources and knowledge. This manifests itself both during the investigation phase as well as during judicial proceedings. Knowledge and investigative skills of police officers are limited as there is inadequate training. Moreover, there is a lack of materials and equipment needed to properly conduct police investigations. For example there is a lack of interview rooms to conduct interviews with victims and witnesses in a private and comfortable setting.¹³⁷ Not having a private place to conduct interviews can prevent victims and survivors from feeling comfortable enough to tell their stories and provide complete testimonies. Lack of knowledge of investigative techniques and training in investigative skills also contributes to incomplete investigations.¹³⁸

The judiciary also lacks legal and human rights knowledge, is insufficiently trained, and has a limited caseload capacity. In its Trial Monitoring Project, the CCHR discovered that hearings are rushed in part due to a heavy caseload, verdicts have little or no legal reasoning, and the quality of legal arguments overall is poor.¹³⁹ An example of a positive achievement is the creation of the Royal Academy for Judicial Professions, which could provide training and education and result in more skilled and capable legal professionals. However the Academy's reputation is tainted with accounts of corruption.¹⁴⁰ The CCHR reports that although efforts have been made in the development of the legal and judicial sectors, this development falls behind progress in other areas."¹⁴¹

Yet it must not be forgotten that Cambodia is still rebuilding itself after decades of war and continuous human rights violations. During the rule of the Khmer Rouge almost the entire intellectual elite of Cambodia either left the country, was executed, or died due to disease or starvation. Only a small number of those who remained survived. Teachers, doctors and legal professionals were systematically eliminated as the regime believed that a thinking elite would be a threat to the agrarian utopia Pol Pot and his accomplices envisioned.¹⁴² Without a doubt this has had an enormously negative effect on the knowledge base and ability to administrate justice in Cambodia. Over the past three decades numerous efforts have been made by the international community to help establish a professional

137 See Asia Regional Cooperation to Prevent People Trafficking, *supra* note 96, at 44.

138 See *id.* Investigations into acid violence in other countries are also hampered by lacking investigation skills and motivation. See Shah, *supra* note 32, at 1182.

139 See CCHR, *supra* note 92, at 2.

140 See Unnamed author, *CAMBODIA: To Be a Judge, Be Ready to Bribe: Students* (May 12, 2009), available at <http://www.humanrights.asia/news/forwarded-news/AHRC-FAT-004-2009/?searchterm%3E>.

141 Email interview with CCHR staff.

142 See Di Certo, *supra* note 89, at 25.

legal framework based on the rule of law.¹⁴³ However, reform and change cannot be achieved without political will and support. Thus far the RGC has appeared to be more interested in economic development than a well-functioning legal framework.¹⁴⁴ The absence of such a system could thus be partially attributed to the RGC and the ruling Party and leaders.¹⁴⁵

In conclusion, wide-spread corruption and an averse government attitude combined with the legacy of decades of war has led to a fragile legal system in Cambodia where the rights of civilians are not properly protected and there is little or no legal recourse for rights violations or crimes. Those whose rights have been violated are effectively denied access to justice due to the lack of an efficient, reliable and independent judiciary.

4.3.3. *Prejudice and Perception.*

Problems in the overall justice system act as obstructions to justice for acid burn survivors seeking redress. Samman traces the challenges acid burn survivors face in their search for justice to the same challenges faced by every Cambodian when dealing with the justice system.¹⁴⁶

Like other Cambodians, many acid survivors have had to struggle to have their case prosecuted and the perpetrators brought to justice. For example, in 2004 TS was attacked by her partner's wife while almost nine months pregnant. The wife instigated her then 11-year-old son throw the acid. The attack left TS with severe burns on her face, chest and back; she lost one of her eyes; and her then eight-year-old nephew was burned in the face leading to eye infections and vision impairments. For personal reasons TS waited until 2011 to file a complaint, but the investigative judge in Kampot did not open the judicial investigation until late 2012. It was expected that the investigation would be completed in a few months, with a trial to start some time after June 2013. Thus far, the court has provided no more information regarding the status of this case.

Nevertheless, acid burn survivors must also confront a problem related exclusively to their injuries — perception. As previously discussed, Cambodian society sometimes views acid burn survivors in a negative manner, as if they must have done something wrong and deserved their fate because, for example, they were

143 See M. Montesano, *Current International Efforts in Cambodia: Developing a Court System to Protect Human Rights*, 11 J.L. & SOC. CHALLENGES 71, 72 (Spring 2009).

144 See Di Certo, *supra* note 89, at 25.

145 See Montesano, *supra* note 143, at 92.

146 Nevertheless, there are also examples where survivors said they lost interest in pursuing legal action and asked for their case to be closed. This remark is not meant as critique of that decision; readers should be aware that not all instances when cases of acid violence are ended before a court has issued a verdict are due to problems or "faults" by the judiciary or authorities. Sometimes ending legal proceedings is the survivor's voluntary choice.

someone's mistress. This view is not only common among the Cambodian civilian population; prosecutors and judges perceive acid burn survivors in the same way.¹⁴⁷ As a result, prosecutors and judges can be reluctant to put much effort into an acid attack case and even halt further proceedings. Importantly, Samman indicates that when prosecutors and judges have been in contact with acid burn survivors this negative perception changes and they are more willing to make an effort toward a successful prosecution.¹⁴⁸

4.4. The Survivor's Perspective

Impunity for acid violence results from problems at all stages of the criminal process: failure to investigate, failure to prosecute or bring to trial, provision of relatively mild sentences in comparison to the crime committed and harm suffered, and lax execution of sentences. For example, many acid violence cases never make it to the trial stage, or trials "stop" at a certain point either because the survivor decides not to start or continue with legal steps, or due to reasons outside the survivor's control.

4.4.1. Fear and Distrust in the Legal System.

The most important reason preventing the prosecution of perpetrators is the decision of survivors not to file a complaint after they have been attacked.¹⁴⁹ Survivors' reasons for not filing a complaint include fear of reprisals by the perpetrator, fear of costs related to court proceedings and legal aid, a lack of confidence in the legal system and not wanting to "waste" time on it, and agreements to settle the matter out of court.¹⁵⁰

For example, survivors ID and IS, two sisters who were hurt in the same attack in 2009, indicate that they did not file a complaint because they had to work in their shop and did not have time to go to the police or attend court proceedings. The same reason was given by survivors CSRith, CSPhon and CSPhat,¹⁵¹ who were injured in an attack in 2010.¹⁵² Because these survivors feared loss of income if they could not work for several days, they decided to not file a complaint

147 Interview with Mr. Ziad Samman, CASC Project Manager.

148 *Id.*

149 See CCHR, *Ending the Cycle of Impunity for Acid Crimes in Cambodia*, at 9 (May 2012).

150 Interviews with several survivors supported by CASC, March 2013.

151 In Cambodia, many family members have similar names that, as is the case here, can lead to identical initials. To avoid confusion the last part of each survivor's name was added.

152 Note that in some cases survivors will choose not to tell the full story of what happened during an attack or what might have precipitated it. Moreover, the reasons survivors express for not filing a complaint are not necessarily the only reasons they have. They are however, what they choose to share.

and thereby prevented any further proceedings. Chatterjee states that in most countries finding legal redress for victims of acid violence is time-consuming and expensive, placing an unbearably heavy burden on victims and families.¹⁵³ Financial constraints are therefore an important reason victims may choose to not file a complaint. In Cambodia, CASC has a legal team to support the survivor during legal proceedings and CASC will pay court related costs; however, survivors often still think that going to court will be a financially costly decision, and therefore do not file complaints.

The fact that survivors are unable to seek justice due to possible loss of livelihood and other financial constraints is worrying as it suggests that one's social-economic position plays a significant role in access to justice. Smith and Castleman argue that poverty can increase someone's vulnerability to denial of their basic human rights.¹⁵⁴ They mention acid violence against women in Bangladesh as an example, and state that the poverty level of women victims hampers them in their ability to respond to human rights violations due to a lack of knowledge of legal procedures and access to legal aid.¹⁵⁵ In this way, practical access to public services is denied to those who lack resources and knowledge. Poverty acts as a barrier for survivors seeking justice and redress.

Another factor limiting the number of acid attack prosecutions can be the relationship between the survivor and the perpetrator. When there are family ties — for example when a spouse is the perpetrator — the victim can be more reluctant to file a complaint, especially if the victim is dependent on the perpetrator for care and support. In fact, several survivors (all male, attacked with acid by their wife and blind as a result of the attack) have indicated in interviews that if they did not rely on their wife to take care of them or were not married any more, they would have filed a complaint and pursued legal steps.¹⁵⁶ One of the respondents said that because he is blind he did not file a complaint, as “*there would be nobody to take care of the children,*” and that if his wife had been prosecuted and arrested “*by law there would be a good result, but not good result in the family.*”¹⁵⁷ Another survivor gave the following reason for not filing a complaint: “*I want my wife to take care of me, so if she stays in the marriage and does her responsibilities I do not file a complaint. If she does not live with me any more I would file a complaint.*”¹⁵⁸ Another example comes from TShal,¹⁵⁹ who decided to not

153 See Chatterjee, *supra* note 19, at 7.

154 See S. Smith & T. Castleman, *Ending Extreme Poverty*, LETRAS LIBRES 2 (2006), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1570167.

155 See *id.* at 3-4.

156 Interviews with 5 male survivors conducted in February 2013.

157 Interview with RB, attacked in 2009.

158 Interview with KK, attacked in 2009.

159 Note that TS, who was mentioned earlier, and TShal are two different acid burn survivors.

file a complaint when she discovered that her partner's first wife was the instigator of her attack for fear that her partner would leave her.

Fear of reprisals is also a reason to not file a complaint. Perpetrators commonly threaten the survivors of their attack, both before and after they file a complaint with the police. There are examples of survivors who have received threatening phone calls from unidentified males. If survivors fear retaliation by the perpetrator or the perpetrator's family they will be hesitant to file a complaint.

There are also cases where survivors choose to not file a complaint or seek justice because they feel that they deserve what happened to them. In some instances people think that they were attacked because they did something wrong in this or a previous life. This manner of thinking can lead to acceptance of what has happened and the belief that they do not need or deserve legal redress. A similar view is reported by Welsh.¹⁶⁰ Tat Marina, a well-known survivor of acid violence,¹⁶¹ has for example said, "*I don't know what I did in a past life [to deserve this], but I think I might have done some bad things.*"¹⁶² To change this attitude, a survivors' views of themselves must be changed and survivors must be supported in this process. Survivors should be helped to realise that acid violence cannot be justified, no matter the reasons for it.

It happens on a regular basis that survivors decide to not file a complaint. In 2012 in two attacks the survivors decided to not file a complaint and to not pursue legal action, and in the first attack of 2013, the survivor indicated that he did not wish to file a complaint and will not proceed with further legal action. This creates a significant difficulty when trying to increase the number of prosecutions and convictions. Without an official complaint by a victim, in practice the police will not investigate the case and the responsible prosecutor will not proceed with further legal actions.¹⁶³ This means that without a complaint the prosecutor will not open an investigation, will not inform the competent court, the investigative judge will not examine the case, and no trial will ever be held.

According to Cohan, many survivors of acid violence do not take legal steps, but agree to the payment of money as a form of compensation.¹⁶⁴ Although such out-of-court settlements have advantages — it is quicker than court proceedings and survivors have immediate access to the funds — the negative side of settling is

160 See Welsh, *supra* note 5, at 60.

161 Tat Marina was a famous karaoke-singer in Phnom Penh who was attacked with acid in 1999 when she was 16 years old. The attack attracted much publicity as she was the mistress of a high-ranking government official, whose wife had ordered the attack. In 2009, a documentary about Tat Marina, "Finding Face," was released. She now lives in the U.S. Due to her many public appearances she is mentioned here with her full name rather than initials.

162 Welsh, *supra* note 5, at 60.

163 See Asia Regional Cooperation to Prevent People Trafficking, *supra* note 96, at 44.

164 See Cohan, *supra* note 59, at 218.

that the perpetrator will not be held criminally accountable for his or her conduct. In Cambodia survivors occasionally accept an out-of-court settlement.¹⁶⁵ However, there is not much available data on this as no records are kept, so it is not possible to make any accurate statements about the frequency of settlement or the amounts agreed upon. CASC knows that in some cases survivors have received one lump sum, whereas in other cases perpetrators have agreed to pay a monthly amount.

Montesano argues that in general Cambodians think it is better to avoid confrontation and strive for conciliation — i.e. not seeking justice or demanding reparations after an attack and just moving on. She states that (re)conciliation is the culturally driven norm in Cambodia.¹⁶⁶ Although this may be partially true, as discussed above, there are also indications that perhaps due to the violent history of Cambodia some individuals have a tendency to violent behaviour. They thus do not strive to reconciliation, but actively engage in confrontations.

Moreover, from interviews with survivors it appears that the majority desires justice but feels incapable of achieving it. In fact, in a survey that CASC conducted with a group of 40 acid burn survivors, 85% of the questioned survivors indicated that they would pursue a legal case if they had greater access to justice. This leads supports the conclusion that some survivors do not pursue a legal case because they do not feel they have the resources to do so.¹⁶⁷ Although a “common cultural thinking” could explain why some acid burn survivors prefer to not seek justice and strive for conciliation, it is my opinion that this does not apply for the majority of the group.

4.4.2. *Lack of Trials.*

When survivors do file a complaint, which is in the majority of the cases, this does not automatically mean an investigation or trial will be held or completed. The second major reason why acid violence is not always prosecuted involves factors unrelated to the decisions or will of the survivor.

First, cases can “disappear.” It happens quite frequently that the legal process suddenly stops and legal cases unofficially end. This means the court or prosecutor does not contact the survivor anymore and the case never makes it to the trial stage. For example in KS was attacked in early 2010 and met with the investigative judge in late 2010, but was not informed until July 2012 that the trial would start “shortly.” Nevertheless, she has not heard from the court since. Another example is PN, who was attacked in March 2010 and immediately

165 In cases that CASC has worked on, two survivors have accepted out-of-court settlements since late 2010.

166 See Montesano, *supra* note 143, at 75.

167 See CASC Legislation Survey (Oct. 2011).

filed a complaint. Even though numerous attempts have been made to contact the relevant prosecutor and court, no actions were taken or progress made and CASC considers this case to be dormant. CB was attacked in 1997, and states that he filed a complaint, but neither the police nor the prosecutor ever started an investigation and eventually he “*just moved on.*”¹⁶⁸ When courts and prosecutors remain effectively silent in cases of acid violence this sends a strong message that acid violence can be carried out with impunity.

Perpetrators are also often not arrested because they flee after committing their crime and remain at large, or their identity is not known. Without a perpetrator or a suspect prosecutors and investigative judges sometimes decide to not continue an investigation and prosecution. This has happened in at least three cases in the last two years.

Another important factor is prosecutorial discretion. In Cambodia, prosecutors can decide which crimes or incidents they will investigate and will prosecute.¹⁶⁹ Prosecutors are not legally obligated to start a prosecution for every alleged crime, and due to corruption or the perception that individuals attacked with acid “deserved” it, it is not inconceivable that prosecutors decide to not prosecute cases of acid violence for extra-legal reasons.¹⁷⁰

There are also occasions when witnesses declined to provide testimony, either to the investigative judge or at trial. This can lead to incomplete investigations, to the investigative judge deciding not to continue with proceedings due to a lack of evidence, or to an acquittal. When witnesses decline to testify or do not appear in court this has a major impact on the trial. Many trials in Cambodia are almost exclusively based on witness statements, and testimony may thus be the only evidence.¹⁷¹ This is partially because, as discussed above, investigation skills and procedures are not as advanced in Cambodia as in other countries. Moreover, after acid violence the actual weapon disappears and thus witnesses statements are very important.

One of the reasons why witnesses and survivors are sometimes hesitant to cooperate is because there is no established witness protection system in place in Cambodia.¹⁷² In fact, newspapers and other media are known to publish full names of survivors and witnesses (and perpetrators), making it very easy to identify someone. Fear of reprisal could lead to unwillingness to testify. Witnesses have previously refused to testify, not only citing fear of reprisals, but also a lack of

168 Interview with acid burn survivor CB.

169 Cambodian Code of Criminal Procedure *supra* note 88, arts. 40-41.

170 Interview with Mr. Ziad Samman, CASC Project Manager.

171 Interview with Ms. Theany Phal Chalm, CASC Legal Unit Manager; Asia Regional Cooperation to Prevent People Trafficking, *supra* note 96, at 47.

172 See Asia Regional Cooperation to Prevent People Trafficking, *supra* note 96, at 46.

confidence in and trust of the legal system, or — like some survivors — their need to work in their shops.¹⁷³ To overcome this lack of faith and unwillingness to devote working hours to attend a trial and testify, a shift is needed in the attitude of witnesses. If even persons that are close to acid burn survivors do not take the initiative to testify, it will be very difficult to achieve justice as crucial evidence will be absent. Even in a fully functioning legal system, evidence — including witness testimonies — is essential for a conviction.

4.4.3. *Low Sentencing Rate.*

In several cases where there have been trials of alleged attackers, the end result was still disappointing when perpetrators were found guilty but the repercussions were relatively mild. When an individual is found guilty of committing acid violence it is a positive statement that increases understanding that acid violence is unacceptable. However, if sentences are disproportionate to the crime and its lifelong consequences for the survivor, this positive step forward is nullified. Gollogly reports that sentences for acid violence tend to be short, from a few months for an attack to a few years in case of a death.¹⁷⁴

A striking example is the story of CT, a woman who was attacked in 2010 by another woman. Both CT and her two young children (PSR, one year old at the time and PM, six years old at the time) were injured in the attack. Encouragingly, the perpetrator was quickly arrested and a trial was held, however, the outcome was less positive. The judge decided to impose a two-year suspended prison sentence with a three-year probation period. The reasoning behind this decision was that the perpetrator had a baby to care for.¹⁷⁵ Although it is commendable that the judge considered the personal situation of the perpetrator, this verdict shows a complete lack of understanding of the seriousness of the crime and the consequences it has had for CT and her two young children. The perpetrator was allowed to walk free because the judge did not recognize the suffering and trauma inflicted by the acid violence.

Another example comes from a male survivor of acid violence, and reflects both the sometimes disproportionately mild sentences imposed for acid violence and also the impact of corruption by court officials. In 2005 DR was attacked by his first wife out of jealousy.¹⁷⁶ He states that he filed a complaint and that

173 The last example happened in the case of TS. Her family members who witnessed the attack failed to appear on two occasions for an interview with the investigative judge in Kampot, stating they had to work in their shop. Eventually the investigative judge summoned the witnesses to appear and CASC staff personally went to pick them up and bring them to the court.

174 See Gollogly *et al.*, *supra* note 63, at 333.

175 Court of Kampong Cham, 06/08/2011.

176 DR and his first wife, the perpetrator of the acid attack, divorced after the attack.

his wife was in fact arrested and sentenced to prison. This seemed like a victory; however, the court in Kampong Cham asked him to pay a “fee” of 30,000 riel (\$7.50),¹⁷⁷ whereas he was only able to pay 5,000 riel (\$1.25). After paying this amount his former wife was sentenced to seven months imprisonment, and was released while DR was still hospitalised due to the severe burns he sustained. DR feels that if he could have paid more, her sentence would have been higher.¹⁷⁸ The fact that the court asked DR to pay this fee contravenes the rules for court fees. According to Article 3 of the Law on Court Fees, only in civil, commercial, labour or administrative disputes shall a court fee be paid.¹⁷⁹ DR’s case was criminal. Moreover, as his former wife was found guilty, according to the law she should be responsible for all court fees.¹⁸⁰ Notably, in Article 20 it is even stated that if a person does not have sufficient resources to pay the fees, the court can exempt the payment of any fees.¹⁸¹ In any case, whether or not the request and the amount requested are legally correct, a victim’s inability to pay a fee should never be a justification for sentencing a perpetrator to a shorter sentence. DR’s case is significant because it not only shows how courts and judges will try to gain extra income by forcing acid burn survivors to pay fees, thereby not protecting those they are obligated to protect, but also how routinely low sentences indicate a lack of understanding of the impact and consequences of acid violence.

When potential attackers hear that perpetrators receive only mild sentences for acid violence, this knowledge could function as a stimulant to commit the crime. Several women who attacked their husbands indicated in interviews that they would have never done it if they had known the physical consequences of throwing acid at someone.¹⁸² Others might be discouraged from committing acid violence if they understood it was a serious crime for which they would be sentenced to long a imprisonment and to pay a large amount of compensation.

It is telling that in the CASC survey with survivors, 70% (28/40) said that the perpetrator behind their attack did not receive any form of punishment. Only 27.5% (11/40) stated that their perpetrator had received some form of punishment.¹⁸³ The survey also asked about the survivors’ feelings towards the punishment that perpetrators received. A full 72.5% (29/40) believed the punishment was too lenient or unfair; only 20% (8/40) thought it was fair. None of those interviewed

177 4,000 riel is worth approximately one U.S. dollar.

178 Interview with survivor DR.

179 Cambodian Code of Criminal Procedure, *supra* note 88, art. 553; Krama on Court Fees, art. 3 (Feb. 8, 1993).

180 Krama on Court Fees, *supra* note 179.

181 *Id.* art. 20.

182 Interview with three female perpetrators of acid violence (Mar. 2013).

183 One survivor interviewed, who is also a perpetrator, declined to answer this question.

stated that the punishment was too severe.¹⁸⁴ From the answers provided it may be concluded that most victims felt the punishment was not severe enough due to either a complete lack of punishment or a punishment that did not reflect the seriousness of the crime.¹⁸⁵

When asked if two to five years' imprisonment for perpetrators who intentionally cause injury — as provided in Article 20, paragraph I of the Acid Law — is acceptable, all victim respondents said no. All felt that this sentence does not reflect the nature of the crime and that longer prison sentences should be imposed. Asked whether five to ten years' imprisonment is a satisfactory sentence under the Acid Law for an acid attack causing permanent disability, all respondents answered no. The majority of victims (72.5%) indicated that a life sentence would be appropriate, and some suggested as possible punishments the death penalty or the victim throwing acid on the perpetrator.

Concerning compensation after acid violence, almost all respondents said that compensation should be paid.¹⁸⁶ The highest percentage, 44.74%, felt that an amount between \$1,000-\$5,000 was appropriate, followed by 28.95% who thought that \$5,000-10,000 would be reasonable.

4.4.4. *Lack of Enforcement.*

Even when a court has sentenced a perpetrator of acid violence to imprisonment and/or a monetary fine, it is common that these sentences are never executed. According to the law the prosecutor is responsible for the execution of sentences; however, there are serious problems with the enforcement and execution of sentences in Cambodia.¹⁸⁷ This is problematic as it leaves a victim with a formal acknowledgement that a crime was committed against him or her, but without the “benefits” of it. This is true both if a perpetrator never serves his or her prison sentence, and when compensation (if awarded) is never paid.

Prison sentences are commonly not executed because many perpetrators flee after their act. If they are not found and arrested the trial will be held *in absentia*. If the perpetrator remains at large the verdict will be impossible to execute. This results in prison sentences not being served and no compensation being paid to the survivor.

In three attacks CASC confirmed that the perpetrators were found guilty *in*

184 Three interviewees declined to answer this question.

185 Forty-five percent indicated that the perpetrator received no punishment or escaped. Twenty-two and a half percent indicated that the punishment does not reflect the seriousness of the crime.

186 Thirty-eight respondents answered positively. One respondent was a perpetrator and therefore declined to answer, and one survivor responded that he did not want money but just wanted the perpetrator to go to prison. CASC Survey (Oct. 2011).

187 Cambodian Code of Criminal Procedure, *supra* note 88, art. 496.

absentia but the prison sentences had not been executed because their whereabouts are unknown. CASC data shows that of eight cases in which it was partially involved and compensation was awarded by the Court, only in one case was compensation actually paid — and only after intervention by high-level officials. This is a disturbing discovery, as it suggests that only when top officials are involved on the side of the survivor will sentences be executed. The survivor, MC, was attacked in 1995 and a verdict was pronounced in 1996. However, not until 2010 did she receive the \$1,500 compensation she was awarded by the court. This only happened after the Royal Prosecutor intervened in 2008 and a complaint was sent to the National Assembly in January 2010, followed by ultimately a letter from the Minister of Justice in February 2010 to the Court of Kandal province. MC was lucky enough to have powerful connections. Survivors who do not have these connections are likely to be left empty handed.

It should be noted that in many instances the perpetrators themselves are also poor and cannot afford to pay part or all of the awarded compensation. However, imprisonment in lieu of payment is possible by law without the necessity of a special court order.¹⁸⁸

4.5. Influence of Acid Laws on Survivors

The goal of the Acid Law and the Acid Subdecree was to fill a gap in Cambodia's legislation by criminalizing acid attacks specifically and regulating the sale, storage and purchase of strong acid, as easy access to acid contributes both to attacks and accidents. NGOs had been pushing for the creation of this law for some time both to acknowledge the problem of acid violence in Cambodia, and to help victims find the justice they deserve and end the impunity long enjoyed by perpetrators. It is hoped that the implementation of these laws will decrease acid violence by acting as a deterrent.

It appears that this is happening in Bangladesh, where in 2002 the Acid Control Act entered into force. Bangladesh was the first country in which legislation was established to help prevent and punish acid violence.¹⁸⁹ After a comprehensive law criminalising acid violence was enacted, there was a remarkable drop in the number of acid attacks — from 500 to 60 a year.¹⁹⁰ The experience of Bangladesh has shown that one of the first steps for addressing and successfully preventing acid violence is having legislation in place targeting acid violence. Similarly, although in the 18th century there were many reports of acid violence in North America and Europe, those very quickly disappeared after legislation was put in place,

188 *Id.* arts. 523-24.

189 *See* Chatterjee, *supra* note 19, at 7

190 *See* Shackle, *supra* note 51.

implemented and enforced.¹⁹¹

Positive developments can also be seen in Pakistan after the introduction of a law criminalising acid violence in 2010. Since then, the number of reported incidents has tripled. The number of convictions after acid violence has risen as well, from 7% in 2007 to 18% in 2011. Shackle notes that this is still a low number and attributes it to poor enforcement of the law, weak overall governance, poor access to justice and female unfriendly attitudes by police officers and judges.¹⁹²

The Pakistani experience has lessons for Cambodia. While legislation is now in place in Cambodia, it will take more than laws alone to fight acid violence and ensure that acid burn survivors not only have access to justice but also that perpetrators no longer enjoy impunity. Since the entry into force of the Acid Law in early 2012, nine deliberate attacks resulted in eight survivors and three deaths.¹⁹³ Of these crimes, only BS's attack against NS, the case mentioned in the introduction, has gone to trial and a verdict has been issued under the Acid Law. What is needed now is effective implementation of laws and regulations, a task for the Cambodian judiciary in cooperation with the Cambodian government.

There has, however, been one another case of acid violence in which the Acid Law has been applied. This case concerns a woman, KT, who was attacked in September 2011 by a member of a rival family. The attack left her face severely disfigured and led to the loss of her left eye. The trial commenced in June 2012 and resulted in a guilty verdict — a 10-year prison sentence and the payment of \$5,000 compensation. This verdict was upheld by the Court of Appeal.¹⁹⁴ However, the judges applied the Acid Law in this case (Article 20(2) “Intentional violence using Acid, leading to permanent disability”) even though the attack was committed before its entry into force. This can possibly be seen as a violation of the *nullem crimen sine lege nulla poena sine lege* principle, which prohibits punishment of a crime without a pre-existing law.¹⁹⁵ The CCHR stated that the verdict demonstrates the Court’s “dedication to fighting acid violence.” The CCHR, however, also sees it as “problematic that the Court decided to make a judgment based on a law that was not yet on the books and decision could set a dangerous precedent.”¹⁹⁶ I agree with this. It is a

191 See Welsh, *supra* note 5, at 39.

192 *Id.*

193 One of these was in fact a criminal offence. NS was driving on his motorbike while carrying a bucket with acid when he was hit from behind by another moto. The victim was splashed with acid when the bucket broke. The man on the moto that cause the accident fled the scene and the police made no attempt to find the man.

194 Lieng Sarith & Mom Kunthear, *10-year sentence upheld in acid case*, PHNOM PENH POST, June 12, 2013, available at, <http://www.phnompenhpost.com/2013061266222/National/10-year-sentence-upheld-in-acid-case.html>.

195 This principle determines that no crime, nor a punishment for it, unless there was a pre-existing law prohibiting the conduct when the conduct took place.

196 Email interview with CCHR staff.

positive signal from the court that it decided to implement the Acid Law to fight acid violence, but doing so by “breaking” other rules cannot be the way forward. For real justice to be achieved all regulations and safeguards of the criminal justice process must be adhered to.

Regarding NS’s case, it is a positive sign that the trial was held rapidly and the perpetrator, BS, was convicted. Moreover, BS was sentenced to five years’ imprisonment, the maximum penalty allowed for the crime with which he was charged (“Intentional violence using acid,” Article 20). Through this verdict the judges acknowledged the brutality of the crime that was committed and correctly applied the law. This is encouraging. Samman stated in an interview with the Southeast Asia Globe, “[T]his case is a first step and it’s a small step — but it’s also an important step. I think it gives us room to be optimistic.”¹⁹⁷

It is questionable, however, if BS was charged with the appropriate crime and under the correct article of the Acid Law. Were the full extent of NS’s injuries reflected in the severity of the charges? This depends on an assessment if NS is “permanently disabled,” which according to Article 20 is an aggravating circumstance leading to a higher maximum sentence. The charges applied are based on the level of injury, and the level of injury must be determined through the so-called “medical expertise” of a doctor who is licensed to make the assessment. According to CASC, measuring the level of injury can be problematic, and I have witnessed assessments where the doctors did not touch survivor and did not perform a real examination. Samman furthermore states that in addition to physical disabilities, perhaps the effect the injuries have and will have on the victim’s opportunity to find employment should be factored in the decision.

Because the Acid Law has only been implemented in two cases so far, it is difficult to make any conclusions on its effect. The fact that in both cases the suspect was convicted and sentenced to the maximum penalty possible under the charged provision is encouraging. Moreover, the fact that the judges choose to use the Acid Law in KT’s case indicates a willingness to move ahead and penalize those who are guilty of committing acid violence. This is a positive indication that prosecutors and judges are becoming aware of the phenomenon of acid violence and are willing to do their duty in ending the impunity of perpetrators.

Although it is certainly progress that there are now specific laws and regulations in place that criminalise acid violence and regulate its sale, storage and transport, and that these laws are being applied, for a lasting impact all prosecutors and judges must know about these provisions and implement them. As only a small number of acid attacks has been prosecuted so far it is too soon to say if the

197 Otis, *supra* note 35, at 44-45.

Acid Law has had an effect on the occurrence of acid violence or legal redress for the survivors of acid violence. Further research after a longer period is needed to properly assess this.

For now, the creation of the Acid Law and the Acid Sub-decree can be seen as steps toward a Cambodia in which the survivors of acid violence have full access to justice, perpetrators of acid violence are prosecuted and strictly punished, and acid violence completely disappears.

5. CONCLUSION AND RECOMMENDATIONS

Too often the victims of acid violence are left empty-handed, their lives destroyed with no means of obtaining legal redress and justice. Currently victims' social-economic status and the flawed legal system in Cambodia do not permit proper and effective access to justice. The Law on the Management of Strong Acid was partially created to put an end to that, to put an end to the impunity the perpetrators of this crime often enjoy.

However, justice can only be obtained if a fully effective, functioning, independent and impartial judiciary and legal system based on the rule of law is in place. As the system is currently malfunctioning in Cambodia, the Acid Law and the Acid Sub-decree alone will not be enough to ensure that the survivors of acid violence find the justice they are looking for.

The RGC should make adequate efforts to ensure that proper investigations of acid attacks are conducted, survivors are protected from threats, and dispel misperceptions and that perpetrators of acid violence are prosecuted and punished. However, this is prevented by a lack of political will, corruption and inadequate law enforcement due to insufficient knowledge and resources.

Recommendations that would lead to greater justice include:

- The Cambodian people should be made aware of their rights and encouraged to understand that being attacked with acid is never justified. This realisation could make them more motivated to proceed with legal action.

- Services should be affordable and the survivors of acid violence should not be prevented from seeking legal aid out of fear of the financial costs. One's economic position cannot be an obstruction to access to justice.

- A survivor and witness protection system should be in place to prevent witnesses from refusing to testify out of fear of reprisals. Furthermore, witnesses should be encouraged to testify.

- Prosecutors and judges can have a negative view of acid burn survivors,

thinking that these individuals deserved what happened to them. Perception is based on access to information about, and awareness of, the issue. The enactment of the Acid Law should lead to more awareness by judicial officers and increased motivation to actively prosecute acid violence.

- The more examples there are of successful prosecutions, the greater the faith in the legal system will be. Hearing the positive judicial experiences of fellow acid burn survivors could make other victims more confident to also pursue this route.

- Awareness that punishment for acid violence is unlikely perpetuates this crime. Consequently, enforcement of the Acid Law could discourage those who are considering acid violence from committing this crime.

- Legal practitioners should be adequately trained, fully skilled and knowledgeable to be appointed as a member of the judiciary.

The effectiveness of the Acid Law and the Acid Sub-decree will depend on the judiciary and government. If the law is properly implemented it will ensure that perpetrators of acid violence no longer enjoy impunity for their crime. However, this can only happen when all steps in the criminal justice system are working as intended. For this to happen it is necessary that there is a proper investigation, prosecution and trial. This can only be achieved if all actors in the criminal justice system and the government collaborate to achieve this goal.

