

PRESERVING HARMONY, OR PREVENTING JUSTICE?

A study of local dispute resolution practices in cases of domestic and intimate partner violence in Cambodia

October 2020

Preserving harmony, or preventing justice?

A study of local dispute resolution practices in cases of domestic and intimate partner violence in Cambodia

October 2020

Research Team

Suyheang Kry
Savath Meas
Kate Seewald
Leang Sok
Mariny Oy

Editor

Raymond Hyma

Design and layout

Malia Imayama

We would like to thank the women respondents from each community for their participation in this research. We are also extremely grateful to the local service providers and key informants, including local authority members, police officers, representatives from relevant government departments and ministries, lawyers/legal practitioners, as well as members of key Cambodian women's rights organizations, who generously gave their time to participate in this research. Thanks also goes to Sotheakeo Amrin for her effort to translate and transcribe the data as well as to our legal analysis team namely, Mr. Chorvorn Sroeung, Ms. Chhanny Tum, Mr. Chansereyvath Neou, and Ms. LyLy Lov, who dedicated their time to analyze the legal framework related to alternative dispute resolution (ADR) and domestic violence (DV).

This research initiative was conducted by Women Peace Makers (WPM) Organization and the Cambodia Center for Mediation (CCM), in collaboration with Klahaan Organization. This research could not have been made possible without the financial support of Mennonite Central Committee (MCC), Pangea Giving, Heinrich Böll Stiftung (HBF) and the Voices for Gender Equality Project funded by DanChurchAid (DCA) and the European Union (EU). The contents of this research can under no circumstances be regarded as reflecting the positions of the MCC, Pangea Giving, DCA and/or the EU.



Table of Contents

- List of Acronyms 2
- Executive Summary 3
- I. Introduction 12
 - 1.1. Context 12
 - 1.2. Rationale 13
 - 1.3. Research Objectives 14
- II. Research Methodology 15
 - 2.1. Analysis methodology 16
 - 2.2. Limitations of the research 17
 - 2.3. Ethical considerations 17
- III. Literature and Policy Review 18
 - 3.1. Current available literature examining DV/IPV and ADR in Cambodia 18
 - 3.2. Key issues and outstanding questions in existing research and legislation 21
 - 3.3. Conclusion 27
- IV. Discussion and Findings 28
 - 4.1. Local ADR practice: Experiences at the service user (SU) level 28
 - 4.1.1. Experiences of violence in the research contexts 28
 - 4.1.2. Survivor experiences of ADR services in cases of DV 31
 - 4.1.3. Firsthand accounts of local ADR provision 37
 - 4.2 Local ADR practice: Experiences at the service provider level 43
 - 4.2.1. Service providers’ composition, knowledge and experience of ADR in DV cases 43
 - 4.2.2. Strategies employed, and perceived purpose of ADR 44
 - 4.2.3. Confidentiality and gender-sensitivity 45
 - 4.2.4. ADR provided by police 46
 - 4.2.5. ‘Kich Saniya’ agreements: 47
 - 4.2.6. Breach of the agreement 47
 - 4.2.7. Inconsistency in referrals: 48
 - 4.2.8. Definition of Crimes 48
 - 4.2.9. Women survivors as deciders of prosecution: 48
 - 4.2.10. Conclusion 48
- V. Conclusion and Recommendations 50
 - 5.1. Conclusion 50
 - 5.2. Recommendations 51

List of Acronyms

ADR	Alternative dispute resolution	IPV	Intimate Partner Violence
CCM	Cambodian Center for Mediation	JSC	Justice Service Center
CC	Criminal Code of Cambodia	JPO	Judicial Police Officer
CCWC	Commune Committees on Women and Children	MoI	Ministry of Interior
CDRC	Commune Dispute Resolution Committee	MoJ	Ministry of Justice
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women	MoWA	Ministry of Women Affairs
CPC	Criminal Procedure Code of Cambodia	NAPVAW	National Action Plan to Prevent Violence Against Women
CSO	Civil Society Organization	SP	Service Provider
DV	Domestic violence	SU	Service User
DV Law	Law on the Prevention of Domestic Violence and the Protection of Victims	WCCC	Women and Children's Consultative Committees
GBV	Gender-based violence	WPM	Women Peace Makers Organization

Executive Summary

Research Purpose

Of the many women who face violence at the hands of their partners in Cambodia, relatively few seek outside help. Previous research suggests that of those women who do seek help, many do not receive gender-sensitive assistance or access to justice, but are instead revictimized or otherwise put at risk. Such women often approach their local authorities for help. They receive assistance usually taking the form of a variety of alternative dispute resolution (ADR) processes, especially reconciliation/conciliation and mediation. Such local justice processes are often reported to be preferred by women and local authorities alike compared to court-based resolutions, which are seen as expensive, time consuming, and geographically distant.

Mediation in certain cases of domestic violence (DV) is permitted by the legal system in Cambodia under the Law on the Prevention of Domestic Violence and the Protection of Victims (DV Law), and relevant policy frameworks, including the second and third National Action Plans to Prevent Violence Against Women 2014–2018 and 2019–2023 (NAPVAW II and III). However, local forms of mediation – which in practice often more closely resemble reconciliation/conciliation or arbitration processes and do not conform with modern mediation principles – often fail to serve women’s best interests and/or protect their safety and security.

Despite the valuable groundwork laid out by previous researchers, further examination is needed to assess the status and efficacy of these mechanisms in addressing domestic violence (DV) and intimate partner violence (IPV) cases, as are personal accounts from women survivors who have used these services. This research builds on Women Peace Makers’ (WPM) and the

Cambodian Center for Mediation’s (CCM) own field experiences in gender-sensitive mediation initiatives over the past several years, which have yielded observations revealing substantial problems with local ADR practices which have not been sufficiently documented and subsequently remain unresolved.

This research, therefore, has two primary, interrelated research objectives:

- a) To **document** emerging grassroots issues, experiences, challenges and suggestions from both survivors (service users) and institutional stakeholders and service providers with regard to the local dispute resolution of cases involving DV/IPV;
- b) To analyze the data collected in order to **formulate** practical recommendations aimed at resolving the tensions identified between current ADR practice and a survivor-centered approach to intimate partner dispute resolution and women’s access to justice.

In addition to a literature and policy review ([Section 3](#)), the insights provided in this report are based on empirical research conducted with a total of 167 participants, including 67 women service users, 89 local authority/service providers, and 11 stakeholders via in-depth semi-structured surveys, key informant interviews (KIIs), and focus group discussions (FGDs).

Description	Number of Participants		
	Semi-structured Survey	Focus Group Discussion (FGD)	Key Informant Interviews (KII)
Women Service Users	46	21	
Local Authorities Service Providers		89 (33 females)	
Stakeholders (CSOs, lawyers and ministry officials)			11 (5 females)
TOTAL		167	

Each of these stakeholder participants have lived experience of using, performing, overseeing, or otherwise interacting with, ADR practice at the local level in DV/IPV cases. The research took place across four districts in four provinces, both with and without formal CDRC and JSC mechanisms. The four research sites, Chumkiri District of Kampot Province, Boribo District of Kampong Chhnang Province, Dambae District of Tbong Khmum Province, and Battambang city of Battambang Province, were strategically selected in order to understand the diverse experiences of women and issues related to the topic.

Key findings and emerging questions from the legal and policy review

1. There was found to be a lack of standardized terminology applied across both academic and literature when discussing local dispute resolution processes. For instance, some reports appear to treat the terms *mediation, reconciliation and conciliation* as interchangeable, both in English and Khmer. This generates (as well as perhaps reflects) confusion about which term is most appropriate (see 3.1 for a full

breakdown of these terms and the implications of their use for ADR in practice).¹

2. A lack of consistency in the usage of these terms is also observable within key legislation and policy documents, including the DV Law and its accompanying glossary of terms (see 3.1).

3. As well as differences in approach to terminology, there is considerable disagreement throughout the literature and among women’s rights practitioners as to the overall desirability and appropriateness of local ADR practice in any form when applied to cases of DV/IPV. This debate is made more complicated when discussing more recently recognized forms of violence, including psychological, emotional or economic violence, the criminal elements of which are known to be more difficult to prove and, therefore, to prosecute (see 3.2(A)).

4. Serious confusion has resulted from the inclusion of the terms ‘severe misdemeanor’ and ‘minor misdemeanor’ within Art. 26 and Art. 17 of the DV Law. Under Art. 26 of this law, cases of DV can be dealt with via ADR processes, only as long as they constitute ‘petty crimes’

or ‘minor misdemeanors.’ Likewise, ADR provision for ‘severe’ misdemeanors or felony offences is explicitly prohibited under Art. 17 of the same law. Crucially, however, the Cambodian Criminal law sets out only three categories of offences, as follows: petty crimes, misdemeanors and felonies. Current Cambodian law defines no distinction between ‘minor’ or ‘severe’ misdemeanor. The language of Art. 26 and 17 is therefore problematic, in practice leaving ADR open as a viable option in response to all misdemeanor-level offences including a range of offences which should under no circumstances be mediated (See 3.2(C) for a detailed legal analysis).

5. Four key questions emerged from the literature and policy review, and were used to develop the interview questions and surveys:

- A. *“Can we **ever** accept that mediation can constitute an appropriate way of dealing with cases of DV/IPV, under any circumstances?”*
- B. *“If we accept that **some forms** of DV/IPV can be mediated through local ADR practices, exactly which forms are these?”*
- C. *“If we accept that mediation can be applied up to a certain level of **severity**, exactly which level of severity should that be?”*
- D. *“If we accept that mediation can be applied in certain circumstances following DV/IPV, what constitutes a survivor-centered approach to mediation, and how can it be ensured? Further, why does this rule out ‘reconciliation’ as a practice?”*

While this research makes an initial attempt at resolving these questions (see 3.2(A-D)), they remain pressing areas for future research and policy analysis.

Key findings from the Service User data

i. Personal experiences of violence

(see Section 4.1.1 for detail)

1. Women service users (SUs) in this study reported having experienced DV/IPV in different forms. Such violence was often experienced repeatedly over a prolonged period. Types of violence included psychological violence, such as death threats; economic violence, such as restricting or controlling household income, and various forms of physical violence ranging from shoving and slapping through to strangulation and rape.

2. Women SU respondents reported living in a climate of fear, feeling trapped living with abusers whom they were afraid would someday kill them. Such respondents reported feeling unable to escape from such situations despite repeated abuse due to a combination of factors, including economic dependency, fear of retribution (further violence or death), loss of child custody, and pressure from relatives and community leaders to remain married to their abusers for the sake of preserving harmony. This finding is important as it reflects the pre-existing power imbalance that is very often present when couples participate in ADR sessions.

3. Alcohol was repeatedly raised as a risk factor that reportedly increases the likelihood of more intense violence, with one SU respondent explaining that she would sleep alone in the forest when her husband had been drinking, so as to avoid risking his violent outbursts.

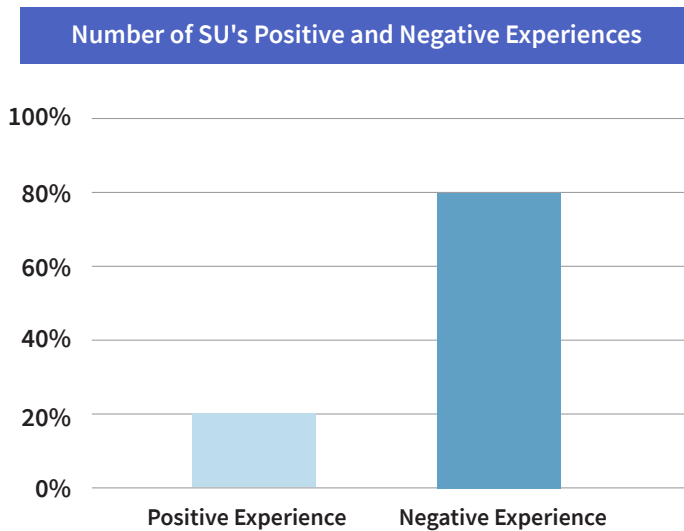
4. Many women SUs reflected on a societal culture of victim-blaming, stigma, shame and gossip, where they felt culpable for the violence being perpetrated against them.

¹In short, a third-party actor who provides mediation can encourage parties to identify options toward a resolution, however such a provider does not advise or makes recommendations (as would be the case during re/conciliation) or rulings in favor of one party or outcome (as would be the case during arbitration). Further, while re/conciliation aims to reconcile a disputing couple, and arbitration refers to a formal process whereby an outcome is decided by a third party and must be respected, mediation is conducted to provide a neutral space for both parties to reach a mutually acceptable outcome – one which may involve separation.

ii. Personal experiences of ADR

(see Section 4.1.2 for detail)

1. Positive experiences: Some women SUs in this study found the experience of ADR provision to be helpful in changing their husband's behavior toward them. However, these were in the minority, with just 20 percent of SU respondents indicating a positive experience and/or satisfactory outcome. For example, some women found the experience of ADR provision to be helpful, when they were able to reach their goal of either being able to get divorced (for informal marriages) or to change their husband's violent behavior toward them.



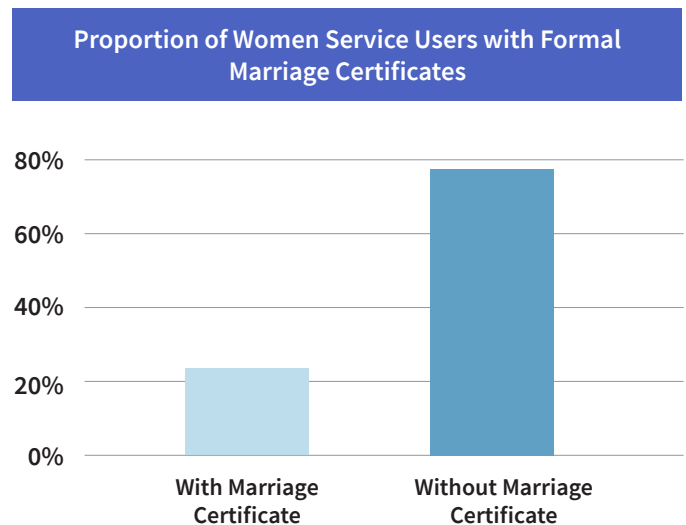
2. Negative experiences: A majority of women SUs (80 percent) in this study found ADR to be a negative experience in some way. Reasons for this included the following:

a. Failure or refusal to refer despite serious violence and/or survivor requests: Many women SUs reported encountering a reluctance or refusal on the part of ADR service providers to refer cases of violence and/or requests for divorce onto the more appropriate authority to deal with such issues. For instance, upon approaching police or local authorities for assistance in making a criminal complaint against their husbands or to facilitate a divorce, some SUs reported instead being pressured into ADR (or advised that ADR was the only available option) and being effectively sent home to live with their abuser.

b. Community power dynamics: Problems with informal justice mechanisms were seen to arise when there is a power imbalance, not only between the perpetrator of DV/IPV and their victim, but also between the perpetrator and those conducting the ADR session. This was reportedly often the case where the perpetrator has a higher social status, or is a member of law enforcement or military and effectively 'outranks' the ADR providers.

c. Repeated ADR sessions despite repeated failures: Many women SUs spoke of frustration at the failure of ADR to improve their situation despite repeated attempts, and often following severe violence. One woman reported that she was simply turned away by service providers as she had apparently approached them too many times. Another reported that her husband had committed violence against her since their first child was one year old right up to present with the child now being 12 years old. She received local ADR through both the commune chief and police five times, but her husband still commits violence against her.

d. Inability to obtain divorce: A core issue that repeatedly emerged was the difficulty that women respondents faced in getting divorced. Many women in customary or informal marriages (those without a legal marriage certificate) reported that they could not obtain a divorce because their husbands did not



agree or show up at the local commune or district halls. This is despite the fact that the agreement of both parties is not legally necessary in order to dissolve an informal marriage. In practice, therefore, such women remain effectively trapped in these marriages against their will, are unable to remarry, and often continue to suffer from abuse.

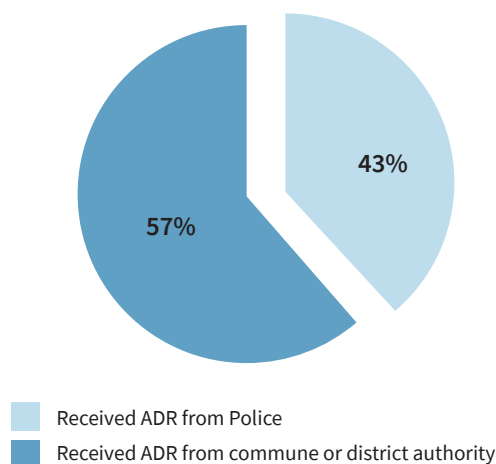
3. Lack of knowledge of protective measures:

A majority (78 percent) of women SU respondents reported not knowing what a protection order or administrative decision is. A further 22 percent reported that while they had heard of such terms, they were unsure of how to access them, who issues them, or what they are for. This reveals a lack of knowledge of protective measures among women and emphasizes the importance of community education initiatives to ensure women who are at risk know about and can access these procedures.

4. Police as conductors of ADR:

43 percent of SUs surveyed for this research reported having received ADR directly from police. There is, therefore, an urgent need for clarification as to what role, if any, police personnel have in conducting ADR. Further, action must be taken to ensure that any such ADR provision does not constitute an alternative to following due process in reporting and investigating DV/IPV cases as is set out in relevant articles of the Criminal Procedure Code (see [Section 4.1.2](#) for detail).

Number of Surveyed Women SUs who Experienced ADR Provided by Police



Key findings from the Service Provider data (Section 5.2)

1. Lack of knowledge and training:

A lack of specific knowledge pertaining to the DV Law was particularly evident among service providers (SPs) when considering responses offered in relation to key provisions, such as protection orders and administrative decisions, where most respondents were only vaguely aware of their existence and/or function. A large number of SP respondents demonstrated a lack of gender sensitivity and mediation-related knowledge, while a majority reported not having received thorough, gender-sensitive mediation training at all. For example, even with the distinction between the terms, mediation, reconciliation/conciliation, arbitration, none of the respondents could clearly differentiate among them and some reported that they had never even given thought as to the actual distinctions of the terms. A number of respondents expressed a desire for training to help improve their capacity and knowledge of ADR service provision in their communities.

2. Perceived purpose of ADR:

Many respondent SPs reported that their own style of ADR provision was based largely on what they perceived to be ‘the right thing to do’ rather than on any formal guidance or procedures. The purpose of conducting ADR was widely perceived to be convincing the parties in conflict to remain together (thus constituting reconciliation/conciliation rather than mediation). Divorce, it was iterated, can only happen as a last resort when every attempt to reconcile a couple has been exhausted and when both parties agree.

3. Dissuasion tactics:

Some SP respondents reflected on ways they would dissuade conflicting parties from going to court: These ranged from ‘explaining’ to women that the court process would take up a lot of their time; they would face shame and embarrassment from the community; they would waste money; their children would be stigmatized and bullied at school, and the process would impact their working hours and their ability to earn an income. Such ‘advice’ does not reflect modern mediation principles, and is neither survivor-centered nor gender-sensitive.

"...one hand cannot

4. Confidentiality and gender-sensitivity: While some CDRCs participating in this research had a room with a table and chairs for conducting mediation in private, many SPs in this study reported conducting ADR sessions in open offices or houses where others could overhear, and in some cases, were welcome to interject in proceedings with ideas and advice. This presents clear challenges in upholding survivor-centered principles, such as confidentiality and privacy.

5. Deliberate delays: Some SPs reported deliberately delaying ADR provision to couples, including victims of DV. Such delays were reportedly orchestrated ‘in the hope that everybody will cool down, which will then make them more likely to not want a divorce anymore.’ This presents a clear breach of authorities’ duty of care, as sending women, who report violence, home with their alleged attacker places them in grave danger and is a response constituting neither formal nor informal justice.

6. ‘Balance’ during ADR sessions: Many SPs reported that they felt it was important to give equal weight to both parties during ADR provision, even in cases where women had been subjected to serious and repeated violence. As one respondent from Kampot province put it: *“The way to conciliation is that we need to explain to the partners no one is right but that **both are wrong**. [ADR] doesn’t mean that the woman who was hit by the man is right, and it also doesn’t mean the man is wrong – like they say, one hand cannot make a clap.”* Again, such practice clearly fails to reflect survivor-

centeredness in ADR proceedings, and likely results in additional trauma and revictimization.

7. ‘Kich Saniya’ agreements: SP respondents advised that agreements drawn up and thumb printed by both parties at the end of ADR sessions form a useful, albeit non-binding, tool that helps to lend the ADR process an air of formality and gravity, and adds weight to any agreed outcomes. However, it was acknowledged that in reality, these are primarily a psychological tool to discourage violent behaviors and to appease complainants, rather than constituting any kind of punitive legal measure. If any party breaches the agreement, and a complainant returns to report again, most SPs reported only re-attempting ADR, claiming to have no power to enforce the agreement and reiterating that their main role is to reconcile couples, and not to take further actions.

8. Perceptions of success and failure: A concerning finding was the language of ‘success’ and ‘failure’ repeatedly employed by SPs when discussing ADR – with success deemed to be the reconciliation of a couple in conflict rather than justice for a survivor of DV. This perception drives an open reluctance to pass serious, unresolved or escalating cases up within hierarchical structures: Village-level authorities reported that in their area, very few cases would go to court because officials ‘put every effort’ into reconciling the disputed parties. The use of such language does not reflect awareness of, or respect for, principles of justice, redress or protection of survivors, but of maintaining

not make a clap."

harmony – potentially at the cost of violating women’s wishes, autonomy and personal safety. This further points toward ADR taking the form of reconciliation/conciliation at present, rather than mediation (for a breakdown of these terms please refer to [Section 3.1](#)). Urgent action should therefore be taken to reorient SPs’ perceptions of success within ADR as carrying out their duty of care to protect survivors and prevent further violence.

9. Inconsistency in referrals: Perceptions of how and when a case should be escalated varied between respondents. One local authority respondent advised that upon learning that a woman had substantial injuries (‘involving bleeding’) he referred the matter to the police post and did not perform ADR. Others reported that they continued to undertake ADR even in cases of severe and repeated violence. For instance, some respondents advised that if a pattern of violence was very common and took place when a husband had been drinking, this was ‘habitual violence’ that was normal for a particular couple; and therefore not worthy of intervention or escalation beyond ADR.

10. Complaint withdrawals: Many SPs in this study reported the belief that a woman survivor has the final say as to the type of action to be taken following DV. If a woman decides to drop the case, the understanding of many SPs is that the alleged offender will have to be released – even in cases involving serious criminal conduct resulting in injury and hospitalization. This reflects a lack of understanding and knowledge of the

Cambodian Criminal Procedure Code, under which Art. 75 prohibits the dropping of cases despite the withdrawal of complaints. It should also be noted that even if a woman remained determined to have criminal action pursued, some SPs reported continuing to try and convince the woman to instead undergo ADR provision.

11. Building on goodwill through clarity in process:

It should be noted that many SPs who set out to resolve DV cases via reconciliation/conciliation do not do so out of careless disregard for women survivors in their communities; rather, most take what they see is the best (or only) course of action based on the knowledge that they have at hand. Indeed, some SPs reported being at a loss for how best to handle repeat DV cases, advising that they have tried visiting homes in person, to ‘build rapport’ with abusers and in some cases reportedly begging them to stop committing violence.

Village and commune chiefs are known to give out their personal phone numbers to women who feel they are in danger, or even to shelter survivors within their own homes to prevent further abuse, and WCCC member respondents interviewed in this study reported donating rice and clothes to support survivors. What is therefore lacking in many cases is not the will or desire of SPs to protect survivors, but rather, clear guidance on what procedures should be followed, and which authorities should be involved at which stage.

Recommendations

General Recommendations

1. The use of the term ‘reconciliation’ and ‘conciliation’ (*phsah phsa*) in referring to local mediation should be discontinued. The use of these terms is problematic as they imply that the purpose of customary dispute resolution between couples is to preserve the marital relationship by encouraging the parties to remain together. Guidance should be issued to service providers on the correct use of these terms (as per the MoJ’s 2010 Mediation Handbook, discussed on page 15 of this report), and policy documents and legislation should be amended as appropriate.

2. The use of the term ‘arbitrator’ to refer to someone performing local mediation should also be discontinued. The action performed by an ‘arbitrator’ is ‘arbitration,’ which is not a permitted or recommended practice in cases of DV/IPV. The use of the term ‘arbitrator’ in this setting would imply that the person conducting mediation has the power to determine who is right or wrong and issue judgements which are binding on both parties – No mediator has this level of power, nor would it be appropriate.

Recommendations at the national level

3. Comprehensive guidance and ongoing practical training on gender-sensitive mediation in cases of DV/IPV should be provided to service providers to ensure that, in practice, mediation² is what is actually being provided. To this end, such guidelines should be developed urgently and with extensive and meaningful discussion and involvement from all key stakeholders, especially the Ministry of Justice (MoJ), Ministry of

Women’s Affairs (MoWA) and Ministry of Interior (MOI), as well as legal and mediation practitioners, and relevant CSOs. Guidelines should be accompanied by training materials and a rigorous, nation-wide training program to ensure that all authorities tasked with performing mediation are only doing so where appropriate and permitted by law, and are consistently applying a gender-sensitive, survivor-centered, and rights-based approach. Such training should include gender-responsive content relating to DV/IPV, including comprehensive safety and referral guides, how to manage and reduce risks of survivor revictimization, and how to screen for DV/IPV throughout mediation provision that may not be initially reported.

4. Mediation should never be provided in cases of DV/IPV which would constitute any misdemeanor-level offence under Cambodian law (see [Section 3.2\(C\)](#) for detail). Clarity should be provided urgently as to which offences can and cannot be mediated under Cambodian law. References to ‘severe misdemeanors’ and ‘minor misdemeanors’ have no legal basis under current Cambodian criminal law and should therefore be removed from the DV Law. Further, whether violence is serious enough to constitute a misdemeanor or not, steps should be taken to ensure the safety and security of women survivors as a top priority and that mediation is only entered into voluntarily by all parties, and should not be viewed as an alternative to the processing of criminal complaints.

5. MoI, MoJ, and MoWA should urgently issue a Joint-Directive Order or other policy or guideline to lay out effective and gender-sensitive procedural solutions/

² Mediation is defined here as a dispute resolution process involving a third party who encourages parties to identify options toward a resolution, but does not make recommendations or rulings in favor of one party or outcome)

mechanisms regarding the dissolution of informal marriages both in de jure and de-facto practice, so as to ensure that women (especially survivors of DV/IPV) do not remain trapped in such marriage against their will.

6. A joint directive order from MoI and MoJ detailing specific and easily obtainable procedures for court-issued protection orders from the court and the commune hall-issued administrative decisions should be developed and issued with urgency (based on existing provisions in the DV Law and Organic Law governing communes/Sangkat).

7. Safe shelters and other victim support services including, but not limited to, a national GBV hotline, and access to financial support and legal aid, should urgently be made available nationwide and free of charge.

8. The language of Art. 14 of the DV Law, which sets out that ‘authorities in charge can issue an administrative decision and take temporary measures...’ should be amended to read ‘...shall issue,’ so as to obligate action. Awareness on this clause shall be strengthened among both the service users and service providers.

Recommendations at the sub-national level (including local authorities and police personnel)

9. Local authorities should understand and perform their legal duty (set out in Art. 42 of the CPC) to refer all reports of felony or misdemeanor-level offences that they become aware of in the line of conducting their duties, to the nearest JPO or directly to the Royal Prosecutor.

10. Community education initiatives related to mediation, divorce, and domestic violence protection legal knowledge should be undertaken with urgency. Such initiatives should ensure that women at risk know about protection orders and administrative decision procedures, and how to access them.

11. Women survivors should not be charged fees, formal or otherwise, for receiving ADR services, neither for keeping their husbands in jail nor for obtaining their release from custody following DV/

IPV. Such fees clearly disincentivize the reporting of violence and may prevent women from seeking help from authorities.

12. Given that physical settings in many ADR cases present clear challenges in upholding survivor-centered principles of confidentiality and privacy, ADR providers at all levels should urgently be given access to more appropriate settings for conducting mediation, in which parties can be separated in private spaces where they may speak freely and safely without fear of being overheard or interrupted.

13. CDRCs, JSCs and other ADR relevant local mechanisms dealing with DV/IPV cases should increase efforts to ensure women comprise 50 percent of committee membership. Targeted policies and programs should also ensure that both men and women conducting ADR are effectively equipped with knowledge and skills, and that women are meaningfully engaged in conducting mediation, and are not relegated to supporting or accompanying roles.

14. It is not advisable for police (whether JPOs or otherwise) to conduct any form of ADR (see [Section 4.1.2](#) for detail). However, if police personnel are to conduct mediation, then the scope of this mandate should be clearly set out and regulated under secondary legislation, such as a sub-decree or other policy, as soon as possible. Such policies should stipulate clearly that conducting ADR is not an alternative to recording and processing complaints from DV/IPV survivors. Police, like all ADR providers, should provide detailed legal advice to survivors informing them of their right to decline participation in ADR, and that doing so does not forfeit their rights to also pursue criminal charges or to separate and/or divorce their partner should they wish to.

15. All police personnel should understand and perform their duty to make a formal record of all criminal complaints, and the process of referral to the Royal Prosecutor as per the Criminal Procedure Code. Authorities should enforce the provisions in Art. 75 of the Criminal Procedure Code against police officers who fail to proceed with a criminal case after withdrawal of the complaint by the victim or settlement between the victim and the suspect.

I. Introduction

1.1. Context

Of the many women who face violence at the hands of their partners in Cambodia, relatively few seek outside help. Previous research suggests that of those women who do seek help, many do not receive gender-sensitive assistance or access to justice, but are instead revictimized or otherwise put at risk.³ Such women often initially approach their local authorities for help. They usually receive assistance in the form of a variety of alternative dispute resolution (ADR) processes, such as reconciliation/conciliation⁴ and mediation. These local justice processes are often reported to be preferred by women and local authorities alike compared to court-based resolutions, which are seen as expensive, time consuming, and geographically distant.⁵

For a breakdown of the key differences among mediation, reconciliation/conciliation and arbitration, as well as their definitions, see [Figure 1](#) in [Section 3.1](#). In short, mediation involves a third-party actor who can encourage parties to identify options toward a resolution. Such a provider does not make recommendations, or embrace an expected outcome for parties to reconcile (as would

be the case during reconciliation/conciliation); nor make rulings in favor of one party or outcome (as would be the case during arbitration). While reconciliation/conciliation aims to reconcile a disputing couple, and arbitration refers to a formal process whereby an outcome is decided by a third party and must be respected, mediation is conducted to provide a neutral space for both parties to reach a mutually acceptable outcome – one which may well involve separation. It may also involve practical discussions regarding child custody, distribution of assets and so on.

Mediation, in limited cases of domestic violence (DV)⁶ and intimate partner violence (IPV),⁷ is permitted by the legal system in Cambodia under the Law on the Prevention of Domestic Violence and the Protection of Victims (DV Law), and relevant policy frameworks including the second and third National Action Plans to Prevent Violence Against Women 2014–2018 and 2019–2023 (NAPVAW II and III respectively). However, local forms of mediation – which in practice often more closely resemble reconciliation/conciliation processes and do not conform with modern

³ Lim, J., 'Out of Court Resolutions of Violence Against Women: Practices and Issues in Cambodia' (DanChurchAid, 2009).

⁴ While in certain contexts (such as, for instance post-conflict restorative justice settings) the words reconciliation and conciliation carry different meanings, for the purpose of this report which focuses on DV/IPV cases, reconciliation and conciliation carry largely the same meaning, being a form of ADR that is conducted with the desired outcome being a reconciling of differences between parties, and the preservation of the marriage and family unit. In Khmer, conciliation and reconciliation are both translated as *phsah phsa*, literally meaning to weld, or to heal. In the English translation of the DV Law, the term "reconciliation" is used. Therefore, to avoid confusion by using them interchangeably, we use 'reconciliation/conciliation' throughout this report. However, if the term "reconciliation" is used alone, that is when we would like to maintain the word choice used within the context and scope of DV Law.

⁵ In general, Cambodians do not prefer the judicial system, and most often prefer other forms of dispute resolutions. The criminal justice system in Cambodia was ranked 124th out of 126 countries in 2019 in the Rule of Law Index by the World Justice Project.

⁶ Cambodia's Law on the Prevention of Domestic Violence and Protection of Victims (2005) defines domestic violence as "violence that happens and could happen towards husband or wife, dependent children, or persons living in the same house and who are dependents of the household."

⁷ Intimate Partner Violence (IPV) refers to any behaviors within an intimate relationship that causes physical, psychological or sexual harm to those in the relationship. While DV is generally limited to spouses and dependents living together in a household, IPV includes de facto and boyfriend/girlfriend relationships.

mediation principles – often fail to serve women and protect their interests or safety and security.

One particularly high-profile example of so-called ‘mediation’ took place in Kirivong District of Takeo province in January 2018. In this case, a man with a long history of committing severe violence murdered his young wife after she went to the commune hall asking for a separation. The local authority had previously urged the couple to reconcile, largely ignoring the woman’s experience of repeated abuse and demonstrating a lack of awareness of legal protection procedures.⁸

The UN Committee on the Elimination of Discrimination against Women (CEDAW Committee) explicitly responded to the hazards of using ADR mechanisms to deal with cases involving any form of gender-based violence (GBV) in their 2013 and 2019 Concluding Observations on the periodic reports of Cambodia. In their 2013 Concluding Observations, the Committee called for additional training for local authorities on the strict application of the DV Law, “so that GBV cases are not systematically referred to mediation rather than prosecution.”⁹ In 2019, the Committee further expressed concern “that informal reconciliation by community members without any formal training remains the primary means of resolving cases of domestic violence.”¹⁰

Previous research has frequently identified a lack of clarity in mediators’ own methods and in the conflicting and confusing application of terminology.¹¹ Further issues in prior research include frequent references by providers of ADR to traditional gender norms – such as women being natural preservers of harmony in the community. Such notions can directly undermine the protection of women’s autonomy and rights. This is particularly evident in cases

where the stated goal of an ADR process is to successfully reconcile the couple.¹² As will be explored in the literature and policy review (Section 3), it is not only service providers, but also legislators, donors and researchers alike who have consistently failed to accurately differentiate between mediation, reconciliation/conciliation and arbitration processes, often using these distinct terms interchangeably.¹³ This confusion has flow-on effects for women survivors of violence who seek to obtain support or legal redress through prosecution or mediation, but are instead provided with reconciliation/conciliation, which is conducted with the aim of reconciling the couple and ensuring the preservation of the marriage and family unit. Conducting such reconciliation/conciliation practices in cases of DV/IPV carries significant risks: overriding women’s decisions, undermining their rights and autonomy, and in many cases, placing their lives in danger by effectively sending them back home with a serial perpetrator of violence and abuse.

Further confusion arises in relation to the threshold beneath or above which a case of violence can be legally responded to by authorities through ADR processes in Cambodia. For instance, the level of severity (slapping versus strangling, for example) or the type of violence (psychological versus physical) that can be mediated is not presently legislated in a clear or consistent manner. These pressing issues are further explored in the literature and policy review in [Section 3](#), as well as throughout subsequent sections.

1.2. Rationale

Despite the valuable groundwork laid out by previous researchers, further clarification is needed in relation to some of the issues noted above and in previous studies. Further personal accounts from women survivors

⁸ Chheng, N., & Handley, E., ‘Spousal Killings Call Commune Officials’ Mediation Role into Question’, *The Phnom Penh Post* (19/1/18) online: <https://m.phnompenhpost.com/national-post-depth/spousal-killings-call-commune-officials-mediation-role-question>

⁹ CEDAW Committee ‘Concluding Observations on the Fourth and Fifth Periodic Report on Cambodia’, (2013) CEDAW/C/KHM/CO/4-5, para 21(a).

¹⁰ CEDAW Committee ‘Concluding Observations on the Sixth Periodic Report on Cambodia’, (2019) CEDAW/C/KHM/CO/6, para 24(b).

¹¹ Ramage et al., *supra* note 3.

¹² Lim, *supra* note 1., p.2.

¹³ For example, in Ramage, et al., *supra* note 3, p. i.

of DV/IPV are also needed regarding the status and efficacy of these mechanisms in addressing such cases. This research builds on Women Peace Makers' (WPM) and the Cambodian Center for Mediation's (CCM) own field experiences in gender-sensitive mediation initiatives over the past several years, which have yielded observations revealing substantial problems with local ADR practices which have not been documented and subsequently remain unresolved.

For instance, service providers conducting these practices often lack the expertise, skills, training, knowledge of relevant laws and policies, and infrastructure that is required to perform appropriate, gender-sensitive and responsive mediation to women going through local ADR processes. Of particular note are those cases where a divorce or separation is sought: Women in unregistered marriages, in particular, are often given improper advice on the procedure for dissolving their marriages, leaving them in limbo and unable to exercise their autonomy. Women survivors of DV/IPV are often not provided with mediation at all, and are instead subjected to a revictimizing reconciliation/conciliation process (see [Figure 1](#) in Section 3.1 for a breakdown and analysis of these ADR terms). Given the serious issues with these types of interactions between women survivors and the formal and informal legal systems which purport to serve them, there is a clear need for an in-depth examination of the so-called 'mediation' practice at the local level in Cambodia.

With this in mind, it is hoped that this report and its recommendations will also aid in a number of ongoing advocacy and policy processes, such as the ongoing drafting of the aide memoire guideline on mediation in IPV cases, being developed by the Ministry of Women's Affairs (MoWA). It is further hoped that the learnings developed through this research may inform the ongoing drafting of the NAPVAW III, as well as current efforts to propose amendments to the DV Law. The findings from this research have already been mobilized to inform the drafting process of NGO shadow reports submitted to the UN CEDAW Committee.

Outside of these more formal advocacy and policy processes, and the potential use of this research to inform the development of training materials, this study also provides much-needed documentation of grassroots women's own experiences of mediation practice. The inclusion of such personal accounts is necessary to ensure that women's own voices are at the center of contributions toward the advancement of gender-sensitive mediation practices across the country – practices that should ultimately uphold women's rights and adopt a survivor-centered approach.

1.3. Research Objectives

This study has two primary, interrelated research objectives:

- A. To document emerging grassroots issues, experiences, challenges and demands from both survivors (service users), local service providers, and institutional stakeholders with regard to the local dispute resolution of cases involving violence against women, particularly DV/IPV;
- B. To analyze the data collected in order to formulate practical recommendations aimed at resolving the tensions identified between current ADR practice and a survivor-centered approach to household-level conflict resolution and women's access to justice.

II. Research Methodology

In addition to a literature and policy review (Section 3), the insights provided in this report are based on empirical research conducted via in-depth semi-structured surveys, key informant interviews (KIIs), and focus group discussions (FGDs) with a range of 167 stakeholders in total. Each of these stakeholder participants have lived experience of using, performing, overseeing or otherwise interacting with ADR practice at the local level in IPV cases.

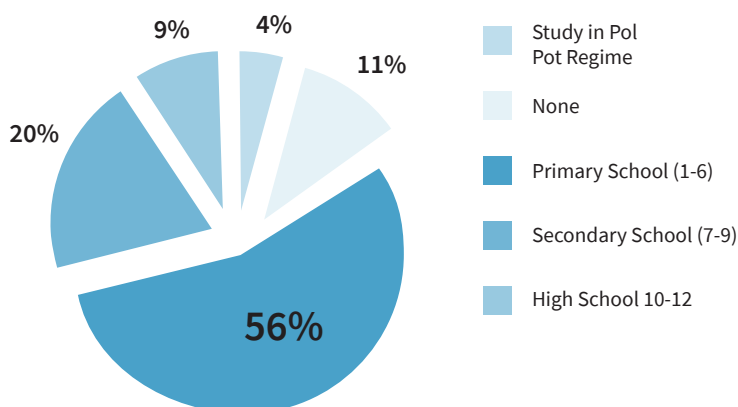
Many of the research findings draw on the reported experiences of 67 women survivors of violence carried out by their current or former husbands. A total of 46 women respondents were interviewed individually using semi-structured, long-form surveys, while the remainder (21 women) were interviewed in a focus group discussion format. Among the 46 surveyed women survivors, over half (56 percent) had been educated up to the primary school level. The ages of the women respondents also varied, with around two thirds (63 percent) of women aged between 36 to 55 years old, and the remainder aged between 24 to 35 years old. All

of the women service user respondents reported having experienced one or more types of violence at the hands of their partners, including physical, economic, sexual and psychological violence. Only one quarter (24 percent) of women respondents had a formal marriage certificate, while the remainder were (or had been) in 'informal' or customary marriages, performed without the issuance of a legal certificate.

These women respondents were recruited to participate in the study through Commune Committees on Women and Children (CCWC), Women and Children Consultative Committee (WCCC) and commune and village chiefs of each commune in the target districts. They participated in the research in their communities, at locations chosen for their confidentiality and safety. Prior to the field research period, an in-depth training was conducted with the research team to ensure that principles of ethical, survivor-centered research were understood and adhered to (see Section 2.3 for more on research ethics). Observation and field notes, including reflections from each field researcher, helped to further enrich and contextualize the data for subsequent analysis.

In order to understand the perspectives and challenges experienced by service providers and duty bearers in navigating the processes of ADR at the local and sub-national levels, the research also involved a wide range of institutional stakeholders. Firstly, FGDs were conducted with 84 service providers at the district, commune and village levels, including heads and members of Justice Service Centers (JSCs) and Commune Dispute Resolution Committees (CDRCs), as well as district and commune chiefs and councilors, and village chiefs. Five KIIs were also conducted with

Level of Education among SUs



Number of Research Participants

Description	Semi-structured Survey	Focus Group Discussion (FGD)	Key Informant Interviews (KII)
Women Service Users	46	21	
Local Authorities Service Providers		84 (30 females)	5 (3 females)
Stakeholders (CSOs, lawyers and ministry officials)			11 (5 females)
TOTAL		167	

various local authority representatives, including with a WCCC, a District Office of Women's Affairs, a JSC, and one police post.

The research took place across four districts in four provinces, with and without formal CDRC and JSC mechanisms.¹⁴ The four research sites, Chumkiri District of Kampot, Boribo District of Kampong Chhnang, Dambae District of Tbong Khmum, and the city of Battambang, were strategically selected in order to understand the diverse experiences of women and key issues related to the topic.

Lastly, 11 additional key informant interviews took place in the capital, Phnom Penh. Respondents included lawyers and other legal practitioners, gender and ADR experts, representatives of relevant civil society organizations, and members of relevant ministries including the Department of Mediation and Local Justice within the Ministry of Justice (MoJ). The purpose of conducting these interviews was to add context to the research findings and gain additional insight from expert stakeholders with experience in relation to local ADR practice and DV/IPV in Cambodia.

2.1. Analysis methodology

In order to utilize all of the data effectively and structure the research report coherently, the qualitative data was interpreted and analyzed using Braun & Clarke's method of thematic analysis.¹⁵ This meant first consolidating all of the individual interviews and long-form responses according to each stakeholder type (police officer, woman survivor, and so on) and then going through those pieces of data in order to become familiar with the content and to generate initial themes.

Following this process, the data was examined a second time and was coded line by line in accordance with the thematic content of the data. Each code was then extracted into a separate, thematically oriented document for ease and rigor of analysis. For instance, for the theme of 'victim blaming,' all content from the raw data relevant to that theme was extracted and analyzed prior to the report writing stage of the methodology. The quantitative data from the semi-structured surveys was transcribed and then analyzed using Excel.

¹⁴In this research context, formal ADR refers to that conducted by the 56 Commune Dispute Resolution Committees (CDRCs) in nine provinces under the supervision of the Ministry of Interior (MoI), and the 66 Justice Service Centers (JSC) in 10 provinces under the supervision of the Ministry of Justice (MoJ). At the time of the data collection period up to October 2019, JSCs remain under the operation of MoJ, while CDRCs function within the commune hall under the MoI. 'Informal' ADR in this report refers to the commune and district-level mechanisms that were not formally established and trained by the joint-Ministry and UNDP Access to Justice Project a decade ago. The research does not take into account the recent establishment of a Legal and Mediation Office (LMO) in January 2020 through Sub-Decree 182-4 issued on December 2, 2019, in which JSCs were integrated into the LMO operated under the district administration.

¹⁵Braun, V. & Clarke, V., (2006) 'Using thematic analysis in psychology,' *Qualitative Research in Psychology*, 3, 77-101.

"to provide a rich description of mediation practices and the resultant experiences of women survivors..."

2.2. Limitations of the research

The study has adopted a qualitative approach, through which it has sought to provide a rich description of mediation practices and the resultant experiences of women survivors of DV/IPV. It therefore captures only a limited number of research locations and respondents, and as a result, should not be considered as representative of the situation across the whole of Cambodia.

While the smaller sample size can be considered a limitation of this research, this study nonetheless contains a range of findings based on empirical research. It provides useful guidance in understanding what structural and socio-cultural issues accompany the practice of ADR in DV/IPV cases, as well as how these issues might be remedied in each of the case study locations, and indeed more broadly, throughout the Cambodian legal context. It is not intended to – and neither is it able to offer a thorough and detailed account of mediation practice in cases of DV/IPV in all Cambodian contexts.

2.3. Ethical considerations

Ethical issues were identified and mitigated through all stages of the research process. Surveys, FGDs and KIIs were conducted in a safe, private location arranged in collaboration with WCCC, CCWC and women's rights-oriented civil society organizations in the target areas. Respondents were issued with Participant Information Statements and Consent Forms (see Appendices in 6.1 and 6.2) detailing the voluntary nature of their involvement in the research and their ability to withdraw from the study at any time without any consequences.

Each member of the research team conducting interviews with survivors of violence first received a training on ethical, survivor-centered research principles for application in conducting field research on violence against women. Further, all respondents who participated in the study have been anonymized, in order to mitigate any possible risks and to maintain their confidentiality.

Any other forms of data (images, detailed locations etc.) that may lead to the identification of individuals via deductive disclosure, which occurs when the traits of individuals or groups make them identifiable in research reports,¹⁶ have been removed or replaced.

¹⁶ Sieber, J. (1993) 'The ethics and politics of sensitive research' in Renzetti C & Lee RM (eds) *Researching sensitive topics*.

III. Literature and Policy Review

3.1. Current available literature examining DV/IPV and ADR in Cambodia

a. Terminology: *'What's in a name?'*

Over the past two decades, a considerable amount of literature has examined the use of local forms of ADR in cases of DV/IPV in Cambodia. The majority of this research has been produced by academics, civil society actors or donor agencies, often in collaboration with national and subnational government actors. A key issue of note, however, is the lack of standardized terminology applied within such literature when discussing ADR processes and DV/IPV. For instance, some reports, such as that of Ramage et al. (2008), appear to treat the terms mediation, reconciliation and conciliation as entirely interchangeable, both in English and Khmer.¹⁷ This generates (as well as perhaps reflects) confusion about which term is most appropriate.

Similarly, in the ongoing drafting of the aide memoire guideline on mediation in DV/IPV cases (at the time of data collection and analysis in late 2019, it was still in draft form) developed by MoWA in collaboration with UN Women, the definitions of terms given again fail to distinguish between mediation, reconciliation and conciliation: *'Mediation or re/conciliation is an alternative dispute resolution process that uses a neutral or impartial third party (mediator or conciliator) which helps parties in a dispute reach a settlement.'* While the text of this document is likely to be amended prior to its finalization, the fact that the terms are used interchangeably in the current draft is itself noteworthy.

Clear, locally produced guidelines for how and when to use the terms can, however, be found in the 'Mediation Handbook' which was produced in 2010 by the MoI and MoJ:

¹⁷ In Khmer, the terms Samroh Samruol and phsah phsa loosely translate as mediation and conciliation respectively.

Types of ADR in Cambodia, according to the Mediation Handbook (MoI and MoJ, 2010)

	Trial	Arbitration	Conciliation	Mediation	Negotiation
Formality	Most formal	Less formal	Less formal	Less formal	Informal
Decision-maker	Judge or jury	Arbitrator	Parties	Parties	Parties
Parties involved	Parties in conflict + judge	Parties in conflict + arbitrator	Parties in conflict + conciliator	Parties in conflict + mediator	Parties in conflict
Role of third party	Resolves the case	Resolves the case	Makes suggestions to the parties, but parties decide resolution	Encourages parties to identify options, they decide resolution	N/A: Parties alone resolve their conflict
Flexibility of process	Process is set by formal rules	Arbitrator sets the process choose a process	Conciliator helps parties choose a process parties, but parties decide resolution	Mediator helps parties choose a process identify options, they decide resolution	Parties set their own process their conflict
Length	Longest: Parties may have to wait for a final decision	A few hours to a few days: The arbitrator may rule immediately or take some time	A few hours	A few hours	Hours or days: Can last as long as the parties want it to their conflict
Cost	High: Parties must pay for lawyers	Moderately high: Most arbitrators charge for their services	Conciliators may charge for their services	Free at the CDRCs and Maisons de la Justice ¹⁸	No monetary costs, unless you hire someone to help negotiate their conflict
Finality of decision	Decision is final and binding	Decision is final and binding	Decision is like an agreement, enforceable in court	If parties come to a decision, it may become binding, in the form of an agreement	Solution must include provisions making it binding
Type of decision	Judge rules for one party or the other	Arbitrator rules for a party	Conciliator suggests solutions for the parties	Parties make their own solution, can be creative	Parties make own solution, can be creative

Figure 1: 'Types of ADR in Cambodia' adapted from the Mediation Handbook, 2010¹⁹

A lack of consistency in the usage of these terms is also observable within key legislation and policy documents. For instance, within the DV Law itself, Art. 26 states that:

“For the offences that are the mental/psychological or economic affected [sic] violent acts and minor misdemeanors, or petty crimes, *reconciliation or mediation* can be conducted with the agreement from both parties. The household members

can choose any way by requesting parents, relatives, Buddhist monks, elders, village chiefs, and commune councilors to act as the *arbitrators* to solve the problems in order to preserve the harmony within the household...”

An attempt at clarifying the use of the terms ‘mediation,’ ‘reconciliation,’ and ‘arbitrator’ in the DV Law is found in the Explanatory Notes of the legislation prepared by MoWA (hereafter called DV Law Glossary, November 2009), as follows:

Reconciliation:	Mediation:	Arbitrator:
<p>Communication process between quarreling parties that aims at maintaining family life (couple wants to stay together). Reconciliation is not allowed during the intervention according to Art. 13 of the DV Law, but possible after the victim has requested a protection order (Art. 26, 27, DV Law). Reconciliation is strictly based on the free will of both parties; thus it is absolutely voluntary. Parties have the right to choose a trustworthy person as an arbitrator who may conduct the reconciliation process.</p>	<p>Communication process between quarreling parties that is conducted by a neutral person (arbitrator) in order to find constructive solutions in a crisis-situation. Mediation process does not necessarily aim at the maintenance of family life, but rather tends to find practical solutions such as custody of children, financial support, and places to stay for the perpetrator. Result of a mediation process can be separation, divorce or maintenance of family life.</p>	<p>Person that facilitates assists the reconciliation process of quarreling parties as a neutral-person that is not allowed to put any pressure on the parties or to decide anything for the parties. Basis of the reconciliation process is the free will of the parties.</p>

Even a cursory comparison of the relevant terms as they are defined earlier within the Mediation Handbook (Figure 1), and their above definition and application within the DV Law and its Glossary (Figure 2), reveals some urgent problems. Firstly, the use of the term ‘arbitrator’ in Art. 26 and its inclusion in the Glossary is confusing and inappropriate: The noun form of ‘arbitrator’ is of course ‘arbitration,’ which is not a practice that is permitted or recommended in cases of DV/IPV. The inclusion of the word ‘arbitrator’

in the Glossary and the Law itself is therefore unclear and inconsistent with the MoJ and MoI’s mediation handbook explanation as well as commonly understood definitions of the terms.

The use of the term ‘arbitrator’ in this setting would imply that the person conducting a local ADR process has the power (as an arbitrator normally does, applying the ordinary meaning of the word) to issue judgements which can be binding on both parties.²⁰ This would

¹⁸ Now called Justice Service Centers, or JSCs

¹⁹ Ministry of Justice, Mediation Handbook, 2010

constitute a totally inappropriate and indeed dangerous level of power over the lives of DV/IPV survivors, to bestow upon unqualified local authorities, community members or religious leaders. The DV Law should therefore be amended and its Glossary updated as soon as possible, to remove or replace the term ‘arbitrator.’

In Art. 17 of the DV Law, both ‘reconcile’ and ‘mediate’ make another joint appearance:

“To participate in the implementation of the penal procedures in effect, the authorities in charge cannot intervene to *reconcile or mediate* the criminal offences that are characterized as felonies or severe misdemeanors.”

Leaving aside the term ‘severe misdemeanors’ which is discussed later in this section, there are again issues with terminology here. Based on this article, it seems that relevant authorities can choose between either reconciliation or mediation in less severe cases of violence. This is problematic because reconciliation, by its nature, implies that the outcome should be one of remaining together.

As stated earlier, such reconciliation, which is conducted with the aim of reconciling the couple and ensuring the preservation of the marriage and family unit, carries significant risks. Such risks include overriding women’s decisions, undermining their rights and autonomy, and in many cases, placing their lives in danger by effectively sending them back home with a serial perpetrator of violence and abuse.

In Art. 27 of the DV Law, the courts are also given leeway to conduct ‘reconciliation’:

“...the courts shall try to *reconcile* the violence disputed parties under the condition that it is in response to the wishes of the household members.”

In the following sentence of the same article, the term mediation is brought in again:

“While *reconciling and mediating*, the courts shall avoid putting pressures on the party who refuses to go along with each other or forcing any party to *reconcile*, or forcing to come into an agreement without the agreement from the two parties”.

b. Conclusion

As can be seen from a brief examination of existing research, policy documents and relevant legislation, there is a serious and consequential lack of consistency and reasoning in the application of a given ADR term. It is difficult to ascertain whether such terms are being used consciously to describe different processes, or interchangeably as synonyms.

3.2. Key issues and outstanding questions in existing research and legislation

As well as differences in approach to terminology, there appears to be some disagreement throughout the literature on the overall desirability and appropriateness of local ADR practice in any form when applied to cases of DV/IPV.

For instance, Ramage et al.²¹ present the existence of this practice through a relatively uncritical lens of analysis. While the report does point out some failings in relation to the performance of ADR in DV/IPV cases, its key findings (the first three of which are listed below) are nevertheless presented in an arguably gender-blind manner:

1. *Samroh Samruol [local ADR practice] can work in cases of domestic violence.*
2. *Villagers prefer Samroh Samruol to formal dispute resolution because:*
 - It is inexpensive, fast and accessible due to the fact conciliators live in the same village.
 - It is deemed successful when it is effective in resolving the dispute and changing behavior.
3. *Local authorities also believe domestic conflicts should be managed locally. They are confident Samroh Samruol works well.*

²⁰ In the Khmer language, arbitrator also translates as ‘referee’ in the sporting sense, with the literal translation being ‘ach-nha kandal’. Ach-nha means authority or power, while kandal means middle. Such a term therefore not only implies the ability to make binding rulings, but also implies that a degree of subjectivity and impartiality exists, where it may in fact be lacking and such a ‘ruling’ may be made on a personal judgement or whim.

²¹ Ramage, et al., *supra* note 3, p. i

In contrast, others such as Lim, question whether mediation can ever be considered survivor-centered practice when used in cases of DV/IPV, and whether it should be discontinued altogether where any form of violence has occurred:

*“...the methods by which local authorities resolve domestic violence cases are clearly **discriminatory and biased in favor of the perpetrator...** [and] do not seem effective in ending and preventing further violence... The discrimination against female survivors is clearly demonstrated through this lack of protection... [when] coupled with the advice given by authorities for parties to stay together for the sake of the family, **these methods continue to subjugate women at a very vulnerable period in their lives.**”²²*

In her 2015 study, Brickell, a prominent researcher on gender in Cambodia, reflected on ADR-related criticism that had been levelled at the Cambodian government via the 2013 CEDAW reporting process:

*“The [CEDAW] working group asked for information ‘on measures taken by the State party to counter the use of local reconciliation processes in dealing with violence against women’... Such concerns are not new... in Cambodia, it is very unusual that conciliators have enough training, with **reconciliation methods arbitrarily based on personal experience rather than dispute resolution knowledge and expertise.**”²³*

Surtees’ research on ADR in Cambodia highlights similar points, namely that such practices fail to address risks specific to the abusive relationship; seek a predetermined outcome, and violate women’s right to autonomy.²⁴ Finally, local human rights organization LICADHO also held ADR in a negative light in their 2018 landmark report on institutional responses to DV in Cambodia, noting that:

“In most cases, when a victim of domestic violence goes to the commune chief asking for a divorce, often bearing the marks of the latest physical assault on her, the commune chief will tell her to calm down, wait for a while and think about the well-being of her children, making the assumption that it is best for the children if the parents remain married, even in a home where there is violence.”²⁵

So, it can be seen that there are a range of voices and perspectives on the appropriateness or permissibility of conducting ADR between couples in cases where DV/IPV has occurred.²⁶ This is a debate made more complicated by the increasing recognition in Cambodia and in jurisdictions around the world, of the different types of behaviors that can or should constitute ‘domestic violence’ under the law. Consider, for example, economic, psychological or emotional violence.

The inclusion of these lesser-recognized types of DV/IPV – such as psychological and emotional harm – within the scope of implementation of relevant legislation is to be welcomed. These types of violence are insidious and form part of a cycle of abuse that very often escalates periodically to include physical forms of violence. However, such developments do complicate the process of delineating exactly the circumstances under which the practice of mediation is appropriate, or legally permissible. This is of crucial concern in socio-legal contexts like Cambodia where local ADR practices realistically form a central (if not the sole) avenue for access to justice for many DV/IPV survivors, and therefore cannot be straightforwardly ‘ruled out’ in favor of formal court processes in certain cases.

The core questions that present themselves from these issues are themselves rife with moral ambiguity and tension. As a result, they can present difficulties for, and

²² Lim, J., ‘Out of Court Resolutions of Violence Against Women: Practices and Issues in Cambodia’ (2009) pp. 1-2

²³ Brickell, K. (2015). Towards intimate geographies of peace? Local reconciliation of domestic violence in Cambodia. *Transactions of the Institute of British Geographers*, 40(3), 325.

²⁴ Surtees, R. (2003). Negotiating violence and non-violence in Cambodian marriages. *Gender & Development*, 11, 30-41

²⁵ LICADHO, (2017). ‘No Punishment, No Protection: Cambodia’s Response to Domestic Violence’

²⁶ See also: CEDAW General Recommendation No. 35 (CEDAW/C/GC/35), Para. 45, which recommends that States Parties: “Ensure that [GBVAW] is not mandatorily referred to [ADR] procedures, including mediation and conciliation... The use of these procedures should be strictly regulated and allowed only when a previous evaluation by a specialized team ensures the free and informed consent by the affected victim/survivor and that there are no indicators of further risks for the victim/survivor or their family members. These procedures

What is the scope of “Domestic Violence” under the 2005 DV Law?

Art. 3 sets out that under the law, domestic violence includes four categories of offences:

A. Acts affecting life

B. Acts affecting physical integrity

C. Torture or cruel acts

D. Sexual aggression

The subsequent articles then set out what is included within those four categories of offences, as follows:

Art. 4 sets out that ‘Acts affecting life’ include:

- Premeditated homicide
- Intentional homicide
- Unintentional homicide resulted from intentional acts of perpetrators
- Unintentional homicide.

Art. 5 sets out that ‘Acts affecting physical integrity’ include:

- Physical abuses with or without using weapons, with getting or not getting wounded
- Tortures or Cruel acts.

Art. 6 sets out that ‘Tortures or cruel acts’ include:

- Harassment causing mental/ psychological, emotional, intellectual harm to physical persons within the household
- Mental/ psychological/ physical harm exceeding morality and the boundaries of the law.

Art. 7 sets out that ‘Sexual aggression’ includes:

- Violent sex
- Sexual harassment
- Indecent exposure.

NB: Art. 2 of the DV Law lists those covered under the Law as: 1) Husbands and wives 2) Dependent children 3) Persons living under the roof of the house and who are dependent of the households (sic). Thus, it is important to note that this law fails to criminalize violence carried out against de facto partners, boyfriends/girlfriends, and former partners.

Figure 3: Scope of implementation under the 2005 DV Law, setting out what constitutes domestic violence

disagreements between, feminist advocates in seeking out the best (or, perhaps, the least worst) strategy in order to eliminate violence and improve survivors’ access to legal remedy in Cambodia’s current socio-legal context. We have summarized these outstanding and contentious issues into four intersecting questions, which will later form the basis for the analysis of findings:

A. “Can we ever accept that mediation can constitute an appropriate way of dealing with cases of DV/IPV, under any circumstances?”

The CEDAW Committee, in their General Recommendation No. 33, stated that:

should empower the women victims/survivors and be provided by professionals specially trained to understand and adequately intervene in cases of [GBVAW], ensuring an adequate protection of women’s and children’s rights as well as an intervention with no stereotyping or re-victimization of women. These alternative procedures should not constitute an obstacle to women’s access to formal justice.”

“Alternative dispute resolution processes... may provide greater flexibility and reduce costs and delays for women seeking justice, they may also lead to further violations of their rights and impunity for perpetrators due to the fact that these often operate with patriarchal values, thereby having a negative impact on women’s access to judicial review and remedies.

...The Committee recommends that States parties... Guarantee that [such] procedures do not restrict access by women to judicial and other remedies in all areas of law, and does not lead to further violation of their rights; and ensure that cases of violence against women, including domestic violence, are under no circumstances referred to any alternative dispute resolution procedures.”²⁷

Thus, the Committee here takes a strong stance against the use of ADR in cases of violence against women, including domestic violence, ‘under any circumstances.’ Other actors take a more relativist²⁸ (and perhaps more pragmatic) approach, suggesting that mediation can form a more accessible, affordable and culturally appropriate alternative to the formal legal system in certain circumstances.

Such commentators include Ramage et al., who reflect on the pre-colonial existence of local dispute resolution practices, which have formed part of Cambodian customary legal tradition for centuries:

‘Customary conflict management that Cambodian villagers use to resolve everyday disputes... has ancient roots in Khmer society... the dispute resolution mechanisms that Cambodian villagers rely on today to settle their differences are steeped in tradition. [This] may help to explain why efforts by French colonialists to establish a Western style judicial system in the 19th century failed to displace [such] practices. Instead... the two legal cultures were precariously coordinated simultaneously.’

²⁷ CEDAW/C/GC/33

²⁸ A relativist position in relation to mediation practice would take into account the fact that such forms of justice have existed in Cambodia as part of traditional pre-colonial justice mechanisms (see Brickell, 2015). In particular, an anthropological or critical human rights perspective would emphasize the validity of local knowledge practices over universalist, primarily Northern-informed, ideas of formal justice as constituting the only ‘real’ justice.

²⁹ Ramage et al., supra note 3, p. 1.

³⁰ Brickell, K. (2015). Towards intimate geographies of peace? Local reconciliation of domestic violence in Cambodia. *Transactions of the Institute of British Geographers*, 40(3), p. 325.

³¹ For instance, see the measures involving ‘specialist ADR teams’ suggested by the UN CEDAW Committee in their General Recommendation No. 35 (CEDAW/C/GC/35), Para. 45, detailed in footnote 25 above.

Brickell also reflects on the longstanding tradition of local forms of mediation, though in bringing in a gender lens, she appears somewhat more critical:

‘...Samroh Samruol has the meaning to smooth over and seek harmony... The emphasis on working to uphold the marital unit ties into wider national and regional cultures. Cambodian culture encourages the Theravada Buddhist principle of forbearance (Khanti), the practice of exercising patience and forgiveness for the peaceful resolution of a conflict (even if the perpetrator does not deserve leniency).’²⁹

Evidence... suggests that this social more has the potential to see an individual victim’s needs subordinated to the perceived interests of the collective at the familial, community and national level. [The] DV law compounds this, complicit in legislating and thus legitimating a language of harmony... [and integrating] recommended recourse to local reconciliation for ‘minor’ cases.’³⁰

There is often significant inherent value in maintaining customary traditions that have been practiced locally for centuries. However, when considering CEDAW’s statements reflecting concern about the use of ADR in cases of DV/IPV in Cambodia, and the potency of the earlier-cited critiques provided by LICADHO and others, it seems that urgent changes to such customary practices are needed to bring them in line with modern standards of DV/IPV prevention and response.³¹

B. “If we accept that some forms of DV/IPV can be mediated through local ADR practices, exactly which forms are these?”

As stated earlier, there is some uncertainty around how more recently recognized forms of DV/IPV – for instance psychological, emotional or economic violence – should be treated in relation to the permissibility of ADR as an alternative process to the

formal system, in Cambodia and elsewhere. While these types of violence are insidious and may constitute criminal offences³² that impinge upon the rights of women, they are also notoriously ‘slippery’ in that they are rarely well-defined in legislation, and the elements of such offences are known to be difficult to prove.

Due to a lack of certainty about, for instance, what constitutes ‘psychological abuse’³³ versus what should be considered an argument or series of arguments between a couple in the everyday ups and downs of domestic life, such offences are difficult to prosecute. They also prove difficult for advocates to assess whether they are forms of violence that should be deemed permissible to resolve via informal justice processes.

As discussed in the previous section, CEDAW’s General Recommendation 33 recommends the prohibition of any form of GBV from being mediated ‘under any circumstances.’ This would arguably include, then, economic, emotional and psychological abuse. Art. 26 of the Cambodian DV Law, however, does permit mediation for ‘mental/psychological or economic affected violent acts’ (as well as ‘minor misdemeanors’ or petty crimes).

It should be noted here that there appears to be a conflict between Cambodian laws, casting doubt on whether the psychological abuse listed in Art. 26 of the DV Law could in fact be legally responded to by ADR provision: Art. 6 of the DV Law (detailed in [Figure 3](#)), sets out that psychological violence is an ‘act of torture or cruelty’ that is subject (as all offences within the DV Law are) to criminal prosecution under the Criminal Code. However, when cross-checking with the Criminal Code, ‘torture or cruelty’ is listed as punishable by imprisonment for seven to 15 years under Art. 210. A penalty of seven to 15 years qualifies this crime as a felony, and is therefore not an offence that is eligible for mediation.

Hence, it can be seen that there are tensions and contradictions not only between international and

domestic law, but also within the Cambodian legal system itself, about what forms of violence can undergo mediation. This makes it difficult to provide recommendations that are based entirely on analysis of existing legal parameters, as those parameters shift depending on the legislation, or even the particular article within a law being read.

It is here suggested that, given Art. 26 of the DV Law is the only relevant article that discusses both mediation and psychological violence in one place, it might be assumed that in the spirit of the law, such types of violence can be mediated. Although an imperfect evidence-based interpretation (given the conflict with Art. 6 and the potential reading of psychological abuse as a felony crime), it is nonetheless here argued that the most appropriate reading is to take Art. 26 on its own, as the specialist law regulating domestic violence, and that there is therefore some scope for less serious acts of psychological violence to be mediated under Cambodian law.

Thus, mediation of certain types of violence, namely economic, emotional and psychological, can arguably be seen to be permitted under Cambodian law. The same article of the DV Law (Art. 26), also implies that physical violence may be mediated, provided the nature of the violence is not sufficiently severe as to constitute more than a ‘minor misdemeanor’ or ‘petty crime.’ This raises yet further issues, which are explored below.

C. “If we accept that mediation can be applied up to a certain level of *severity*, exactly which level of severity should that be?”

This question is of particular pertinence in the Cambodian legal context, where ambiguities in the law have reportedly led to cases of serious malpractice in institutional responses to DV. These include practicing local forms of ADR even in cases of grievous and repeated physical harm where such instances should clearly have warranted automatic referral to the police or other law enforcement personnel.

³² While the CEDAW Committee has recommended revision of the DV Law to clearly criminalize DV in all of its forms, the Criminal Code does not explicitly do so.

³³ Defined within the Cambodian DV Law Glossary as: ‘Any act that causes direct pressure on a person’s mind like threatening, racketeering, persecution or degrading slander her/his reputation and dignity by means of threats, insults or blackmail, isolating from relatives and close friends, coercion or compelling into committing actions beyond or against her/his intention, will or capability’ (p. 16).

The crux of this legal ambiguity may be found within the terms ‘severe’ and ‘minor’ misdemeanors. Under Art. 26 of the DV Law, cases of DV³⁴ can be dealt with via ADR processes, only as long as they constitute ‘petty crimes’ or ‘minor misdemeanors:’

‘For offences that are the mental/psychological or economic affected violent acts and minor misdemeanors, or petty crimes, reconciliation or mediation can be conducted with agreement from both parties.’

Likewise, ADR provision for ‘severe’ misdemeanors or felony offences is explicitly prohibited under Art. 17 of the same law:

‘...the authorities in charge cannot intervene to reconcile or mediate the criminal offences that are characterized as felonies or severe misdemeanors.’

Crucially, however, Cambodian criminal law sets out only three categories of offences, as follows:

1. **Petty crimes** (offences punishable in the Criminal Code by one to six days [CC, Art. 48]);
2. **Misdemeanors** (offences punishable in the Criminal Code by more than six days, but no more than five years [CC, Art. 48]); and
3. **Felonies** (offences punishable in the Criminal Code by more than five years, but no more than 30 years [CC, Art. 48]).

As can be seen above, the Cambodian Criminal Code makes no distinction between ‘minor’ or ‘severe’ misdemeanors.

In practice, the language of Art. 26 leaves ADR open as a viable option in response to all misdemeanor-level offences, which include a range of offences which should under no circumstances be responded to via ADR.

Such offences include:

- Indecent [sexual] assault (CC, Art. 246), Death threats (CC, Art. 233),

- Intentional acts of violence (CC, Arts. 217, 218 and 222 [violence committed by spouse or partner]) and
- Unlawful confinement (CC, Art. 253).

The above offences clearly constitute criminal acts that should be dealt with via more formal processes, such as the issuance of a protection order, the undertaking of investigations against the perpetrator and referral to the Royal Prosecutor.

In conclusion, we wish to echo here a decade-old recommendation made by the Cambodian Committee of Women (CAMBOW):

‘To effectively protect victims of domestic violence, the DV Law’s provisions for reconciliation/ mediation should be tightly defined, and it should be clear what types of specific acts can and cannot be included in this.’³⁵

D. “If we accept that mediation can be applied in certain circumstances following DV/IPV, what constitutes a survivor-centered approach to mediation, and how can it be ensured? Further, why does this rule out ‘reconciliation’ as a practice?”

As put succinctly by the CEDAW Committee in their General Recommendation No. 33: “[ADR] processes... may lead to further violations of [women’s] rights and impunity for perpetrators because they often operate on the basis of patriarchal values, thereby having a negative impact on women’s access to judicial review and remedies.”³⁶ Similarly, Brickell suggests that ‘the DV Law has the potential to entrench, rather than diminish, an environment of victim blaming.’³³

A survivor-centered approach to ADR, it is here argued, firstly requires that it takes the form of **mediation** rather than reconciliation/conciliation. As stated earlier, reconciliation/conciliation, which is conducted with the aim of reconciling a couple and ensuring the preservation of the marriage and family unit, carries

³⁴ LICADHO, supra note 21.

³⁵ CAMBOW, (2007). Violence Against Women: How Cambodian Laws Discriminate Against Women, 11.

significant risks. These risks include but are not limited to: Overriding women's decisions, undermining their rights and autonomy, and in many cases placing their lives in danger by effectively sending them back home with a serial perpetrator of violence and abuse. We recommend, therefore, that in no cases should any form of conciliation or reconciliation be conducted as a response to cases involving any form of violence, at any time.

Similarly, it is important that those conducting mediation should be referred to in law and practice as mediators, and never as arbitrators. As stated earlier, the noun form of 'arbitrator' is 'arbitration,' which is not a practice permitted in DV cases. The use of the term 'arbitrator' in this setting would imply that the person conducting a local ADR process has the power to issue judgements which can be binding on both parties. This would constitute an inappropriate, and indeed dangerous, level of power over the lives of DV survivors to bestow upon local authorities, community members or religious leaders.

In line with the CEDAW General Recommendation 35, further principles of survivor-centered mediation include women being informed of their legal rights, (including to proceed with criminal complaints), and the principle of free, prior and informed consent rather than being automatically subjected to ADR processes. Women survivors of DV/IPV should be free to choose the third party conducting the process,³⁶ and should receive ADR in the form of mediation only, rather than reconciliation/conciliation. Such mediation procedures should empower women and only be conducted by someone who has been professionally trained in conducting mediation in cases of DV/IPV, as well as in gender norms and relevant legal and human rights principles, "ensuring an adequate protection of women's and children's rights as well as an intervention with no stereotyping or re-victimization of women".³⁹

Additional principles of survivor-centered mediation, rooted in women's own experiences of the process, are discussed in the conclusions and recommendations section (**Section 5**), following an examination of the empirical data gathered during the research process.

3.3. Conclusion

This section has explored how others – researchers and legislators alike – have approached four pressing, fundamental questions:

- a. Can DV ever be mediated?
- b. If yes, which 'types' of DV/IPV?
- c. And how 'severe' can that DV/IPV be before mediation should be prohibited?
- d. What constitutes gender-sensitive, survivor centered mediation practice?

It is here suggested that the lack of clarity that can be gleaned from prior commentary on the issue, and the inconsistencies in the legal and policy framework, call now for an exploration of women DV survivors' current experiences of local ADR mechanisms, in practice 'on the ground', as follows in the next section.

³⁶ UN CEDAW, (2015) General Recommendation No. 33: Women's Access to Justice, CEDAW/C/GC/33, Para 45.

³⁷ Brickell, K. (2017). Clouding the judgment of domestic violence law: Victim blaming by institutional stakeholders in Cambodia. *Journal of interpersonal violence*, 32(9), 1358

³⁸ Article 26 of the DV Law stipulates that 'household members shall be free to choose' the party conducting mediation. However, CAMBOW (2007, supra note 26) recommends that 'it should be the victim in an abusive relationship who has the right to choose' the party conducting ADR.

³⁹ UN CEDAW, (14 July 2015), General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, CEDAW/C/GC/35, p. 14.

IV. Discussion and Findings

Having provided some context for the study through an exploration of prior literature and analysis of key legislative and policy documents, this report now moves on to examine the empirical findings that emerged from the field research process.

The first half of this section (4.1) examines ADR from the perspective of ‘service users,’ (SUs) namely women survivors of DV/IPV who underwent some form of local ADR practice. The second half (4.2), examines ADR from the perspective of ‘service providers,’ (SPs) namely those conducting some form of local ADR practice, and also includes observations from interviews with key informants, such as civil society workers, mediators, gender experts, legal practitioners and lawyers.

4.1. Local ADR practice: Experiences at the service user (SU) level

This subsection is also divided into two parts. First, in [Section 4.1.1](#), for the purposes of contextualization, the personal experiences of violence suffered by women respondents are examined. This examination includes the forms and severity of DV/IPV perpetrated against them, and the impact this has had on their lives. Secondly, in [Section 4.1.2](#), women’s first-hand experiences of receiving local ADR, with both positive and negative outcomes, are explored.

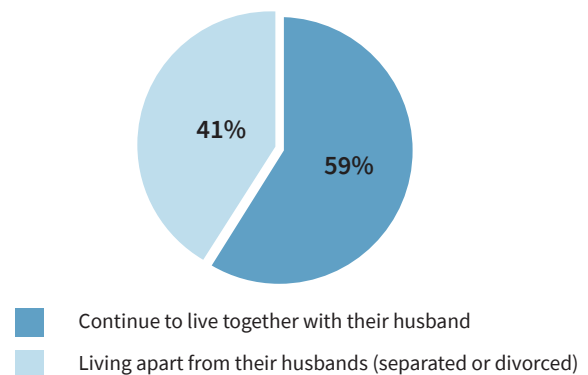
4.1.1. Experiences of violence in the research contexts

a. Types of domestic violence reported: From insults to injury

Each of the women who shared their experiences of

local ADR had experienced some form of violence at the hands of their intimate partners, and in all cases, these partners were their current or former husbands. A majority of the women surveyed for this research (59 percent) remained married and living together at the time of the interviews, while the remainder (41 percent) were living apart from their (ex-)husbands, either separated or divorced.

Service Users' Living Situation at Time of Interview



The types of violence experienced, and the severity of that violence, varied widely among respondents. Some spoke of restrictions on access to household finances, which would amount to **economic abuse** under the definition offered within the DV Law Glossary.

As the following respondent shared:

My husband would tell me I don't have any share in any property including the car, house and other things, even though the car was bought by both of us through loans that we both paid. When he broke his phone, he took my phone... He said even my clothes belong to him.

He makes it sound like I don't have any rights. He even filed a complaint to authorities that I took rice from home without informing him.' (Woman service user (SU), 30, Chumkiri district, Kampot province).

Others spoke of repeated 'insulting language,' which in many, if not all cases would amount to **psychological and/or emotional abuse**, given the prolonged nature of such behavior and the substantial impact they had upon the women who reported experiencing them. One respondent shared how such psychological abuse was perpetrated against her in the community and online:

He accuses me of having an affair with another man. He tells others that I am a useless person, depending only on my mother and relatives. He posted pictures of me on Facebook, and said 'this is the woman who gives up the husband and wants to find another husband' (Woman SU, 30, Chumkiri district, Kampot province).

For the majority of respondents, the violence went beyond psychological abuse, with such insults appearing peripheral to other forms of abuse, including **violent threats**, sometimes with weapons. The following three women respondents shared frightening accounts of threats of **physical violence**:

He threatened to cut my head and kill me... He would come home after drinking asking, 'Bitch, where have you hidden my things?' He would seize my hair and neck. One time he attempted to beat me with a nail but my nephew and child held him back. I am fed up. I have had enough because he has hurt me so much.' (Woman SU, 51, Boribo district, Kampong Chhnang province)

He told me that 'if I am arrested and put in jail, I will slice your throat to death when I am released.' I was so frightened to hear that. So I had to continue to put up with all those violent and abusive episodes.' (Woman SU, 34, Boribo district, Kampong Chhnang province)

For the last two to three years, he always blames and

curses me on the phone. He accuses me of having a new lover. He says he wants to buy a gun to shoot me to death.' (Woman SU, 48, Boribo district, Kampong Chhnang province)

Others, in addition to such threats, reported their husbands **throwing and breaking objects**, and engaging in physically injurious behavior. Such behavior involved **physical violence** ranging from 'slapping on the shoulders' right through to kicking, beating, strangulation and rape, including outcomes of severe bruises and broken limbs.

Indeed, **spousal rape** was reported by multiple respondents, though their framing of such incidents did not necessarily reflect an understanding that a lack of consent constitutes rape. One woman respondent reported that such sexual violence was a regular occurrence:

...he always threatened me and accused me of betraying him when I refuse to have sex with him. Every time he wants it, he must get it. He has sex with me almost every night, almost 30 days a month. So, I just have to put up with it.' (Woman SU, 34, Boribo district, Kampong Chhnang province).

b. A climate of fear in the home

When analyzing women's responses, it became clear that **fear** has a constant presence in many of their lives. Some reported running from their homes, terrified, in the middle of the night on multiple occasions to escape escalating abuse. The following two respondents shared harrowing accounts of the reality of living with a violent partner:

I always get so scared when he gets even slightly drunk. I hide all of the knives because he always talks about cutting my throat.' (Woman SU, 29, Boribo district, Kampong Chhnang province)

'One time, he brought the knife from his workplace at the slaughterhouse and threatened to cut my neck. We were sleeping and he suddenly grabbed the knife. I just pretended to sleep, but was thinking he would probably kill me... When I was pregnant, I didn't dare to sleep

at home... Nowadays, I am still scared... I am afraid that he will come back and hack me to death in the middle of the night. There will be no one to help me in time.' (Woman SU, 28, Dambae district, Tbong Khmum province).

c. Economic dependency:

Alongside fear, some women respondents reported feelings of helplessness or resignation that the violence would never cease, due to their economic dependence on their husbands. In the below testimony, one woman respondent reported relying on her abusive husband's income in order to provide for their children's basic needs, and therefore seeing no alternative but to remain in a physically violent situation:

'He beats my arms, my body, my head. I used to fight back but it was useless... without him, no one will be able to support the children. I have just had to put up with this since we got married. For the last month, he's seemed OK, not violent – but I still have the feeling of fear every day.'

'There is no solution for me. So it is normal the way it is. What can I do? The authorities should not arrest him because there will be no one earning income to support the family and my two kids.' (Woman SU, 34, Boribo district, Kampong Chhnang province).

d. Alcohol and other risk factors:

Alcohol was identified by a large number of participants as a key trigger factor increasing the likelihood that their husbands would perpetrate violence. One woman reported taking her blanket and a mosquito net alone into the forest to sleep whenever she knew her husband had been drinking, so as to avoid facing his abusive behavior. The below quote from another woman respondent also reported an increase in abuse when her husband was drinking:

'Whenever he drinks, he always argues and says that I'm useless. Two or three times he chased me, trying to beat me. He threw a pot at me, so I washed it. But when he was sober, he said that he had not done it.' (Woman respondent, 47 years old, Kampong Chhnang province).

e. Pressure from family members to seek local ADR:

Despite the often severe and recurrent cycles of violence reported by women respondents, many also reported that their families had repeatedly encouraged or pressured them to stay with their abusive partners. In doing so, relatives would often emphasize the importance of family harmony and of a woman's duty to keep her household intact, even where her physical safety was clearly at risk. They would also often encourage local forms of ADR over prosecution, as the following respondent shared:

'That time [following a 'severe beating'], one week later, [my husband] went to bring me back. I did not want to go with him, but my father said that the family should not be broken and asked me to [receive ADR], because we already have children together.' (Woman respondent, 38 years old, Kampong Chhnang province).

f. Conclusion

The above exploration into women's experiences of violence in the research locations provides a snapshot through which some important contextual background information can be drawn. Firstly, it sets the scene as to the types of DV/IPV for which they seek help, which range from insults, threats and throwing objects, through to serious and repeated physical beatings and wounding.

Secondly, and clearly related to these actual experiences of violence, it illuminates a climate of fear, even terror, that many women respondents reflected as forming part of their daily lives. Some told of fleeing their homes in the middle of the night seeking help, only to be brought or sent back home by their relatives. One, perhaps with nowhere safer to turn, slept alone in the open forest when she knew her husband had been drinking and was likely to behave violently at that time. Understanding the presence of this climate of fear is key to understanding such women's experiences of local ADR processes, as it is demonstrative of the drastically unequal power dynamics that exist usually long prior to a couple undergoing mediation or reconciliation/

conciliation. Consider, for instance, the woman respondent whose husband scorned her for reporting his violent behavior, threatening to ‘slice her throat to death’ if he ended up in prison. What kind of agency does she have in an ADR setting, with her husband physically present, to give an honest account of the situation at home, or to freely voice which outcome she desired through participating in the process?

These and other contextual issues are not separate to, but rather play out during local ADR processes, reducing the likelihood of justice and placing women survivors at high risk of revictimization. Such issues are further explored in the next section, which examines women’s experiences of local ADR in practice.

4.1.2. Survivor experiences of ADR services in cases of DV

This section details findings related to women’s firsthand experiences of undergoing some form of ADR by one or more service providers following DV/IPV. It begins by briefly examining the process that women service users in the study followed, in approaching help outside the home. It then looks more closely at the current role of police officers as providers of ADR, and discusses a range of issues with this practice in terms of both the legal basis and the overall appropriateness of police playing the role of dispute resolution provider in cases involving DV/IPV.

Following this, women’s own personal experiences of local ADR are explored, beginning with those that can be described as ‘positive’ in terms of process and outcome, and moving on to those stories from women respondents for whom ADR was an overall negative experience (the overwhelming majority in this study). As per the thematic analysis methodology applied in this research, the personal stories are shared in the form of ‘snapshots’ or long quotations, and have been grouped thematically under sub-headings to highlight the core issues raised within them.

a.Process:

Women service user (SU) respondents’ experiences with local ADR mechanisms varied, but in terms of process (the order in which they approached or were referred to different service providers), this largely conformed to that described in a previous study by Ramage et al.:

‘The Samroh Samruol [ADR] process usually starts at the lowest level—the village—and only when it is not resolved does a case move up the hierarchical ladder, first to the commune and then to the police, district or court. ...Cambodians rarely seek assistance to manage their conflicts beyond the village or commune without trying to find local solutions first.’⁴⁰

Most women SU respondents in this study first reported violence to and received ADR from their village chiefs. In these rural provinces, the village chief or deputy village chief was almost always the first person in authority to whom women would turn for support, safety and/or redress. Reasons given for approaching the village level before other service providers usually centered around convenience due to proximity; interpersonal familiarity and therefore higher levels of trust than those outside the village, and costs related to traveling to other relevant authorities. Some SUs reported going directly to the commune level if their cases were not resolved at the village level or if they sought the dissolution of their informal marriage. Notably, the ‘hierarchical ladder’ Ramage references has certain challenges, as some commune-level service providers would reportedly deny ADR complaints from SUs if they had not gone through the village level first.

While many women received ADR from the first service provider that they approached, others were referred on to another provider, either at the commune or in some cases, at the district level. This included referrals to Justice Service Centers (JSCs) or Commune Dispute Resolution Committees (CDRCs) (see [Figure 4](#) below).

⁴⁰ Ramage et al., supra note 3.

JSC and CDRC Roles and Background

The Maisons de la Justice/JSCs and CDRCs were established through cooperation between the Ministries of Justice and Interior, and the United Nations Development Program (UNDP) in 2006 as an alternative to the courts, or other adjudicating institutions, and in light of the substantial lack of access to justice in Cambodia.

JSCs

Each JSC is led by a director with a number of assistants available when necessary. Its key mission is to provide training and/or technical advice to commune councils on conciliation and certain legal matters, conciliate and mediate disputes if the parties agree, as well as provide referral services to disputants whose cases cannot be, or are not desired to be, resolved at local levels. The JSC is located in the district house and is jointly governed by two ministries. The MoJ is in charge of training the JSC staff on laws and ADR techniques and the MoI is responsible for administration, finance, and means for operation of the JSCs.

CDRCs

CDRCs are located at commune/sangkat offices. CDRCs consist of seven members, at least two of which are female. A typical composition might consist of a commune councilor as chair, a woman focal point as deputy, a commune police chief or deputy and four respected laypersons as members of the committee. The main objectives of CDRCs are to reduce and prevent conflict at the local level, mediate and conciliate disputes (if parties agree), and provide a referral service for disputants whose cases cannot be resolved at the local level or who desire resolution elsewhere as well as assist commune councils on alternative dispute resolution aspects.

Figure 4: Roles and background of JSCs and CDRCs

b. Protection Orders and Administrative Decisions:

The Cambodian legal framework gives a role to the commune (sangkat) council in the protection of women and children from violence. For instance, Art. 14 of the DV Law, citing the law on the Management of Commune Administration, stipulates that the ‘authorities in charge’ can issue an **administrative decision** (see [Figure 8](#) below) and take temporary measures and prohibit the perpetrator from committing DV, destroying property, entering or selling the shared home, or other measures deemed necessary.

Regarding **protection orders**, Art. 16 of the DV Law also states that ‘the victims can file a complaint to provincial/municipal courts requesting a protection order. The assigned judges shall issue the protection order with or without the presence of the perpetrators.’

Of all the women SUs surveyed in this study, a vast majority (78 percent) reported not knowing what a protection order or an administrative decision are. A further 22 percent reported that while they had heard of such mechanisms, for example from neighbors, they were unsure of how to access them, who issues them, or what they are for. It is vital that community

Administrative Decision

- A legal measure that aims at temporary legal protection at the local level;
- Comprises different singular orders, such as prohibiting the perpetrator from entering a house shared with the victim, prohibiting contact with the victim, prohibiting destruction or sale of the property;
- To obtain such a measure, the applicant must provide detailed, plausible and credible information justifying the conclusion that there is a danger of domestic violence;
- For measures of interlocutory legal protection, full proof is not required, but the information must be supported by a preliminary showing (prima facie evidence);
- According to the DV Law Glossary, 'Details are still to be regulated via a sub-decree.'

Protection Order

- A civil law decision issued by the Provincial/Municipal Court of First Instance, as requested by a victim who alleges DV;
- A legal measure with the purpose of providing a temporary protection from DV through imposing orders on the perpetrator not to do something or to do something;
- Can be used, for example, to forbid the offender from the house/street/neighborhood of the victim, but orders can be requested regarding other aspects of the household as well;
- A civil measure: It is neither an intervention by public authorities (administrative law); nor a punishment of a perpetrator (criminal law). However, violating a Protection Order is a criminal offence;
- Protection Orders can be ordered at two different stages in domestic violence cases:

Stage 1 - Temporary Protection Order Valid for a maximum of two months, and shall be issued as an emergency measure in case of a DV crisis (Art. 23 DV Law 2005).

Stage 2 - Regular Protection Order: Effective for up to 6 months and issued during the period of time the Court is investigating a DV case, the trial is not yet conducted, or before a final verdict is declared.

- As per the DV Law (Art. 22), the individuals who are entitled to apply for a Protection Order are:

Protection Order

- The victim or representatives of the victim or the authorities in charge within the victim's residential area or officials, agents who perform their work at the scene;
- Any person who learns about the incident of DV if the victim is a child, [intellectually disabled] person or a person whom the Court believes is unable to file a complaint by him/herself;
- A Protection Order can also be requested by JPO-MoWA. In the policy of MoWA these Protection Orders are only asked on behalf of the victim if the victim agrees. policy of MoWA these Protection Orders are only asked on behalf of the victim if the victim agrees.

Figure 5: Outline of Administrative Decisions and Protection Orders. Text adapted from DV Law Glossary p. 13 and MoWA's 'Guidelines for Legal Protection of Women's and Children's Rights in Cambodia' (2014) pp. 68-70.

education initiatives are undertaken to ensure women at risk know about these procedures, and how to ask for them. This is especially urgent given the concerns expressed elsewhere in relation to the low number of orders issued: From 2014–2016, a total of 19 protection orders were reported to have been issued in six of the 12 provinces with forms and systems in place.⁴¹

c. Cost of ADR Services:

A majority of women SU respondents in this study did not pay for ADR services. Several were requested to pay a small fee 'for breakfast' or of a similar nature; however, these 'fees' were usually less than 20,000 Riel (about \$5 USD). Others reported offering to pay sums of around \$3–5 USD, but that these offers were declined by the authorities in question.

Of particular concern, one woman reported that district police required her to pay 30,000 riels (about \$7.50 USD) for releasing her husband from custody and for providing ADR. Similarly, another woman SU reported being charged 70,000 riels (about \$17 USD) for keeping her husband in custody overnight.

Women survivors should not be charged fees, formal or otherwise, for the release of their husbands from

custody following DV. Such fees clearly disincentivize the reporting of violence and may prevent women from seeking help from authorities. It should be noted that despite inconsistencies in fee payments, previous research indicates these were still likely to be cheaper than pursuing justice through the formal court mechanism, where taking a case to court can reportedly cost survivors considerably more, inclusive of loss of income and transportation costs in rural areas.⁴²

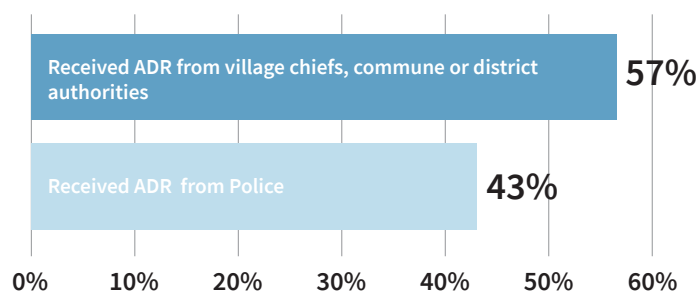
d. The Police as ADR Providers:

A concerning number of women respondents (over one third) reported receiving ADR performed by police personnel. Such circumstances usually involved women either independently approaching police, or being referred to them for assistance. Such referrals took place either following one or more failed ADR attempts conducted by the village chief, or when a case involved severe physical violence and was therefore deemed non-mediatable by village or commune authorities, or when the village chief was unavailable (in one case due to a snake bite). Of those women who bypassed the village chief and went straight to the police post, this was usually immediately following a severe episode of physical

⁴¹ Sixth periodic report submitted by Cambodia, to CEDAW Committee, CEDAW/C/KHM/6, p. 15

⁴² See, for instance, LICADHO (2015) 'Getting Away With It: The treatment of rape in Cambodia's justice system' p.10.

Number of Surveyed Women SUs Who Experienced ADR Provided by Police



violence. However, rather than investigating such incidents or referring the case to the prosecutor, police often conducted their own process of ADR within the police post.

Because of the high number of respondents who reported receiving ADR by the police, this section includes an examination of the police mandate for performing such practices, and an analysis of how police are currently required to respond to reports of DV that they receive.

No clear statutory basis for police conducting ADR in cases of DV could be identified in developing this research. While police are not explicitly permitted to conduct ADR under Art. 26 of the DV Law (which permits ‘parents, relatives, Buddhist monks, elders, village chiefs, and commune councilors’ to perform ADR), it is arguable that police are permitted to do so under Art. 13 of the same law, which allows ‘authorities in charge’ to ‘intervene urgently’ by ‘explaining, educating and *mediating* both parties to stop violence and informing the victims about their rights to prevent violence.’

As others, including the Cambodian NGO Committee on CEDAW (NGO-CEDAW), have pointed out, Art. 13 seems to refer to *in flagrante delicto* (‘red handed’ scenarios in which violence is occurring or is believed to occur), which would most appropriately be dealt with by investigation and/or referral to the Royal Prosecutor

rather than ‘educating, explaining and mediating’ the perpetrator and victim.⁴³

There are additional concerns regarding the lack of training that police at the local level have received in responding to cases of DV/IPV in a gender-responsive and survivor-centered manner. This raises questions as to the appropriateness of police being involved in ADR provision. According to NGO-CEDAW:

‘Police are not trained mediators and should not be encouraging parties actively engaged in violent behavior to just resolve it on their own. Often, because they have never been punished by police, perpetrators continue to commit violence.’⁴⁴

It should be urgently clarified whether commune and/or district police have a mandate under the law to conduct mediation, and what the scope of any such mandate is. If it is solely the purview of certain types of police personnel, such as JPOs or JPO-MoWAs, this should also be made clear, and guidance should be issued as to how to ensure any provision of ADR does not conflict with police carrying out their professional duties and upholding their responsibilities to the victim, including to record and investigate/refer criminal complaints.

Regardless of whether ADR is provided at a later stage, it should be clear to police that their first duty, upon receipt of a complaint, is for the Judicial Police Officer⁴⁵ (JPO) to make a formal recording in the complaint registry, as is set out in Art. 73 of the Criminal Procedure Code (CPC). Secondly, as set out in Art. 74, the JPO must begin an investigation into the incident, or refer the case to the Royal Prosecutor:

‘A judicial police officer who receives a complaint must start the investigation immediately or deliver the record on the receipt of the complaint to the prosecutor to take further action.’

Under Art. 40 of the CPC, prosecutors then decide to either hold a file without processing (effectively

⁴³ NGO-CEDAW (2019), ‘Recommendations for Amending DV Law based on CEDAW Analysis’ version 9/4/2019

⁴⁴ Ibid.

⁴⁵ According to Art. 56 of the CPC, the judicial police act as an auxiliary of the judiciary’s power. ‘Judicial police shall have the duty to watch felony, misdemeanor and petty crime, identify and arrest offenders and collect evidence.’ A list of who constitutes a ‘judicial police officer’ is set out in Art. 60 of the CPC. Most relevant to this study is the inclusion of chiefs and vice-chiefs of commune/sangkat administrative police posts for criminal offences.

dismissing it) or to bring criminal charges. Before making the decision, a prosecutor conducts preliminary investigations or orders further investigations.

The recording and investigation of each DV/IPV complaint is an essential part of justice provision that should not be disregarded because the police officer receiving the complaint arbitrarily decides that ADR is a more appropriate response than investigation and referral. It is here recommended that all complaints, as well as *in flagrante delicto* incidents observed by police or other authorities, are investigated and referred to the prosecutor, regardless of whether ADR is additionally offered to the victim.

The reasoning behind such an approach is well articulated by the CEDAW Committee, in sections 20–21 of their 2013 Concluding Observations:

The [CPC] Articles 73 and 74 require a registry of all complaints and either an investigation of each complaint or a referral to the prosecutor... By requiring an investigation of every incident, regardless of whether a case is referred to court, the State creates consequences for perpetrators and provides an incentive for abusers to change their behavior. It also discourages authorities from treating abuse as normal behavior and reinforces the view of the community that domestic violence is a societal problem, not a private matter.⁴⁶

Consider the following scenario: If a police officer receives a complaint from a woman who alleges that her husband threw objects toward her and punched her, it may well be that the police officer considers a single punch to be a petty crime that would be best redressed solely through the provision of ADR. Nonetheless, the officer must inform the JPO of the complaint, who must make a formal record of it and refer it to the prosecutor. To skip these steps would deny justice to the victim and would place the officers in violation of Art. 75 of the CPC:

Article 75. Abuse of Judicial Actions In any case, the judicial police officer cannot keep any criminal

case without processing even though there has been a negotiation for settlement between the offender and the victim or there has been a withdrawal of the complaint.

Further confusion may arise as a result of Art. 36 in the DV law, which stipulates that the victim has the right to withdraw the complaint, except for cases involving serious violence or repeat reported offences: This article should be removed, given that it is in contradiction to Art. 25 of the CPC, which states that if a victim withdraws his or her complaint, this abandonment does not suspend the criminal action (Art. 25 CPC 2007). It is also in contradiction to the above-mentioned Art. 75 of the CPC, which states expressly that the police cannot keep criminal cases without processing, even if negotiations between the suspect and the victim are pending or the victim withdraws a request (Art. 75 CPC 2007).

e. Conclusion

It is here argued that it is not advisable for police, whether JPOs or otherwise, to conduct any form of ADR. However, if police personnel are to conduct local ADR, then this mandate should be clearly set out and regulated under secondary legislation, such as a sub-decree or other policy, as soon as possible. Such policies should stipulate clearly that conducting ADR does not constitute an alternative to recording and processing complaints from DV/IPV survivors. Police, like any ADR provider, should provide detailed advice to survivors informing them of their right to decline participation in ADR, and that doing so does not forfeit their rights to also pursue criminal charges or to separate from and/or divorce their partner should they wish to do so.

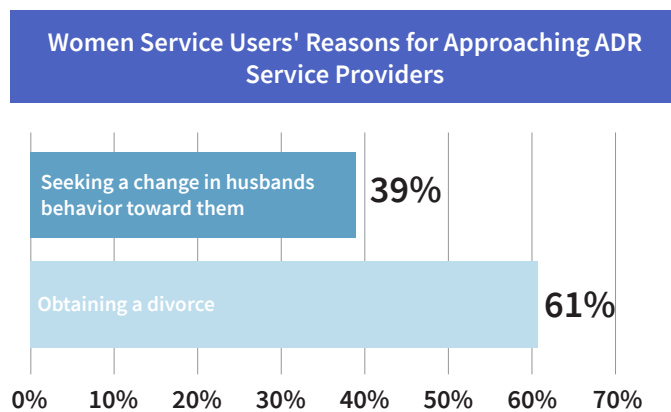
Again, we stress here that it is not desirable for police personnel to be involved in conducting ADR; but if they are doing so, then it is crucial that they have received comprehensive professional training in gender-sensitive mediation, and should otherwise refer on to other service providers as appropriate. Under no circumstances should police conduct any form of reconciliation/conciliation, a type of ADR process

⁴⁶ UN CEDAW Committee (2013) Concluding observations on the fourth and fifth periodic report of Cambodia, CEDAW C/KHM/CO/4-5

which aims to reconcile a couple and preserve the marital relationship. Any ADR conducted should be understood by all to be ‘mediation,’ and should take this form. It should also be referred to as ‘mediation’ (*Samroh Samruol* as opposed to *phsah phsa*) to avoid confusion. Above all, police should prioritize the safety of a complainant, and should liaise with other authorities and service providers as appropriate to this end.

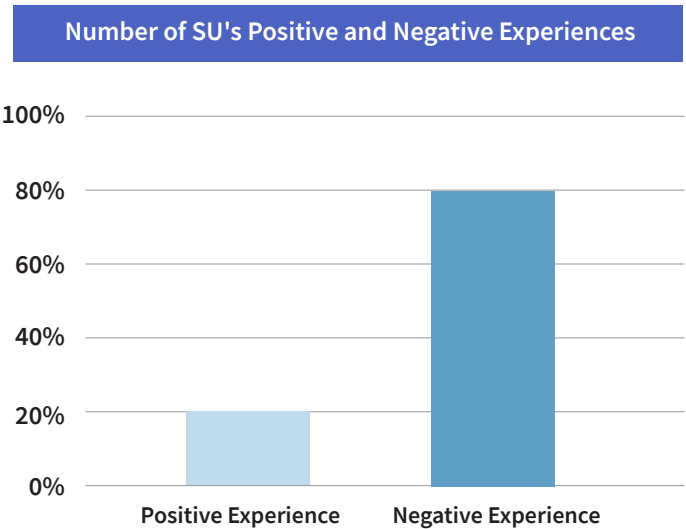
4.1.3. Firsthand accounts of local ADR provision

The women service users (SUs) in this study reported two main reasons for having approached ADR service providers (SPs); to obtain a divorce (61 percent) and/or to seek a change in their husband’s behavior toward them, including violence (39 percent).



The women in this study who underwent ADR directly through the police gave mixed reviews regarding both their experiences of ADR and the ultimate outcome of the process. It should be noted that 20 percent of the women reported such experiences favorably, stating that it was only when they were able to reach their goals, namely being able to get a “divorce” and to make their husband accept mistakes and change behaviors. Some women said that when police became involved, their husbands actually paid heed, ‘because the police

carry guns.’ (For such an account, see the first snapshot below under ‘positive reported experiences’). The other 80 percent reported the same frustrations and challenges with their police-provided ADR as those who received ADR from other types of service providers, such as village or commune chiefs.



Snapshots: Positive reported experiences of local ADR

It is important to note that while this report focuses largely on unresolved issues and challenges with ADR provision at the grassroots level, some women did report that they felt overall satisfaction with the outcome of the local ADR that they received. Their stories should not be discounted by the fact that almost two thirds of women interviewed remained dissatisfied with (or experienced trauma through) their ADR process.

Indeed, the below experiences serve to show that in certain circumstances, including where women’s wishes to get divorced are respected, or when they wish to remain in a relationship but want their partner to accept their mistakes and to stop acting violently toward them, local ADR practice might form an accessible and feasible community-based mechanism to improve women’s lives:

⁴⁷ Arguably this could constitute a threat, which would fall under Art. 231 of the CC, and following an investigation, prove to be a misdemeanor, in which case we would argue that ADR is not an appropriate response. Nonetheless we have included this case here as the survivor reported satisfaction with the outcome.

‘Whenever he was drunk, he came home loudly insulting me about this and that. Once he threw a bicycle and grabbed a stick intending to beat me,⁴⁷ but my child took it from him.

I went to the village chief to ask for a divorce but he said he had no authority to do so, so I went to the police station to get divorced. The next day, they called us to resolve [the situation] in the police station. There were mediators like police officers, neighbors, a woman working in the commune and an uncle from the village.

Again, I said that I wanted to divorce, but the police officer said it can only be mediated and if I wanted to divorce, I needed to go to the court. Then, they told my husband to stop committing violence... After that, the two of us thumb-printed a contract. The result was that my husband abandoned such actions. I believe that small things, like arguments, verbal abuse and insults can be solved at the village level.

[ADR] met my needs. It is good that we did it. Before, I had been determined to tolerate the situation to the point that I could not stand any more. Coming to the police station, I was embarrassed that my name would be stained, and that people would spread gossip. But the police officer told me that it was good that I told them. They were afraid that next time he would beat me to death. They told me not to hide, because the law exists.’ (Woman SU, aged 37, Kampong Chhnang province)

‘I have undergone [ADR] twice. Once was because my husband drank and insulted me saying that I had a lover. The second time was when he came home drunk and slapped my shoulders.⁴⁸ I told the village chief, but my husband did not listen to him. So the village chief then called the police, who took him to the station. In the police station, he talked back to the police and the police warned him.

I was happy to have the village chief and police both available to advise us. I want both the village chief and police to know about the situation, but the mediation should be done in the police station because the police are strong and have handcuffs. When he didn’t listen to the village chief, the police were able to advise. The police made us sign a contract, and gave a copy to my husband.

Since then, my husband has never argued with me again. Now he just sleeps after drinking, instead of arguing with me. I think we should have mediation – the mediators are like parents and discipline us, and they are old so we respect them.’ (Woman SU, aged 53, Kampong Chhnang province)

“One day, he came back home and laid on the sofa talking on the phone for a long time. When he finished, I asked him who he was talking to. He got very angry with me and threw the phone at me and slapped my face twice. If there hadn’t been help from [a neighbor], he might have beaten me severely. I knew he was having an affair with another woman. From that day on, we lived separately. A month later, I filed a [customary] divorce complaint at the commune hall. We were soon invited to solve our case. First, the commune councilors tried to reconcile us to not divorce but I had already made the decision. I didn’t want to continue living with him anymore, so divorce is a good option. I agreed to give him 8,000,000 riels (about 1,900 USD) to allow me to take the children, and he agreed to give 600 baht (about 20 USD) per month for child support.

I think ADR can help in such a case like mine when we don’t want to pursue living together. We don’t need to wait for a complicated process at the court. It would have consumed so much time and money, and the court is too far from our village.” (Woman SU, aged 29, Kampot province)

⁴⁸ Arguably this could constitute an intentional act of violence, which would fall under Art. 217 of the Criminal Code, and following an investigation, could prove to be a misdemeanor, in which case we would argue that ADR is not an appropriate response. Again, we have included this case here as the survivor reported satisfaction with the outcome.

Snapshots: Negative reported experiences of local ADR

Unfortunately, the majority (65 percent) of women service users (SUs) who participated in this study expressed dissatisfaction with the ADR provision that was provided to them. Many expressed frustration at unsuccessful outcomes in terms of getting a divorce, and/or changing their husband's behavior to reduce the frequency and severity of violence.

Others explained that they had actually approached the relevant authorities for assistance in making a criminal complaint against their husbands or to facilitate a divorce, but were instead pressured into ADR (or advised that ADR was the only option available to them) and were effectively sent home to live with their abuser.

As has been explored in the previous section on experiences of violence ([Section 4.1.1](#)), some women reported living in constant fear for their lives, despite having received locally-performed ADR. Many explained that their experience with ADR had proven ineffective in curbing their husband's violent tendencies, and in some cases even reinforced this behavior.

The following 'snapshots' are comprised of women's real experiences of ADR, and highlight key issues that have been thematically grouped.

a. Failure to refer despite serious violence and/or survivor requests:

A key reported issue playing out at the local level is a reluctance or refusal on the part of ADR service providers to refer cases of violence and/or requests for divorce on to the more appropriate authority to deal with such issues. Many cases involved serious physical violence well beyond that which should be responded to via ADR provision.

The below cases are among many stories told by women respondents that highlight the serious miscarriages of justice that can occur when women are pushed into ADR by those responsible for protecting them:

I received [ADR] when I was beaten on the head and bleeding. I went to the village chief twice, and the police post twice too. If the beating was something I could put up with, I didn't complain, only when it was too much.

I walked to the deputy village chief's house while my head was bleeding. He asked me what had happened and I responded that my husband beat me. Then he took me on his motorbike to the police post. I told them that my husband beat me. Then they went to find my husband and took him to the police post. At the police post, I asked the police to detain him for a long time. But the police did not do so.

The village chief called me to meet him and my husband. He made a promise contract. Then we went back. I returned home, back to my husband. (Woman SU, aged 48, Kampong Chhnang province).

When I turned to the village chief, he was in the hospital due to a snake bite so he referred me to the police station. When I arrived, there were two police officers, myself and my husband in the police post.

I told them everything that happened – that he got drunk and beat me with a laundry basket. I sat on one side and my husband sat on the other. The police said to him, 'Don't use violence. Thumbprint on the agreement.'

My husband refused to admit his fault, and no agreement was made. My husband didn't listen to what the police said in the police station... They didn't know much about how to solve it, so my husband did not listen to them. When I came home, my husband was sharpening an axe saying that there would be one of us who would die that day. I was scared. (Woman SU, aged 38, Kampong Chhnang province).

The use of ADR in the above cases involving threats and serious violence again highlights the urgency in clarifying exactly which forms of DV can and should be mediated. This clarification is needed in terms of legislation, policy and, most importantly, practice. As discussed earlier in [Section 3.2](#) of this report, Art. 26 of the DV Law permits ADR only in cases of petty crimes or minor misdemeanors. This is echoed in Art. 17 of the same law, which explicitly prohibits mediation in cases that constitute severe misdemeanors or felonies.

However, under the current Cambodian Criminal Code, there is no such thing as a *severe* or *minor* misdemeanor, only a misdemeanor (which is an offence listed in the criminal code as punishable by more than six days in prison, but no more than five years). We therefore recommend amending all relevant legislation and policy documents to clarify that in no cases can offences that are found to constitute misdemeanors be responded to via any form of ADR.

Further, all local ADR providers should be made aware that as well as being prohibited from performing ADR in cases involving felonies or misdemeanor offences, Art. 42 of the CPC concerning ‘obligations to file a complaint of a felony or misdemeanor,’ also sets out that all public authorities or officers (therefore including village or commune chiefs) who learn of a **felony or misdemeanor** during the performance of their duties **must immediately report** this incident to the prosecutor or the judicial police.

Knowledge of proper procedure does not appear to have been sufficiently disseminated among relevant authorities at the local level. Further, even in cases where the outcome was ultimately successful (in that the perpetrator received punishment), many women respondents reported being subjected to serious pressure, doubt and revictimization throughout the ADR process.

b. Refusal to process criminal complaints:

Several respondents advised that police simply refused to process a criminal complaint, usually deeming ADR (or in the below case, no action at all) to be a better approach:

‘When my husband got drunk and used violence, I reported it to the village chief. This was only when I couldn’t put up with it anymore. He would hit me on the face, on my eyes. When I went to see the village chief, he called my husband to meet once he was sober. He tried to tell my husband not to use violence. [But] even though the agreement was made, he still does not stop.

What I wanted most was for him to stop that behavior. But for the past 30 years, it has been unbelievable. In 2018, violence happened nearly all year round. I went to the police once... when the violence was severe. But the police allowed him to come back home, because he has a heart issue.

He was back home, but I didn’t know. The police just released him while I was still being medically treated. They told me to be patient because he is already sick. So, I had to follow their advice. I don’t know what to do... I just want to be left alone in peace.’ (Woman SU, aged 53, Dambae district, Tbong Khmum province).

This above case highlights the importance of ensuring that police officers are aware that it is their duty to ensure that a JPO makes a formal record of all criminal complaints in cases of DV, and that these are referred to the Royal Prosecutor. This is laid out in Art. 74 and Art. 75 of the CPC, the latter of which expressly states that the police cannot keep criminal cases without processing, even if negotiations between the suspect and the victim are pending or the victim withdraws a request.

c. Community power dynamics:

Problems with informal justice mechanisms arise when there is a power imbalance not only between the perpetrator of DV/IPV and their victim, but also between the perpetrator and those conducting the ADR. As previous researchers have noted, this is often the case where the perpetrator is a member of law enforcement or military and effectively ‘outranks’ the ADR providers. One reported case in this study involved a powerful man in the community for whom mediation was ineffective given his seniority over the ADR providers,⁴⁹ while

⁴⁹ LICADHO, *supra* note 21.

another, below, spoke of how her husband simply refused to pay attention during their ADR session:

‘They advised us to not argue, and told him to stop using violence with me. But it was useless because my husband didn’t listen to them (he played with his phone and put earphones in his ears while they advised him). I think none of them can educate or advise my husband because he is arrogant and he is only afraid of his boss.’ (Woman SU, aged 27, Kampot province)

d. Victim blaming and stigma:

Many women respondents spoke of the shame involved in seeking help for resolving DV/IPV. Many reported feeling concerned that such actions would make them the subject of gossip in their small communities. Some explained that they felt reluctant to seek help because of fear they would be stigmatized for having a conflict in the family and needing to approach the authorities:

‘First we turned to the village chief and made an agreement. We went there around 10 to 20 times. We also went to the police post once or twice to make an agreement. But even though we proceeded to the police, it is still the same, no change at all. I will not go there again because I went there twice already. I am ashamed.’ (Woman SU, 35, Dambae district, Tbong Khmum province).

e. Repeated ADR sessions despite repeated failures

As indicated in the previous quote, many women spoke of frustration at the failure of ADR to improve their situation despite repeated attempts, often in multiple cases of severe violence. One woman advised that she was simply turned away by service providers as she had approached them too many times. Another woman reported that her husband had committed violence against her since their first child was one year old right up to present with the child now being 12 years old. She has received local ADR through both the commune chief and police five times, but her husband continues to commit violence against her.

The below case highlights an SU with similar frustrations at repeatedly being offered ADR despite its inefficacy and the clearly life-threatening situation at hand:

‘They could only invite us for [ADR] again. I’m so irritated. I feel so tired. Sometimes, the more I think about it, the more I feel very scared. I’m afraid that I could get killed. He said: ‘Be careful, I might beat you to death...’

I told the police about these threats, but they didn’t say anything. They told me to go home first, and that they would go to my house later. And they said that if I’m afraid, I should find another place to stay and I should not resist or talk back to my husband.

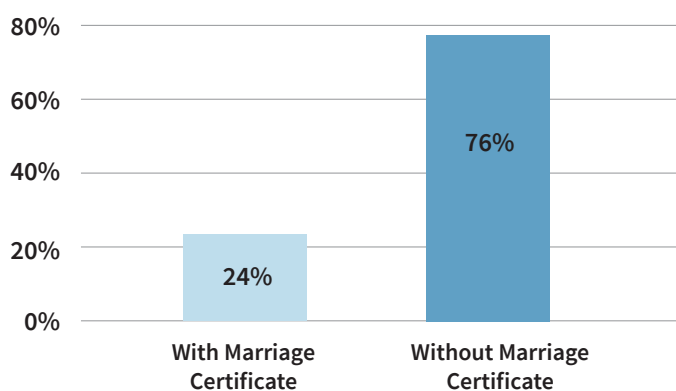
I think [ADR] is not effective, as my husband doesn’t follow the agreement he signed. We signed a contract twice, but whenever he’s drunk, he’s still like that... I’ve been three times now, and it has remained the same. I just want him to follow the agreement – I really want that, but I don’t know how! It’s been too many times now, so I may not dare to come again as it’s so embarrassing to come for the same issues over and over again. (Woman SU, 37, Kampong Chhnang province).

f. Problems related to divorce

In current practice, there are two types of marriages in Cambodia; and therefore two processes for requesting and obtaining a divorce. In this study, 76 percent of women surveyed were, or had been, married ‘informally,’ i.e. without obtaining a formal marriage certificate. In cases of requests for divorce where the couple are ‘formally married’ with a marriage certificate registered at the civil registry, the appropriate authority is the formal court system. In cases of customary or ‘informal marriages,’ where the couple did not register a marriage and obtain a certificate, their marriage is not legally recognized under contemporary Cambodian law and thus there is actually no need to apply for a divorce.

However, in practice, some form of divorce certificate or letter is still necessary in order for the parties in an informal marriage to be considered unmarried, and thus able to remarry in their community. A core issue that

Proportion of Women Service Users with Formal Marriage Certificates



emerged repeatedly from the data was the difficulty that women faced in getting a divorce granted – this applied to women who were in both formal and informal marriages. Some of these cases bore frightening similarity to that of the Takeo murder case detailed in [Section 1](#) of this report.

Many women reported that they were refused a divorce on the grounds that their husbands did not agree or show up (usually having either absconded or migrated for work, or serving a prison sentence). Without mutual agreement from both partners, local authorities refused to authorize a marriage separation or to certify these women’s ‘single’ marital status. Some local authorities even advised women to wait for several years, or to try and appease their husband until he agreed to dissolve the marriage.

According to Art. 982 of the Cambodian Civil Code, which applies to formally married couples, suits for divorce shall be filed in court. However, Art. 982(2) also states that:

“(2) Either party to a marriage may file a petition for divorce at the commune or sangkat council for the domicile or location of residence... In such a case the commune or sangkat council may attempt conciliation during the period of 15 days following its receipt of the petition. If the conciliation is unsuccessful, the commune or sangkat council shall forward the complaint to the court immediately as if a suit has been filed.”

The law makes no mention of any procedures for informal marriages. According to lawyers interviewed for this study, the agreement of both parties is not actually required in order to dissolve a customary or informal marriage since such a marriage, in fact, has no legal basis. However, local practice requiring agreement from both parties is widely reported, and appears to constitute a ‘gray zone’ in both law and practice.

One account from a lawyer respondent explained that there is currently a lack of consensus as to how to address this informal divorce issue, with only some courts and judges accepting unregistered divorce cases. Technically, those courts accepting such cases do not issue a divorce certificate per se; rather, the court decides on matters pertaining to child custody or collective property and so on. One can then use that court decision to serve as a formal ‘divorce certificate’ to show the local authorities, who themselves seem unwilling to perform customary divorces despite being perfectly able to do so. This back-and-forth process makes access to divorce an immense hurdle for women survivors of DV/IPV to overcome. As Van der Keur puts it, such a hurdle “reflects the Cambodian social culture and the stigma on divorce by including additional obstacles.”⁵⁰ The absence of clear information available to both local authorities and community members in accessing divorce has a devastating impact on the lives of many women survivors of violence, who remain effectively trapped in such marriages.

g. Conclusion

This section has detailed findings related to women’s firsthand experiences of undergoing some form of ADR by one or more service providers following DV/IPV. It began by briefly examining the process that women SUs in the study followed in terms of approaching help outside the home. It then analyzed the role that police officers are currently playing as providers of ADR, discussing a range of issues with this practice in relation to both the legal basis and the overall appropriateness of police playing the role of dispute resolution provider in cases involving DV/IPV.

Following this, an exploration of women’s own personal

⁵⁰ Dorine Van Der Keur, (2014), Legal and gender issues of marriage and divorce in Cambodia. P. 18. http://cambodialpj.org/wp-content/uploads/2014/05/DCCAM_CLPJ_Dorine.pdf

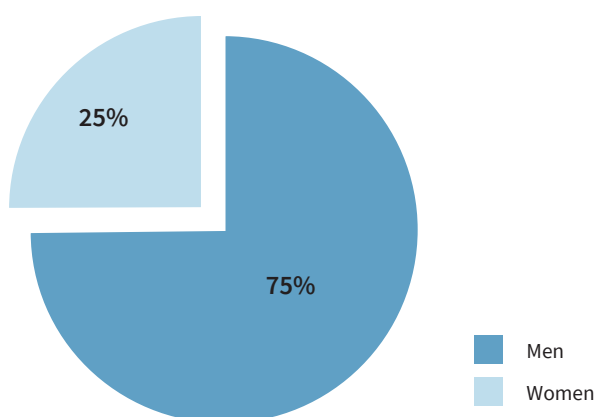
experiences of local ADR began with those that can be described as ‘positive’ in terms of meeting their goals, and moved on to those stories from women for whom ADR was overall a negative experience. The stories that were shared by respondents have highlighted significant issues with current ADR practice that must be resolved urgently in order to protect women’s rights, dignity, and, in many cases, their immediate physical safety.

These issues included failure to provide referrals despite serious violence and/or survivor requests, as well as in certain cases a refusal to process criminal complaints; factors affecting mediation such as community power dynamics between powerful perpetrators and those who would seek to mediate them; victim blaming and stigma; the provision of repeated ADR sessions despite repeated failures to reduce violence; and, finally, issues related to both formal and informal access to divorce.

4.2. Local ADR practice: Experiences at the service provider level

The following section examines local ADR in practice, but does so using data gathered through evidence from the ‘other side of the coin,’ namely local ADR service providers. The section also includes analysis and insight from key stakeholders, such as lawyers and civil society organizations, who are involved with local ADR in some way.

Composition of the Commune and District Level Dispute Resolution Committee (CDRC/JSC) members



4.2.1. Service providers’ composition, knowledge and experience of ADR in DV cases

At the commune level, in communes with formal CDRCs, most are headed by the first deputy commune chief; while ‘informal’ CDRCs are headed by the commune chief. At the district level where there are formal JSCs, each JSC head is appointed by the MoJ. In those districts without JSCs, complaints are settled by the district administration, mostly at the multi-sectoral office. All heads of dispute resolution committees/offices interviewed for this study, whether at district or commune levels, were headed by men. Only approximately 25 percent of members were women. Noticeably, in practice, these women members were reported to play only a supporting or accompanying role in ADR provision, with very few taking a lead role in ADR sessions.

The reported levels of capacity and confidence in conducting ADR varied between individual service provider (SP) respondents, as well as across research locations. The most common form of ADR training that had been received by SP respondents was that which was conducted between 2008–2010, during the period of establishment of the CDRCs and JSCs by MoI and MoJ in cooperation with UNDP. Such training was reportedly received by only a limited number of SPs at that time, and the number has reduced further over the past decade as many members in the relevant institutions have changed. A large number of SP respondents have therefore not received thorough, gender-sensitive mediation training. Those who did receive training at the outset of the pilot project reported having forgotten much of its content, given they received the training over ten years ago and have, as yet, received no updated or refresher training.

A number of respondents expressed a desire for training to help improve their capacity and knowledge of ADR service provision in their communities. For instance, several SP respondents requested training or at least clarification in the correct use of terminology to be applied in ADR practice. The inconsistent use of terminology pertaining to ADR in Cambodia has been discussed elsewhere in this report, and was also reflected in the responses of SPs during interviews and

FGDs: When questioned, SPs would attempt to explain their understanding of differences in the relevant terms (mediation, reconciliation and so on), and how they applied them in their daily work. However, many would then revert back and ask the researchers if their explanation was correct. Many stated their response was given ‘off the top of their head’ and that they had not ever given thought as to the actual distinctions between the terms. Some SPs expressed that they hoped that in future, there would be training provided to them so as to understand these terms clearly and how they are used differently, noting that it would be helpful for them to apply into their daily practice.

Local authorities reported high levels of awareness as to the existence of the DV Law. However, very few were able to recall specific provisions within the law, usually describing more general principles that might be suggested by the title of the law. The lack of specific knowledge pertaining to the DV Law is particularly evident when considering responses offered in relation to key provisions, such as protection orders, where most respondents were only vaguely aware of their existence and/or function.

A lack of knowledge of reporting procedures within the DV Law or CPC was also evident, with local authorities reporting that if a case of DV/IPV were to be reported to the court, it could only be done by the police. Some local authority respondents explained that they stuck strictly to the hierarchical structure of authority to avoid any risk of blame or ‘being called too clever or more daring’ than their superiors.

4.2.2 Strategies employed, and perceived purpose of ADR

Many respondent SPs advised that their own style of ADR provision was based largely on what they perceived to be ‘the right thing to do’ rather than on any formal guidance or procedures. Surprisingly, all of the reported purpose behind conducting ADR was widely perceived to be convincing the parties in conflict to remain together (thus constituting reconciliation/conciliation rather than mediation). Divorce, it was reiterated by respondents, can only happen as a last resort – when every attempt to reconcile a couple has been exhausted, to no avail.

In conducting ADR with such end-goals in mind,

SPs reported employing a number of strategies. Some of these strategies are of concern, in that they clearly increase the risk of further violence and revictimization of women who approach SPs for help following domestic abuse. The first of these is the deliberate delay of ADR provision to couples, including victims of DV/IPV – usually by around a week. Such delays were reportedly orchestrated ‘in the hope that everybody will cool down, which will then make them more likely to not want a divorce anymore’ (SP FGD respondent, Kampong Chhnang province). This strategy, according to all SP participants in one focus group discussion, works to their satisfaction as some couples would not return for an ADR session – a result they felt indicated that the couple was no longer in conflict.

One SP respondent in Kampong Chhnang province recalled that he once encountered a woman who had come to the commune council visibly upset. She was crying and said she wanted a divorce because her husband had committed violence against her. The respondent SP told her not to cry, and that an uncle (older community member) would go to her house to solve the case by providing ADR. He advised that his plan was to call them only if she returned to file a complaint to the commune within one week. But, if she did not return, he would assume they were ‘getting along again already’ and the violence had stopped, in which case there was ‘no need to call them after all.’ Such an approach indicates a failure of SPs to uphold their obligations to protect women who report violence, and arguably places women at increased risk by sending them home to live with their abusers rather than taking meaningful action to ensure their safety or to punish alleged perpetrators of violence.

While some SP respondents stated that it is the right of the women survivors to choose whether to proceed to court, some respondents reflected on strategies that they used to dissuade conflicting parties from doing so: These ranged from ‘explaining’ to women that the court process would take up a lot of their time, that they would face shame and embarrassment in their communities, that they would waste money, that their children would be stigmatized and bullied at school, and that the process would impact their working hours and their ability to earn an income. Some SP respondents also reported considering those who failed to take their

advice as stubborn, and that they would refuse to provide additional support in such cases.

While some respondents acknowledged that ‘the final decision [to separate/divorce] is up to the couple,’ the overwhelming indication from respondent SPs was that they felt it was their personal responsibility to discourage and prevent divorce from taking place. Only ‘after everything fails,’ can divorce be considered and can couples be provided with advice on how to proceed with separation. Thus, it can be seen that the form of ADR currently taking place in the research locations largely takes the form of reconciliation/conciliation, (the purpose of which is to reconcile couples) and not mediation (the purpose of which is to provide a space for parties to assert claims and agree to a way forward, and does not preclude separation).

4.2.3. Confidentiality and gender-sensitivity

While practice varies between individual ADR providers, as well as across particular communes or villages, the process of ADR usually begins by inviting parties to sit down opposite one another. A service provider begins by reading the complaint out loud, and asking the complainant if the content in the complaint is correct. Then, the SP asks the other party whether they also consider it to be a true version of events.

According to one respondent:

“If it is too tense at this point, we explain to the complainant the problems involved with... putting [their husband] in jail, about having to pay money if [their husband is] detained... about no one taking care of the kids and the family, about the embarrassment to them and so on.

In doing [ADR], we have to be as straight and direct as possible, we don’t need to use complicated procedures. Being direct means speaking the truth and [encouraging parties to] each accept fault... even when the victims have physical injuries. If they still don’t listen, we just threaten them and say, “if you still deny an apology, we will send you to the police.”

When we feel that the man is pressuring the woman,

we try to find a way to send an indirect message to the woman, so that the woman will catch the message and put pressure back on the man. The main purpose [of ADR] is to help the parties come to terms with the past and start a new life together in order to make the family live in happiness.” (SP KII respondent, Kampong Chhnang province).

Some CDRCs participating in this research had a room with a long table and chairs provided to them during the 2008–2010 UNDP project inception. Such CDRCs referred to it as a ‘mediation room,’ and stated that it was used in DV/IPV ADR cases. Other CDRCs that did not have such a space would usually perform ADR in the commune hall. This presents clear challenges in upholding survivor-centered principles, such as confidentiality and privacy.

For instance, in Battambang province, the research team observed in one commune that when a couple came to seek divorce, the male head of the CDRC sat them down at his table in the corner of the commune hall where their conversation could be heard. The woman SU, who was accompanied by her mother, appeared to feel uncomfortable to talk openly. She looked frequently around the room and tried to speak in a low voice, only to have her words repeated loudly by the SP. Again, this reflects an inadequate standard of confidentiality and sensitivity awarded to such sensitive proceedings.

A common explanation for the lack of a private space for performing ADR sessions is that SPs work as a team. They often see it as advantageous to have everyone available nearby to join the session because each person can give a piece of advice, and when combined together, this could improve the quality of advice received by the couple in conflict. In practice, this reportedly meant nearby staff sitting at their own table, completing their own work, but jumping in at any time when they had an idea they thought could be helpful.

In some communes, the respondent SPs advised that there was not enough space for them to have a separate room for mediation in cases of DV, though they would ideally like to be able to offer one. Others reported that conducting ADR in the open was a conscious method to ensure transparency, so that everyone could see and hear

what the authorities in question are saying and doing.

When asked about ‘gender sensitivity’, the most frequent responses from SPs centered around ‘not interrupting’ each other, ensuring that when one is talking, the other has to be quiet and listen:

‘Normally we start by telling both parties the rules of process, such as no interruptions, and allowing the wife to talk first. Then after learning of the issues clearly, we start to advise him.

*The way to conciliation is that we need to explain to the partner that no one is right but that **both are wrong**. [ADR] doesn't mean that the woman who was hit by the man is right, and it also doesn't mean the man is wrong – like they say, one hand cannot make a clap.*

Our objective is to help the parties come to terms with the past and start a new life together in order to make the family live in happiness.’ (KII SP respondent, Kampot province).

Key issues with this approach include an overall lack of survivor-centeredness, the lack of acknowledgement that a crime has taken place, perpetuating impunity by doling out equal blame to the victim and perpetrator and revictimizing the survivor.

Similar issues of confidentiality and sensitivity arise at the village level, where ADR sessions are usually conducted at the house of the village chief. This house is almost

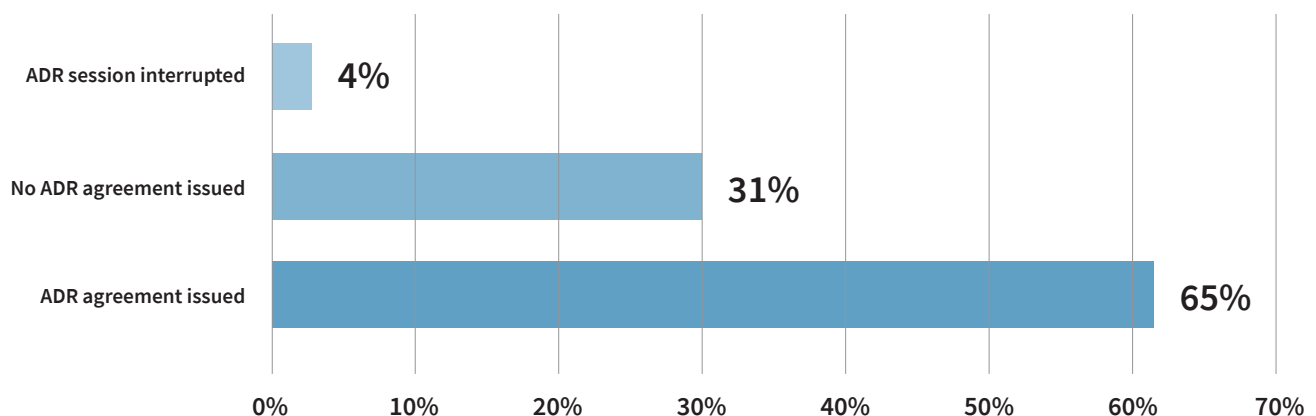
always close to neighboring houses in the village. When a session is underway, one can reportedly expect more villagers to come and listen to or witness the proceedings. ADR at the village level is often performed in a collective manner, reflecting long-standing customary traditions of dispute resolution in Cambodia. For instance, in many areas, if there is an appointed date, the village might seek to invite other elders in the neighborhood to attend the session to at least witness the proceedings, if not to give advice. Moreover, the parties themselves also often invite their relatives or elders who are on their side to attend the sessions. This means that confidentiality during village-level ADR provision is simply not a reality, and survivors may experience revictimization from witnesses doubting their claims or even heckling them as they attempt to speak.

4.2.4. ADR provided by police

In some places, a commune police chief is actively involved in ADR service provision. SP respondents advised that this is useful to have, as a law enforcement official will be an expert in law and if any case ends up being referred to the police, ‘he is already informed about what has happened, which makes it easier for the enforcement officer.’

As has been explored in previous sections of this report (in particular in [Section 4.1.2](#)), there are serious issues with police acting as providers of ADR, especially when

Percentage of Service Users with Thumb-printed Agreement Issued During ADR Session¹ and the three options:



this process replaces the formal criminal processes set out in the CPC (including conducting investigations and referring cases to the Royal Prosecutor). As indicated by the following quote, there appears to be concern over use of police discretion applied when taking action in DV/IPV cases at the local level:

“If there are injuries involving hospitalization, but it was because the husband was drunk, and if the husband goes to take care of his wife at the hospital once sober, then it is OK. But if he has refused to go and take care of the wife, the police will take further action...”

“Only if it is a beating to death will the district police bring in the offenders and send them to the court. Otherwise, at the police [post], the police just make an agreement for both parties, and if they both agree to sign, they can go back home.” (FGD SP respondent, Kampong Chhnang province)

As stated earlier in this report, there is an urgent need for clarification as to what role, if any, police have in conducting ADR. Further, action must be taken to ensure that any such ADR provision does not constitute an alternative for police in following due process in reporting and investigating DV/IPV cases as set out in relevant articles of the CPC.

4.2.5. ‘Kich Saniya’ agreements:

Service Provider (SP) respondents advised that agreements drawn up and thumb-printed by both parties at the end of ADR sessions form a useful, albeit non-binding, tool that helps to lend the ADR process an air of formality and gravity, and adds weight to any agreed outcomes. However, it was acknowledged that, in reality, these are primarily a psychological tool to discourage violent behaviors and to appease complainants rather than actually constituting any kind of punitive legal measure:

“The victims always want to have such an agreement thumb-printed because when it happens again, they want the officials to read this before the offenders and ask why it happened again. When the offenders see it, they’ll be conscious that they entered into this agreement.” (FGD SP respondent, Kampong Chhnang province).

The provision of such agreements is common, with 65

percent of service users (SUs) in this study reporting having received an ADR agreement at the end of the session, while 31 percent did not and 4 percent were interrupted.

4.2.6. Breach of the agreement

If any party breaches the verbal or written agreement, and a complainant returns, most SPs reported only trying to conduct ADR again, claiming to have no power to enforce the agreement and iterating that their main role is to reconcile couples and not to prosecute or take any action besides ADR. Others informed that they would in fact refer cases on following repeated complaints and failed sessions: For instance, if conflicts continued following several ADR attempts, a village chief might refer the case to the commune level authority. However, village personnel (including deputy village chiefs and village assistants) advised that very few cases are referred to the commune level because they have ‘put every effort in’ to make sure that they can get couples to ‘successfully’ reconcile. Such responses again reflect an alarming level of individual discretion rather than an adherence to formal reporting or referral processes.

There is also some cause for concern here in relation to the language used by respondents, consistently referring to ‘success’ or ‘failure’ in reconciling a couple, and a subsequent reluctance to pass serious, unresolved or escalating cases up within hierarchical structures. In cases when the ADR resulted in a couple being separated, they were regarded as “failures” by the SPs. Village-level authorities reported that in their area, very few cases would go to court because officials ‘put every effort’ into reconciling the disputed parties. The use of such language does not reflect awareness of principles of justice, redress or protection of survivors, but of maintaining the appearance of harmony – potentially at the cost of violating women’s autonomy and personal safety. This further points toward ADR taking the form of reconciliation/conciliation rather than mediation.

Urgent action should be taken to reorient SPs’ perceptions of success within ADR as constituting a duty of care to protect survivors and prevent further violence. Sending cases up the hierarchy should be understood by all as a compulsory adherence to due process, rather

than as a showing of weakness, losing face or ‘failing’ at performing ADR. This should be clearly spelled out during comprehensive trainings to all parties who are responsible for providing ADR between conflicting couples at any level.

4.2.7. Inconsistency in referrals:

Perceptions of how and when a case should be escalated varied between respondents. Some local authority respondents noted that as soon as they learned that a woman had substantial injuries (usually defined as ‘involving bleeding’), they then referred the matter to the police post and did not perform ADR. Others reported that they continued to undertake ADR even in cases of severe and repeated violence. For instance, if a pattern of violence was very common and took place when the husband had been drinking, some respondents reflected on this as ‘habitual violence’ that was normal for a particular couple, and therefore, not worthy of intervention or escalation beyond ADR.

4.2.8. Definition of Crimes

Of significant concern, many respondent SPs indicated a lack of awareness as to the legal definition of crimes, and subsequently, when to refer a case on to other authorities. Some local authorities reported not knowing how to distinguish between severe and minor cases, reasoning that they are not law enforcement officers. They just try their best to have couples reconciled under almost all circumstances: ‘We try to resolve all cases, even when there’s physical injury or bleeding. As long as it’s not too serious, we can take our action.’

Disturbingly, even where cases are referred on to police or higher authorities, this often means that couples will merely receive ADR in a different location by different providers. Rigorous, repeat trainings should therefore be mandated so that all SPs know their role in performing (or not performing) ADR, and survivor-centered mediation principles are put into practice.

None of the SP respondents in this study had ever seen any court-issued protection orders, and none had issued administrative decisions to protect survivors following DV that was reported to them or which they had

witnessed. When asked if authorities have the power to issue any document to prevent the abusers from entering the home where survivors reside, one response was negative, because ‘How could we tell the husband to not enter their own house? It would be impossible.’

4.2.9. Women survivors as deciders of prosecution:

Many SPs in this study reported the belief that the woman survivor has the final say as to the type of action to be taken following DV/IPV. If a woman decides to drop the case, the understanding of many SPs is that the alleged offender will have to be released, despite whether the cases has involved serious injury and hospitalization. Likewise, where SPs feel that criminal action is warranted and should be pursued – they believe it is nonetheless the prerogative of the woman survivor to decide the course of action. This is reportedly even the case where a survivor had intended to pursue criminal charges, but was begged by relatives of the offender to have the case dropped. This reflects a lack of SP understanding and knowledge of the CPC, under which Art. 75 prohibits the dropping of cases despite the withdrawal of complaints, and the DV Law, which Article 36 prohibits dropping such cases with severe or repeated DV.

However, even if a woman remained determined to have criminal action pursued, some SPs reported defying this and trying to find other ways to get the women instead to undergo ADR provision. For instance, as earlier noted, this can be done by informing the SU about the potential consequences in relation to child rearing, economic income, livelihoods and so on, until the survivor agrees to their suggestion to not pursue the case.

4.2.10. Conclusion

It should be noted that many SPs who set out to resolve DV/IPV cases via reconciliation/conciliation do not do so out of careless disregard for women survivors in their communities. Rather, most take what they see as the best (or only) course of action based on the knowledge that they have at hand. Indeed, some SPs reported being at a loss for how best to handle repeat DV/IPV cases,

advising that they have tried visiting the homes where such violence is taking place in person, to 'build rapport' with known abusers and in some cases reportedly begging them face to face to stop committing violence.

Village and commune chiefs are known to give out their personal phone numbers to women who feel they are in danger, or even to shelter survivors within their own homes to prevent further abuse. Some local authorities also work on weekends in order to accommodate garment factory workers for whom it is difficult to come in on weekdays, and WCCC member respondents interviewed in this study reported donating rice and clothes to support survivors. What is lacking in many cases, therefore, is not the will or desire of SPs to protect survivors, but rather, clear guidance on what procedures should be followed, and which authorities should be involved at which stage.

"...most take what they see as the best course of action..."

v. Conclusion and Recommendations

5.1 Conclusion

This research was conducted in order to document emerging grassroots issues, experiences, challenges and demands from both survivors (service users), local service providers, and institutional stakeholders with regard to the local dispute resolution of cases involving domestic violence/IPV in Cambodia.

It began with a literature and policy review, which contained a number of key findings that it is hoped will form the basis for future research and policy review. These include a lack of standardized terminology applied across both academic literature as well as within core legislative and policy documents, when discussing local ADR processes. For instance, some reports appeared to treat the terms mediation, reconciliation and conciliation as interchangeable, both in English and Khmer. This generates (as well as perhaps reflects) confusion about which term is most appropriate.

As well as differences in approach to terminology, there was found to be considerable disagreement throughout the literature and among women's rights practitioners as to the overall desirability and appropriateness of local ADR practice in any form when applied to cases of DV. This debate has been made more complicated when discussing more recently recognized forms of domestic violence, including psychological, emotional or economic abuse, the elements of which are known to be more difficult to prove, and therefore, to prosecute. Accordingly, it is suggested that clear guidance be issued as to which types of violence (if any) can be appropriately mediated, and when and how cases should be escalated beyond ADR service providers. It is further suggested here that, in no case, should conduct constituting any

misdeemeanor-level offence be dealt with via ADR, and that legislation, in particular Art. 17 and Art. 26 of the DV Law, should be amended to reflect this.

A key component of the research was to capture the experiences of women service users (SUs) of ADR at the grassroots level, in order to document and share their stories in their own words. It was found that a majority of SUs in this study faced considerable problems during ADR provision. These included a failure to be referred upon request or when clearly appropriate (following severe violence); repeated mediation sessions despite repeated failures to protect them or curb men's violence; imbalances of power in the community where ADR was taking place impacting the ability of SPs to reason with or influence perpetrators; and severe difficulties faced by women when seeking to obtain a divorce.

Further, it was found that 78 percent of the surveyed women SU respondents reported that they had never heard of and did not know what a protection order or administrative decision is. The remainder explained that while they had heard of such mechanisms, they were unsure how to access them, who issues them, or what they are for. It is vital that community education initiatives are undertaken to ensure that women at risk know about these procedures, and how to ask for them. Finally, many SUs (43 percent) reported having received ADR directly from police. There is therefore an urgent need for clarification as to what role, if any, police have in conducting ADR. Further, action must be taken to ensure that any such ADR provision does not constitute an alternative for police to following due process in reporting and investigating DV/IPV cases as set out in

relevant articles of the Criminal Procedure Code.

A number of findings from within the service provider (SP) data were also explored, within [Section 5.2](#). These included some SPs deliberately delaying ADR provision to couples, and actively persuading women survivors not to proceed with complaints to higher levels of authority, advising they would only waste their own time and money, as well as bring shame and embarrassment on their children. Such practices highlight the urgent need for practical training and guidance on conducting gender-sensitive, survivor-centered mediation to women survivors of DV/IPV, and only where appropriate and where explicitly requested by such women. Such principles of gender-sensitivity and survivor-centeredness should include ensuring the confidentiality of proceedings by conducting sessions in private: While several CDRCs participating in this research had a room with a table and chairs for conducting mediation in private, many SPs in this study reported conducting ADR sessions in open offices or houses where others could overhear, and in some cases, were welcome to interject in proceedings with ideas and advice. Given that such settings present clear challenges in upholding confidentiality and privacy, ADR providers at all levels should urgently be given access to more appropriate settings for conducting mediation.

Many SPs reported that they felt it was important to give equal weight to both parties during ADR provision, despite where women had been subjected to serious and repeated violence. Again, such practice clearly fails to reflect survivor-centeredness in ADR proceedings, and likely results in additional trauma and revictimization. Trainings should include practical guidance on how to ensure both parties are heard during mediation, and should reiterate that ADR should never be conducted following serious violence. Given that perceptions of how and when a case should be escalated varied widely between SP respondents, clear guidance and in-depth trainings should be provided to all providers of ADR to ensure they have adequate knowledge in relation to all relevant reporting and referral procedures.

As a final word, it is hoped that this study is not viewed as critical of local authorities and other ADR service providers merely for the sake of being so. Many SPs

participating in this study reported going over and above their duties in their attempts to protect survivors. Some noted working on weekends to ensure women garment workers could access support services and others even opened their own homes to survivors for their immediate safety. What is lacking is not usually the goodwill of service providers, but rather, adequate resources, support, clear guidance and in-depth training on how to provide gender-sensitive and survivor-centered mediation, and when and to whom serious cases should be referred. Rigorous, clear and easy to follow processes should be formulated and implemented across all provinces and made easily accessible to all ADR service providers and law enforcement personnel.

“It has taken a lot of courage for a woman to come forward and report their case ... We need to empower them with our positive responses, and not stay silent about it ... ensuring that their safety is secured must be our top priority, ...and if a criminal act has taken place, criminal punishment needs to be enforced accordingly to send a warning sign to the perpetrator.” (Stakeholder KII respondent, Phnom Penh)

5.2. Recommendations

General Recommendations

1. The use of the term ‘reconciliation’ and ‘conciliation’ (*phsah phsa*) in referring to local mediation should be discontinued. The use of these terms is problematic as they imply that the purpose of customary dispute resolution between couples is to preserve the marital relationship by encouraging the parties to remain together. Guidance should be issued to service providers on the correct use of these terms (as per the MoJ’s 2010 Mediation Handbook, discussed on page 15 of this report), and policy documents and legislation should be amended as appropriate.
2. The use of the term ‘arbitrator’ to refer to someone performing local mediation should also be discontinued. The action performed by an ‘arbitrator’ is ‘arbitration,’ which is not a permitted or recommended practice in cases of DV/IPV. The use of the term ‘arbitrator’ in this setting would imply that the person conducting

"ensure women co of committee

mediation has the power to judge who is right or wrong and issue judgements which are binding on both parties – No mediator has this level of power, nor would it be appropriate.

Recommendations at the national level

3. Comprehensive guidance and ongoing practical training on gender-sensitive mediation in cases of DV/IPV should be provided to service providers to ensure that, in practice, mediation⁵¹ is what is actually being provided. To this end, such guidelines should be developed urgently and with extensive and meaningful discussion and involvement from all key stakeholders, especially the Ministry of Justice (MoJ), Ministry of Women's Affairs (MoWA) and Ministry of Interior (MOI), as well as legal and mediation practitioners, and relevant CSOs. Guidelines should be accompanied by training materials and a rigorous, nationwide training program to ensure that all authorities tasked with performing mediation are only doing so where appropriate and permitted by law, and are consistently applying a gender-sensitive, survivor-centered, and rights-based approach. Such training should include gender-responsive content relating to DV/IPV, including comprehensive safety and referral guides, how to manage and reduce risks of survivor revictimization, and how to screen for DV/IPV throughout mediation provision that may not be initially reported.

4. Mediation or any form of ADR should not be provided in any cases of DV/IPV which would constitute any misdemeanor-level offence under Cambodian law (see [Section 3.2\(C\)](#) for detail). Clarity should be provided urgently as to which offences can and cannot be mediated under Cambodian law. References to 'severe misdemeanors' and 'minor misdemeanors' have no

legal basis under current Cambodian criminal law and should therefore be removed from the DV Law. Further, whether violence is serious enough to constitute a misdemeanor or not, steps should be taken to ensure the safety and security of women survivors as a top priority and that mediation is only entered into voluntarily by all parties, and should not be viewed as an alternative to the processing of criminal complaints.

5. MoI, MoJ, and MoWA should urgently issue a Joint-Directive Order or other policy or guideline to lay out effective and gender-sensitive procedural solutions/mechanisms regarding the dissolution of informal marriages both in de jure and de-facto practice, so as to ensure that women (especially survivors of DV/IPV) do not remain trapped in such marriages against their will.

6. A joint directive order from MoI and MoJ detailing specific and easily obtainable procedures for court-issued protection orders from the court and the commune hall-issued administrative decisions should be developed and issued with urgency (based on existing provisions in the DV Law and Organic Law governing communes/sangkat).

7. Safe shelters and other victim support services, including but not limited to a national GBV hotline and access to financial support and legal aid, should urgently be made available nationwide and free of charge.

8. The language of Art. 14 of the DV Law, which sets out that 'authorities in charge *can* issue an administrative decision and take temporary measures...' should be amended to read '*shall* issue,' so as to obligate action. Awareness on this clause shall be strengthened among both the service users and service providers.

⁵¹ Mediation defined here as a dispute resolution process involving a third party who encourages parties to identify options toward a resolution, but does not make recommendations or rulings in favor of one party or outcome)

comprise 50 percent membership..."

**Recommendations at the sub-national level
(including local authorities and police personnel)**

9. Local authorities should understand and perform their legal duty (set out in Art. 42 of the CPC) to refer all reports of felony or misdemeanor-level offences that they become aware of in the line of conducting their duties, to the nearest JPO or directly to the Royal Prosecutor.

10. Community education initiatives related to mediation, divorce, and domestic violence protection related legal knowledge should be undertaken with urgency. Such initiatives should ensure that women at risk know about protection orders and administrative decision procedures, and how to access them.

11. Women survivors should not be charged fees, formal or otherwise, for receiving ADR services, or for keeping their husbands in jail or for their release from custody following DV/IPV. Such fees clearly disincentivize the reporting of violence and may prevent women from seeking help from authorities.

12. Given that physical settings in many ADR proceedings present clear challenges in upholding survivor-centered principles of confidentiality and privacy, ADR providers at all levels should urgently be given access to more appropriate settings for conducting mediation, where parties can be separated in private spaces in which they may speak freely and safely without fear of being overheard or interrupted.

13. CDRCs, JSCs and other ADR relevant local mechanisms dealing with DV/IPV cases should increase efforts to ensure women comprise 50 percent

of committee membership. Targeted policies and programs should also ensure that both men and women conducting ADR are effectively equipped with knowledge and skills, and that women are meaningfully engaged in conducting mediation, and are not relegated to supporting or accompanying roles

14. It is not advisable for police, (whether JPOs or otherwise), to conduct any form of ADR (see Section 4.1.2 for detail). However, if police personnel are to conduct mediation, then the scope of this mandate should be clearly set out and regulated under secondary legislation, such as a sub-decree or other policy, as soon as possible. Such policies should stipulate clearly that conducting ADR is not an alternative to recording and processing complaints from DV/IPV survivors. Police, like all ADR providers, should provide detailed legal advice to survivors informing them of their right to decline participation in ADR, and that doing so does not forfeit their rights to also pursue criminal charges or to separate and/or divorce their partner should they wish to.

15. All police personnel should understand and perform their duty to make a formal record of all criminal complaints, and the process of referral to the Royal Prosecutor as per the Criminal Procedure Code. Authorities should enforce the provisions in Art. 75 of the Criminal Procedure Code against police officers who fail to proceed with a criminal case after withdrawal of the complaint by the victim or settlement between the victim and the suspect.



Women Peace Makers
#43E, Street 456, Sangkat Tuol
Tumpong II, Khan Chamkarmon,
Phnom Penh, Cambodia

www.wpmcambodia.org

