The Good, Bad, and Unintended: American Lessons for Cambodia's Effort Against Domestic Violence

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THE GOOD, BAD, AND UNINTENDED: AMERICAN LESSONS FOR CAMBODIA’S EFFORT AGAINST DOMESTIC VIOLENCE

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Abstract: Despite numerous laws that guarantee women equal rights and prohibit violence, the current Cambodian legal system has proven inadequate to combat spousal abuse. In response, the Royal Government of Cambodia has proposed a draft-law specifically aimed at domestic violence. However, if enforcement of current Cambodian law in domestic violence situations is any indication, the proposed law has little hope of implementation. Current cultural paradigms make the Cambodian police and the public at large view domestic violence as a private matter rather than a crime. Thus, Cambodia is in need of new strategies to reduce domestic violence.

Cambodia is not alone in its effort against domestic violence. Many countries worldwide struggle with spousal abuse. Notably, the United States has been working for over forty years to reduce domestic violence and has succeeded in several key areas. Cambodia should consider implementing a synthesized strategy of providing services to victims and criminalizing abusive behaviors based on the American model. Private efforts to provide victim’s services should be dispersed throughout the country and the government should make direct efforts to support these services in any way possible. The government should also secure passage of the draft-law with as much publicity as possible in order to spark public debate and provide education on the issue of domestic violence. Criminalization efforts should initially focus on encouraging law enforcement intervention, followed by mandatory prosecution strategies and the enforcement of civil protection orders. The good, bad, and unintended consequences of the American struggle with domestic violence offer several possible strategies for Cambodian reform.

I. INTRODUCTION

"I can kill you whenever I want. I could kill you and no one will ever do anything about it.‖ With these words, a Cambodian man bragged to his wife that he could kill her with impunity. He was right.

Cambodia is plagued by widespread and brutal domestic violence. The progressive guarantees of equality and protection in Cambodia's

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1 CATHY ZIMMERMAN, PLATES IN A BASKET WILL RATTLE: DOMESTIC VIOLENCE IN CAMBODIA 17 (1994).

2 Id. at 17. This foundational study of domestic violence in Cambodia focused on male perpetrated abuse of female intimate partners based on the statistical reality that around the world the overwhelming majority of domestic violence is such. Id. at 3. Under a similar rationale, this Comment will focus on male perpetrated domestic violence.
Constitution, laws and international agreements are rarely, if ever, enforced to protect victims or punish abusers.\textsuperscript{3} Cambodian legislation currently under consideration to combat domestic violence is likely to be ineffective for the same reason.\textsuperscript{4} At this juncture, Cambodia needs new strategies to combat spousal abuse because current efforts are ineffective. The relative infancy of the Cambodian legal system could be an asset in this endeavor, inasmuch as it can be shaped from an early point to effectively combat domestic violence.

Cambodia is not alone in its struggle against domestic violence. Rather, spousal abuse "is a nearly universal phenomenon [that] exists in countries with unduly varying political, economic, and cultural structures."\textsuperscript{5} The United States, for example, has been working to end domestic violence for more than forty years.\textsuperscript{6} The good, bad, and unintended consequences of the American struggle against domestic violence illustrate some possible avenues for reform in Cambodia.

Despite the many differences between these two countries,\textsuperscript{7} lessons from the American struggle with domestic violence remain valuable for Cambodia,\textsuperscript{8} especially as efforts in the United States have succeeded in

\textsuperscript{3} See discussion infra Part III.
\textsuperscript{4} See discussion infra Part IV.
\textsuperscript{5} Judith Armatta, Getting Beyond the Law's Complicity in Intimate Violence Against Women, 33 WILLAMETTE L. REV. 773, 842-845 (1997).
\textsuperscript{7} The United States and Cambodia are very different countries. They vary socially, politically, and economically in significant ways. Cambodia is a small, poor, and sparsely-populated country that is struggling to rebuild its economy after decades of civil war and invasion; as a result, it lacks many basic necessities, such as economic infrastructure. L. Gollogly, The Dilemmas of Aid: Cambodia 1992-2002, 360 THE LANCET 793, 793 (2002); CHEEYWA SPINDEL ET AL., WITH AN END IN SIGHT: STRATEGIES FROM THE UNIFEM TRUST FUND TO ELIMINATE VIOLENCE AGAINST WOMEN 61 (2000). In contrast, the United States is a large and wealthy country that has not experienced civil war in over one hundred years, and has the "largest and most technologically powerful economy in the world." CENTRAL INTELLIGENCE AGENCY, WORLD FACT BOOK 2002—United States 6 (2002) at http://www.odci.gov/cia/publications/factbook/geos/us.html (last visited May 1, 2003) [hereinafter CIA (United States)]. The United States has almost 200 times the population of Cambodia and boasts health and quality of life statistics far higher than Cambodia. Compare CENTRAL INTELLIGENCE AGENCY, WORLD FACT BOOK 2002—Cambodia 6 (2002) at http://www.odci.gov/cia/publications/factbook/print/cb.html (last visited May 1, 2003) [hereinafter CIA (Cambodia)] with CIA (United States), supra note 7.
\textsuperscript{8} Despite these differences the United States can offer valuable lessons for Cambodian efforts against domestic violence. Because the progression of U.S. domestic violence law greatly parallels international law, it has the advantage of demonstrating a wide spectrum of possible strategies for Cambodian reform. Murray, supra note 6, at 443. Additionally, the United States has been working to combat domestic violence for nearly forty years—allowing for the application of numerous strategies, information on the outcomes of those strategies, and a plethora of literature on domestic violence. See generally discussion infra Part V. American strategies for reform have been compared to other countries and cultures on issues of gender and domestic violence. See generally Juley A. Fulcher, Domestic Violence and the Rights of Women in Japan and the United States, 29 HUMAN RIGHTS 16 (2002); Diane Mitsch Bush, Women's Movements and State Policy Reform Aimed at Domestic Violence Against Women: A
reducing domestic violence. The American legal response to spousal abuse also illustrates the international legal movement against domestic violence. The fact that spousal abuse plagues women in such different countries highlights the universal nature of domestic violence.

This Comment discusses the progress and shortcomings of the American effort against domestic violence and identifies specific strategies that may succeed in the Cambodian context. Part II discusses the Cambodian epidemic of domestic violence within its historical, legal, and social context. Part III argues that, despite progressive protections in the Cambodian Constitution, international agreements, and family and criminal laws, the current Cambodian legal system is ineffective in fighting domestic violence because these laws are not enforced. Part IV addresses the proposed Cambodian draft-law to combat domestic violence, arguing that, like current legislation, it is unlikely to be enforced even if adopted due to prevailing social attitudes. Part V reviews the successes, failures, and unintended consequences of specific American approaches used in combating domestic violence, recommending particular strategies for application in Cambodia. Cambodia should adopt a synthesized approach similar to the American model, one that provides social services to victims and criminalizes abusive behavior. The Royal Government of Cambodia ("RGC") should also continue to secure passage of the domestic violence

Comparison of the Consequences of Movement Mobilization in the U.S. and India, 6 GENDER AND SOCIETY 587 (1992); Murray, supra note 6.

9 See discussion infra Part VI. The comparison between the United States and Cambodia regarding domestic violence is also vital because Cambodia's neighboring countries are confronting similar high levels of domestic violence and have not yet achieved success in preventing it. Although domestic violence is a major problem in the entire Mekong sub-region, "no specific laws addressing domestic violence have yet to be enacted in Cambodia, Lao PDR, Thailand or Vietnam." See UNIFEM EAST AND SOUTH EAST ASIA, Workshop on National Legislation on Domestic Violence in the Mekong Basin Sub-Region, 3 (Dec. 4-6 2001) at http://www.unifem-eseasia.org/Projects/EVAW2001-3regionalpgm/MekongWorkshop2001 (on file with author) [hereinafter Workshop on National Legislation]. With its proposed law, Cambodia appears closest to passing domestic violence legislation. Thailand and Vietnam are in the early drafting stages, and Lao PDR is still collecting information about its domestic violence problem and considering opening a shelter for victims. Id. In addition, many countries worldwide are just beginning to confront domestic violence. See generally Many Abused Women Lack Social Support to Leave, REUTERS HEALTH, July 16, 2001, available at http://www.vachss.com/help_text/archive/many_abused.html (last visited Apr. 27, 2003) (on file with author); Hana Ibrahim, Hands Off, Domestic Violence Has Become a National Social Problem, SUNDAY OBSERVER (Sri Lanka), June 24, 2001 available at http://www.vachss.com/help_text/archive/hands_off.html (on file with author); Samya Burney, Crime or Custom? Violence Against Women in Pakistan (HUMAN RIGHTS WATCH United States) at http://www.hrw.org/reports/1999/pakistan/ (last visited May 1, 2003) (on file with author).
draft-law in order to spark public debate and educate its citizens about the issue of spousal abuse. Cambodian criminalization efforts should initially focus on encouraging law enforcement intervention, and then secondarily pursue mandatory prosecution policies and civil protection orders.

II. THE HISTORICAL, LEGAL, AND SOCIAL CONTEXT OF CAMBODIA’S DOMESTIC VIOLENCE EPIDEMIC

Before exploring the character of domestic violence in Cambodia, it is necessary to place the problem within its proper historical, legal and social context. Cambodia’s volatile political history, especially its experience under the rule of the Khmer Rouge between 1975 and 1979, is commonly credited with cultivating the current spousal abuse epidemic. During the brutal four-year reign of the Khmer Rouge “[v]iolence became an integral part of the social order.” One out of every three Cambodians—around two million people—were killed directly by the government or indirectly by government policies that caused starvation and disease. The Khmer Rouge systematically destroyed all existing government institutions, including the legal system, in favor of rule by terror. The regime destroyed educational and sacred texts and adopted draconian economic policies based on collectivization.

Courts and written law were abolished and the government targeted judges and lawyers for persecution. After less than five years of Khmer Rouge governance, only ten law graduates, five of them judges, remained in Cambodia. By contrast, in 1975, before the Khmer Rouge takeover, the country held between four hundred and five hundred legal experts. This

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15 Zimmermann, supra note 1, at 25-26. However, during the reign of the Khmer Rouge domestic violence was almost nonexistent—personal violence was severely penalized by state violence. Id. at 39.


17 Zimmermann, supra note 1, at 25-26.

18 Si Phana Sok & Denora Sarin, Legal System of Cambodia 20 (1998); see also Cambodian Culture since 1975 Homeland and Exile xi (May M. Ebihara, et. al, eds., 1994). Estimates of the number of Cambodians killed under the Khmer Rouge vary from around one million to over three million. See CIA (Cambodia), supra note 7, at 1; O.P. Paijwal, Cambodia Past and Present xi (1991). The figure of two million Cambodian victims of the Khmer Rouge falls between the estimates and is well supported.

19 Lawyers Committee for Human Rights, Cambodia; The Justice System and Violations of Human Rights 24 (1992); Sok & Sarin, supra note 18, at 20.

20 Cambodian Culture since 1975, supra note 18, at 2.

21 Id. at 20.

22 Id.

23 Id.

24 Id.
violent restructuring of society and abandonment of the rule of law is often blamed for the current epidemic of spousal abuse and the impotence of current Cambodian law to reduce it.\textsuperscript{25}

Cambodia's continuing political instability and the infancy of the Cambodian legal system have also contributed to the problem of domestic violence. After the fall of the Khmer Rouge, civil war dominated Cambodia for twelve years.\textsuperscript{26} In 1991, Cambodia signed the Paris Peace Agreement, and in 1993, it held free elections and adopted a constitution.\textsuperscript{27} However, the country continued to experience internal violence and political infighting as recently as 1998.\textsuperscript{28} Only since 1999 has Cambodia achieved relative political stability.\textsuperscript{29}

A severe gender imbalance in the Cambodian population, resulting from decimation under the Khmer Rouge, has also been blamed for the current problem of domestic violence.\textsuperscript{30} Women significantly outnumber men and are a majority of the country's labor force.\textsuperscript{31} Women are increasingly economically independent and yet still expected to "maintain the image of the Khmer female as a passive, softly spoken woman who serves as the caretaker of the family."\textsuperscript{32} Women's increasing presence in the labor market challenges traditional gender roles and leads to male frustration.\textsuperscript{33} The result has been an increase in domestic violence.\textsuperscript{34} The

\begin{footnotes}
\item ZIMMERMANN, supra note 1, at 39-45.
\item CIA (United States), supra note 7, at 1.
\item Sok & Sarin, supra note 18, at 21-22. The Cambodian Constitution is based on the "principles of liberal democracy and pluralism." CAMBODIA CONST., ch. I, art. I, ch. V, art. 56. Legislative power rests in the National Assembly, an elected body representing the entire Khmer population. Id. ch. VII, art. 76-77. The Royal Government of Cambodia, led by a prime minister and composed of the Council of Ministers, exercises executive power. Id. ch. VIII, art. 99. The independent judiciary is to "uphold impartiality and protect the rights and freedoms of the citizens." Id. ch. IX, art. 109. The current Constitution is only ten years old. See Sok & Sarin, supra note 18, at 21-22. The legal system recently adopted in Cambodia is a strange amalgam of "centuries-old Cambodian legal tradition, more than half a century under French-influenced codes and almost two decennia of socialist legislation, with a measure of Common Law influences in the pre-1975 period and the post-1989 period." Id. at 4.
\item CIA (Cambodia), supra note 7, at 5-6.
\item Not until 1999 did Cambodia achieve its first full year of peace. CIA (Cambodia), supra note 7, at 5-6.
\item See MINISTRY OF WOMEN'S AND VETERANS' AFFAIRS, KINGDOM OF CAMBODIA, PLATFORM FOR ACTION: BEIJING PLUS 5, at 18 (2000) [hereinafter BEIJING PLUS 5]; SECRETARIAT OF THE STATE FOR WOMEN'S AFFAIRS, CAMBODIA'S COUNTRY REPORT, WOMEN: KEY TO NATIONAL RECONSTRUCTION 57 (1995) [hereinafter COUNTRY REPORT].
\item In 1994 Cambodian women accounted for between "55 and 56 percent of the adult population . . . and the highest percentage of the work force in any country in the world." see ZIMMERMANN, supra note 1, at 28. A conference in 2002 asserted that "women outnumber men (52% of the population) in Cambodia . . . [and] constitute 53% of the active labour force." See Proceedings: International Conference on Gender and Development in Southeast Asia 101 (2002).
\item SPINDEL, supra note 7, at 62.
\item BEIJING PLUS 5, supra note 30, at 18.
\item Id. at 18.
\end{footnotes}
demographic imbalance may also exacerbate abuse by compelling women, mindful of the shortage of men, to remain with abusers for fear that they will be unable to find another male partner.\footnote{35}

The Cambodian domestic violence epidemic has also been attributed to "social and cultural attitudes that condone male domination."\footnote{36} In Khmer culture "women are inferior, less valuable, and subservient to men."\footnote{37} These mores are taught in numerous popular stories and texts.\footnote{38} In the Cb\textit{ab Srey}, a traditional poem, a Cambodian mother instructs her daughter to obey a husband’s orders “like a slave” and warns her daughter to obey rather than provoke an abusive husband, who may even treat her like a prostitute.\footnote{39} The \textit{Cbab Srey} and other verses like it teach Cambodian women to be docile and submissive.\footnote{40} In this way mores encourage women to submit to abuse and communicate to men that abuse is acceptable.\footnote{41} Consequently, when women speak out against abusive husbands, they are commonly ignored or accused of disobedience.\footnote{42}

As a result of these historical, legal, and social factors, domestic violence has become a devastating problem in Cambodian society.\footnote{43} One out of every six Cambodian women is a victim of domestic violence\footnote{44} and at least one in ten Cambodian men admits to beating his spouse.\footnote{45} Cambodian spousal abuse may be even more common than these statistics suggest because many cases go unreported.\footnote{46}

Abuse commonly consists of savage beatings that include “punching; kicking; hair-pulling; whipping with ropes, bamboo canes, metal rods and cords; immolation; rape; stabbing; and gunshots.”\footnote{47} Many abused women
receive head injuries\(^{48}\) and a majority are beaten with objects—"farm implements, bamboo and rattan canes, wood switches, firewood, poles for pounding rice, metal rods and pipes, and cooking utensils, such as pots, pans, and plates."\(^{49}\) One-third of victims report being threatened with a gun or knife\(^{50}\) and some women are even tied up and beaten.\(^{51}\) Cambodian spousal abuse may in fact be more vicious than these statistics imply because victims often understate the severity of abuse.\(^{52}\)

Domestic violence has a devastating effect on Cambodia's economy and stands as a significant impediment to Cambodian development.\(^{53}\) It increases family poverty, causes unnecessary medical expenses and leads to the destruction of property.\(^{54}\) In fact, spousal abuse exacts a high cost from the entire Cambodian economy by debilitating women who compose a majority of the country's workforce, and are the primary breadwinners in many families.\(^{55}\)

III. THE CAMBODIAN LEGAL SYSTEM IS INADEQUATE TO COMBAT DOMESTIC VIOLENCE BECAUSE ITS PROGRESSIVE LAWS ARE NOT ENFORCED

Despite progressive laws promising equality and protection, domestic violence continues because of enforcement problems. The Cambodian Constitution ("Constitution"), and international agreements to which Cambodia is a party, guarantee women equal rights and equal protection under the law.\(^{56}\) Liberal divorce laws theoretically allow an abused wife to divorce her batterer.\(^{57}\) Moreover, criminal law prohibits rape, assault, battery, and murder.\(^{58}\) However, these laws and agreements are rarely enforced to protect or vindicate the rights of domestic violence victims because of prevailing social attitudes towards women.\(^{59}\)

\(^{48}\) NELSON & ZIMMERMAN, supra note 44, at 25.

\(^{49}\) Id. at 20.

\(^{50}\) Id. at 21.

\(^{51}\) Id. at 20.

\(^{52}\) ZIMMERMAN, supra note 1, at v.

\(^{53}\) GORMAN, supra note 46, at 33.

\(^{54}\) ZIMMERMAN, supra note 1, at 181-87.

\(^{55}\) GORMAN, supra note 46, at 33.

\(^{56}\) See discussion infra Part III.A.

\(^{57}\) BEIJING PLUS 5, supra note 30, at 24; See discussion infra Part III.B.

\(^{58}\) See discussion infra Part III.C.

\(^{59}\) See discussion infra Part A-C; see also BEIJING PLUS 5, supra note 30, at 4 (noting that divorce, while technically obtainable, is a difficult and troublesome experience for Cambodian women).
A. Protections for Women Afforded in the Cambodian Constitution and International Agreements Are Not Enforced

The Cambodian Constitution and various international agreements signed by Cambodia guarantee women equality under the law. The Constitution, for example, declares absolute equality between male and female citizens. It also grants "citizens of either sex equal political and social rights and specifically abolishes gender discrimination." It also specially states that men and women are equal "in marriage and matters of the family." Similarly, the United Nations Charter ("U.N. Charter") and the Universal Declaration of Human Rights, which Cambodia has agreed to follow, declare human rights equal to both men and women. Cambodia has also signed the International Convention on the Elimination of All Forms of Discrimination Against Women which requires signatories to work towards both legal and practical equality for women.

Cambodian guarantees of gender equality are not enforced due to "prevailing social ideals and attitudes about power and gender relations." For example, while the Constitution and the UN Charter promise equal pay for equal work, Cambodian women still earn thirty to forty percent less than men for the same work. Similarly, although the Constitution guarantees

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61 CAMBODIA CONST., ch. III, art. 31.

62 Id. art. 34-36.

63 Id. art. 35.

64 These rights include the right to: choose a profession and have equal pay for equal work (CAMBODIA CONST., ch. III, art. 36), form unions and strike (CAMBODIA CONST., ch. III, art. 37), equality in marriage and family matters (CAMBODIA CONST., ch. III, art. 45), equality of education (CAMBODIA CONST., ch. VI, art. 65-68), paid maternity leave (CAMBODIA CONST., ch. III, art. 46), participate in non-violent demonstrations (CAMBODIA CONST., ch. III, art. 36), and "participate in the political, economic, social, and cultural life of the nation" (CAMBODIA CONST., ch. III, art. 35). The Constitution goes so far as to explicitly mandate that "work by housewives in the home shall have the same value as what they can receive when working outside the home." Id. ch. III, art. 36.

65 Id. art. 45.

66 Id.

67 Id. art. 31; see SOK & SARIN, supra note 18, at 26.

68 U.N. CHARTER, pmbl.; Universal Declaration, pmbl.

69 BEIJING PLUS 5, supra note 30, at 10.

70 CEDAW, supra note 60.

71 GORMAN, supra note 46, at 1.

72 Id. at 101; see also BEIJING PLUS, 5 supra note 30, at 6 (acknowledging that women continue to make less money than men in Cambodia).
women equal political rights, women are underrepresented at every level of Cambodia's political decision-making structure. Moreover, there are no female governors in any of the twenty-four provinces and municipalities, and less than two percent of district and commune representatives are women. Women are also severely underrepresented in government positions responsible for the enforcement of laws, including police forces and the judicial system.

Cambodia's unenforced guarantees of gender equality do little to reduce domestic violence. As a result, new strategies are necessary to effectively enforce these laws and reduce domestic violence.

B. Progressive Cambodian Family Law Provisions Are Not Enforced

Another area of chronic under-enforcement is family law. Cambodia does not enforce its progressive laws on marriage and family, which allow for divorce and prohibit polygamy. For example, while polygamy is prohibited, "the concept of second and third wives is still generally tolerated." One Cambodian judge has stated that polygamy is so widespread it should be legalized and regulated. Similarly, newspaper articles frequently refer to "Cambodian society's quiet toleration of men who have many wives," particularly men of power. Cambodian men, however, avoid blatant illegality by not legally marrying their "minor wives."

Similarly, Cambodia's liberal divorce law that allows for divorce by a spouse who is "cruelly and badly beaten" is rarely useful because the Cambodian custom of reconciliation compels women to stay. Reconciliation, in the context of divorce, is a process whereby judges and officials "are required to dissuade a person from seeking a divorce and to

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73 GORMAN, supra note 46, at 5.
74 Id.
75 Id. at 5-6.
76 CAMBODIA LAW ON MARRIAGE AND FAMILY, sec. 2, art. 6; see ZIMMERMAN, supra note 1, at 34.
77 ZIMMERMAN, supra note 1, at 34; see also BEIJING PLUS 5, supra note 30, at 4; Levi, supra note 41, at 7; Seth Mydans, Vengeance Destroys Faces, and Souls, in Cambodia, N.Y. TIMES, July 22, 2001.
78 ZIMMERMAN, supra note 1, at 35.
80 Mydans, supra note 77.
81 Cochrane & Kola, supra note 79.
83 Reconciliation is a traditional Khmer response to conflict in which intermediaries work to solve a dispute in an "apparently" mutually agreeable way. ZIMMERMAN, supra note 1, at 147.
attempt to reconcile the couple. If unable to dissuade the woman from requesting a divorce, the judge is authorized to conduct additional attempts at reconciliation even when the woman is severely abused. Reconciliation requires many meetings between the parties and can delay divorce as much as a year. In reconciliation meetings, wives are often confronted with threats that they may be driven into poverty or ostracized by society if they continue with the divorce. One reconciliator explained to an abused woman seeking a divorce that "[y]our parents will take you back into the house, but they will not love you anymore." If a woman succeeds in divorcing her husband she is socially disgraced and sometimes forced to surrender property or cash to her abuser.

Family law in Cambodia has failed to protect victims of domestic violence because its provisions simply go unenforced. Consequently, to reduce domestic violence, Cambodia must find new strategies to increase enforcement of existing provisions or adopt enforceable provisions.

C. Cambodian Criminal Prohibitions Are Not Enforced

While Cambodian criminal law and procedure are both gender neutral and in theory safeguard equality for women, crimes that occur within the context of domestic violence are not investigated or prosecuted. Criminal law prohibits murder, attempted murder, voluntary manslaughter, rape, illegal confinement, involuntary manslaughter, etc.
assault and battery, and indecent assault. Nonetheless, abused women in Cambodia have little chance of receiving justice or protection from the government. Similarly, battery is a crime and yet in cases of domestic battery police take no action at all. Domestic violence statistically results in an injury to one in twelve Cambodians and yet few cases ever appear in court. Murder is also illegal, but even murder does not guarantee police investigation or involvement. A forum of Cambodian Non-Governmental Organizations ("NGOs") that work to prevent domestic violence sent an open letter to the Cambodian Prime Minister decrying the "increasing number of violent acts against and murder of women" and the complete lack of enforcement against male perpetrators of these crimes. Attached to the letter was a list of thirteen women who were murdered by men. These men, whose identities were generally known, were never investigated or arrested.

Social values and customs also undermine the enforcement of rape laws. Although the criminal law prohibits rape and indecent assault, police are unlikely to intervene in these cases. In the case of marital rape, most police believe that forced intercourse in a marriage is not rape. One Cambodian judge said that while Cambodian law does not exclude marital rape from criminal prohibitions on rape, custom dictates that intercourse

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98 Id. art. 33(1).
99 Id. art. 35.
100 Id. art. 40.
101 Battery occurs when one "voluntarily strikes another resulting in injury leading to permanent disability or temporary disability." Id. art. 41(1).
102 "Any person who sexually offends another, unconsenting, person of either sex by touching, caressing or any other sexual act not involving penetration, is guilty of . . . indecent assault." Id. art. 42(1).
103 Levi, supra note 41, at 1.
104 CRIMINAL LAW, art. 41(1).
105 Cambodian Defenders Project, Activities/Successes, at http://www.cdpcambodia.org/activities.asp (last visited May 1, 2003) (on file with author) [hereinafter ACTIVITIES/SUCCESSES].
106 One out of every six Cambodian women experience domestic violence and half of all women who experience spousal abuse sustain injuries. In conjunction, these figures mean that at least one in twelve Cambodians are injured by domestic violence. Nelson & Zimmerman, supra note 44, at 17, 25.
108 CRIMINAL LAW, art. 31.
110 Id.
111 With one exception: one assailant is listed as "unknown." Id.
112 Id.
113 CRIMINAL LAW, art. 33(1).
114 Id. art. 42(1).
115 SPINDEL, supra note 7, at 63.
116 Id. at 65.
between husband and wife can never be rape. Non-marital rape is also rarely vindicated. Although the press frequently reports rape, the offense is seldom punished, even when the victim is killed and the perpetrator generally known. The Khmer saying for female rape victims is "if your skirt is torn, don't tear it further." This adage edifies the cultural belief that rape shames a woman and that reporting rape only brings more shame. There is also a disincentive for women to report rape because victims worry about being forced to marry the rapist.

Although domestic violence is not excluded from the prohibitions of Cambodian law, custom prevents criminal law from being applied to assaults in the home. It is a common misconception among Cambodians that domestic violence is an internal family problem—immune from state law. Most police officers in Cambodia believe they cannot intervene in domestic violence because it is a private matter. Consequently, officers often allow domestic violence to go unchecked. Even when the police or courts do intervene, criminal laws prohibiting violence are not enforced because the same social and cultural attitudes that foster domestic violence pervade the police and judiciary. One abused woman was told by police, "I cannot arrest him because you have no injury. Only a kick or a punch, no injury." Another victim recalled police telling her that because her husband had a gun they would prefer not to help her.

Cambodia’s progressive equal rights guarantees, family laws and criminal laws are ineffective in reducing domestic violence because they are not enforced. Action is necessary to effectuate greater enforcement of these laws, to adopt enforceable legislation, and to develop alternate strategies to combat spousal abuse.

117 ZIMMERMAN, supra note 1, at 70.
118 BEIJING PULIS 5, supra note 30, at 18.
119 Id.
120 Id.
121 Id.
122 Id.
123 ZIMMERMAN, supra note 1, at 198.
124 ACTIVITIES/SUCCESSES, supra note 105.
125 SPINDEL, supra note 7, at 62.
126 Id.
127 Id.
128 Id. at 140.
IV. The Current Cambodian Proposal to Combat Domestic Violence Will Also Fail Because It Will Not Be Enforced

The RGC’s primary strategy to combat domestic violence is a draft-law for the prevention of domestic violence. On June 14, 2002, the Council of Ministers approved the draft-law, which was scheduled for debate in Cambodia’s National Assembly on November 11, 2002. On January 27, 2003, when the draft-law finally came up for debate, the National Assembly lacked the quorum necessary to act on it. As of May 2, 2003, no apparent subsequent action is underway.

The proposed law criminalizes the violent acts that characterize domestic violence and provides civil protection orders for victims. The draft-law defines domestic violence as any act in one of three categories: 1) emotional abuse and harassment, 2) interfering with property and financial rights of victims, and 3) acts of physical violence and coercion. The draft-law specifically prohibits acid attacks, provides for restraining orders, and gives police authority to enter homes without

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130 The RGC has taken other steps to improve the situation of women generally. It has created several national bodies to represent Cambodian women and advocate for their rights. The government created a Secretariat of State for Women’s Affairs, and the Secretariat hosted a regional conference on domestic violence in 1995. The conference was initiated in response to the endemic, prevalent rates of family violence. In 1996, the RGC upgraded the Secretariat to the Ministry of Women’s Affairs, which then in 1998 became the Ministry of Women’s and Veteran’s Affairs. In 1999, the RGC adopted a program specifically designed to combat domestic violence: Neary Rattanak—Women are Precious Gems. BFIJING PLUS 5, supra note 30, at 1-3. Similarly, several prominent government figures have publicly called for an end to familial violence. Prince Norodom Ranariddh has called for government action to end domestic violence and asserted that family violence is “a deterioration in the social fabric that must be eradicated.” Ranariddh Presses for Action on Women’s Plight, ASIAN POL. NEWS, Sept. 16 1999, at 1999 WL 221803771. Similarly, the Cambodian Premier “appealed to the Cambodian people to eliminate violence and resolve [such] cases in a proper way.” Oana-Xinhua, Cambodian Premier Calls for Elimination of Violence, BERNAMA—THE MALAYSIAN NATIONAL NEWS AGENCY, Mar. 4, 2002, at 2002 WL 15920029.


132 Cambodia: Debate Set for Domestic Violence Draft-law, supra note 131.


134 The categories of acts prohibited by the draft-law include: “1. The forcing or/and pressure that effects the wills; 2. The forcing or/and pressure that cause damages to any living condition; 3. The forcing or/and pressure that cause physical or spiritual damages.” Press Release, Royal Government of Cambodia, The Office of the Spokesman, Weekly Meeting of the Council of Ministers (June 14, 2002) at http://www.camnet.com/kh/ocm/press_release/prerelase41.htm (on file with author) [hereinafter Press Release].

135 Id.

136 Id.

137 Id.

138 Id.

139 Id.; See discussion of acid attacks, infra note 147.
warrants when abuse is suspected.\textsuperscript{140} The draft-law also provides increased penalties for domestic violence.\textsuperscript{141} There is currently debate over whether the proposed law prohibits spousal rape.\textsuperscript{142}

Even if the draft-law is passed, it has little hope of being enforced. The behavior prohibited and punished under the draft-law is generally identical to that already barred under current but unenforced criminal and family law.\textsuperscript{143} There is no reason to believe that the “social attitudes, which hold that domestic violence is a private, family matter,” will cease to obstruct enforcement of the provisions included in the proposed law if passed.\textsuperscript{144}

Recent press coverage of the draft-law also suggests that it will not be enforced against male abusers. Articles on the draft-law typically address it as a way to punish official wives for their attacks on their husband’s mistresses.\textsuperscript{145} The few articles that address the draft-law discuss it only in the context of acid attacks between non-cohabitating wives.\textsuperscript{146} Cambodia has recently experienced a rise in acid attacks carried out by wives against their husband’s lovers.\textsuperscript{147} These attacks do not involve domestic violence\textsuperscript{148} and only one such attack in recent history has involved a man.\textsuperscript{149} The man was the victim and, not surprisingly, his was “the only instance in which the attacker was tried and punished.”\textsuperscript{150} One article discussing the draft-law was

\textsuperscript{140} Cambodia: Debate Set for Domestic Violence Draft-law, supra note 131.
\textsuperscript{141} Press Release, supra note 135.
\textsuperscript{142} For the argument that spousal rape is prohibited see Cambodia: Debate Set for Domestic Violence Draft-law, supra note 131; for the argument that it is not prohibited, see Molly Ball, NGOs: Domestic Violence Law Fatally Flawed, THE CAMBODIA DAILY, Dec. 2, 2002, available at http://cambodia.ahrchk.net/mainfile.php/news200212/523/ (on file with author).
\textsuperscript{143} Restraining orders, rape, assault, murder, sexual coercion, and acid attacks seem to fall within areas already legislated, though not enforced, under the gender-neutral criminal law. See ACTIVITIES/SUCCESSES, supra note 105; discussion supra Part III.C.
\textsuperscript{144} Cambodia: Debate Set for Domestic Violence Draft-law, supra note 131.
\textsuperscript{146} Mydans, supra note 77.
\textsuperscript{147} Id. Acid attacks are increasing in Cambodia and ordinarily involve an official wife pouring acid on the head and face of her husband’s minor wife or mistress. This kind of attack is particularly horrific because it not only severely injures the victim but also deprives her of her beauty, her primary financial asset. See generally id.; Jeff Smith & Kay Kimsong, Acid-Laced Vengeance, CAMBODIA DAILY, Feb. 5-6, 2000 available at http://www.camnet.com.kh/cambodia.daily/ selected_features/acid_laced_vengeance.htm (on file with author).
\textsuperscript{148} The attacks ordinarily involve official and minor wives that do not live together. Usually the second wife is not legally married to the husband. Mydans, supra note 77.
\textsuperscript{149} Id.
\textsuperscript{150} Id.
titled "Cambodia to Have Law to Punish Acid Attacks" and discussed the
draft-law solely in that context. In its own press release publicizing the
law, the Council of Ministers stressed the draft-law's application to acid
attacks, which rarely involve a male perpetrator or victim. Few articles
linked the proposed legislation to male perpetrated domestic abuse,
indicating that such an application is unlikely.

V. AMERICAN DOMESTIC VIOLENCE STRATEGIES MAY OFFER HOPE FOR
THE CAMBODIAN DOMESTIC VIOLENCE EPIDEMIC

Cambodia is not alone in its struggle with domestic violence. Spousal
abuse is a worldwide phenomenon that many countries have attempted to
combat with legislation. Notably, the United States has had a long
struggle with intimate violence that persists to this day. American domestic
violence continues to be widespread, brutal, and costly, despite a movement
to prevent spousal abuse since the 1960s. Cambodia can learn from
American successes and failures in the fight against domestic violence, using
those lessons to improve its own efforts.

Sub-part A discusses the character of the American epidemic of
domestic violence. Sub-part B reviews American successes, such as
increased enforcement, prosecution, availability of civil protection orders,
provision of victim's services, public awareness, and the synthesis of victim
support and criminal prohibitions as part of a uniform system in combating
domestic violence. It recommends Cambodia adopt similar strategies in its
efforts to address its own domestic violence problem. Sub-part C outlines
the failures of American efforts to eradicate spousal abuse. Sub-part D
addresses the unintended consequences of those efforts, such as increased
perpetrator aggression and the further disempowerment of victims.

151 Cambodia to have Law to Punish Acid Attacks, supra note 147.
153 Cambodia to have Law to Punish Acid Attacks, supra note 147 (not mentioning male to female
domestic violence); Royal Government of Cambodia, The Office of the Spokesman, supra note 135
(mentioning "men, women, boys and girls" as victims); Cambodia: Debate set for Domestic Violence
Draft-law, supra note 131 (mentioning female victims of domestic violence); Sokhet, supra note 145
(mentioning wife battering in particular).
154 Armutta, supra note 5, at 842-45.
A. A Picture of Domestic Violence in the United States

Domestic violence is extremely widespread in the United States. Approximately 1.9 million women are assaulted annually, and each year more women are abused by spouses than get married. Domestic abuse is the leading cause of injury to women nationally and, according to statistics from the Federal Bureau of Investigation, every eighteen seconds a woman is beaten in the United States.

American domestic violence is also vicious, resulting in injury to nearly one-third of the women assaulted. Thirty percent of all incidents of domestic violence involve weapons and approximately one-third of women murdered nationwide are killed by former husbands or boyfriends.

Domestic violence exacts high costs on the United States. It results in 400,000 visits to emergency rooms; 21,000 hospitalizations; 99,800 days in the hospital and 39,000 visits to physicians. Domestic violence is also estimated to result in employment losses totaling between three and thirteen billion U.S. dollars annually.

Moreover, one-third of all police response time and many hours of court time are attributed to domestic violence cases. Other social and monetary costs arise from domestic violence: birth defects and miscarriages due to abuse, mental health treatment for
victims, shelter for women and children who flee abuse, and foster care for children whose families are broken by abuse.\textsuperscript{165}

The grave problem of domestic violence in the United States has sparked many efforts to reduce spousal abuse. Some of these approaches have been successful while others have not. Many have resulted in unintended consequences for domestic violence victims.

B. \textit{American Successes in the Effort Against Domestic Violence Provide Ideas for Potential Cambodian Reforms}

In its struggle against domestic violence, the United States has made progress in instituting both social and legal reform.\textsuperscript{166} Mandatory arrest policies have increased police enforcement, no-drop prosecution policies have reduced recidivism and homicides, and the availability of civil protection orders has deterred abusers.\textsuperscript{167} In addition, improvements have been made in providing services for victims and in increasing public awareness of domestic violence. Over time a synthesized approach to the problem has evolved.\textsuperscript{168} Each sub-part in this section addresses a particular success of the American model, and then discusses the potential application of a similar strategy in the Cambodian context.

1. \textit{Mandatory Arrest Policies Could Be a Valuable Tool in Cambodia to Effect Greater Criminal Enforcement Against Domestic Violence}

American law enforcement against domestic abusers has increased greatly over the past forty years.\textsuperscript{169} In the 1960s, police commonly failed to respond to domestic violence calls at all.\textsuperscript{170} If they did respond, police tended to mediate the conflict rather than arrest the perpetrator.\textsuperscript{171} Domestic violence advocates pushed for police to treat domestic violence like any

\begin{itemize}
\item \textsuperscript{165}Zorza, supra note 156, at 383-88.
\item \textsuperscript{166}Deborah Epstein, \textit{Redefining the State's Response to Domestic Violence: Past Victories and Future Challenges}, \textit{1 Georgetown J. of Gender & the L.}, 127-143 (1999) [hereinafter Epstein, \textit{Redefining}].
\item \textsuperscript{167}See discussion supra Part V.B.
\item \textsuperscript{168}Id.
\item \textsuperscript{169}Epstein, \textit{Redefining}, supra note 166, at 127-43; see also Douglas R. Marvin, \textit{The Dynamics of Domestic Abuse}, \textit{The FBI L. Enforcement Bulletin}, July 1997; see generally Cara Feinberg, \textit{Hitting Home; Domestic Violence Is the Issue That Embarrasses Traditionalists}, \textit{American Prospect}, Apr. 2002.
\item \textsuperscript{170}Epstein, \textit{Redefining}, supra note 166, at 127-43; see also Marvin, supra note 169; see generally Feinberg, supra note 169.
\item \textsuperscript{171}Epstein, \textit{Redefining}, supra note 166, at 127-43; see also Marvin, supra note 169; see generally Feinberg, supra note 169.
\end{itemize}
other crime, filing suits against cities and police departments for their failure to protect victims. These suits made police departments rethink their policies, and police began responding to domestic violence calls nationally.

Many jurisdictions adopted mandatory arrest policies to remove police officer discretion in domestic violence cases. Under such policies, "if probable cause exists, the officer must arrest." By 1997, nineteen states had mandatory arrest laws for domestic violence. Advocates also targeted police officer training and, by 1997, twenty-nine states required domestic violence training for new officers. Evidence suggests that the higher rates of arrest produced by mandatory arrest laws may reduce domestic violence, deter abusers, reduce the number of subsequent police responses involving the same parties, and extend the time between incidents. With the help of mandatory arrest policies, American law enforcement has gone "from merely 'maintaining the peace' to arresting offenders, protecting victims, and referring battered women to ... community resources."

In Cambodia, mandatory arrest policies may effectuate greater criminal enforcement against domestic violence. Although American policies were adopted in response to civil suits for failure to intervene in domestic violence, similar enforcement provisions might be implemented in Cambodia legislatively. If mandatory arrest policies are legislatively adopted in Cambodia, the police may have less incentive to follow these policies than in the United States, where failure to respond to domestic violence calls resulted in financial liability for police departments because of civil suits. Enforcing civil liability against police for failure to respond is probably not feasible in Cambodia due to the lack of government financial resources. However, while police officers would not be subject to civil liability, the legislative adoption of mandatory arrest policies in Cambodia

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172 Epstein, Redefining, supra note 166, at 127-43.
173 Feinberg, supra note 169.
176 Epstein, Redefining, supra note 166, at 127-43.
177 Id.
179 Id. at 278.
181 Marvin, supra note 169; see also Hampton, supra note 175, at 59; Epstein, Redefining, supra note 166, at 127-143.
could still improve enforcement by removing police officer discretion in situations involving domestic violence.

Special training and education would be necessary for both the police, who respond to domestic violence calls, and for the community at large, so that victims learn to turn to the police for help. In addition to training, these policies would also likely require additional law enforcement personnel to deal with the potential increase in the number of calls for help. Although this would require hiring and maintaining a larger police force, it would also open up the opportunity for increased female representation in the force. Since lack of enforcement is the primary source of Cambodia’s inability to effectively fight domestic violence, this strategy could be key to accomplishing significant change.

2. No-Drop Prosecution Policies Should Be Implemented in Cambodia to Enforce Criminal Prohibitions Against Domestic Violence

As part of its efforts, the United States increased prosecution of domestic violence perpetrators.\(^2\) Since mandatory arrest policies were insufficient to curb domestic violence when prosecutors refused to press charges,\(^3\) advocates lobbied prosecutors to treat domestic violence like other crimes, prosecuting when evidence supports a charge.\(^4\) Now, many jurisdictions have no-drop policies,\(^5\) which require prosecutors to proceed with domestic violence cases whenever there is “sufficient evidence . . . to prove criminal conduct.”\(^6\) These policies have been credited with decreases in both domestic violence recidivism and gender-based homicides, and have also sent a strong message that spousal abuse will not be tolerated.\(^7\)

No-drop prosecution policies should be implemented in Cambodia to enforce criminal prohibitions against domestic violence and protect victims from abuse. These policies could reduce recidivism and murder in addition to demonstrating that domestic violence is not a private issue but a crime

\(^2\) Epstein, Redefining, supra note 166, at 127-43; Deborah Epstein, Effective Intervention in Domestic Violence Cases: Rethinking the Roles of Prosecutors, Judges and the Court System, 11 YALE J.L. & FEMINISM 3, 15 (1999) [hereinafter Epstein, Effective Intervention].

\(^3\) Epstein, Redefining, supra note 166, at 127-43.

\(^4\) EIGENBERG, supra note 178, at 285.

\(^5\) For a detailed discussion of the variation among “no drop” policies, see Hanna, supra note 174, at 1863.

\(^6\) Epstein, Redefining, supra note 166, at 127-43.

\(^7\) Id.; Epstein, Effective Intervention, supra note 182, at 15.
against the state, as similar policies have in the United States. Sensitivity and domestic violence training would be advantageous for those in the criminal justice system that lack experience with the issue.

Problematically, while mandatory prosecution policies would increase the number of abusers charged and convicted, increased expenses for court time, prosecution, and imprisonment would result. In addition, the relatively new legal system in Cambodia is already behind in prosecutions, and the addition of many more domestic violence cases may only exacerbate this problem. Also, this strategy would be dependent upon increased enforcement and consequently may not be immediately feasible. Thus, while no-drop prosecution policies may be a valuable tool in Cambodia, their viability is limited until improvements are made in domestic violence intervention.

3. Protection Orders Could Be an Effective Way to Protect Victims Once an Increase in Domestic Violence Enforcement is Achieved in Cambodia

Advocates in the United States have also lobbied for statutes governing civil protection orders to prohibit abusers from contacting and approaching their victims. By 1988, forty-eight states authorized civil protection orders. Although these orders did not initially subject violators to arrest, by 1997 forty-nine states allowed for the warrantless arrest of perpetrators who violated protection orders. Forty-five states also made violating a protection order a statutory crime and thirty-four implemented criminal contempt orders to help enforce protection orders. There is evidence these protective orders deter domestic violence and increase the prosecution of batterers when they are vigorously enforced.

In Cambodia, protection orders could be an effective way to protect victims once an increase in domestic violence enforcement is achieved. In order for protection orders to have any effect, they must be both enforced and prosecuted. Even in the United States, where protection orders are

188 Epstein, Redefining, supra note 166, at 127-43; Epstein, Effective Intervention, supra note 182, at 15.
189 Epstein, Redefining, supra note 166, at 127-43.
190 Feinberg, supra note 169.
191 EIGENBERG, supra note 178, at 204.
192 Id.
193 Id.
194 Epstein, Redefining, supra note 166, at 127-43.
195 EIGENBERG, supra note 178, at 205.
routinely enforced and prosecuted, they are often violated. Thus, Cambodia should consider protection orders as a secondary strategy for combating domestic violence once greater enforcement and prosecution are achieved. If protection orders are implemented before enforcement is achieved they may seem useless to victims and lose their appeal.

Nevertheless, the Cambodian National Assembly should pass legislation authorizing and defining protection orders once enforcement of domestic violence crimes is achieved. Much of the implementation may be assigned to the NGOs that are already helping victims. NGO advocates could assist domestic violence victims in filling out the paperwork and petitioning the court for the protection order, thereby lessening the manpower and financial burdens on the state, and thus, helping to make the approach viable in Cambodia.

4. Cambodia Should Increase the Provision of Social Services for Domestic Violence Victims

The American response to domestic violence has also included social services for victims, such as shelters, focused support and empowerment groups, and workshops geared toward community education. Domestic violence shelters offer safe harbor from abuse and provide much needed services to victims, including group and individual counseling, legal aid, social service advocacy and referral, critical services for victims’ children including child care, transitional housing and job training. The number of domestic violence shelters has grown significantly in the past thirty years. In 1976, only five or six domestic violence shelters existed. That number grew to 780 by 1985 and 1,200 in 1996. Today shelters operate "across the country in various shapes and sizes, with trained volunteers and paid staff whose duties include advocacy, counseling, support, medical care, and referral services."

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196 More than half of all batterers violate protection orders. Id.
197 See infra note 205.
198 Epstein, Redefining, supra note 166, at 29.
200 Armatta, supra note 55, at 842-45.
201 Hampton, supra note 175, at 57.
202 The first shelters appeared in the United States between 1974 and 1976. Id.
203 Id.
204 Id. at 41.
205 Id. at 57.
206 FLOWERS, supra note 199, at 223.
In Cambodia social services for victims already exist—but only to a limited extent. Most existing services are centered in the capital city of Phnom Penh. For example, the Cambodian Women’s Crisis Center (“CWCC”), which opened in 1997, provides direct services to domestic violence victims and their children on a small scale in Phnom Penh. Shelters such as the CWCC are currently the only refuge for abused women in Cambodia, because laws are not enforced to protect them in their homes. Since these services are extremely important, many more victim’s shelters are needed throughout the country. The diffuse nature of the Cambodian population makes it necessary for shelters to open in distant rural communities. However, opening shelters to serve isolated communities may increase the danger to fleeing victims because such shelters will be easier for abusers to locate. Shelters could potentially avoid this problem by networking with other shelters, and transferring victims to locations where their abusers may not be able to find them easily.

5. Cambodia Should Incorporate a Synthesized Approach to Domestic Violence Like That Embodied in the American Violence Against Women Act of 1994

In 1994, the United States Congress passed the Violence Against Women Act (“VAWA”)—the first federal legislation to tackle domestic violence by combining service provision with criminalization. The legislation outlaws domestic violence perpetrated across state lines, as well as gun possession by anyone subject to a protective order or domestic violence.
violence conviction. VAWA also mandates enforcement of protection orders across state lines and allows a victim to speak to a court concerning the pretrial release of an abuser. In addition to these criminal provisions, the VAWA allocates an unprecedented level of funding for preventing violence against women. This social service component of VAWA dedicates federal funding and institutions to directly serve victims.

The VAWA represents the first time the United States government has made a significant contribution to both the direct provision of services to domestic violence victims and to criminalizing perpetrators. The allocation of funds was significant, not only because it provided financial support for victim services, but also because it demonstrated significant Federal Government support. The breadth of the VAWA signaled a dramatic change in the way federal law approaches the issues of domestic violence. The VAWA weaves together for the first time a variety of solutions for domestic violence, "including funding for women’s shelters, a national domestic-abuse hot line, rape education-and-prevention programs, training for federal and state judges, new remedies for battered immigrants, and criminal enforcement of interstate orders of protection."

Cambodia may want to consider incorporating the synthesized approach to domestic violence embodied in the VAWA. Service provision will be extremely important to Cambodian victims until improvement in criminal enforcement is achieved. Thus, government support of services is vital not only financially but socially as well. The RGC could support shelters and services by allowing shelters special access to government institutions or courts, providing facilities for domestic violence training, allowing NGOs to train government employees or parliamentarians on domestic violence issues, and legislatively supporting

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216 Id. § 922(g)(8).
217 Id. § 2262(a)(1-2).
218 Id. § 2263.
219 EIGENBERG, supra note 178, at 209.
220 Goldfarb, supra note 213, at 540.
221 Id. at 541-42.
222 Id. at 541.
223 See id. at 541.
224 Feinberg, supra note 169.
225 In fact such a synthesized approach has already been suggested by NGOs in Cambodia, such as the Project Against Domestic Violence ("PADV"). PADV has asserted that long-term change will necessitate close government and NGO cooperation. Levi, supra note 41, at 8; see also Cambodian Women’s Declaration on the 92nd Anniversary of International Women’s Day (Mar. 8, 2002), at http://www.camnet.com.kh/ocm/government/government118.htm, (advocating for a holistic strategy to strengthen cooperation between development agencies and the Cambodian government).
226 PADV has already begun to train government employees from the Ministry of Women’s Affairs, Ministry of Social Affairs, Ministry of Health, Ministry of Education and some police officers. These
victim services. Government action in support of victim services in Cambodia may lend authority to and publicize the campaign against domestic violence, increasing its credibility and contributing to national education on the issue.

6. Increased Public Awareness About Domestic Violence

Domestic violence activists' efforts have gained publicity and led to increased public discussion about domestic violence in the United States. For example, victim suits against police departments alleging failure to protect "made domestic violence policing a national issue." The ensuing public discussion along with increased enforcement helped reconceptualize domestic violence as a crime against the state. Similarly, the passage of VAWA galvanized national attention to the issue, leading to unprecedented public education about domestic violence. Through their efforts, domestic violence activists have "successfully elevated social recognition of the reality and severity of domestic violence."

In Cambodia activists are beginning to make domestic violence a national public issue. Education programs aimed at encouraging intervention in domestic violence have been initiated for villagers as well as parliamentarians. Training programs in safety and legal strategies for victims also exist. Similarly, pilot projects using domestic violence sensitivity training in villages are under way. One such project provides classes, encouraging communities to support victims and establishing networks for supporting and monitoring local victims. In 2001, Phnom

sessions encourage increased involvement in domestic violence situations and give general education about issues of domestic violence that government employees may lack. Levi, supra note 41, at 8.


Hanna, supra note 174, at 1857-58.

Hoctor, supra note 157, at 645.

Goldfarb, supra note 213, at 542.

Cahn & Meier, supra note 227.


Workshop on National Legislation, supra note 9, at 3.

Domestic Violence Against Women, supra note 232, at 1.

Id.

Id.
Penh hosted a Workshop on Preventing Domestic Violence, which brought national attention to Cambodia’s domestic violence epidemic.

Encouraging private activism and recognizing the work of NGOs are two ways the RGC can publicize the problem of domestic violence. Public efforts to teach and discuss Cambodian domestic violence issues should continue and expand into rural villages. Government legislation on domestic violence, for example the draft-law, may bring national publicity to the issue and spark public debate, even if enforcement remains unlikely. The more support that is shown for victims of domestic violence, the more the issue may gain public attention and increase public awareness.\(^{237}\)

C. The Failures of the American Effort Against Domestic Violence

Despite the achievements of the battered women’s movement in the United States, there is still much more to be done toward eradicating domestic violence.\(^{238}\) National statistics demonstrate that although domestic violence has not risen since 1975, it has not decreased either.\(^{239}\) This could be due in part to the fact that the law is still sometimes ineffective in protecting victims, and that assumptions about gender and violence still permeate the criminal justice system.

Despite the fact that domestic violence is a criminal offense in every state and at the federal level, the law is still often ineffective to protect victims.\(^{240}\) Law enforcement officers often fail to arrest batterers\(^{241}\) and domestic violence against women is rarely prosecuted.\(^{242}\) In this way domestic violence is still not treated as a real crime,\(^{243}\) or addressed in the same manner as other violent crimes.\(^{244}\) Most victims who do not report their abuse fail to do so because they believe the police will not do anything to help them.\(^{245}\) Despite the fact that protective orders are now common, studies show that more than half of all batterers routinely violate such orders.\(^{246}\) Further, although VAWA signaled a significant positive shift in

\(^{237}\) See Rona Riddh Presses for Action on Women’s Plight, supra note 130; Cambodian Premier Calls for Elimination of Violence, supra note 130.

\(^{238}\) Epstein, Effective Intervention, supra note 182, at 3.

\(^{239}\) USA: Domestic Violence is Alarmingly High, WIN NEWS, Wntr 1996, at 31.

\(^{240}\) Extent, Nature, and Consequences, supra note 155, at 52.

\(^{241}\) Hocker, supra note 157, at 643.


\(^{243}\) Kalyani Robbins, No-drop Prosecution of Domestic Violence: Just Good Policy, or Equal Protection Mandate, 52 STANFORD L. REV. 1, 205.

\(^{244}\) Marvin, supra note 169.

\(^{245}\) Extent, Nature, and Consequences, supra note 155, at v.

\(^{246}\) Eigenberg, supra note 178, at 205.
federal policy, there were only fourteen prosecutions under it two years after it was passed.\footnote{Id. at 220.}

Assumptions about gender and violence are still embedded in the criminal justice system. Despite improved enforcement, some responses to victims continue to demonstrate decades-old preconceptions about domestic violence.\footnote{Hampton, supra note 175, at 64.} For example, prosecutors, judges and the court system, who are responsible for the application and enforcement of the law,\footnote{Epstein, Effective Intervention, supra note 182, at 3; see also Epstein, Redefining, supra note 166, at 127-43.} lack an understanding of domestic violence and have difficulty sympathizing with victims who return to their abusers.\footnote{Epstein, Redefining, supra note 166, at 127-43.} Litigation frequently reflects the assumption that spousal abuse is uncommon despite its prevalence.\footnote{See generally Martha R. Mahoney, Legal Images of Battered Women: Redefining the Issue of Separation, 90 MICH. L. REV. 2-10, 71-79, 93-94 (1991) in DOMESTIC VIOLENCE LAW (Nancy K. D. Lemon, ed., West Group 2001).} Similarly, domestic violence is still sometimes treated as an essentially private problem.\footnote{Zorza, supra note 156, at 383-88.} A recent study funded by the Department of Justice found the criminal justice understanding of domestic violence to be so lacking that it recommended comprehensive spousal abuse training for the entire U.S. justice system community.\footnote{Extent, Nature, and Consequences, supra note 155, at 57.}

In Cambodia, immediate change should not be expected. The American experience with spousal abuse indicates that Cambodian activists must be patient and avoid frustration as domestic violence is not quickly eradicated. The fact that criminalization alone has been insufficient in the United States to deter domestic violence stresses the importance of services to help victims escape from abuse. As the Cambodian problem of domestic violence is deeply embedded,\footnote{Armatta, supra note 55, at 842-45.} legal reform there should learn from the weaknesses of the American experience, taking an integrated approach to the problem and working on providing aid to victims while simultaneously prosecuting perpetrators.

D. As Cambodia Implements American Strategies to Combat Domestic Violence it May Encounter Unintended Consequences

American increases in enforcement, prosecution, and public awareness of domestic violence have resulted in unintended consequences

\footnotesize{\begin{itemize}
  \item \footnote{Id. at 220.}
  \item \footnote{Hampton, supra note 175, at 64.}
  \item \footnote{Epstein, Effective Intervention, supra note 182, at 3; see also Epstein, Redefining, supra note 166, at 127-43.}
  \item \footnote{Epstein, Redefining, supra note 166, at 127-43.}
  \item \footnote{Zorza, supra note 156, at 383-88.}
  \item \footnote{Extent, Nature, and Consequences, supra note 155, at 57.}
  \item \footnote{Armatta, supra note 55, at 842-45.}
\end{itemize}}
for victims. As the "state escalates its response to domestic violence, activists [may] need to reassess their dependence on and trust in state power." Mandatory arrest and "no drop" policies may force a victim to assist in the prosecution of her abuser, "regardless of her physical danger from retaliation assault, her cultural and religious misgivings about breaking up the family, her economic vulnerability . . . and her individual need for agency and control." In many ways, the criminal justice system can perpetuate the same kinds of power and control dynamics that exist in the abusive relationship, further disempowering the victim. Increased state involvement in cases of domestic violence may also expose victims to charges of failure to protect their children from their abuser.

Focusing solely on efforts to protect the victim "at the expense of providing fair treatment for perpetrators" may also have unintended negative consequences for victims. There is evidence of a "potentially close connection between victim safety and abusers' sense of fair treatment" in the criminal justice system. When state involvement in domestic violence is over, the experience and perception of the abuser often affects the victim's safety. In this way, aggressive enforcement policies may actually encourage spousal abuse. Similarly, increased public awareness of domestic violence may unintentionally support "a stereotype of battered women as weak, helpless victims" which in turn perpetuates victim isolation.

As Cambodia works to implement some successful strategies from the American experience with domestic violence, it may encounter some of the same unintended consequences encountered in the United States. As a solution it may look to some of the strategies currently debated in the American movement to combat such unintended consequences. For example, the potential of state domestic violence intervention to also disempower victims could be counteracted by allowing such victims to opt out of the prosecution and enforcement process. Victims could be less

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255 Epstein, Redefining, supra note 166, at 127-43.
256 Epstein, Effective Intervention, supra note 182, at 5.
257 Epstein, Redefining, supra note 166, at 127-43; see also Epstein, Effective Intervention, supra note 182, at 17.
258 Id. at 5.
260 Id. at 1847.
261 Id. at 1848.
262 Epstein, Effective Intervention, supra note 182, at 17.
263 Cahn & Meier, supra note 227, at 355.
264 Although these strategies are intended to counteract the unintended consequences of earlier policies they may have ramifications of their own.
involved in prosecutions if other evidence, such as DNA evidence, could be used instead of or in addition to, victim testimony. Although DNA evidence is not economically or technologically feasible in Cambodia, other forms of evidence may be—such as community testimony or allowing victims to testify in writing. Similarly, gender bias and stereotypes in the judiciary could be counteracted with specially tailored prosecution strategies and increased advocacy services. Alternatively, special domestic violence courts could be created to provide experience and expertise with spousal abuse issues. Finally, the current emphasis in the United States is on the provision of culturally appropriate services to both victims and abusers—in Cambodia special consideration should go to providing culturally sensitive services and criminal justice, and this may be gained through consultation with domestic violence NGOs already in action.

VI. CONCLUSION

Cambodia’s current legal system is ineffective to combat domestic violence because current laws are not enforced. The RGC’s main strategy for reform, the draft-law, will probably also be ineffective for the same reason. As a result, the time is ripe for Cambodia to explore and develop alternate strategies for reform. In this context, the relative infancy of the Cambodian legal system could be an asset—inasmuch as it can still be shaped from this early point to effectively combat domestic violence. Cambodia should consider implementing a synthesized strategy of victim service provision and criminalization similar to that in the VAWA. Efforts to provide services should be dispersed throughout the country and the RGC should make direct efforts to support such services in any way feasible. The government should also secure passage of the draft-law with as much publicity as possible in order to spark public debate and education on the issue of domestic violence. Criminalization efforts should initially focus on encouraging law enforcement intervention, with mandatory prosecution and

266 Epstein, Effective Intervention, supra note 182, at 18.
267 Id. at 5.
268 Id. at 6.
269 The Cambodian legal system is still undergoing the basic training of its judiciary. Therefore, now is an opportune time to incorporate domestic violence issues into the judicial training already underway. Kelly McEvers, Disorder in the Courts From Highly Educated to Un schooled, Cambodian Judges are a Mixed Lot, CAMBODIA DAILY, March 4-5, 2000, at http://www.camnet.com.kh.cambodia.daily/selected_features/disorder_in_the_courts/default (on file with author).
civil protection orders coming next. Continuous effort should go to consulting and empowering victims. By learning from the successes and failures of U.S. efforts, Cambodia can advance in its effort to eradicate domestic violence.