



LEGAL TOOLS USED TO PROSECUTE CHILD SEX OFFENDERS IN CAMBODIA

Rape:

The United Nations Transitional Authority of Cambodia (UNTAC) Criminal Code of 1992 Article 33 provides the applicable definition of 'rape'. The offence covers both sexes, and is limited to penetration carried out through violence, coercion or surprise. The punishment is 5-10yrs. If, however, if the rape is accompanied by threats with a weapon, or on a pregnant woman or a person suffering from a mental illness or mental or physical infirmity, or by two or more offenders or accomplices, or by a person in a position of authority over the victim, the punishment is 10-15yrs.

In the 2001 Law on Aggravating Circumstances of the Felonies, the offence of 'rape' is given a similar definition, however the punishment proscribed is from 10-15yrs, and may be increased to 15-20yrs in the same circumstances as highlighted in Article 33 of the UNTAC law.

Indecent Assault:

Article 42 of the UNTAC Criminal Code criminalizes the sexual assault of another person of either sex by touching, caressing or any other sexual act not involving penetration and is punishable by a term of imprisonment of 1-3yrs. Where the assault is accompanied by fraud, violence or threat, or is carried out by a person in a position of authority over the victim, or if the victim is under 16yrs, the duration of the sentence will be doubled.

Any person, who procures, entices or leads away, for the purposes of prostitution or sexually exploits a minor, even with the consent of that minor¹, shall be liable to 2-6yrs in prison.

Debauchery:

This criminal offence of 'debauchery' is used in cases involving sexual abuse of children, of either sex, under the age of 15yrs. This offence is preferred to 'rape' in most sex abuse cases involving children due to the higher sentence it enumerates and because this offence was made specifically for this purpose.

Article 8 of the 1996 (Cambodian) Law on the Suppression of Kidnapping, Trafficking and Exploitation of Human Beings criminalizes acts of debauchery committed on a minor person of below 15yrs regardless of consent or the purchase of such minor person from

¹ The age of majority is not stated in the Constitution; however Cambodia is a party to the UN Convention on the Rights of the Child and it is applied in courts in accordance with the CRC.

someone else or from a head/owner of a brothel. The sentence is from 10-20yrs and in the case of repeated offences such a sentence can be applied twice.

The court may apply a sub-punishment by restricting that person's civil rights and imposing a ban on his/her residence in Cambodia, in addition to the above main offence.

There is no definition of 'Debauchery', however, the generally accepted interpretation applied by the courts of the law includes most types of serious physical sexual abuse, including penetrative sexual intercourse and oral sex. However, it has not been taken to include acts of making or producing child sex abuse videos.²

AGE OF CONSENT:

There is no legally defined or statutory age of consent to sexual intercourse under Cambodian law. The accepted age of consent to sexual relations is therefore interpreted from other related laws as well as judicial decisions by default as 15 years of age.

Age of majority as stated in the CRC is 18 years of age, and Article 42 of the UNTAC law stipulates the indecent assault of a minor under 16 years of age as an aggravating circumstance. Neither of these instruments are, however, interpreted as determining age of consent.

Article 5 of the Law on Marriage and Family of 1989 stipulates the legal minimum age of marriage is 18 years of age for a woman and 20 years of age for a man. The exception to the rule is where the woman is pregnant and the parents or guardian of both the man and the woman consent to the marriage. No guidelines are given as to age of consent for sexual intercourse.

Article 8 of the 1996 Law on the Suppression of Kidnapping, Trafficking and Exploitation of Human Beings states '... a minor person of below 15 years old, even through there is his (her) consent...' On this basis, the de facto age of consent largely accepted by the legal community and the courts is 15 years of age.

WHEN ARE THESE LAWS USED?

The UNTAC Criminal Code and the Law on Aggravating Circumstances are usually used where the rape was undertaken outside a commercial context and there was no obvious consent.

Article 8 of the 1996 Law on the Suppression of Kidnapping, Trafficking and Exploitation of Human Beings is used where the sexual relations took place within a commercial context. The courts have defined the commercial context as to whether there was an exchange of anything of material value between the defendant and the procurer. It expressly states that consent is of no relevance.

² Child Pornography should be referred to as child sex abuse images, documentaries or videos. Pornography refers to videos, pictures, photographs etc between two or more consenting adults, therefore with regard to children consent is irrelevant and pornography is wrongly labelling abuse within a legal context.

Where non-Cambodians are prosecuted for sexual relations with a child, the offence of 'debauchery' is most commonly used. The mandated sentence range is from 10-20 yrs. The courts use Article 8 due to the commercial context in which these foreigners have obtained access to the children.

Demand for the commercial sexual exploitation of children in Cambodia has led to trafficking of children for such purposes from parts of Cambodia and Vietnam. Many of these children are thereafter prostituted to foreign nationals, or travelling sex offenders. This is the rationale behind the Cambodian government implementing the 1996 law, which has since its enactment allowed for the successful prosecutions of both foreign nationals buying sexual access to children and their exploiters. These have often been high profile cases and have involved mainly Westerners and nationals from more developed countries.

Therefore, although relative, it is promising to note that prosecutions of men having sexual relations with children under the age of 15yrs has been relatively regular and increasing since the passing of the 1996 law.

Through a legal framework, how can we protect vulnerable children?

Ensure countries comply with and their legislative standards mirror the CRC and its optional protocols.

Advocate for law reform where necessary, for example, in Cambodia the production and distribution of child pornography/child abusive images is yet to be criminalized. Moreover, there are diverging arguments as to the 'age of consent'; a void in the law as to the definition of a 'minor' and special mechanisms safeguarding child victims of re-victimization during the prosecution of a child sex offender. The British Embassy in Phnom Penh sponsored an English barrister working for AFESIP to draft a law on the Commercial Sexual Exploitation of Children, unfortunately despite the draft being completed in March 2005, it has yet to be submitted to Parliament.

On the other hand, we can have perfect laws but without efficient law enforcement and an independent and knowledgeable judiciary, child sex offenders will never be made accountable for their actions. There are a great number of factors that go into ensuring an accountable legal system, namely, eliminating corruption at each level, guaranteeing qualified persons fill the roles within the system, and continually educating and updating personnel in response to changing circumstances, procedures and norms.

This is where it is critically important to ensure that extra-territorial laws are able to be implemented effectively. Although not a long-term solution, the enforcement of extra-territorial jurisdiction ensures accountability in cases where child sex offenders would be likely to evade justice.

The United States Law on the Trafficking (Trafficking Victims Protection Act 2000) has contributed to making the commercial exploitation of children a global issue, as it applies economic pressure on States who are unwilling or slow to realise the need to protect vulnerable persons. However, the counter arguments to the implementation of economic sanctions would undoubtedly merit consideration when advocating such an approach. Moreover, the Protect Act passed in 2003 gave the United States jurisdiction

over the criminal acts against children of American nationals whilst travelling abroad. This is significant step forward ensuring the concerns for children worldwide take precedence over the bureaucracies of international law, furthermore it could be viewed as guidance to other states in guaranteeing state responsibility over their nationals.