



DRAFT Cambodian LAW

ON

**Commercial Sexual Exploitation of
Children**

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Preamble

The Royal Government of Cambodia;

Gravely concerned at the significant and increasing international traffic in children for the purpose of the sale of children, child prostitution and child pornography,

Deeply concerned at the widespread and continuing practise of sex tourism, to which children are especially vulnerable, as it directly promotes the sale of children, child prostitution and child pornography,

Recognising that as a number of particularly vulnerable groups, including girl children, are at greater risk of sexual exploitation and that girl children are disproportionately represented among the sexually exploited;

Concerned about the growing availability of child pornography on the Internet and other evolving technologies that increase the ability and capacity to abuse children through its production, distribution, exportation, transmission, importation, intentional possession and advertising of child pornography, thus calling for greater cooperation between the Royal Government of Cambodia and the Internet Industry,

Giving respect to the Cambodian tradition and cultures on the value of the child and also giving due respect to the Constitution of the Kingdom of Cambodia, in particular to Articles 48 and Articles 73.

Noting the Provisions of the UN Convention on the Rights of the Child acceded to by the Kingdom of Cambodia on 15 October 1992, and its Protocol on the sale of children, child prostitution and child pornography ratified by the Kingdom of Cambodia on 30 May 2002,

Following the National Plan of Action against Sexual Exploitation and Trafficking of Children, 2000, and, in accordance with the Stockholm Agenda for Action 1996 and the Yokohama Commitment 2001;

Considering the growing need for appropriate legislation on the Commercial Sexual Exploitation of Children as means to prevent and end this scourge;

Committing to the protection of children against all forms of sexual exploitation and abuse in order to preserve their physical, spiritual, psychological, moral and social development which is of primary importance for the Royal Government of Cambodia;

The Royal Kingdom of Cambodia passes this legislation.

Definitions

Minor / Child

Any person under the age of 18

Child Pornography

Shall include pornographic material that visually depicts;

- a. a minor engaged in sexually explicit conduct;
- b. a person appearing to be a minor engaged in sexually explicit conduct;
- c. realistic images representing a minor engaged in sexually explicit conduct.

Child Prostitution

Means the use of a child in sexual activities for remuneration or any other form of consideration.

Child Sexual Exploitation

A form of sexual abuse of children initiated by an adult, who exerts his or her will over the child or children in order to secure some sexual, economic or other benefit of value to the offender.

Commercial Sexual Exploitation

The exchange of sexual services for monetary or non-monetary consideration.

Grooming

Preparing a child for sexual abuse or related sexual activity.

Organisation

A legal entity other than an individual person.

Paedophile

An adult who is sexually attracted to children, of either sex, below the age of puberty.

Pimping / Procuring

Shall be considered as a pimp (male or female) or head of prostitutes, any person:

- a. who supports or protects one or more persons, by whatever means, with advance knowledge of the act of prostitution of such person(s) or seeks customers for such person(s) for the purpose of prostitution, or
- b. who regularly receives benefits obtained from the prostitution acts and other sexual exploitation in any form of others, or
- c. who recruits men or women by whatever means to become prostitutes, or
- d. who acts as an intermediary by whatever form, to create relationships between male and female prostitutes, or with the head/owner of a brothel or with a person who provides benefits from prostitution of others, or
- e. who confines men or women in his/her house or any place, for the purpose of forcing them to commit prostitution to earn benefits for him/her.

Pornography

The explicit depiction or exhibition of sexual activity in literature, films or photography that is intended to stimulate erotic, rather than aesthetic or emotional feelings.

Producing

Means making, directing, manufacturing, issuing, publishing, or advertising;

Sale of Children

Means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration.

Sexual Exploitation

Means the participation by a person, whether male or female, in prostitution, sexual servitude, or the production of pornographic materials a result of being subjected to a threat, coercion, abduction, force, abuse of authority, debt bondage or fraud. Even in the absence of any of these factors, where the person participating in prostitution, sexual servitude or the production of pornographic materials in under the age of 18, sexual exploitation shall be deemed to exist.

Sexually Explicit Conduct

Means actual or simulated

- (a) sexual intercourse, including genital-genital, oral genital, anal genital, or oral-anal, whether between persons of the same sex or opposite.
- (b) bestiality
- (c) masturbation
- (d) sadistic or masochistic abuse; or
- (e) lustful exhibition of the genitals or pubic area of any person;

Trafficking in persons

- a. The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power, of superiority or of a position of vulnerability or a situation of necessity, of inferiority, whether economic, physical or psychological, or through immoral domination or of the giving or receiving of payments of benefits to achieve the consent of a person having control over another person, for the purpose of sexual exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery, servitude or the removal of organs.
- b. The consent of the victim of trafficking of persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant regardless of whether they were initially aware of such actions or not, where any of the means set forth in subparagraph (a) have been used.
- c. The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;

Visual depiction

Includes undeveloped film and videotape, and data stored on computer disk or by electronic means which is capable of conversion into a visual image.

Section 1: General

Article 1: Jurisdiction

This law applies to

1. All activities that take place in the Kingdom of Cambodia or on board a ship or aircraft registered in the Kingdom of Cambodia;
2. Those offenders who are nationals of or are habitual residents of, the Kingdom of Cambodia.
3. Those victims that are nationals of the State of Cambodia.

Article 2: Extraditable

All offences defined herein shall be recognised as extraditable offences and therefore shall be included in every extradition treaty subsequently concluded between the Kingdom of Cambodia and any other state.

Article 3: Legal Basis for Extradition in the Absence of a Treaty

In the case that another state requests the extradition of a defendant, on the grounds that he or she is a national of that state, and there is no pre-existing extradition treaty with that State, the Royal Government of the Kingdom of Cambodia may use Article 5 (2) of the Optional Protocol on the Sale of Children, child prostitution and child pornography to the UN Convention on the Rights of the Child, as a legal basis for the extradition, if that other state is also a signatory. Further conditions may be made by the Royal Government of the Kingdom of Cambodia and the requesting State. For such purposes; the offences shall be treated as if they were committed in the territory of the requesting state.

Section 2 : Sexual Abuse of Children

Article 4: Statutory Rape

A person who has sexual intercourse with a minor under 16 years of age, whether male or female, is guilty of statutory rape and shall be liable to punishment of imprisonment

Article 5: Sexual Molestation of a minor

Any person that has sexual relations with a minor under 16 years of age, whether male or female is guilty of sexual molestation of a minor shall be punished....

Article 6: Failure to report Child Abuse

A person who, while engaged in a professional capacity or activity, learns of facts that give reason to suspect that a child suffered an incident of child abuse, as defined hereinabove, and fails to make a timely report, shall be found guilty of negligent and fined.

Section 3: Sale of Children

Article 7: Offence of Engaging in the Sale of Children

Any person that offers, delivers or accepts, by whatever means, a child for the purpose of:

- a. Sexual exploitation of the child;
- b. Transfer of the organs of the child for profit
- c. Engagement of the child in forced labour;

shall be punished.....

Article 8: Trafficking in Children

Any person who traffics in children, as defined under “Definitions” above shall be punishable by no less than 10 years and no more than 20 years imprisonment. The fixed term of imprisonment may be more if one or more of the aggravating factors such as those listed herein below exist. Furthermore, the offender shall be liable to forfeit all related property and be liable to pay full restitution and compensation to the victim(s).

Article 9: Unlawful Withholding of Identification Documents

Any person who, acting or purporting to act as a child’s employer, manager, supervisor, contractor, employment agent, or solicitor of clients, pimp, knowingly procures, destroys, conceals, removes, confiscates, or possesses any passport, immigration document, or other

governmental identification document, whether actual or purported, belonging to another person, with the intent to commit any of the offences defined herein, shall be fined under this title and imprisoned not more than 7 years.

Article 10: False Imprisonment

Any person who falsely imprisons a child shall be punishable:

- a. For up to five years, if the restraint lasted up to a period of one month.
- b. For ten years, if the confinement or detention lasts longer than one month;
- c. From three to five years, if the confinement or detention lasts less than one month

Article 11: Legal Age of Consent to Sex Not a Defence in Trafficking

Age of consent to sex, legal age of marriage, or other discretionary age shall not be used as a defence to trafficking in children under Article 8 or any other offence defined herein.

Article 12: Third party or Implied Consent not an admissible Defence

Consent of the parents of the victim or implied consent of the victim after reaching age of majority shall not be used as a defence for trafficking in persons under Article 8 or any other offences defined herein.

Article 13: Adoption

Any person that improperly induces consent, as an intermediary, for the adoption of a child in violation of applicable national and international legal instruments on adoption shall be punished

Section 4: Child Prostitution

Article 14: Offence of Prostituting Children

Any person that offers, obtains, procures or provides a child for child prostitution, as defined in hereinabove shall be punished

Article 15: Causing or encouraging Child prostitution of a child

Any person that causes, induces or encourages the prostitution of, or the commission of unlawful sexual intercourse with, or of an indecent assault on a child of who he or she is responsible shall be punished ... For these purposes the persons who are to be treated as responsible for a girl are;

- a. Any person who is his or her parent or legal guardian; and
- b. Any person who has actual possession or control of her, or whose charge she has been committed by parent or legal guardian or by a person having custody of her; and
- c. Any person who has the custody, charge or care of her.

Article 16: Receipt of Payment from Prostitution Activities

Any person who receives money or any other form of material gain from the prostitution of a child shall be punishable by imprisonment for no less than 5 years and no more than 10 years.

Article 17: Promotion and Profiting from Child Prostitution

Any person that promotes child prostitution or profits from the prostitution of a child shall be punished with 6 to 10 years of imprisonment.

Article 18: Living on the earnings of child prostitution

Any adult that knowingly lives wholly or partly on the earnings of child prostitution shall be punished An adult person is presumed to knowingly live on the earnings of child prostitution, unless he or she proves the contrary by;

- a. he or she lives with, or is habitually in the company of, a prostituted child; or
- b. he or she exercises control, direction or influence over a prostituted child's movements in a way which shows he is aiding, abetting or compelling his or her prostitution with others.

Article 19: Pimping / Procuring Prostitution of Minors

Any person who procures/ pimps the prostitution of a minor, as defined above, shall be punishable by no less than.

Article 20: Coercing Prostitution of Minors

Any person, who coerces, howsoever, whether by a minor to undertake prostitution, shall be punishable by no less than 5 years and no more than 10 years.

Article 21: Buying sexual services of child prostitutions

Any person that has sexual relations with a minor in exchange for money or any other consideration shall be punished by imprisonment.

Article 22: Knowledge of Child Prostitution

Any public officer or official who learns that a minor is prostituting himself or herself shall immediately give notice to the Public Prosecutor who will institute proceedings for taking ward ship of the minor and filing for application of the relevant clauses herein under Section 9: Victim Care.

Article 23: Organisation of Child Prostitution

A person who manages or organizes practice of child prostitution by restraining another in a designated place shall be punished with imprisonment for more than 5 up to 10 years.

Article 24: Providing a place for Child Prostitution

A person who knowingly or negligently provides a fund, a land, or a house for the purpose of committing any of the offences defined herein shall be punished with imprisonment for 2 to 5 years and/or fine of XXX and the property shall be liable for confiscation or forfeiture.

Section 5: Child Pornography

Article 25: Offence of Child Pornography

A person who, physically, electronically or in any other way;

- a. produces or portrays a child in a pornographic picture;
- b. disseminates, distributes, imports, exports, duplicates, transfers, grants use, exhibits or in any other way makes such a picture of a child available to some other person;
- c. acquires, makes available or offers such a picture of a child;
- d. sells or brings about contact between buyer and seller of such pictures of children or takes any other similar step to facilitate dealing in such pictures; or
- e. knowingly or without good reason obtains, receives or possesses such picture of a child

shall be sentenced ...

Article 26: Exploitation of Minor for purposes of making Pornography

Any person that exploits a minor for the purposes of making pornography shall be punished with imprisonment of minimum 10 years and fined

Article 27: Profiting from Child Pornography

A person who in the course of business or otherwise for the purposes of making money or any other form of material gain disseminates a picture of the kind described in the first paragraph through negligence shall be sentenced as there stated.

Article 28: Allowing Access to Children to Pornography

Any person that allows children to openly access pornography shall be punished.....

Article 29: Showing Pornography

Any person that

- a. offers, makes available or makes pornography accessible to a minor;
- b. exhibits, posts, displays, or otherwise makes them accessible in a location that is accessible to minors, or a location that such minors can see into;
- c. allows pornography to reach another individual without having been requested to do so by that individual;

shall be punished ...

Article 30: Showing Pornography for grooming purposes

Any person that commits any of the offences as outlined in Article 29 for purpose of grooming, seducing or sexual exploitation of a minor shall be punished ...

Article 31: Advertising or publicising

Any person that advertises or publicises the commission offences as defined hereinabove, for the purposes of encouraging the commission of the offences, shall be punished.....

Section 6: Inchoate Offences

Article 32: Attempt

Any person that attempts to commit any of the offences as described herein shall be punished...

Article 33: Complicity

Any person that is complicit in any of the offences as described herein, shall be punished the same as the principal.

Section 7: Defences

Article 34: Defences to Offences of Child Pornography

It shall be a defence to Articles XXX that:

- a. the person in the pornography was an adult at the time the material was produced;
- b. the defendant had a legitimate reason for having the photograph in his/her possession.
- c. the defendant had not seen the photograph and did not know, nor had cause to suspect it to be indecent.
- d. that the photograph was sent to him without any prior request made by him or on his behalf and that he did not keep it for an unreasonable time.

Section 8: Sentencing

Article 35: Proportionate Punishment

The sentence on a conviction of any of the offences as provided in this law shall be graver according to the seriousness of the offence so much so that the punishment is properly proportionate to the offence.

Article 36: Aggravating Factors

- a. Where the offence has involved the abuse of a victim
- b. Where the involves a minor under the age of 14
- c. Where the offence involved any other illegal activities or crimes.
- d. Where the crime was committed as part of criminal activity that was systematically practised or practised on a larger scale.
- e. Where the use of violence or threats were used.
- f. Where the use of drugs of arms were used in the commission of the crime.
- g. Where a child has been adopted for purposes of committing the above offences.
- h. Where the offender has committed more than one of the offences in this law.
- i. Where the offender has committed a repeated offence.
- j. Where the offender is a blood relative of the child (the closer the relation the more serious or severe the punishment).
- k. Where the offender is a spouse or the conjugal partner of the victim.
- l. Where the offender is the guardian of the minor who has been entrusted for the purposes of health, care, education, supervision, custody, employment, or in other words a public official or a social worker who is responsible for the minor in the course of their functions or responsibilities.
- m. Where the minor is a victim of trafficking.
- n. Where the minor is physically or psychologically handicapped.

Article 37: Mitigating Factors

- a. Where the offender has taken concrete measures to ensure that the minor is enabled to be self-reliant and independent.

Section 9: Victim Care and Protection

Article 38: Victim Assessment

In every case of child abuse resulting from the commission of offences as described hereinabove, the court shall undertake a child welfare assessment to determine the method of provisions of care for the victim. The court shall hear from the victim and/or the victim's representative regarding the best interests of the child and shall also hear other applications for care and/or custodianship of the child in determining its decision.

Article 39: Victim Care

The court may order, at any time, at its own discretion or on application from any of the relevant parties to the investigations and/or legal proceedings, and on presentation of relevant evidence, the transfer of guardianship and custody of the child victim to an institution such as a civil society organisation, that provides for adequate care and assistance in the form of at least the victim's full social reintegration and their full physical and psychological recovery.

Article 40: Safety

The competent authorities, such as the Police, Prosecution and the Judiciary, should ensure the safety and protection of child victims, as well as their families and witnesses on their behalf, from intimidation, retaliation, economic manipulation and any other interference for the purposes of tampering testimonies and other evidence.

Article 41: No Discrimination

The rights and protections as outlined hereinabove shall be provided to all child victims as described regardless of their nationality, sex, race, religion, age, physical or mental ability, occupation or any other act or behaviour that may have been undertaken by the child.

Article 42: Foreign Child Victims

In the case of a child victim of any of the offences outlined hereinabove and who is not a national or a habitual resident of the Royal Kingdom of Cambodia, the court may follow the same procedures for deciding temporary care and custodianship as enumerated in Articles 38 and 39 taking into account the provisions of International Conventions, and further, acting through the Ministry of Foreign Affairs in consultation with the country of nationality or citizenship of that minor.

Article 43: Raising Awareness

The relevant Ministries (Education, Interior, Women’s Affairs, Social Affairs, Health and Justice) shall positively adopt policies promoting awareness in the public at large, including children, through information by all appropriate means, education and training, about the preventative measures and harmful effects of the offences as stated hereinabove. The Ministries shall encourage the participation of the community, in particular children and child victims, in such information and education and training programmes, including at the international level.

Section 10: Register of Sex Offenders

Article 44: The Register

The Cambodian National Registry (or the equivalent) shall list convicted criminals who have committed murder, rape, abuse, kidnapping, production of pornography and other sex crimes against children. Each offender shall be on this register for the number of years as allocated by the Judge who convicts the offender, depending on the seriousness of the offence.

Article 45: Requirement to Check

Thereinafter the above has been implemented, all schools, hospitals and other places of employment where workers would come in contact with children, including all NGOs and State Authorities, shall be required to check and consult this registry before hiring an employee.

Article 46: Notification of Change of Address

Any registered offender must notify the registry of any change of address.

Article 47: Notification of leaving the country

Where a registered offender plans to leave the country, the offender must previously inform the registry of this trip. This information shall then be passed on to the appropriate authority of the destination country(ies) where the offender plans to go.

Article 48: Information of a Registered Foreign Offender

In the case that the appropriate Cambodian authorities receive information from the official authorities of another country of a previous sex offender planning to enter the Kingdom of Cambodia, his or her entry shall be denied. If for any reason his or her entry is not denied, that offender shall be kept under close surveillance.

Article 49: Registry Information Prohibition

The Registry will ensure that information is not disseminated that is intended to be used to harass or commit a crime against the offender.

Article 50: First Information Report

Any person who has special responsibilities in any institution or organisation where there is any contact with children shall report any incidences of sexual exploitation to the police by way of a first information report.

Section 11: Joint National Tourism Code on CSEC

Article 51: Role of Government in Preventing Sex Tourism

The Ministry of Tourism should take steps to educate and collaborate with all tourism industries about sex tourism. These steps should include:

- a. Cooperating with airline industry, hotel industry, taxi industry, and others to jointly produce educational materials alerting them to evidence of sex tourism by their customers and warning them against facilitating such behaviours.
- b. Warning citizens and employees in the industries mentioned above that crime committed when someone engages in sex with a minor, sex tourism, or frequents a brothel holding trafficked women and children.
- c. Promote a/ the Joint National tourism code against the commercial sexual exploitation of children and include provisions on prevention of CSEC in National Tourism Plans.

Article 52: Tourism which promotes Child Sexual Exploitation

Any person that organises or promotes foreign travel to or any travel within the Royal Kingdom of Cambodia which promotes child prostitution or encourages such activity shall be punished (6 to 12 years and fine...).

Article 53: Notice to Travellers

Any legal entity or person who / which organises or operates collective or individual travel within the Royal Kingdom of Cambodia are obliged to insert in a prominent manner in their advertising material and programmes, or otherwise in the travel documents given to customers, as well as in their brochures and catalogues the notice of this law and the liability of imprisonment for any type of sexual exploitation of children. This notice must be given in Khmer, English and any other language of the nationality of customers if there is specialised catering for that nationality.

Article 54: Tourist Places

Tourist places such as beer bars and other similar establishments which are frequented after 6pm and / or sell alcohol on their premises shall be declared as “hazardous workplaces” at which children below the age of 18 years cannot be employed.

Article 55: Foreigner Custody of Children

Any unauthorized adult, tourist or foreigner shall not accompany or have custody of children in tourist places.

Article 56: Child Visitors

Foreign tourists shall not receive child visitors (except those of whom they are the legal guardians) visit their rooms in hotels at any time of the day or night.

Article 57: Mandatory Display

Every reception counter of a hotel or guesthouse shall have within a 10 feet radius and in a prominent place a display of anti-sex tourism messages containing legal provisions and punishments against child sex tourism (CST) in a legible and well-lit manner.

Article 58: Tourist Reporting

All management and staff shall report to the police any information or knowledge on unauthorised possession or custody of a child as well as any names of visitors who are registers on the sex offenders list.

Section 12: Remedies

Article 59: Civil Compensation

All child victims of the offences, regardless of nationality, as defined hereinabove shall be given access to adequate procedures to seek, without discrimination, compensation for damages from the perpetrator.

Article 60: Confiscation of Properties and Benefits.

- a. On bringing of legal proceedings against an alleged offender of the offences above, the court may order for the seizure and confiscation, as appropriate as:
 - i. Goods, such as materials, assets and other instrumentalities used to commit or facilitate offences under the present protocol.
 - ii. Proceeds derived from such offences;
 - iii. Execute requests from another State Party for seizure or confiscation of goods or proceeds referred to hereinabove;
- b. These measures may be ordered by the court on application and presentation of valid reasons and evidence by any of the relevant parties to the legal proceedings, including the victim or representative of the victim.
- c. An order of court for the above measures may be taken in the interim period of the legal proceedings on a temporary basis, or on the conviction of the defendant on a permanent basis.

Article 61: On Conviction of a Legal Entity

In the case of conviction of a legal entity or a legal person convicted of any of the offences enumerated hereinabove through a registered entity, there shall be mandatory revocation of license and authorisation of the continued registration of that entity, such that that entity must discontinue its operations that gave rise to the commission of offences committed as outlined hereinabove. Where the entity is registered outside of the Royal Kingdom of Cambodia, the mandatory revocation of license and authorisation shall be limited to those operations that are taking place within the Royal Kingdom of Cambodia, whether this is done directly or through diplomatic channels with the country from which the legal entity is registered.

Article 62: Special Fund

The fines imposed, the monies confiscated and the proceeds from the sale of goods confiscated under these provisions will be held by the State and will form a special fund to be managed under the Ministry of Social Welfare. Two-thirds will be used to finance specific programmes for prevention, assistance and psycho-therapeutic rehabilitation of minors who have been victims of offences as provided within this law. The reminder of the fund will be used, within the limits of available resources, for the treatment of offenders found guilty of the offences. The Ministry of Treasury and Finance is authorised to make the relevant budgetary arrangements.

Section 13: Evidentiary Issues

Article 63: Medical, Forensic and Expert Evidence

Medical, forensic and expert evidence shall be considered admissible by the court on application of by either party to the legal proceedings insofar as it was not gathered in any illegal manner and its admissibility would not be unfairly prejudicial to the defendant.

Article 64: Not too much burden on the witness or victim evidence

Any legal proceedings for criminal charges involving sexual abuse of children shall be decided with regard to all evidence presented, and unnecessary weight shall not be given to the victim's testimony insofar as it is not prejudicial to the defendant or the victim.

Article 65: Proof of Age

Proof of age should be capable of being established by medical or scientific opinion if reliable documentary proof is not available.

Article 66: Entry, search and seizure

Where the court is satisfied, on presentation of evidence and application by a court prosecutor or police, that there is reasonable ground for suspecting that, in any premises in the jurisdiction of that court, there is some child pornographic material, the court may issue a warrant authorising any police to enter, if need be by force, and search the premises within 14 days from the date of the warrant, and to seize and remove any articles which he believes, with reasonable cause, to be or include child pornographic material. Articles seized under the authority of the warrant, and not returned to the occupier of the premises, must be brought before the court that issued the warrant.

Article 67: Special Methods of Obtaining Evidence

- a. In furtherance of the work of prosecutors and the relevant authorities of not less than provincial level, the judicial police and the specialised units for sexual offences and the care of minors and those dealing with organised crime, may, on foot of a judicial order, and for the sole purposes of obtaining proofs in relation to offences as outlines hereinabove use subterfuge methods to obtain evidence.
- b. The Ministry with responsibility for the security and regulation of the telecommunication services, through the telecommunications police, may, on foot of a judicial order, take any necessary measures to prevent the commission of offences envisaged in this law, and involving the use of computer or public telecommunication systems. To such end, the relevant officers may use any form of subterfuge, even by giving false information, setting up and managing communication sites or exchanging lines and telecommunication systems. The said personnel may also do any of the above by means of telecommunication.
- c. The judicial authorities may, by order, delay a transmission or delay the arrest or detention of anyone if it is necessary for the purposes of obtaining more evidence or finding the person responsible for the commission of the offences provided for in this law. When the person responsible for the offence has been identified, he may be arrested on information provided to a Judge by the Prosecutor responsible for the protection of children in the area.
- d. The judicial authorities may order any confiscated material to be held by the judicial police for purposes of entrapping other offenders of crimes covered in this law.

Section 14: Transnational Issues

Article 68: Foreign Law Enforcement Investigations

Any Foreign law enforcement wanting to investigate criminal cases of their nationals within the territory of the Royal Kingdom of Cambodia must seek authorisation from [the appropriate authority] within the Ministry of Interior. This is subject to any bilateral or

multilateral treaty or convention with the countries involved. Such requests shall be treated expeditiously in the context of maximum cooperation, in line with national law and policy.

Article 69: Foreign Requests for Legal Assistance

Any request for legal assistance from outside the Kingdom of Cambodia should be directed to the [appropriate authority] within the Ministry of Justice. This is subject to any bilateral or multilateral treaty or convention with the countries involved. Such requests shall be treated expeditiously in the context of maximum cooperation, in line with national law and policy.

Article 70: International Cooperation

The Royal Government of Cambodia, through its relevant Ministries and Departments, shall make a concerted effort in international cooperation to prevent, detect, investigate, prosecute and punish those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism. These efforts shall also include coordination between Government agencies, national and international non-governmental organisations and international organisations.

Section 15 : Specific Procedures for CSEC Cases

Article 71: Legal Persons

All of the above offences cover the criminal liability of legal persons as well as natural persons.

Article 72: Reasonable Grounds

Liability prescribed in this law shall be imposed even on a person who did not realise but had reasonable grounds for assuming the victim had not yet reached the age of majority.

Article 73: 3 Years Difference in Age

When, in the case of *offences (XXXX)* there is less than 3 years difference between the age of the offender and the age of the victim, public prosecution shall not occur unless it is called for in the public interest.

Article 74: Past Sexual Behaviour History of Victim is Irrelevant

In a prosecution for trafficking in persons under Article 5 or any other offences defined herein, evidence of a victim's past sexual behaviour or predisposition is irrelevant and inadmissible for the purpose of proving the victim's bad character or as a defence to the offence.

Article 75: Determination of Age of Victim

Basis for determination of the victim's age for use in legal prosecution against the defendant would be at what age the victim was when the offence first occurred. If the victim was under 18 at that time, but the offence was only discovered when the victim past the age of 18 years, the defendant must be charged with commission of the relevant offences against a minor.

Article 76: Training

The competent authorities shall ensure that appropriate training is given, in particular legal, social and psychological training, for persons who work with the victims of the offences prohibited under this law.

Article 77: Safety of Aiding persons or organisations

The competent authorities shall, in appropriate cases, protect the safety and integrity of those persons and/or organisations involved in the prevention and/or protection and rehabilitation of victims of such offences.

Article 78: No complaint needed

There shall be no requirement for the filing of a complaint on behalf of the victim for a prosecution to commence.

Article 79: Time Limit

Time limits for prosecution should not run until the child is 18 years of age.

Section 16: General Procedural Law

Article 80: Best Interests of the Child

Recognising the vulnerability of child victims of the practises prohibited hereinabove, and the need for adapting procedures to recognise their special needs, especially their special needs as witnesses in all investigations and legal proceedings undertaken in relation to this law, the best interests of the child shall be a primary consideration by all officials and public agents.

Article 81: Right to be informed

The child victim(s) of the offences defined hereinabove shall be informed of his/her/their rights, their role and scope in, and the timing and progress of, the legal proceedings or investigations and of the disposition of their cases. This may be done through the legal representation of the child as far as the court and relevant officials give full and regular communications with him or her.

Article 82: Right to Legal Representation / Child Advocate

The child victim(s) of the offences defined hereinabove shall have the right to legal representation in all investigative, legal and judicial proceedings related to the crimes committed regarding them. This representative shall act in the best interests of the child victim s/he is representing and must be consulted for every decision made regarding the child.

Article 83: Participation of Victim in Proceedings

The victim shall be provided with the opportunity to be heard, allowing their views, needs and concerns to be presented and considered in any judicial and administrative proceedings, where their personal interests are affected, either directly, or through their representative / advocate.

Article 84: Privacy, Confidentiality and Closed Proceedings

- a. The competent authorities should ensure that the identity of the victim is not revealed and the inappropriate dissemination of information that could lead to the identification of child victims to any third parties is avoided during investigations and during any legal proceedings to non-parties without the prior authority of the victim and the presiding Judge.
- b. The Court shall have the authority to order closed proceedings at its own discretion or on application from the relevant parties for the purposes of protecting the identity of the child victim.

Article 85: Unnecessary Delay

Considering the special circumstance of child victims following the offences as defined hereinabove, unnecessary delay in the disposition of cases and the execution of orders, whether temporary or permanent, or decrees granting compensation to child victims should be

avoided, and where such delay occurs, the court must, if requested by a legal representative of one of the parties to the case, give reasons for such delay.

Article 86: Uncertainty as to Actual Age shall not prevent proceedings

Uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim.

Article 87: Unavailability of the Actual Victim

The unavailability of the actual victim shall not prevent the initiation of criminal investigations and legal proceedings where there is adequate other evidence to commence proceedings.

Article 88: Testimonies of Child Victims and/or witnesses

For the purposes of the child's best interests and protection from further trauma and/or intimidation from confrontation of an alleged abuser in the court room, court testimony from child victims and/or other child witnesses may be given by the following alternative methods on application to the court for legitimate reasons;

- a. Live video-link in the court room
- b. Video Interview in advance
- c. Partition in the court room / Behind a Screen
- d. Separate interviewing chambers

Other Efforts for the Elimination of this law and the implementation of the Optional Protocol of the Sale of Children, Child Prostitution and Child Pornography.

Article 10 (2) Optional Protocol

States Parties shall promote international cooperation to assist victims in their physical and psychological recovery, social reintegration and repatriation.

Article 10 (3) Optional Protocol

States Parties shall promote the strengthening of international cooperation in order to address the root causes, such as poverty and underdevelopment, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism.

Article 10 (4) Optional Protocol

States Parties in a position to do so shall provide financial, technical or other assistance through existing multilateral, regional, bilateral or other programmes.

Article 12 (1) Optional Protocol

Each State Party shall, within two years following the entry into force of the present Protocol for that State Party, submit a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol.

Article 12 (2) Optional Protocol

Following the submission of the comprehensive report, each State Party shall include in the reports they submit to the Committee on the Rights of the Child, in accordance with Article 44 of the Convention, any further information with respect to the implementation of the present Protocol. Other States Parties to the Protocol shall submit a report every five years.

Article 12 (3) Optional Protocol

The Committee on the Rights of the Child may request from States Parties further information relevant to the implementation of the present Protocol.

- ❖ Does this law adequately cover Extradition?
- ❖ Does the law also cover inchoate offences properly?
- ❖ What types of sentences should be imposed that would adequately take into account their grave nature?
- ❖ Any such thing as restitution under Cambodian law?
- ❖ Should I divide those clauses that should be included in the general Procedural codes?
- ❖ Is the Sexual Abuses section adequate?
- ❖ What should be the kinds of punishment sentenced?