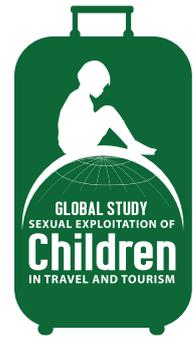


EXPERT PAPER

TRAVELLING CHILD SEX OFFENDERS IN CAMBODIA

ACTION POUR LES ENFANTS (APLE)



It is 2004, an undercover agent from the organization Action Pour Les Enfants (APLE), witnesses a western man walking hand in hand with a Cambodian boy through the capital of Cambodia, Phnom Penh. Without a single question from hotel staff, the man is allowed to take the boy into a hotel room. APLE's agent immediately informs the police who subsequently come and raid the room. The man is found with two Cambodian boys, and he readily admits that he sexually abused them. APLE is a Cambodia-based non-governmental organisation, working to protect children from sexual exploitation.

A decade ago, cases like the one described above were relatively common. Travelling Child Sex Offenders [TCSO] were characterised by their bold and almost reckless modus operandi. Some would approach street children and instantly offer money in return for sex. Some would inappropriately hug, kiss and touch children while in public places. Most TCSO would rarely make any effort to disguise their feelings and intentions. Undoubtedly, these men strongly believed they would get away with their crimes.

After some (high-profile) arrests, international media started to report on the issue and Cambodia soon received the undesirable reputation of being 'a haven for pedophiles'. In the years that followed, sexual exploitation of children in travel and tourism received more attention from the government, tourism sector, civil society, and other stakeholders, resulting in significant improvements to Cambodia's child protection system.

A turning point came in 2008 with the adoption of the Law on the Suppression of Human Trafficking and Sexual Exploitation [LSHTSE]. This new law, which is more in line with international standards, details a comprehensive set of sexual offences against children. Up until 2008, most child sex offenders were charged with 'debauchery', an inconsistent article that did not define clearly which sexual acts it included and also made every convicted child sex offender liable to a sentence of 10 to 20 years in prison, regardless of the circumstances.

In the years that followed, police officers, especially from the Anti-Human Trafficking and Juvenile Protection (AHTJP) unit, greatly improved their skills and attitude. Services for victims also improved, most notably in the development of services specifically for boys. Furthermore, the general public reported more cases of alleged child sexual abuse and thereby took a stronger stance against the problem. Lastly, awareness about child sexual abuse, including sexual abuse of boys increased throughout Cambodia, especially among police and court officials.

Unfortunately, TCSO have not stopped coming to Cambodia. Corruption within the police and judiciary¹, inconsistent implementation of laws, and lack of trust in the legal system, in combination with widespread poverty and cultural beliefs about sexuality, continue to create an attractive environment for those who seek to sexually exploit children.

The direct approach previously used by TCSO, however, has mostly been replaced with advanced and time-consuming grooming techniques that aim to build trust with the potential victim, his or her family and the wider community. One of the primary grooming tools in this regard is money: by targeting poor families and communities, TCSO aim to create financial dependency. Consequently, victims find it harder to resist or to disclose the sexual exploitation. Additionally, some individuals will continue to support the offender even after victims have made disclosures.

Besides communities, TCSO also target institutions intended to benefit the well-being of children in order to access, groom, and/or sexually exploit children. While many institutions have child protection policies, implementation is far from adequate. For example, convicted TCSO continue to find work inside orphanages, schools, and other institutions because criminal background checks are not requested.

1 https://www.transparency.org/country/#KHM_DataResearch

In addition, behavioral guidelines are often not monitored effectively and consequently, leaving TCSO free to find opportunities to have one-on-one contact with children or meet children outside the institution.

After TCSO are arrested, inconsistent implementation of the LSHTSE and the Criminal Code [CC] often leads to lower sentences than expected. For example, while self-produced child pornography has been found in around 10 percent of all APLE cases, the charge Child Pornography (Art 41. LSHTSE) is rarely included in the indictment. Additionally, in cases involving oral sex, TCSO can and should be charged with Sexual Intercourse with a Minor under Fifteen Years (Art. 42 LSHTSE). But it is APLE's experience that those offenders are instead charged with Indecent Act against a Minor under Fifteen Years (Art. 43 LSHTSE) – the latter having a maximum sentence of 3 years while the former has a maximum sentence of 10 years.

In 2015, 26 APLE-initiated cases led to a conviction in the Court of First Instance or in the lowest courts with territorial jurisdiction. Thirteen Cambodian nationals made up half of this group and were convicted for a wide variety of crimes, including The Act of Selling, Buying or Exchanging a Person for Cross-border Transfer (Art. 16 LSHTSE), Aggravated Procurement of Prostitution (Art. 27 LSHTSE), Purchase of Child Prostitution (Art. 34 LSHTSE), Soliciting for Child Prostitution (Art. 35 LSHTSE), Sexual Intercourse with a Minor under Fifteen Years (Art. 42 LSHTSE), Indecent Act against a Minor under Fifteen Years (Art. 43 LSHTSE), and Rape (Art. 239 Criminal Code) with Aggravating Circumstances - status of the victim (Art. 241 Criminal Code).

Thirteen or half of the group came from the west (2 Australian, 2 British, 1 American, and 2 French), East Asia (2 Chinese and 2 Vietnamese), and other parts of Asia (1 Russian and 1 Turkish). The East Asian offenders were all convicted of offences relating to child trafficking and child prostitution, charges being Procurement concerning Child Prostitution (Art. 28 LSHTSE) and The Act of Selling, Buying or Exchanging a Person for Cross-border Transfer (Art. 16 LSHTSE). None of them sexually exploited a child themselves; they instead used one or more children for financial gain.

The offenders from the west and other parts of Asia were all convicted for crimes that involve the actual sexual abuse of a child. These offenders were charged with Purchase of Child Prostitution (Art. 34 LSHTSE), Child Pornography (Art. 41 LSHTSE), Sexual Intercourse with a Minor under Fifteen Years (Art. 42 LSHTSE), Indecent Act against a Minor under Fifteen Years (Art. 43 LSHTSE), and Indecent Assault (Art. 246 Criminal Code) with Aggravating Circumstances - status of the victim (Art. 248 Criminal Code).

On average, the Court of First Instance sentenced the 26 offenders to 4.28 years imprisonment and compensation was awarded to the civil plaintiff(s) 18 out of 26 times. Four offenders were ordered to pay a fine and 5 out of 13 foreign offenders were given a deportation order. On average, Cambodian nationals were sentenced to 3.69 years imprisonment, offenders from the west and other parts of Asia to 5.02 years, and East Asian offenders to 4.5 years.

Eight offenders received a sentence below the minimum sentence. In one case, two Chinese and four Cambodian offenders charged with The Act of Selling, Buying or Exchanging a Person for Cross-border Transfer (Art. 16 LSHTSE) were sentenced to 2 years imprisonment, while the minimum sentence for this crime is set at 15 years. Two other offenders (1 Russian and 1 French) saw their prison sentence partly suspended. For judges, suspending a prison sentence is a method to avoid abiding by the minimum sentence outlined in the law. For example, a Russian offender charged with Purchase of Child Prostitution (Art. 34 LSHTSE) was sentenced to 3 years imprisonment, but 2 years were suspended. In another case, a French man was charged with Indecent Assault (Art. 246 Criminal Code), which entails a minimum sentence of one year; however, this TCSO only spent 8 months and 15 days in prison.

Concluding, while Cambodia's child protection system has improved drastically, the situation remains critical and continued attention is needed. Only the development of a strong multi-stakeholder approach involving NGOs, police, judiciary, and other stakeholders will ensure that the consequences of sexual exploitation do not remain the silent burden of the victims and that a powerful message is sent out to TCSO that Cambodia is not a 'haven for pedophiles'.

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Prepared by Sarah Nijholt

APLE Initiated Cases Leading to the Conviction of Child Sex Offenders in Cambodia, 2015

Nationality	Article	Min Sentence	Max Sentence	Sentence	Suspended Sentence
American	246 CC	1 year	3 years	2 years	No
Australian	34 & 41 LSHTSE	5 years	10 years	8 years	No
Australian	42 & 43 LSHTSE	5 years	10 years	5 years	No
British	42 LSHTSE	5 years	10 years	7 years	No
British	34 & 43 LSHTSE	7 years	15 years	8 years	No
Cambodian	27 LSHTSE	5 years	10 years	5 years	No
Cambodian	241 CC	7 years	15 years	7 years	No
Cambodian	239 CC	5 years	10 years	5 years	No
Cambodian	42 LSHTSE	5 years	10 years	5 years	No
Cambodian	35 LSHTSE	2 years	5 years	3 years	No
Cambodian	35 LSHTSE	2 years	5 years	3 years	No
Cambodian	35 LSHTSE	2 years	5 years	3 years	No
Cambodian	43 LSHTSE	1 year	3 years	2 years	No
Cambodian	239 CC	5 years	10 years	7 years	No
Cambodian	16 LSHTSE	15 years	20 years	2 years	No
Cambodian	16 LSHTSE	15 years	20 years	2 years	No
Cambodian	16 LSHTSE	15 years	20 years	2 years	No
Cambodian	16 LSHTSE	15 years	20 years	2 years	No
Chinese	16 LSHTSE	15 years	20 years	2 years	No
Chinese	16 LSHTSE	15 years	20 years	2 years	No
French	246 CC	1 year	3 years	14 months	5.5 months
French	248 CC	2 years	5 years	2 years	No
Russian	34 LSHTSE	2 years	5 years	3 years	2 years
Turkish	34 LSHTSE	7 years	15 years	9 years	No
Vietnamese	28 LSHTSE	7 years	15 years	7 years	No
Vietnamese	28 LSHTSE	7 years	15 years	7 years	No

Contact

Global Study on Sexual Exploitation of Children in Travel and Tourism
 Email: globalstudysectt@ecpat.net
 Website: www.globalstudysectt.org