

Disrupting Harm

Evidence from 13 countries on the context, threats, and children's perspectives of online child sexual exploitation and abuse.

Legal Analysis of OCSEA related Provisions in Cambodia

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This report is a summary of preliminary data collected for this research project. The perspectives contained herein represent the individuals interviewed and surveyed. Support from the Fund to End Violence Against Children does not constitute endorsement.

International, Regional and National Commitments and Legislation on Sexual Exploitation of Children

Status of ratification of relevant international and regional instruments, reporting to human rights bodies and engagement with the special procedures of the Human Rights Council		
International Instruments	Date of ratification/accession	
Convention on the Rights of the Child - 1989	15 October 1992	
Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography - 2000	30 May 2002	
Optional Protocol on a Communication Procedure - 2011	No action	
ILO Convention on the Worst Forms of Child Labour - 1999 (No. 182)	14 March 2006	
UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and children – 2000 (supplementing the UN Convention against Transnational Organised Crime)	2 July 2007	
Regional Instruments	Date of ratification/accession	
ASEAN Convention against Trafficking in Persons, Especially Women and Children - 2015	25 January 2016	
Human Rights Bodies	Date of latest submitted report	Comments
Committee on the Rights of the Child (OPSC review)	5 October 2012	Due date: 2004

General Issues Related to Children’s Rights

The Civil Code of Cambodia defines **minors** as “persons under the age of eighteen”.¹ Although Cambodia’s legislation contains alternative terminology for persons under the age of 18 years (e.g. Labour Law uses the word adolescent for children aged fifteen and over,² the Civil Code,³ the Code of Criminal Procedure⁴ and the Law on Suppression of Human Trafficking and Sexual Exploitation⁵ define them as minors), this does not hamper the legal protection of child victims of online child sexual exploitation and abuse, as described below.

The **age of sexual consent** is 15 years for both boys and girls.⁶ Furthermore, Cambodia does not have a **close-in-age exemption** allowing exceptions for consensual sexual activities among peers and the legislation does not provide criteria to determine whether the consent of sexual activities between children is **voluntary, well informed and mutual**. However, Article 44 of the Law on Suppression of Human Trafficking and Sexual Exploitation contains an exemption from punishment for persons under the age of 15 years who have sexual intercourse or commit an indecent act against a child under 15 years.⁷

The **legal working age** is 15 years for boys and girls⁸ and 18 years for hazardous forms of labour which could affect the health, safety or morality of the children.⁹ Additionally, the law permits children aged 12-15 to engage in light work, provided that the work is not hazardous to their health or development and does not affect their regular attendance in schools or participation in vocational training or guidance programmes.¹⁰ The **age of criminal responsibility** is set at 18 years¹¹ and the **legal age of marriage** is 18 years for both boys and girls, or 16 years with parental or guardian consent for both genders if one of the parties has attained the age of majority and the other party is a child at least 16 years of age.¹²

¹ Government of Cambodia. (2007). [Civil Code of Cambodia](#), Article 17.

² Government of Cambodia. (1997). [Labour Law](#), Article 177 (3).

³ Government of Cambodia. (2007). [Civil Code of Cambodia](#), Article 17.

⁴ Government of Cambodia. (2009). [Criminal Code of the Kingdom of Cambodia](#), Articles 38-41.

⁵ Government of Cambodia. (2008). [Law on Suppression of Human Trafficking and Sexual Exploitation](#), Royal Kram NS/RKM/0208/005, Article 7.

⁶ Government of Cambodia. (2009). [Criminal Code of the Kingdom of Cambodia](#), Article 239 and Government of Cambodia. (2008). [Law on Suppression of Human Trafficking and Sexual Exploitation](#), Royal Kram NS/RKM/0208/005, Article 42.

⁷ Government of Cambodia. (2008). [Law on Suppression of Human Trafficking and Sexual Exploitation](#), Royal Kram NS/RKM/0208/005, Article 44.

⁸ Government of Cambodia. (1997). [Labour Law](#), Article 177(1)

⁹ Government of Cambodia. (1997). [Labour Law](#), Article 177(2).

¹⁰ Government of Cambodia. (1997). [Labour Law](#), Article 177(4).

¹¹ Government of Cambodia. (2009). [Criminal Code of the Kingdom of Cambodia](#), Article 38.

¹² Government of Cambodia. (2007). [Civil Code of Cambodia](#), Article 948.

Online Child Sexual Abuse and Exploitation

One of the main instruments related to OCSEA is the Law on Suppression of Human Trafficking and Sexual Exploitation (TIPSE) passed on 20 December 2007, which contains a number of criminal provisions with the aim of suppressing the acts of human trafficking and sexual exploitation. **Child sexual abuse material** is referred to as “child pornography” in its Article 40 and it is defined as “a visible material such as a photograph or videotape, including a material in electronic form, depicting a minor’s naked figure which excites or stimulates sexual desire”.¹³ The reference to excitement or stimulation of sexual desire can lead to impunity for crimes against children due to the difficulty of proving this circumstance at the time of the commission of the crime. Moreover, this definition does not cover child sexual abuse materials that are **audio and/or written material**. This definition is also unclear regarding **virtual child sexual abuse material**, which involves computer/digitally generated child sexual abuse material including realistic images of non-existent children. In addition, the definition contained in the TIPSE law does not comprise child sexual abuse material that **depicts a person appearing to be a minor** engaged in sexually explicit conduct, nor does it incorporate images of the sexual parts of a child’s body for primarily sexual purposes, and therefore, it is only partially in line with Article 2(c) of the OPSC as it does not issue a comprehensive definition of child sexual abuse material. However, in an attempt to clarify the definition of child sexual abuse material, the Cambodian Ministry of Justice stated in an explanatory note that such “visible material” includes photographs, drawings, texts, videos and movies in any physical or electronic form, and may also contain audio content that is pornographic in nature.¹⁴

According to paragraph one of Article 41 of the TIPSE Law, “a person who **distributes, sells, leases, displays, projects or presents** in a public place, child pornography shall be punished with imprisonment from 2 to 5 years and a fine from 4,000,000 to 10,000,000 riels” (approx. US\$987 to US\$2,469 as of March 2021). The same punishment is stipulated in paragraph two for “a person who possesses, transports, imports, or exports a child pornography” for the purpose of using it as described in paragraph one. Additionally, producing child sexual abuse material carries an offence punishable by 5 to 10 years of imprisonment, and 10 to 20 years when child sexual abuse material is produced with the purpose of making it available.¹⁵ Therefore, crimes described in Article 41 of the TIPSE law carry penalties that reflect their grave nature.

Notwithstanding, Article 41 of the TIPSE Law does not criminalise the offence of **knowingly obtaining access** to child sexual abuse material nor the offence of **mere possession of child sexual abuse material** without the intent to distribute it. Correspondingly, Article 41 of the TIPSE Law does not criminalise the distribution, sale, lease, display, projection or presentation of child sexual abuse material in private places,

¹³ Government of Cambodia. (2008). [Law on Suppression of Human Trafficking and Sexual Exploitation](#), Royal Kram NS/RKM/0208/005, Article 40.

¹⁴ Government of Cambodia - Ministry of Justice (2008). Explanatory notes for the Law on Suppression of Human Trafficking and Sexual Exploitation.

¹⁵ Government of Cambodia. (2008). [Law on Suppression of Human Trafficking and Sexual Exploitation](#), Royal Kram NS/RKM/0208/005, Article 41.

nor the intentional consumption, access and viewing of such materials in the **online environment or through the use of communication and information technologies.**

The **attempt** at committing the above-mentioned crimes is criminalised according to Article 4 of the TIPSE law.¹⁶ The Criminal Code defines attempt in its Article 27 and states that it will be punished if the perpetrator has started to commit the offence, that is, they have committed acts which lead directly to the commission of the offence; and the perpetrator did not stop their acts voluntarily, but was interrupted solely by circumstances beyond their control.¹⁷ The Criminal Code also contains a provision that criminalises sexual harassment and defines it as the “abuse by one person of the authority conferred by his or her functions against another person for the purpose of applying pressure repeatedly in order to obtain sexual favours”.¹⁸ According to this definition, the **bullying** of children through online sexual harassment can be prosecuted. The punishment provided for this crime is the penalty of imprisonment from six days to three months and a fine of between 100,000 Riels and 500,000 Riels (approx. US\$25 to US\$123 as of March 2021),¹⁹ a punishment that clearly does not reflect the grave nature of the crime. Besides, the attempt to commit sexual harassment carries the same punishment.²⁰

Further, although the Criminal Code does not prohibit the online solicitation of children for sexual purposes (**online grooming**) as a standalone offence, it does criminalise “the arrangement, by an adult, of meetings involving indecent exposure or sexual relations at which minors are present or participate”.²¹ As stipulated in article 346 of the Criminal Code, it carries a penalty of imprisonment from 1 to 5 years and a fine from 2,000,000 to 10,000,000 Riels²² (approx. US\$494 to US\$2,469 as of March 2021). The punishment contained in this provision fails to address the difference if children are present or if they are involved in the sexual relation or exposure.

With reference to other OCSEA-offences, the law does not include any provisions criminalising the **offline or live streaming of child sexual abuse**, the **recruitment or coercion of children into participating in pornographic performances, attending pornographic performances**, or the **sexual extortion** of a child. Moreover, Cambodian legislation does not provide for the exclusion of a child’s criminal liability for **sexting**. These omissions create a paramount legal gap in the protection of children from online sexual exploitation and abuse in Cambodia.

A recent advancement in the protection of children is the Action Plan to Prevent and Respond to Violence Against Children 2017-2021 (“Action Plan”), announced in December 2017 by the Government of Cambodia as a response to the results of the Cambodia Violence Against Children Survey conducted in

¹⁶ Government of Cambodia. (2008). [Law on Suppression of Human Trafficking and Sexual Exploitation](#), Royal Kram NS/RKM/0208/005, Article 4, paragraph 1.

¹⁷ Government of Cambodia. (2009). [Criminal Code of the Kingdom of Cambodia](#), Article 27.

¹⁸ Government of Cambodia. (2009). [Criminal Code of the Kingdom of Cambodia](#), Article 250.

¹⁹ Government of Cambodia. (2009). [Criminal Code of the Kingdom of Cambodia](#), Article 250.

²⁰ Government of Cambodia. (2009). [Criminal Code of the Kingdom of Cambodia](#), Article 251, in compliance with the definition of attempt provided in Article 27.

²¹ Government of Cambodia. (2009). [Criminal Code of the Kingdom of Cambodia](#), Article 346.

²² Government of Cambodia. (2009). [Criminal Code of the Kingdom of Cambodia](#), Article 346.

2013.²³ According to this plan, the Ministry of Justice is obligated to expand the definition of child sexual abuse material under the Anti-Trafficking Law to mirror the definition contained in the OPSC and to amend Article 41 of this law to criminalise all forms of possession of child sexual abuse material.²⁴ In addition, the Ministry is tasked with introducing new legal provisions in Draft Law on Cybercrime Law to protect children from online sexual exploitation, including sexual extortion, sexting and live streaming of child sexual abuse in real time²⁵ and in the Criminal Code to criminalise acts of non-physical sexual abuse and grooming.²⁶

Currently, the Cambodian legislation does not include any provisions on the **ignorance of the age of the victim** therefore, it is not clear whether offenders can excuse their conduct based on this excusatory cause.

In order to stop online crimes, the Government of Cambodia is currently reviewing a draft law on cybercrime, initiated in 2012,²⁷ which would criminalise various manifestations of OCSEA, including the offences of: producing child sexual abuse material for the purpose of its distribution through a computer system, offering or making available child sexual abuse material through a computer system, distributing or transmitting child sexual abuse material through a computer system, procuring child sexual abuse material through a computer system for oneself or for another person, and possessing child sexual abuse material in a computer system or on a computer-data storage medium.²⁸ According to Article 27, the above-mentioned offences carry imprisonment from 1 year to 3 years and fines from 2,000,000 Riel to 10,000,000 Riel (approx. US\$493 to US\$2,469 as of March 2021). The attempt to commit any of the above-mentioned offences carries the same punishment.²⁹

Conjointly, the current draft on the Cybercrime Law also contains a definition of ‘child pornography’ that includes “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”. Even if this provisional definition is wider than the one provided in the TIPSE Law, it still partially fails to comply with international standards as it does not

²³ Government of Cambodia. (2017). [Action Plan to Prevent and Respond to Violence Against Children \(2017-2021\)](#).

²⁴ Government of Cambodia. (2017). [Action Plan to Prevent and Respond to Violence Against Children \(2017-2021\)](#), 24.

²⁵ Government of Cambodia. (2017). [Action Plan to Prevent and Respond to Violence Against Children \(2017-2021\)](#), 24.

²⁶ Government of Cambodia. (2017). [Action Plan to Prevent and Respond to Violence Against Children \(2017-2021\)](#), 24.

²⁷ The legislation is currently being drafted, and as recently as December the Ministry of Interior had the latest of 20 such meetings while conducting their “preliminary review”. It is unclear, however, when this legislation will be completed. Southeast Asia Globe. (2020). [Child Abuse-The Online Threat](#).

²⁸ Government of Cambodia – Working Group of Council of Ministers. (Undated). [Cybercrime Law Draft V.1](#), Article 27.

²⁹ Government of Cambodia – Working Group of Council of Ministers. (Undated). [Cybercrime Law Draft V.1](#), Article 33.

explicitly cover other means and other forms of child sexual abuse material such as audio and written material, and it is unclear regarding virtual material.

It is also important to address the fact that Cambodia has no laws, policies or practices that require **Internet Service Providers (ISPs)** to filter, block and/or remove any child sexual abuse material and report individuals or companies who disseminate, trade or distribute child sexual abuse material. Reportedly, the blocking of child sexual abuse material occurs via informal communications between government officials and ISPs.³⁰ According to the Action Plan to Prevent and Respond to Violence Against Children 2017-2021, the Ministry of Justice is tasked with adding a new article to the Draft Law on Cybercrime Law to ensure that the law enforcement agencies have the authority to block content of any online platform that contributes to, promotes or facilitates OCSEA.³¹ Furthermore, in November 2019, the Government enacted the Law on Electronic Commerce.³² The fifth chapter of this Law covers potential liabilities of e-commerce service providers and intermediaries, possibly including foreign entities for third-party content and content takedown requests.³³ This could potentially be applicable to content relating to OCSEA.

Furthermore, in 2012, the Government of Cambodia issued a Circular on Preventive Measures on Certain Illegal Activities in the Business of Internet Café Service stipulating that cyber cafes cannot be used by guests to access child sexual abuse material³⁴ or to commit crimes such as inter-border sexual exploitation.³⁵ Notwithstanding, there are no provisions for **cybercafés owners** in the Draft Law on Cybercrime to report and prevent cases of OCSEA, and the only provisions that could affect their activities are related to the preservation and copying of computer data and traffic data during a criminal investigation,³⁶ as well as rules on the search and seizure of computer data,³⁷ and interception or the recording of communications carried out by means of computer systems.³⁸

³⁰ UNICEF. (2016). [Child protection in the digital age: National responses to online child sexual abuse and exploitation in ASEAN Member States](#), Strengthening Child Protection Systems Series: No.6, 27.

³¹ Government of Cambodia. (2017). [Action Plan to Prevent and Respond to Violence Against Children \(2017-2021\)](#), 24.

³² Khmer Times. (2019). [New Commerce Laws Come into Effect](#).

³³ Tilleke &Gibbins. (2019). [Cambodia Enacts a New E-Commerce Law and a Consumer Protection Law](#).

³⁴ Government of Cambodia – Ministry of Posts and Telecommunications. (2012). [Circular No. 1815 on Preventive Measures on Certain Illegal Activities in the Businesses of Internet Café Service](#), item 3.

³⁵ *Ibid.*, item 4.

³⁶ Government of Cambodia – Working Group of Council of Ministers. (Undated). [Cybercrime Law Draft V.1](#), Articles 17 and 18.

³⁷ Government of Cambodia – Working Group of Council of Ministers. (Undated). [Cybercrime Law Draft V.1](#), Article 19.

³⁸ Government of Cambodia – Working Group of Council of Ministers. (Undated). [Cybercrime Law Draft V.1](#), Article 20.

Extraterritoriality and Extradition

The Criminal Code provides for territorial jurisdiction over crimes committed on Cambodian territory,³⁹ as well as for **extraterritorial jurisdiction** for crimes committed by Cambodian nationals abroad⁴⁰ (active personality principle), or when the victim is a national from Cambodia⁴¹ (passive nationality principle). The principle of double criminality applies only for misdemeanours committed by Cambodian nationals in a foreign country, but not for felonies.⁴² According to the Criminal Code, a felony is an offence for which the maximum sentence of imprisonment incurred is life imprisonment or imprisonment for more than five years, but no more than thirty years.⁴³ Next in order, a misdemeanour is an offence for which the maximum sentence of imprisonment incurred is more than six days, but no more than five years.⁴⁴ Since most OCSEA offences are misdemeanours, the principle of double criminality applies in cases where they are committed by Cambodian nationals outside Cambodia.

Similarly, the TIPSE Law, applicable to the crimes included in it, comprises a clause stating that it applies to crimes committed in the territory of the Kingdom of Cambodia,⁴⁵ to crimes committed outside the territory of Cambodia by a Khmer citizen and to offences committed outside the territory of Cambodia by a foreigner if the victim is a Khmer citizen at the time of commission of the offence.⁴⁶

The Draft Law on Cybercrime also provides for extraterritorial jurisdiction over crimes committed inside Cambodia and over crimes committed inside or outside Cambodia which affect legal and natural persons or interests of Cambodia.⁴⁷

In relation to **extradition**, the Constitution states in its Article 33 that a “Khmer citizen shall not be deprived of his/her nationality, exiled, or arrested to be extradited to a foreign country, except in case of mutual agreement”.⁴⁸ Accordingly, the Code of Criminal Procedure allows extradition of foreign residents in the territory of Cambodia and declares that “the extradition of a foreign resident who has been arrested in the territory of the Kingdom shall be governed by the provisions of international conventions and treaties ratified by the Kingdom of Cambodia.”⁴⁹ Cambodia has signed extradition treaties with Thailand, China, Laos and Russia. According to these agreements, most OCSEA-related offences are extraditable

³⁹ Government of Cambodia. (2009). [Criminal Code of the Kingdom of Cambodia](#), Article 12.

⁴⁰ Government of Cambodia. (2009). [Criminal Code of the Kingdom of Cambodia](#), Article 19.

⁴¹ Government of Cambodia. (2009). [Criminal Code of the Kingdom of Cambodia](#), Article 20.

⁴² Government of Cambodia. (2009). [Criminal Code of the Kingdom of Cambodia](#), Article 19.

⁴³ Government of Cambodia. (2009). [Criminal Code of the Kingdom of Cambodia](#), Article 46.

⁴⁴ Government of Cambodia. (2009). [Criminal Code of the Kingdom of Cambodia](#), Article 47.

⁴⁵ Government of Cambodia. (2008). [Law on Suppression of Human Trafficking and Sexual Exploitation](#), Royal Kram NS/RKM/0208/005, Article 2.

⁴⁶ Government of Cambodia. (2008). [Law on Suppression of Human Trafficking and Sexual Exploitation](#), Royal Kram NS/RKM/0208/005, Article 3.

⁴⁷ Government of Cambodia – Working Group of Council of Ministers. (Undated). [Cybercrime Law Draft V.1](#), Article 3.

⁴⁸ Government of Cambodia. (1993). [Constitution of the Kingdom of Cambodia](#), Article 33.

⁴⁹ Government of Cambodia (2007). [Code of Criminal Procedure of the Kingdom of Cambodia](#), Article 566.

offences.⁵⁰ If there is no such treaty or Convention, the provisions laid in the Code of Criminal Procedure apply.⁵¹ The Code of Criminal Procedure also includes the principle of double criminality by stating that “an extradition may be made only if the prosecuted facts against the wanted person constitute an offence under the laws of both the requesting State and the Kingdom of Cambodia.”⁵² Further, these provisions would be applicable to cybercrime offences as incorporated in Article 36 of the Draft Law on Cybercrime.⁵³

It is noteworthy that the OPSC, to which the country is a party, specifically sets forth, in its article 5.2 that in the absence of an extradition treaty, a State Party may consider the OPSC as a legal basis for extradition. Therefore, in the absence of any extradition treaty, the provisions of the OPSC could also be taken into consideration by the Cambodian government to extradite OCSEA offenders.

⁵⁰ According to [Treaty between the Kingdom of Cambodia and the Kingdom of Thailand on Extradition](#) (1998). Article 1; [Treaty between the Kingdom of Cambodia and the People’s Republic of China on Extradition](#) (1999). Article 2; [Treaty between the Kingdom of Cambodia and the Lao People’s Democratic Republic on Extradition](#) (1999). Article 2; and [Treaty between the Kingdom of Cambodia and the Russian Federation on Extradition](#) (2017). Article 4 (1) extraditable offences are those punishable for a period of more than a year of imprisonment.

⁵¹ Government of Cambodia. (2007). [Code of Criminal Procedure of the Kingdom of Cambodia](#), Article 567.

⁵² Government of Cambodia. (2007). [Code of Criminal Procedure of the Kingdom of Cambodia](#), Article 569.

⁵³ Government of Cambodia – Working Group of Council of Ministers. (Undated). [Cybercrime Law Draft V.1](#), Article 36.

Other OCSEA-Related Provisions

Article 48 of the TIPSE Law establishes the **confiscation** of any equipment, materials or objects used to commit or to facilitate offences in this law, as well as the proceeds or the properties that resulted from those offences.⁵⁴ This would therefore also apply to those whose conduct is criminalised by Article 41 in relation to child sexual abuse material.

Legal entities are liable for the offences committed on their behalf by their organs or their representatives, as stated in Article 42 of the Criminal Code⁵⁵ and Article 4 of the TIPSE Law.⁵⁶ The Draft Law on Cybercrime also incorporates a provision on the liability of legal entities that commit any of the regulated cybercrimes, and adds a list of applicable accessory penalties.⁵⁷

Cambodia's legislation does not include any provisions for the establishment of a national **sex offender registry**, nor any provisions on **recidivism** of OCSEA offenders. Further, Cambodian law does not prohibit **advertising or promoting** OCSEA offences.

The Criminal Code does not include a general prohibition **to hold positions involving or facilitating contact with children** for convicted sex offenders, but this prohibition can be imposed in respect of the offences defined in Articles 250 and 346 of the Criminal Code as stated in its Articles 252(2) and 349(2) respectively, only if the offence was connected to the profession.⁵⁸ Plus, according to the Draft Law on Cybercrime, the prohibition to hold positions involving or facilitating contact with children is not listed among the accessory penalties which can be imposed to OCSEA offenders.⁵⁹

According to the Draft Law on Cybercrime, ISPs will have the obligation **to preserve computer and traffic data** during a criminal investigation if ordered by the prosecutor,⁶⁰ but the draft law does not include any provisions to ensure that the principle of best interests of the child is followed.

⁵⁴ Government of Cambodia. (2008). [Law on Suppression of Human Trafficking and Sexual Exploitation](#), Royal Kram NS/RKM/0208/005, Article 48.

⁵⁵ Government of Cambodia. (2009). [Criminal Code of the Kingdom of Cambodia](#), Article 42.

⁵⁶ Government of Cambodia. (2008). [Law on Suppression of Human Trafficking and Sexual Exploitation](#), Royal Kram NS/RKM/0208/005, Article 4.

⁵⁷ Government of Cambodia – Working Group of Council of Ministers. (Undated). [Cybercrime Law Draft V.1](#), Article 35.

⁵⁸ Government of Cambodia. (2009). [Criminal Code of the Kingdom of Cambodia](#), Articles 250, 252 (2), 346 and 349 (2).

⁵⁹ Government of Cambodia – Working Group of Council of Ministers. (Undated). [Cybercrime Law Draft V.1](#), Article 34.

⁶⁰ Government of Cambodia – Working Group of Council of Ministers. (Undated). [Cybercrime Law Draft V.1](#), Article 17.

Access to Justice and Remedies

National complaint mechanisms and reporting

Reporting OCSEA related cases by professionals working with children and institutions is not mandatory by law, nor is it for **private citizens**.

The national legislation does not establish a system for **receiving and addressing reports**, including protection mechanisms for those who report OCSEA-related crimes. The Code of Criminal Procedure includes three articles on the initiation of criminal actions or complaints by prosecution and victims,⁶¹ but it does not include any provision on the presentation of an **anonymous complaint** as sufficient evidence to open an investigation.

According to Article 122 of the Code of Criminal Procedure, a judicial investigation is mandatory for a felony, but it is optional for a misdemeanour.⁶² Since most of OCSEA-related crimes are misdemeanours, **Public Prosecutors** do not have the duty to initiate investigations of those OCSEA crimes *ex-officio*.

According to the Code of Criminal Procedure, the **time limitation** for the prosecution of OCSEA offences is fifteen years for a felony, and five years for a misdemeanour.⁶³ This means that the misdemeanours contained in Article 250 and 346 of the Criminal Code have a statutory limitation of five years, as do child sexual abuse material-related crimes as stipulated in Article 27 of the Draft Law on Cybercrime, and distributing, selling, leasing, displaying, projecting or presenting child sexual abuse material in a public space, as well as possessing, transporting, importing or exporting child sexual abuse material for the offences stipulated before, as laid down on Article 41 of the TIPSE Law. On the other hand, producing child sexual abuse material, including for the purpose of use in the commission of any of the above-mentioned offences, has a time limitation of fifteen years for their prosecution.

Child-sensitive justice

The only clause which involves any protection of children is Article 49 of the TIPSE Law on the concealment of the **victim's identity**. According to this provision, mass media cannot publish, broadcast or disseminate any information which can lead to the revelation of the victim's identity.⁶⁴ Similarly, the Law on the Press, that applies to print media, prohibits in its Article 15 the disclosure of information, photographs or drawings which may make it possible for readers to identify or know the name of a children in any civil or criminal suit.⁶⁵ However, there are no provisions on the **protection of child victims and their families or witnesses from retaliation and intimidation**, nor on the **safety and integrity** of those who are involved in helping child victims.

⁶¹ Government of Cambodia. (2007). [Code of Criminal Procedure of the Kingdom of Cambodia](#), Articles 4-6.

⁶² Government of Cambodia. (2007). [Code of Criminal Procedure of the Kingdom of Cambodia](#), Article 122.

⁶³ Government of Cambodia. (2007). [Code of Criminal Procedure of the Kingdom of Cambodia](#), Article 10.

⁶⁴ Government of Cambodia. (2008). [Law on Suppression of Human Trafficking and Sexual Exploitation](#), Royal Kram NS/RKM/0208/005, Article 49.

⁶⁵ Government of Cambodia. (1995). [Law on the Press](#), Article 15.

In 2007, the Cambodia National Council for Children (CNCC) issued a Guideline for the Protection of the Rights of Trafficked Children, aiming to ensure that the principle of best interest of the child is respected in all actions concerning trafficked children.⁶⁶ The Guideline, that applies to trafficked children, includes child trafficking for the purpose of production and dissemination of child sexual abuse material⁶⁷ and contains recommendations for assessing special protection measures, conducting child-friendly interviews, ensuring confidentiality or conducting criminal proceedings, among others.

In 2008, the Ministry of Justice passed a *Prakas*⁶⁸ on the Use of Court Screen and Courtrooms TV-Linked Testimony from Child/Vulnerable Victims or Witnesses⁶⁹ aiming to provide a safe and supportive environment in which a child can share information regarding their experience that minimises trauma and threats to their personal safety and in accordance with the developmental level of the child.⁷⁰ This *Prakas* sets courts screens as a primary protective measure in all cases involving children, and TV-linked testimony in cases where special protection is needed.⁷¹ According to the regulation, the testimony of a child should be held in camera,⁷² children can be accompanied by a court-approved support person⁷³ and the Court must ensure that there is a comfortable environment for the child.⁷⁴ The Ministry of Justice also produced instructional videos for child victims and witnesses about the role and functions of criminal justice actors.⁷⁵

More recently, in 2016, the Government issued the Guidelines on the Forms and Procedures for Identification of Victims of Human Trafficking for Appropriate Service Provision which provides for, *inter alia*, certain ethics to be followed while interviewing the victims. According to the guidelines, “If a victim is a minor, a child-friendly methodology shall be used with the presence of his/her parent (s) or guardian (s) or legally authorised officials or adult (s) trusted by the child so that they can witness and create a

⁶⁶ Cambodia National Council for Children. (2007). [Decision on Guideline for the Protection of the Rights of Trafficked Children of the Kingdom of Cambodia](#), Article 1.

⁶⁷ Cambodia National Council for Children. (2007). [Decision on Guideline for the Protection of the Rights of Trafficked Children of the Kingdom of Cambodia](#), Article 2 (a).

⁶⁸ A *Prakas* is a regulation adopted by a Ministry of Cambodia.

⁶⁹ Government of Cambodia. (2008). [Prakas No. 62/08 on the Use of Court Screen and Courtrooms TV-Linked Testimony from Child/Vulnerable Victims or Witnesses](#).

⁷⁰ Government of Cambodia. (2008). [Prakas No. 62/08 on the Use of Court Screen and Courtrooms TV-Linked Testimony from Child/Vulnerable Victims or Witnesses](#), Item 1.

⁷¹ Government of Cambodia. (2008). [Prakas No. 62/08 on the Use of Court Screen and Courtrooms TV-Linked Testimony from Child/Vulnerable Victims or Witnesses](#), Item 2.

⁷² Government of Cambodia. (2008). [Prakas No. 62/08 on the Use of Court Screen and Courtrooms TV-Linked Testimony from Child/Vulnerable Victims or Witnesses](#), Items 6 and 17.

⁷³ Government of Cambodia. (2008). [Prakas No. 62/08 on the Use of Court Screen and Courtrooms TV-Linked Testimony from Child/Vulnerable Victims or Witnesses](#), Items 7 and 12.

⁷⁴ Government of Cambodia. (2008). [Prakas No. 62/08 on the Use of Court Screen and Courtrooms TV-Linked Testimony from Child/Vulnerable Victims or Witnesses](#), Items 6, 12 and 14.

⁷⁵ Committee on the Rights of the Child. (2014). [Consideration of reports submitted by States parties under article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography](#), CRC/C/OPSC/KHM/1, paragraph 42.

comfortable environment; however, the presence of the person(s) suspected of involving in the offence(s) shall not be allowed”.⁷⁶

In 2014, the Government issued a Guideline for Applying Child Participation to promote quality child participation at subnational, national and international levels on relevant issues or concerns affecting children.⁷⁷ The guideline aims to facilitate child participation processes by stating key principles⁷⁸ that should be implemented and steps to follow in each of the stages of the process: pre-event, during-event and post-event.⁷⁹ The guideline does not include any provisions on the access to **psychological assistance or free legal aid**, but considers the creation of a support team to facilitate child participation smoothly in the event. Representation of children is addressed in the guideline and it also includes clauses on the arrangement of a friendly environment for children, **the information given to children**, the children’s safety and on a process for children to express their personal view on the discussion.⁸⁰

Child victims from poor families have access to legal aid through the Legal Aid Department of the Bar Association of Cambodia.⁸¹ However, there is no comprehensive law that regulates legal aid in Cambodia. Due to increasing demands, the services provided by the Bar Association have proved to be insufficient. However, there are legal provisions in Cambodia to ensure that **NGOs can assist or support victims**, at their request, during the investigation and legal proceedings, and legal aid NGOs play a significant role in supporting children in these proceedings.⁸²

Finally, under the Action Plan to Prevent and Respond to Violence Against Children 2017-2021, the Ministry of Justice is tasked with developing and implementing pre-service and in-service training modules for judges and prosecutors on managing cases involving child victims, witnesses, and offenders relating to, among other things, online child sexual exploitation.⁸³ The Ministry is also tasked with strengthening the implementation of child-friendly procedures.⁸⁴

⁷⁶ Government of Cambodia. (2016). [Guidelines on the Forms and Procedures for Identification of Victims of Human Trafficking for Appropriate Service Provision](#), 17.

⁷⁷ Government of Cambodia. (2014). [Decision on Guideline for Applying Child Participation](#), Article 1.

⁷⁸ Government of Cambodia. (2014). [Decision on Guideline for Applying Child Participation](#), Article 5.

⁷⁹ Government of Cambodia. (2014). [Decision on Guideline for Applying Child Participation](#), Article 6.

⁸⁰ Government of Cambodia. (2014). [Decision on Guideline for Applying Child Participation](#), Articles 5 and 6.

⁸¹ Joamets, K., & Ngouv, M. (2019). [A Child’s Right to be Heard and be Represented in the Criminal Procedure: A Comparative Analysis of Estonian and Cambodian Law To CRC](#). *Baltic Journal of European Studies*, 9(4), 140.

⁸² Joamets, K., & Ngouv, M. (2019). [A Child’s Right to be Heard and be Represented in the Criminal Procedure: A Comparative Analysis of Estonian and Cambodian Law To CRC](#). *Baltic Journal of European Studies*, 9(4), 141.

⁸³ Government of Cambodia. (2017). [Action Plan to Prevent and Respond to Violence Against Children \(2017-2021\)](#), accessed 3 October 2019, 28.

⁸⁴ Government of Cambodia. (2017). [Action Plan to Prevent and Respond to Violence Against Children \(2017-2021\)](#), accessed 3 October 2019, 28.

Despite improvements in the child protection system in Cambodia, the actual implementation is quite dismal and requires further attention.⁸⁵ Reports have shown that the professionals working in the criminal justice system are ill-equipped to handle children’s cases effectively.⁸⁶

Access to recovery and reintegration

The Cambodian legislative system lacks a comprehensive child protection law and any provisions on recovery and reintegration of child victims of OCSEA across its legislation, as required by Article 19 of the United Nations Convention on the Rights of the Child. The Law on Suppression of Human Trafficking and Sexual Exploitation does not include the obligation to address the need for additional measures to protect children from further harm nor to provide support to guarantee their **recovery and reintegration**.

The Government implemented a 24-hour helpline platform to inform the public where children can receive assistance, be referred to support services, or lodge complaints related to human trafficking and sexual exploitation.⁸⁷ In order to fully ensure the mental, physical and moral development of children, including child survivors of online sexual exploitation and abuse, the Government of Cambodia has issued a number of Sub-Laws in the form of *Prakas*, Guidelines or Circulars. In 2009, the Ministry of Social Affairs, Veterans and Youth Rehabilitation (MoSVY) approved the *Prakas* No. 852 on the Implementation of the Policy on the Rights of Victims of Human Trafficking,⁸⁸ that includes the recovery and reintegration of victims, including child victims of sexual abuse and exploitation.

During the same year, the MoSVY approved the *Prakas* No. 857 on Minimum Standards for the Protection of the Rights of Victims of Human Trafficking,⁸⁹ a regulation that includes recovery and reintegration in the case management process provided for service workers. In 2011, the MoSVY issued the *Prakas* No. 2280 on Procedures to Implement of the Policy on Alternative Care for Children⁹⁰ that includes the protection, care and support of “abused and exploited children”. However, in 2015, the CRC Committee stated that “the State party’s recovery and reintegration measures are limited to victims of trafficking and do not adequately take into account the needs of child victims of offences covered under the Optional Protocol, especially at the commune level, owing to a lack of resources and insufficient number of adequately trained staff and officials”. It also confirmed “the absence of State-run rehabilitation and reintegration programmes and that social reintegration and assistance are tasks carried out mainly by non-

⁸⁵ Joamets, K., & Ngouv, M. (2019). [A Child’s Right to be Heard and be Represented in the Criminal Procedure: A Comparative Analysis of Estonian and Cambodian Law To CRC](#). *Baltic Journal of European Studies*, 9(4), 138.

⁸⁶ Joamets, K., & Ngouv, M. (2019). [A Child’s Right to be Heard and be Represented in the Criminal Procedure: A Comparative Analysis of Estonian and Cambodian Law To CRC](#). *Baltic Journal of European Studies*, 9(4), 138.

⁸⁷ ECPAT. (2014) “The Commercial Sexual Exploitation of Children in East and South-East Asia”, 62.

⁸⁸ Government of Cambodia. (2009). [Prakas No. 852 on the Implementation of the Policy on the Rights of Victim of Human Trafficking](#).

⁸⁹ Government of Cambodia. (2009). [Prakas No. 857 on Minimum Standards for the Protection of the Rights of Victim of Human Trafficking](#).

⁹⁰ Government of Cambodia. (2011). [Prakas No. 2280 on Procedures to Implement of the Policy on Alternative Care for Children](#).

governmental organisations and United Nations agencies, with insufficient involvement and support from the Police and the Ministry of Social Affairs, Veterans and Youth”.⁹¹

A recent advancement in the protection of children was the Action Plan to Prevent and Respond to Violence Against Children 2017-2021 (“Action Plan”) announced in December 2017 by the Government of Cambodia as a response to the results of the Cambodia Violence Against Children Survey conducted in 2013.⁹² The Action Plan declares that the “activities outlined (...) are designed to help support efforts in Cambodia to develop and implement effective child-friendly prevention strategies, as well as to improve service provision for all Cambodians, especially for children, both boys and girls, who experience violence”.⁹³ The Action Plan provides a number of activities relevant to the recovery and reintegration of child victims, such as the development of a centralised referral mechanism that coordinates social and mental health services for children identified in child protection cases (8.3.1)⁹⁴ or the development of child-friendly standard operating procedures/protocols for handling all cases and reports of violence against children for social service institutions and workers (8.4.1).⁹⁵

Access to compensation

Child victims can seek compensation in civil or criminal proceedings, as enshrined in Title 3 of the Code of Criminal Procedure, whether the injury is physical or psychological.⁹⁶ A **civil action** can be brought in conjunction with a criminal action that is before a criminal court or **independently** before a civil court, though it will be suspended until the final decision on the criminal action has been made.⁹⁷ The civil action can be filed on behalf of a child victim by their legal representative.⁹⁸

According to the Code of Criminal Procedure, “an injury can be compensated by paying damages, by giving back to the victim the property that has been lost or by restoring damaged or destroyed property to its original state”. In any case, “the damages shall be proportionate to the injury suffered”.⁹⁹ The Code of Criminal Procedure also includes the possibility of imprisonment in lieu of payment if requested by a civil

⁹¹ Committee on the Rights of the Child. (2015). [Concluding Observations on the Report Submitted by Cambodia Under Article 12, Paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography](#), CRC/C/OPSC/KHM/CO/1, paragraph 30.

⁹² Government of Cambodia. (2017). [Action Plan to Prevent and Respond to Violence Against Children \(2017-2021\)](#), accessed 3 October 2019.

⁹³ Government of Cambodia. (2017). [Action Plan to Prevent and Respond to Violence Against Children \(2017-2021\)](#), Foreword ii.

⁹⁴ Government of Cambodia. (2017). [Action Plan to Prevent and Respond to Violence Against Children \(2017-2021\)](#), 19.

⁹⁵ Government of Cambodia. (2017). [Action Plan to Prevent and Respond to Violence Against Children \(2017-2021\)](#), 20.

⁹⁶ Government of Cambodia. (2007). [Code of Criminal Procedure of the Kingdom of Cambodia](#), Article 13.

⁹⁷ Government of Cambodia. (2007). [Code of Criminal Procedure of the Kingdom of Cambodia](#), Article 22.

⁹⁸ Government of Cambodia. (2007). [Code of Criminal Procedure of the Kingdom of Cambodia](#), Article 15.

⁹⁹ Government of Cambodia. (2007). [Code of Criminal Procedure of the Kingdom of Cambodia](#), Article 14.

party after proving that all means of enforcement had been used, such as seizing personal or real property.¹⁰⁰ However, the offender remains a debtor of the amount due.¹⁰¹

Additionally, Article 46 of the TIPSE Law includes a specific clause on restitution of unjust enrichment by stating that “a person who obtains enrichment without a legal cause knowing that the enrichment has been obtained from the act of selling/buying or exchanging a person or sexual exploitation shall be liable for restitution of the whole unjust enrichment along with accrued interests”.¹⁰² According to this clause, a child victim of OCSEA can claim damages in addition to the restitution of such unjust enrichment.

Nevertheless, Cambodian legislation does not provide a mechanism which ensures the payment of such compensation, such as through **country-managed funds**, so that child victims of OCSEA have no guarantees that the perpetrator of the crime will indeed pay. The absence of a law enforcement mechanism can result in delays in the payments, thereby failing to comply with Articles 8 (g) and 9 (4) of the OPSC.

Further, “out-of-court settlements” are a widespread practice in Cambodia where an offender may negotiate extra-judicial agreements with the children’s family. These settlements often end up with the victim dropping the charges against the offender and receiving less financial compensation than the victims are entitled to by law.¹⁰³ This form of conciliation is facilitated by corrupted law enforcement officials, including police.¹⁰⁴

¹⁰⁰ Government of Cambodia. (2007). [Code of Criminal Procedure of the Kingdom of Cambodia](#), Article 13.

Government of Cambodia. (2007). [Code of Criminal Procedure of the Kingdom of Cambodia](#), Articles 523 and 533.

¹⁰¹ Government of Cambodia. (2007). [Code of Criminal Procedure of the Kingdom of Cambodia](#), Articles 532 and 533.

¹⁰² Government of Cambodia. (2008). [Law on Suppression of Human Trafficking and Sexual Exploitation](#), Royal Kram NS/RKM/0208/005, Article 46.

¹⁰³ APLE. (2014). [Investigating Travelling Child Sex Offenders](#), 21.

¹⁰⁴ Committee on the Rights of the Child. (2015). [Concluding Observations on the Report Submitted by Cambodia Under Article 12, Paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography](#), CRC/C/OPSC/KHM/CO/1, paragraph 22.