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MINISTRY OF JUSTICE

EXPLANATORY NOTES

FOR THE
LAW ON SUPPRESSION OF HUMAN TRAFFICKING AND SEXUAL EXPLOITATION

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Produced by The Ministry of Justice of the Kingdom of Cambodia

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Finalization of the Explanatory Notes for the Law on Suppression of Human Trafficking and Sexual Exploitation by:

1. Her Excelency Chan Sotheavy, Secretary of State , Ministry of Justice
2. Mr. Ku Khemlin, Deputy Director of Ministry of Justice
3. Miss. Lay Lyna, Assistant to Secretary of State, Ministry of Justice
4. Mr. Michael Lerner, Legal Consultant
5. Ms. Ana Janet Suga, Child Protection Specialist, Unicef
6. Ms. So Serey Vathana, Child Protection Officer, Unicef

FORWARD

Kingdom of Cambodia
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H.E AngVongVathana
Minister of Justice

The Royal Government of Cambodia under the wise leadership of Prime Minister Samdech Akka Moha Sena Padei Techo Hun Sen has been giving significant attention to the suppression of human trafficking and sexual exploitation in Cambodia.

Stemming from the attention and strong responsibility of the Royal Government of Cambodia to further strengthen the protection of the rights and freedoms of and seek justice for its citizens, the Ministry of Justice, as an arm of the Royal Government, endeavored to conduct studies and researches on the national and international provisions relating to human trafficking, in order to reform the law in conformity with the legal and judicial reform policy of the Royal Government.

The Law on Suppression of Human Trafficking and Sexual Exploitation (TSE Law) was adopted and promulgated by the King on February 15, 2008.

After this law came into force, the Ministry of Justice understood the need to ensure that the law is implemented effectively. Thus, it was necessary to develop the Explanatory Notes to serve as a guidebook for all citizens, law enforcement officials and researchers to easily understand and abide by the law, and to avoid misunderstanding and misinterpretation of the content of each of the Law's provisions, which affect the rights and freedom of citizens, especially the right of access to justice.

Recognizing this important need, the Ministry of Justice, in cooperation with UNICEF, has set-up a working group to develop the Explanatory Notes. The Explanatory Notes for the Law on Suppression of Human Trafficking and Sexual Exploitation has now been finalized, as a result of the joint efforts and strong responsibility of the team.

I acknowledge that it was not easy to develop this Explanatory Notes. It was a complicated job that required a highly capacitated and experienced team with knowledge of national and international laws.

In the process of developing the Explanatory Notes, the working group explained each provision in accordance with national laws as well as international laws that Cambodia has ratified. The working group also carefully reviewed each provision and provided clear examples and explanations on those provisions.

This Explanatory Notes also serves as a guide for training and awareness-raising on the TSE law and its relevant provisions.

After finalizing this Explanatory Notes, the Ministry of Justice will take further measures to educate and disseminate the Explanatory Notes to all judicial and law enforcement officials nationwide.

Availing myself of this opportunity, on behalf of the Ministry of Justice and in my own name, I express my most profound thanks to all the members of the working group, consultants and advisers who gave their serious attention, tireless efforts, and commitment, and who dedicated their physical, intellectual and spiritual faculties to develop and complete the Explanatory Notes.

I fervently believe that the Explanatory Notes will become a very useful instrument to help implement the TSE Law more effectively, towards greater protection and fulfillment of the rights of Cambodian citizens.

Phnom Penh, 4 April 2013

Ang Vongvathana
Minister of Justice

Table of Contents

The Royal Government of Cambodia under the wise leadership of Prime Minister Samdech Akka Moha Sena Padei Techo Hun Sen has been giving significant attention to the suppression of human trafficking and sexual exploitation in Cambodia.....3
Stemming from the attention and strong responsibility of the Royal Government of Cambodia to further strengthen the protection of the rights and freedoms of and seek justice for its citizens, the Ministry of Justice, as an arm of the Royal Government, endeavored to conduct studies and researches on the national and international provisions relating to human trafficking, in order to reform the law in conformity with the legal and judicial reform policy of the Royal Government. 3
The Law on Suppression of Human Trafficking and Sexual Exploitation (TSE Law) was adopted and promulgated by the King on February 15, 2008. 3
Introduction.....8
General overview 8
Principles of statutory interpretation 11
Article 1. Objective of This Law 13
Article 2. Application of This Law within the Territory 14
Article 3. Application of This Law outside the Territory 16
Article 4. Criminal Responsibility 18
Article 5. Pronouncement of Principal Penalties.....21
Article 6. Concurrence of Offences.....21
Article 7. Definition of Minor.....23
Chapter 2 - The Act of Selling/Buying or Exchanging a Person 25
Article 8. Definition of Unlawful Removal.....26
Article 9. Unlawful Removal, inter alia, of Minor.....30
Article 10. Unlawful Removal with Purpose.....32
Article 11. Unlawful Removal for Cross-border Transfer 36
Article 12. Unlawful Recruitment for Exploitation.....38
Article 13. Definition of the Act of Selling, Buying or Exchanging a Person 42
Article 14. The Act of Selling, Buying or Exchanging a Person 43
Article 15. The Act of Selling, Buying or Exchanging a Person with Purpose.....43
Article 16. The Act of Selling, Buying or Exchanging a Person for Cross-border Transfer 46
Article 17. Transportation with Purpose.....49
Article 18. Cross-border Transportation (The Act of Bringing a Person Cross-border)52
Article 19. Receipt of Person with Purpose.....54
Article 20. Receipt of a Person for the Purpose of Assisting the Offender.....58
Chapter 3 - Confinement.....60
Article 21. Abduction (Arrest), Detention or Confinement 60
Article 22. Aggravating Circumstances.....62
Chapter 4 - Prostitution and Child Prostitution.....64
Article 23. Definition of Prostitution and Child Prostitution 64
Article 24. Soliciting.....66
Article 25. Definition of Procuring Prostitution 69
Article 26. Procurement (of Prostitution).....74
Article 27. Aggravated Procurement (of Prostitution) 75
Article 28. Procurement with regard to Child Prostitution.....77
Article 29. Procurement of Prostitution by Torture 77
Article 30. Management of Prostitution 78
Article 31. Management of Establishment for Prostitution.....79
Article 32. Provision of Premise for Prostitution.....82
Article 33. Offense with regard to Child Prostitution 84
Article 34. Purchase of Child Prostitution 84
Article 35. Soliciting for Child Prostitution 87
Article 36. Conditional Money Loan in connection with Child Prostitution.....89
Article 37. Contract of Child Prostitution.....90
Chapter 5 - Pornography 91
Article 38. Definition of Pornography 91

Article 39. Pornography....92
Article 40. Definition of Child Pornography....93
Article 41. Child Pornography....94
Chapter 6 - Indecency against Minors under Fifteen Years....97
Article 42. Sexual Intercourse with Minors under Fifteen Years....97
Article 43. Indecent Act against Minors under Fifteen Years....99
Article 44. Exemption from Punishment....101
Chapter 7 - Civil Remedy....102
Article 45. Contract for the Act of Selling/Buying or Exchanging a Personand Sexual Exploitation 102
Article 46. Restitution of Unjust Enrichment....103
Article 47. Preference to Confiscated Property....104
Chapter 8 - Supplemental Provisions....105
Article 48. Additional Penalties....105
Article 49. Concealment of Identity of Victim....107
Chapter 9 - Final Provisions....109
Article 50. Repeal of Law....109
Article 51. Replacement by Penal Code....110
Article 52. Enforcement of this Law....111

Abbreviations and Acronyms

CAT	The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.
CEDAW	The Convention on the Elimination of all forms of Discimination against Women.
COMMIT	Coordinated Mekong Ministerial Initiative against Trafficking
CRC	The Convention on the Rights of the Child
HIV	Human Immunodeficiency virus
MoI	Ministry of Interior
MoJ	Ministry of Justice
MoLVT	Ministry of Labour and Vocational Training
MoWA	Ministry of Women's Affairs
NGOs	Non-Governmental Organizations
UN	United Nations Organization
UNICEF	United Nations Children's Fund
UNTAC	United Nations Transitional Authority in Cambodia
UNTOC	United Nations Convention Against Transnational Organized Crime
Palermo Protocol	The protocol to prevent, Suppressed and Punish Trafficking in Persons, especially Women and Children
Prakas	Ministerial Regulation
TSE Law	Law on the Supression of Human Trafficking and Sexual Exploitation.

Introduction

This document comprises the Explanatory Notes on Cambodia's Law on Suppression of Human Trafficking and Sexual Exploitation (hereinafter referred to as the "TSE Law").

The goal of these Explanatory Notes is to inform judicial and law enforcement officials of the intent and meaning of the provisions of the TSE Law. These Explanatory Notes are therefore intended to serve as a supporting material to help criminal justice officials understand and clarify the law's provisions, and to assist relevant ministries, training institutions and their partners in developing training and awareness-raising materials on the new law.

General overview

On 15 February 2008, the Kingdom of Cambodia promulgated the Law on Suppression of Human Trafficking and Sexual Exploitation (TSE Law).

As set out in the TSE Law's Article 1, the objective of the law is "to suppress the acts of human trafficking and sexual exploitation." Human trafficking and sexual exploitation are serious crimes, and many Cambodians have both suffered as victims and been involved as perpetrators. For this reason, it is in the interests of the Kingdom of Cambodia and its Royal Government to prohibit and suppress such criminal acts.

The TSE Law has additional objectives: "to protect the rights and dignity of human beings, to improve the health and welfare of citizens, to preserve and enhance good national customs, and to implement the United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention against Transnational Organized Crime…" This protocol – also known as the Palermo Protocol – is the chief international legal instrument in the fight against human trafficking, and was signed by Cambodia in December 2003.

In addition to implementing Cambodia's obligations under the Palermo Protocol, the TSE Law is also intended to implement obligations under "other international instruments or agreements with regard to human trafficking that the Kingdom of Cambodia has ratified or signed." These include, notably, the Convention on the Rights of the Child (CRC) and its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography; the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (the CAT); and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Cambodia is also a party to the Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT) Memorandum of Understanding on Cooperation against Trafficking in Persons in the Greater Mekong Sub-Region, to which the People's Republic of China, the Lao People's Democratic Republic, the Union of Myanmar, the Kingdom of Thailand, and the Socialist Republic of Vietnam are also parties.

History of the TSE Law

The TSE Law was developed by the Ministry of Justice (MoJ) starting in 1999, in collaboration with the Institute of Japanese Legal Development, and with financial support from UNICEF, in order to replace the "1996 Law on Suppression of the Kidnapping, Trafficking and Exploitation of Human Persons" with a revised legislation that would comply with the CRC and its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, which was signed by Cambodia in June 2000. In addition to meeting Cambodia's new obligations under international law, the new law was intended to be more precise than the 1996 law, which was considered by many to be vague, with definitions and offenses that were too broad.

The TSE law was initially drafted by a working group comprised of three MoJ officials and an international legal adviser. After finishing the draft, the working group submitted it to a new working group comprised of twelve officials from the MoJ, Supreme Court, Court of Appeal, Phnom Penh Court of First Instance and Provincial Courts for consultation and discussion. The working group examined the content of the draft law article by article many times until the

whole draft was finalized, and thereafter submitted it to a consultation workshop. The national workshop on human trafficking and sexual exploitation was held in August 2002 in Phnom Penh, with broad participation from the National Assembly, Senate, relevant government institutions and national and international NGOs. The workshop recommendations were considered and incorporated into the draft law by three national and international experts -- Mr. Yoichi Yamada (Japanese legal expert), H.E. Hy Sophea and H.E. Chan Sotheavy- with an assistant, Mr. Seng Puthy. This draft was returned to the 12-member working group for another discussion. After approval by the working group, the draft law was submitted to the Council of Ministers in March 2003. During the Council of Minister's inter-ministerial meetings in 2004, recommendations were made to add other matters to the draft law, pursuant to which the draft was revised by MoJ. After the revisions at the inter-ministerial meetings, the Ministry of Justice held another (consultation) workshop on 24 August 2006 in Phnom Penh. Thereafter, the MoJ working group reviewed and finalized the draft law and re-submitted it to the Council of Ministers for discussion at its inter-ministerial meetings. This draft law was approved by the Council of Minister's plenary meeting on 24 August 2007. The law was adopted by the National Assembly on 20 December 2007 and by the Senate on 18 January 2008, and promulgated by the King on 15 February 2008.

Following the adoption of the TSE Law in 2008, the Ministry of Justice (H.E Ang Vong Vathana, H.E Hy Sophea and H.E Chan Sotheavy) initiated the development of Explanatory Notes to serve as a guide (intellectual-support material) for all law enforcement officials, who are mandated to abide by the law's provisions and continued its cooperation with UNICEF to develop the Explanatory Notes with strong support from UNICEF representative, Mr. Richard Bridle and Chief of Child Protection Section, Ms. Lesley Miller.
To ensure an effective process in developing the Explanatory Notes, MoJ set up a working group comprised of MoJ senior officials, the President of the Court of Appeals and the President of the Phnom Penh Municipal Court, who have high capacity and work experience, as well as representatives of the Ministry of Interior (MoI) and the Ministry of Women Affairs (MoWA). The working group was set-up under Prakas No.40 ky.Rbk 09 dated 21 April 2009 and comprised of the following members:

1. H.E. Ang Vong Vathana, Minister of Justice — Chair
2. H.E. Hy Sophea, Secretary of State, MoJ — Deputy Chair
3. H.E. Chan Sotheavy, Secretary of State, MoJ — Deputy Chair in charge of project.
4. H.E. You Bun Leng, President of Court of Appeals — Member
5. Secretary of State, MoI — Member
6. Secretary of State, MoWA — Member
7. H.E. Chiv Keng, President of the Court of First Instance of Phnom Penh — Member
8. Mr. Ku Khemlin, Deputy Director of MoJ — Member

There was also participation from the international legal expert Mr. Yoichi Yamada, who helped prepare the Law on Suppression of Human Trafficking and Sexual Exploitation from its first stage of development; legal protection consultant on the Explanatory Notes, Mr. Michael Lerner; child protection specialist, Ms. Ana Janet Sunga; child protection officers, Mr. Keo Sokea and Ms. So Serey Vathana; and translator, Mr. Nop Tong Hay.

The TSE Law in the Cambodian Legal Framework
After coming into force, the TSE Law can only be fully understood if it is considered in light of the broader Cambodian legal framework. When the TSE Law was prepared, the Penal Code was still in draft. Despite the fact that the Penal Code was still under development, it was considered important and has nonetheless greatly influenced the drafting of the TSE law (for example, in many offenses relating to sexual exploitation) and other laws. The drafting team for the TSE Law looked carefully at these and other Cambodian laws, as well as relevant provisions of international law and laws of other countries.

It should be noted as well that this law is part of the criminal law: that is, the TSE Law defines a range of offenses that are understood as related to human trafficking and sexual exploitation, and establishes the punishments (fines and/or imprisonment) for those found guilty of these

offenses. While anti-trafficking laws in some other countries have a broader reach – with, for example, provisions on victim protection – this is not the case for Cambodia's TSE Law. In the future Cambodia may develop laws or provisions on victim protection or other aspects related to human trafficking and sexual exploitation. The Royal Government of Cambodia has issued decisions and guidelines on victim protection. For example, the Cambodian National Council for Children issued the Decision on Guidelines for the Protection of the Rights of Trafficked Children of the Kingdom of Cambodia (Decision No. 107, 20 December 2007). That same year, the Ministries of Justice, Interior, Women's Affairs, Health and Social Affairs, Veterans and Youth signed an agreement with 24 NGOs on Guidelines for Practices and Cooperation between the Relevant Government Institutions and Victim Support Agencies in Cases of Human Trafficking in 6 February 2007).The Royal Government of Cambodia has also developed a "Policy and National Minimum Standards for the Protection of the Rights of Victims of Human Trafficking, No. 062 S.V.Y., 31 August 2009.

Cambodia has also signed international agreements that contain provisions on victim protection. For example, in 2007, Cambodia signed the ASEAN regional agreement on the protection of child victims of trafficking.[1] Prior to 2007, Cambodia also signed bilateral Memoranda of Understanding with Thailand[2] and Vietnam,[3] as well as a regional agreement for the Greater Mekong Sub-region.[4] In 2009, Cambodia further signed an agreement with Vietnam on the identification and repatriation of trafficked victims, dated 03 December 2009.[5]

In the TSE Law, the offenses are defined in a more narrow and precise manner (compared to the Palermo Protocol) For example, the Palermo Protocol conceptualizes "trafficking in persons" as a combination of specific *acts*, *means* and *purposes*. The Protocol's definition of human trafficking covers a range of acts, such as "the recruitment, transportation, transfer, harbouring or receipt of persons". In contrast, the TSE Law seeks to separate out these acts into different offenses. Thus, Chapter 2 of this law differentiates between the offenses of unlawful removal; unlawful recruitment; buying, selling or exchanging a person; transportation of a trafficking victim; and receipt of a trafficking victim. The TSE Law treats separately each step of the Palermo Protocol's definition of trafficking in persons, providing for different offenses and different punishments.

In the same vein, the TSE law separates out different crimes of sexual exploitation and crimes of sexual relations with minors. Under the 1996 anti-trafficking law, there was only one offense of debauchery with a minor below 15 years of age, which provided the same punishment for all offenders convicted of having sexual relations with minors under 15 years old, regardless of the nature of those relations. In contrast, the TSE Law provides a number of specific offenses pertaining to sexual relations with minors, including purchase of child prostitution, indecent acts with minors under the age of 15, and sexual intercourse with minors under 15 – and each of these offenses carries a different range of punishment.

One result of this precise listing of offenses is that police, prosecutors and judges must make careful determinations as to what is the most appropriate offense for which to investigate,

[1] Southeast Asian Guidelines for the Protection of the Rights of Children Victims of Trafficking (December 2007).

[2] Memorandum of Understanding between the Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand on Bilateral Cooperation for Eliminating Trafficking in Children and Women and Assisting Victims of Trafficking, signed in Siem Reap on 31 May 2003. This agreement was supplemented by the Guidelines for Cooperation between Cambodia and Thailand on the Criminal Justice Process of Trafficking-Related Crimes.

[3] Agreement between the Royal Government of Cambodia and the Government of the Socialist Republic of Vietnam on Bilateral Cooperation for Eliminating Trafficking in Women and Children and Assisting Victims of Trafficking, signed in Hanoi on 10 October 2005.

[4] Memorandum of Understanding on Cooperation against Trafficking in Persons in the Greater Mekong Sub-Region, signed by the Government of the Kingdom of Cambodia in Rangoon, Myanmar, on 29 October 2004.

[5] Cooperation Agreement between the Royal Government of the Kingdom of Cambodia and the Government of the Socialist Republic of Vietnam on Cooperation on the Identification and Repatriation of Trafficked Victims, December 2009.

charge and try the accused. It is hoped that these Explanatory Notes will help clarify this issue, among others.

Principles of statutory interpretation

No matter how careful the law-making process may be, drafters of new laws cannot foresee all the situations that will inevitably arise, and which will require the judicial system – the judges, prosecutors and lawyers – to examine and interpret the law in order to apply it to the facts.

All jurisdictions – whether civil or common law – face this challenge, and jurists have developed a set of tools to assist them in interpreting laws. Some principles of statutory interpretation may vary from one jurisdiction to another, but there are several foundational principles which are widely accepted around the world. This section will review some of the basic principles of statutory interpretation, which have guided the development of these Explanatory Notes.

The *purposive principle* states that when interpreting a legal provision, the interpretation should lead to a result that is consistent with and does not conflict with the objective and purpose of that law. For the TIPSE Law, Article 1 sets out this law's objective very clearly. Consistency with this stated purpose should always be the first test of any interpretation of the law.

Internal consistency should always be kept in mind when interpreting a legal provision. Where provisions or terms must be interpreted (perhaps because they are vague or undefined, or because the provision must be applied in a situation not foreseen by the drafters), this should be done such that the interpretation does not conflict with how that provision or term is used elsewhere in the same law.

A second goal is *consistency with other laws in the same jurisdiction*. When engaging in statutory interpretation, all efforts should be made to ensure that an interpretation of a provision or terms does not conflict with how that provision or term is used elsewhere in the applicable body of law. For this reason it is important to examine all relevant laws. In developing these Explanatory Notes, it was important to review the relevant provisions of a wide range of Cambodian laws, including the Constitution, the criminal laws (including the Penal Code and the Criminal Procedure Code), the Press Law, the Labour Law, the Law on Aggravating Circumstances, and a range of sub-decrees, prakas, circulars and guidelines.

Given the wide-ranging subject matter present within a set of laws, there will no doubt be conflicts in how different laws use the same provisions and terms. Where such conflicts are found, the generally accepted rule is that a higher-ranking legal instrument will prevail over a lower-ranking one. For conflicts between the provisions of legal instruments that are at the same level, two rules should be kept in mind:

1) New vs. Old. The more recent law will prevail over the older law.
2) Specific vs. General. The more specific law will prevail over the more general law.

However, where a newer but more general law has a provision that is in direct conflict with an older but more specific law, then the newer law prevails. However, if a newer general law is silent on a particular issue and that particular issue is contained in the old specific law (and therefore there is no direct conflict), then the relevant provisions of the older law are generally considered still to be valid.

These principles of statutory interpretation help to resolve the conflict between, for example, the TSE Law's Article 22 (which imposes a life sentence for aggravated confinement) and Article 7 of the old Law on Aggravating Circumstances (which allows the same crime to be punished by 15 years of imprisonment). Since the TSE Law is more recent and, arguably, more specific than the old Law on Aggravating Circumstances, the sentencing provisions in Article 22 of the TSE Law prevail over those in Article 7 of the old Law on Aggravating Circumstances.

As another example, the new Penal Code, which was adopted after the TSE Law and entered

into full force in December 2010, may contain provisions that may conflict with the TSE Law. Under the Penal Code (Book 6 "Final Provisions", Article 671 "Abrogation and effect of previous criminal provisions"), provisions of pre-existing criminal laws, that are contrary to the provisions of the new Penal Code, shall be considered as invalid with regard only to the contradictory provisions. Accordingly, while the TSE Law will remain in force, where a provision in the TSE Law is contradictory to a provision in the Penal Code, the provision in the TSE Law will be superseded to the extent only of the contrary wording.

However, with respect to illegal acts related to trafficking offenses, the TSE Law may be invoked despite a conflict with the Penal Code provisions, in recognition of the principle of statutory interpretation that, in general, a special law prevails over a general law. It should be noted that the Penal Code does not contain offences "specific" to human trafficking and, therefore, the TSE Law remains the core legislation governing offences relevant to human trafficking. In fact, the Penal Code recognizes the primacy of special laws over general laws in Article 668 (Application of Other Criminal Legislation), Book 5 "Transitional Provisions", which states that:

> *"Criminal offences defined and punished by other separate criminal legislation and provisions in force shall be implemented in accordance with such criminal legislation and provisions.*
>
> *In the event of conflict between other criminal laws and provisions and the provisions of this Code, application shall be done according to the rules set out in Book 1 (General Provisions) of this Code.*[6]
>
> *The provisions of paragraph 2 above shall not be applicable to special criminal laws."*

The TSE Law may be considered as a special criminal law, based on the law's objective set out in Article 1, to "suppress the acts of human trafficking" and to "implement the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children". Accordingly, where a clear direct conflict arises between the Penal Code and the TSE Law criminal provisions, the TSE Law provisions may still be applied to cases that involve trafficking-related acts.

Finally, it is crucial to remember that Cambodia's legal system exists within a broader international legal framework – one where Cambodia has certain obligations under international law. Cambodia's Constitution recognizes these obligations, with Article 31 of that document binding "The Kingdom of Cambodia [to] recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights, women's and children's rights." This provision of the Constitution creates a binding legal obligation for Cambodia to incorporate these rights into its domestic law – and, therefore, to ensure that its laws are interpreted so that they do not conflict with these international treaty obligations. This approach has been recognized by Cambodia's own Constitutional Council, which (most recently, in a decision No 092/003/2007 dated 10 July 2007) has interpreted Cambodian laws so that they are kept consistent with international human rights.

This last point is especially relevant when interpreting the TSE Law, as this law is explicitly intended to implement an international protocol (the Palermo Protocol). The development of these Explanatory Notes included a careful review of the relevant international instruments – and the drafters of this document encourage the courts, when called upon to interpret the TSE Law, to examine the relevant international human rights conventions and interpret the law in a manner consistent with the provisions of the protocols or conventions.

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[6] Under the Penal Code, Book 1 "General Provisions", Title 1, Chapter 2, Article 10 (Application of criminal law which is less severe or more severe), *"A new provision that prescribes a lighter penalty shall be applicable immediately….A new provision that prescribes a heavier penalty shall be applicable only to acts committed after the provision came into force."*

Chapter 1 - General Provisions

Chapter 1 of the TSE Law covers the law's objective, its application inside and outside of Cambodia, certain relevant principles of Cambodian criminal law, and the definition of a minor under the TSE Law.

Article 1. Objective of This Law
The objective of this law is to suppress the acts of human trafficking and sexual exploitation in order to protect the rights and dignity of human beings, to improve the health and welfare of citizens, to preserve and enhance good national customs, and to implement the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, or other international instruments or agreements with regard to human trafficking that the Kingdom of Cambodia has ratified or signed.

This Article explains the objective and purpose of this Law. It calls for the implementation of the United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (hereinafter, the "Palermo Protocol"), supplementing the United Nations Convention against Transnational Organized Crime (hereinafter, the "Transnational Organized Crime Convention"). The Palermo Protocol was first adopted by the United Nations in Palermo, Italy in 2000; it later entered into force in December, 2003. By 2006, the Palermo Protocol had been signed by 117 states and ratified by 110. Cambodia signed the Protocol on December 25, 2003 and has undertaken to implement its provisions through this Law.

The TSE Law's objective, however, is slightly broader than that of the Palermo Protocol.

"to suppress the acts of human trafficking and sexual exploitation"

The Palermo Protocol defines and prohibits human trafficking, but the TSE Law goes further, as it also defines and penalizes a number of offenses related to sexual exploitation. These offenses are not generally found in the Palermo Protocol.

It is important to clarify that these two categories of offenses – human trafficking and sexual exploitation – sometimes happen together and sometimes happen separately. For example, the two categories overlap in the case of sex trafficking, where vulnerable persons (generally young women and children) are trafficked into sex work or for the purpose of sexual exploitation. But there are also many cases of trafficking that is not associated with sexual exploitation, such as persons trafficked into forced labor situations that do not involve sex work or sexual exploitation. For example, there have been numerous cases documented of Cambodians who are trafficked into forced labor on fishing boats or as househelpers or other domestic workers. Likewise, sexual exploitation offenses can take place in the absence of human trafficking – such as in the case of pornography, or sexual relations with minors under 15 years old.

"to protect the rights and dignity of human beings, to improve the health and welfare of citizens"

Another objective for the TSE Law is the protection of human rights and the improvement of citizens' health and welfare. When interpreting the provisions of the TSE Law, this objective should be kept in mind and all interpretations that result should be consistent with the protection of human rights and the promotion of citizens' health and welfare. To this end, it is crucial that victims of trafficking and sexual exploitation are protected, rather than punished for any offenses or activities relating to their having been trafficked.

"to implement the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime"

The implementation of the United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (the "Palermo Protocol") is a key objective of the TSE Law. After Cambodia signed the Palermo Protocol on December 25, 2003, the draft of the TSE Law was revised in order to make it consistent with the provisions of the Palermo Protocol. This means that,

where questions arise, the TSE Law must be interpreted and applied in a manner consistent with the Palermo Protocol.

"or other international instruments or agreements with regard to human trafficking"

These international instruments or agreements, as far as they are relevant for the present purpose, include, but are not limited to, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (the CAT), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Rights of the Child (CRC). Cambodia is also a party to multilateral and bilateral Memoranda of Understanding regarding human trafficking in the Greater Mekong Sub-Region.

This provision is consistent with Cambodian law. The Constitution, which is the supreme law of Cambodia, states in Article 31(1) that:

> *The Kingdom of Cambodia recognizes and respects human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights, women's and children's rights.*

In July of 2007, Cambodia's Constitutional Council affirmed this proposition in a decision regarding an apparent conflict between Article 8 of the old Law on Aggravating Circumstances (2002) and Cambodia's obligations under the Convention on the Rights of the Child.. The Constitutional Council reviewed a petition by civil society organizations challenging Article 8 of the old Law on Aggravating Circumstances of Felonies as to be in breach of the Constitution and the Convention on the Rights of the Child, which states that "imprisonment of a child shall be used only as a measure of last resort and only for the shortest appropriate period of time." However, Article 8 of the Law on Aggravating Circumstances of Felonies removed the power of judges to reduce the sentence of persons (all persons including minors) convicted of felonies.

Previous to this law, judges were obliged by the 1992 transitional Criminal Law and Procedure of Cambodia (UNTAC Law), to take into account age as a mitigating factor when sentencing, and to reduce by one half any sentence imposed on a minor. But, after the 2002 Law on Aggravating Circumstances of Felonies was adopted, many children were sentenced to long imprisonment terms disproportional to their age and the crimes they have committed.

In deciding this petition, the Constitutional Council found that Cambodian law included the international human rights treaties to which Cambodia is party and that such treaties are directly applicable to domestic court proceedings. The Constitutional Council noted that

> *… at case trial, in principle, a judge … also relies on law. The term law here refers to the national law including the Constitution, which is the supreme law, and other applicable laws as well as the international conventions that Cambodia has recognized…*

This decision was therefore invoked by judges to once again mitigate or reduce the sentences imposed on minors, based upon the Convention on the Rights of the Child.

Thus, in the same vein, when enforcing the TSE Law, the courts should take international treaties into account, to the extent that they are relevant and contribute to the prevention and suppression of any kind of human trafficking and the protection of trafficking victims.

Article 2. Application of This Law within the Territory

This law shall apply to any offense committed in the territory of the Kingdom of Cambodia.

For the purposes of this law, the territory of the Kingdom of Cambodia is deemed to include any vessel or aircraft entitled to fly the flag of Cambodia.

An offense shall be considered to be committed in the territory of the Kingdom of Cambodia whenever one of its constituent acts (elements) takes place within the territory of the Kingdom of Cambodia.

This article provides for the application of the TSE Law within Cambodian territory, and also expands the definition of Cambodia's territorial jurisdiction for the purposes of applying the TSE Law. It is also important to note that this article grants application of the TSE Law even if only a single element of an offense takes place within Cambodian territory.

It should be noted, however, that Article 51 of the TSE Law provides that this article will be replaced when the Penal Code comes into force. (See discussion under Article 51 below.) Article 2 of the TSE Law is consistent with the new Penal Code (Book 1, Title 1, Section 1, "Offences Committed or Deemed to Have Been Committed in the Territory of the Kingdom of Cambodia") in particular, Article 13 ("Place where offence is committed"), Article 14 ("Offence committed on board a Cambodian vessel"), and Article 16 ("Offence committed on board a Cambodian registered aircraft") of the Penal Code.

"any offense committed in the territory of the Kingdom of Cambodia"

This article states that the TSE Law shall apply to any offense. The UNTAC Law in force at the time the TSE Law was promulgated sets out two categories of offenses: felonies and misdemeanors. The Penal Code, in contrast, establishes three categories of offenses: felonies, misdemeanors and petty crimes. However, these distinctions are irrelevant for any offense defined by the TSE Law that is committed within Cambodia, as this article provides that all such offenses may be punished.

"the Kingdom of Cambodia is deemed to include any vessel or aircraft entitled to fly the flag of Cambodia"

If an offense (or a constituent act or objective element of an offense – see below) defined by this law takes place on a Cambodia-flagged vessel or Cambodian registered aircraft, then the TSE Law shall apply. It does not matter where the vessel or aircraft is located at the time: even if the vessel or aircraft is physically located outside of the territory of the Kingdom of Cambodia when the offense or act is committed, then jurisdiction is still proper under this law.

"Whenever one of its constituent acts (elements) takes place within the territory of the Kingdom of Cambodia"

The third paragraph of this article is crucial, as it expands the application of this law in a fundamental way. This provision means that the offense is considered to have been committed in Cambodia whenever all or part of the crime has been committed in Cambodia – that is, whenever any one of the objective elements of the offense has been committed in Cambodia.

It should be noted that this means that all constituent elements of an offense still must be fulfilled for an offense to have been committed, but not all of those elements need to have been committed in Cambodia.

For example, Article 19 of this Law punishes a person who receives a victim who has been unlawfully removed for the purpose of profit making. If an offender in Thailand receives a victim who was unlawfully removed from a place in Cambodia, the Cambodian courts shall have jurisdiction over the offender, because one objective element of the crime (the unlawful removal of the victim) took place in Cambodia, even though the offender's act was committed in Thailand – and so, according to this article, the TSE Law shall be applied.

The terms "constituent acts" and "elements" are understood to refer to the objective elements of the crimes, not the subjective elements such as the offender's intent.

It is also important to note that the act or acts need not be committed by or against someone of Cambodian nationality. This article refers to territorial jurisdiction, and so the nationality of the offender and/or victim are not relevant; the only thing that matters is whether one or more constituent acts of an offense have taken place in Cambodian territory.

Article 3. Application of This Law outside the Territory
This law shall apply to any felonies or misdemeanors committed outside the territory of the Kingdom of Cambodia by a Khmer citizen.

This law shall apply to any felonies or misdemeanors committed outside the territory of the Kingdom of Cambodia by a foreigner if the victim is a Khmer citizen at the time of commission of the offense.

This article provides for the application of the TSE Law with respect to offenses that are committed entirely outside Cambodian territory, provided that either the offender or the victim is Cambodian.

This article does not mean that Cambodian police or judicial powers will be applied within the territory of a foreign state, but rather that Cambodia may choose to prosecute, and punish offenses under the TSE Law if and when the offender enters Cambodia. This is consistent with accepted principles of international law: a state generally does not enforce its law within the territory of a foreign state, but it may choose to punish crimes when the offender comes to the state's own jurisdiction.

However, under certain circumstances and/or as provided by relevant international treaties or agreements, Cambodian authorities might also choose to seek extradition or transfer of an accused offender so that the person can be tried in the Cambodian courts. Such extradition or transfer is generally governed by a treaty or memorandum of understanding that has been signed with the country from which Cambodia seeks to extradite or transfer the accused. However, in addition to the relevant legal issues, the decision to seek and grant extradition has a strong political and diplomatic dimension, and as such is generally beyond the scope of this document.

It should be noted that Article 51 of the TSE Law provides that this article will be replaced when the new Penal Code comes into force and is implemented. (See discussion under Article 51 below.) The new Penal Code (Book 1, Title 1, Chapter 3, Section 2, "Offences Committed Outside the Territory of the Kingdom of Cambodia") limits the scope of the application of the TSE Law outside the territory of Cambodia.

For example, Article 19 ("Felony or misdemeanour committed by a Cambodian national") of the Penal Code provides:

> *"Cambodian law is applicable to any felony committed by a Cambodian national outside the territory of the Kingdom of Cambodia.*
>
> *Cambodian law is applicable to misdemeanours committed by Cambodian nationals in a foreign country if the conduct is also punishable under the law of that country."*

In comparison, Article 3, paragraph 1, of the TSE Law provides:

> *"This law shall apply to any felonies or misdemeanors committed outside the territory of the Kingdom of Cambodia by a Khmer citizen."*

Moreover, Article 20 (Where the victim is a Cambodian national) of the new Penal Code sets forth that:

> *"Cambodian law is applicable to any felony committed by a Cambodian or foreign national outside the territory of the Kingdom of Cambodia if the victim is a Cambodian national at the time of the commission of the offence."*

Thus, under Article 20 of the Penal Code, misdemeanours and petty crimes committed against a Cambodian national outside Cambodia are not covered by Cambodian law, including the TSE Law.

"any felonies or misdemeanors"

This provision means that the TSE Law will only be applied to offenses committed outside the territory of Cambodia if those offenses are classified as felonies or misdemeanors. The TSE Law will not apply

to lesser offenses (such as soliciting, as defined by Article 24) that are committed outside the territory of Cambodia.

It should be noted, however, that with the entry into force of the new Penal Code, the TSE Law will no longer apply to misdemeanors committed outside Cambodia, unless the misdemeanor is committed by a Cambodian national and is also an offense punishable under the law of the foreign country, in which case the offender may be prosecuted in Cambodia in accordance with the TSE Law.

"committed outside the territory of the Kingdom of Cambodia"

Article 2 already provides that where any constituent act or objective element of an offense is committed in the territory (including flag vessels and aircraft) of the Kingdom of Cambodia, the TSE Law considers that the offense has been committed in Cambodia and, therefore, that the TSE Law shall be applied. This article, therefore, refers to situations where all constituent acts or elements of an offense have been committed outside Cambodian territory. In such circumstances, the TSE Law will be applied in two circumstances:

1) where the offense is committed by a Khmer citizen, or
2) where the victim is a Khmer citizen at the time of the commission of the offense.

These circumstances are described in greater detail below.

"committed…by a Khmer (Cambodian) citizen"

The provisions of the TSE Law shall be applied where someone who is a Cambodian citizen commits an offense against a foreigner, and the commission of the offense takes place outside Cambodia. This is an articulation of the *nationality principle* – a broadly accepted principle in international law, by which states seek to punish crimes committed by their nationals, even when those crimes were committed on the territory of a foreign state. Note that, under this paragraph, the application of the law is not limited by the perpetrator being Cambodian at the time the offense is committed (compare with Art 3(3) below). Under this provision, an offender who is not Cambodian at the time of the offense may still be prosecuted if that person later takes on Cambodian citizenship. This is consistent with the new Penal Code (Book 1, Title 1, Chapter 3, Section 2, Article 19 "Felony or misdemeanor committed by a Cambodian national"). Paragraph 3 of Article 19 provides that "these provisions shall be applicable even if the accused acquired Cambodian nationality after the acts which he or she is alleged to have committed".

It should be noted that the term "Khmer citizen" is used here to refer to a citizen of the Kingdom of Cambodia, regardless of that person's ethnicity. The use of this term does not mean that only ethnic Khmers are subject to the jurisdiction of the law; it is understood that there are members of many different ethnic groups (such as Cham, Vietnamese, Brou, Phnong, etc.) who are also citizens of the Kingdom of Cambodia. If a question arises regarding the citizenship of the accused offender or the victim, the courts should answer this question by looking at the relevant Cambodian laws and regulations. In particular the Law on Nationality (1996) defines that a person may acquire Khmer citizenship through birth (Article 4), either to a parent possessing Khmer citizenship (Article 4(1)) or to foreign parents who were themselves born and living legally in Cambodia (Article 4(2)(a)); through marriage (Article 5), or by naturalization (Articles 7-17).

"committed … by a foreigner if the victim is a Khmer (Cambodian) citizen"

The provisions of the TSE Law shall be applied where a foreigner commits an offense against a victim who is a Cambodian citizen at that time. This is an articulation of the *passive personality principle* in international law, whereby a state may assert jurisdiction over acts which, although committed abroad by a foreign national, have affected one or more citizens of the state.

As noted above, if a question arises regarding the citizenship of the accused offender or the victim, the courts should answer this question by looking at the relevant Cambodian laws and regulations. In particular the Law on Nationality (1996) defines that a person may acquire Khmer citizenship through birth (Article 4), either to a parent possessing Khmer citizenship (Article 4(1)) or to foreign parents who were themselves born and living legally in Cambodia (Article 4(2)(a)); through marriage (Article 5), or by naturalization (Articles 7-17).

"at the time of commission of the offense."

In the case where the law is applied to offenses committed outside the territory of the Kingdom of Cambodia because the victim is Cambodian, the application of the TSE Law is limited to cases where the victim is a Cambodian citizen at the time the offense is committed. This means that the TSE Law cannot be applied in the case of victims who are not Cambodian at the time of the offense although those victims later acquire Cambodian citizenship. This provision is consistent with the provisions of the new Penal Code (Book 1, Title 1, Chapter 3, Section 2 "Offences Committed Outside the Territory of the Kingdom of Cambodia), in particular, Article 20 ("Where the victims is a Cambodian national").

Article 4. Criminal Responsibility

An attempt to commit the felonies or misdemeanors stipulated in this law shall be punished and liable to the same punishment as if the offence has been committed.

An accomplice and instigator of the felonies or misdemeanors stipulated in this law shall be punished and liable to the same punishment as a principal who commits it.

An accomplice and instigator shall include, but not be limited to, the form of organizing or directing another to commit any of the felonies or misdemeanours stipulated in this law.

When a representative, agent, or employee for a legal entity or a principal commits any offense stipulated in this law in the scope of its business, or in the interest of the legal entity or the principal, the legal entity or the principal shall be punished with fine and additional penalties in accordance with the punishment stipulated in the relevant article.

This article defines the scope of criminal responsibility for persons who either attempt to commit one or more offenses defined by the TSE Law, or for those persons who assist or instigate a principal offender to commit an offense.

It should be noted that Article 51 of the TSE Law provides that this article will be replaced when the Penal Code comes into force. (See discussion under Article 51 below.)

"the felonies or misdemeanors stipulated in this law"

This provision means that criminal responsibility is borne by those who attempt, assist or instigate an offense under the TSE Law only if those offenses are classified as felonies or misdemeanors. Under the TSE Law, persons who attempt, assist or instigate a lesser offense (such as soliciting, as defined by Article 24) do not bear criminal responsibility.

"An attempt … shall be punished…"

"An accomplice and instigator … shall be punished…"

These provisions explicitly state that if a person attempts, assists or instigates the commission of a felony or misdemeanor defined by the TSE Law, that person will be punished.

The TSE Law does not define the terms "attempt", "accomplice" or "instigator", but definitions for these terms may be found elsewhere in Cambodian criminal law, including the new Penal Code, as follows:

- **Attempt.**

The new Penal Code provides a clear definition in Article 27 on Definition of Attempt, located in Book 1 (General Provisions for the Implementation of Criminal Law), Title 2 (Criminal Responsibility), Chapter 1 (General Provisions):

> *An attempt to commit a felony or, in the cases provided for by law, a misdemeanor is punishable when the following conditions are fulfilled:*
>
> *1. the perpetrator has started to commit the offence, which means, that the perpetrator has carried out acts which lead directly to the commission of the offence;*

2. *the perpetrator did not stop his/her act voluntarily but was interrupted solely by circumstances outside his/her will.*

A preparatory act that does not directly lead to the commission of the offence does not constitute the commencement of execution (of the offence).

An attempt to commit a petty crime shall not be punishable.

- **Accomplice.**

The new Penal Code, provides a clear definition, in Article 29 on Definition of an Accomplice, located in Book 1 (General Provisions for the Implementation of Criminal Law), Title 2 (Criminal Responsibility), Chapter 1 (General Provisions):

Described as an accomplice is *a person who knowingly, by aiding or abetting, facilitates an attempt to commit a felony or a misdemeanor, or its commission.*

An accomplice is punishable only if the felony or the misdemeanour was committed or was attempted.

An accomplice to a felony or a misdemeanour shall incur the same penalties as the perpetrator.

- **Instigator.**

The new Penal Code provides a clear definition, in Article 28 on Definition of Instigator, located in Book 1 (General Provisions for the Implementation of Criminal Law), Title 2 (Criminal Responsibility), Chapter 1 (General Provisions):

Described as an instigator of a felony or a misdemeanor is *a person who:*

1. *gives an instruction or order to commit a felony or misdemeanor;*
2. *provokes the commission of a felony or a misdemeanour by means of a gift, promise, threat, incitement, persuasion or abuse of his/her authority or power.*

An instigator is punishable only if the felony or the misdemeanour was committed or was attempted.

An instigator of a felony or a misdemeanor shall incur the same penalties as the perpetrator.

"…and liable to the same punishment"

This provision mandates that a person who attempts a felony or misdemeanor shall be "liable to the same punishment" as if the offense had been committed, and that an accomplice or instigator shall be "liable to the same punishment" as the principal.

This approach emphasizes criminal intent. Attempt, complicity and instigation all require criminal intent, and the TSE Law punishes this intent. Thus, even if a person merely attempted (but did not successfully complete) a trafficking or exploitation-related crime, the person bears the same liability of punishment as though the crime was successfully committed.

This does not mean that the person found guilty of attempt, complicity or instigation will necessarily receive the same degree of punishment: although the offender is liable to the same punishment, the judge may still exercise discretion with respect to the degree of punishment.

For example, for commission of the crime of "transportation with purpose", Article 17 of the TSE Law imposes a punishment of 7 to 15 years. A person who merely assists a principal offender to carry out the crime is liable to the same punishment as the principal: to be imprisoned for any length of time between 7 to 15 years; but the judge may sentence the accomplice to a lesser period of time than the principal within that range.

For cases that involve attempts, in considering the actor's intent at the time of attempt, courts should look at why the action in question did not ultimately result in the successful commission of the crime. Where the actor voluntarily and completely renounced his plan to commit the crime before any substantial step to the commission of the crime has been taken, he may be presumed not to have the same intent as someone who although intending to carry out the plan to its successful commission, was prevented from doing so by some circumstance. If the court considers that the offender's intent was less, then the judge may choose to apply a lighter sentence within the available range of punishment. However, if the actor could not carry out his criminal plan due to external circumstances that made the successful commission of the crime impossible or more difficult, or if the actor did not carry out his criminal plan but rather decided to wait for a "better time," the court may consider that the criminal intent is the same as that of a successful offender – and so the judge may apply a higher sentence within the available range of punishment.

For cases that involve complicity or instigation, the focus should also be on intent. Courts should consider whether an alleged accomplice or instigator intended to aid a principal in the commission of a crime or possessed knowledge that his action would likely aid the principal in committing the crime. If the alleged accomplice had neither purpose nor knowledge, it may be presumed that he did not have the required intent to be an accomplice or instigator. In theory, the definition of complicity or instigation requires possession of mutual knowledge between the principal and the accomplice or instigator. This means that the principal possessed knowledge that the accomplice or instigator intended to aid him or her in the commission of a crime and vice versa.

"An accomplice or instigator shall include, but not be limited to the form of organizing … to commit any of the felonies or misdemeanors stipulated in this law"

The TSE Law does not define the term "organizing", but the word organized in this article is understood to mean arranging with another person to commit a crime.

"When a representative, agent, or employee for a legal entity or a principal…"

The last provision of this Article can be applied to punish and to deter (impersonal) legal entities (for example, companies, organizations or associations) or principals involved in crimes stipulated in the TSE Law, even if the crimes were committed by the representative, agent or employee of the legal entity or principal, provided that the acts where done in the scope of the business or in the interest of the legal entity or principal.

Consistent with the new Penal Code (Book 1, Title 2, Chapter 4 "Criminal Responsibilities of a Legal Entity"), the criminal responsibility of a legal entity does not exclude or negate the criminal responsibility of the natural person for the same act.

"Representative" or "agent" refers to a person who is authorized to act on behalf of the legal entity or principal.

"Employee" as defined in Article 3 of the Labour Law means "any person of any sex or nationality, who has signed an employment contract in return for remuneration, under the direction and management of another person, whether that person is a natural person or legal entity, public or private. Neither the jurisdictional status of the employer nor that of the worker, nor the amount of remuneration, have any effect in determining whether or not a person is considered an employee".

"Legal entity" is explained in the Civil Code, Book 2 "Persons", Chapter 2 "Juristic Persons", and defined in its glossary as "any group of people or foundation which is granted jurisdictional status of being the subject of rights and obligations, such as, associations, companies, organizations, foundations, etc."; whether the legal entity is for profit or not for profit, and whether of limited or unlimited liability, including companies, partnerships, associations, organizations, foundations, etc.. Consistent with the new Penal Code (Book 1, Title 2, Chapter 4 "Criminal Responsibilities of a Legal Entity"), organs of the state are not considered legal entities with regard to questions of criminal responsibility.

"Principal" refers to a person who authorizes a representative or agent to act on the principal's own behalf.

For example, A is a hotel owner who authorizes B to recruit staff. A knows that B recruited female as staff to provide sexual services for hotel customers. In this case, both A, the principal, and B, the agent, are liable for the crime of procurement of prostitution.

"…commits any offense stipulated in this law in the scope of its business, or in the interest of the legal entity or the principal…"

According to this law, the legal entity or principal may be held liable only if the offender (representative, agent or employee) committed the offense in the same field of business as that carried out by the legal entity or principal, or in furtherance of the interests of the legal entity or principal.

For example, A is the agent of "B Company", which recruits Cambodians to work overseas. In this case, if A unlawfully removes a victim in order to send that person to work overseas through B Company's services, then B Company may also be held liable because the offense was committed in the scope of business of B Company and in furtherance of its interests.

"the legal entity or the principal shall be punished with fine"

If it is necessary to punish the legal entity or the principal, then this punishment should generally be imposed with a fine. In the case of a legal entity, the imposition of financial punishment is an appropriate punishment since a legal entity cannot be punished by imprisonment. This is also consistent with the new Penal Code (Book 1, Title 3, Chapter 7 "Penalties Applicable to Legal Entities"), which states that fines are the principal penalties to be imposed on a legal entity.

"and additional penalties"

This term refers to the additional penalties that are provided by Article 48 of the TSE Law. Some of these penalties – such as confiscation of materials or property that have a strong connection to the commission of the offense (Article 48(1)-(3)), or closure of a business (Article 48(4)) – may be appropriate when imposing punishment on a legal entity. (See discussion under Article 48 for more details.)

Article 5. Pronouncement of Principal Penalties

In all cases where an offence is punishable with both imprisonment and fine, the court may pronounce:

1. concurrence of imprisonment and fine
2. only imprisonment or
3. only fine.

Where the TSE Law provides for punishment through imprisonment and fines, this article gives the court discretion to impose either or both punishments. If the court finds an offender guilty of a crime that is punishable with imprisonment and a fine, the court may impose only the imprisonment, or only the fine or both the imprisonment and the fine.

Where an offense established by this law provides for penalties of imprisonment and fine, then, to be consistent with the objective of the law, in deciding whether or not to imprison offenders, the judge should consider imprisonment in order to ensure victim safety and prevent the offender from retaliating against a victim who has testified in court against the offender.

Article 6. Concurrence of Offences

During the prosecution of a single offender, when the accused is found guilty of several concurrent offenses, each of the penalties incurred may be pronounced. However, when several penalties of the same nature are incurred, only one penalty of that nature may be pronounced to the extent of the legally allowed higher maximum.

This article provides that, if an offender is found guilty of several concurrent offenses and sentenced to different punishments of the same nature, the punishment that is applied may not exceed the highest penalty provided for the most serious offense. However, punishments of different natures (for example, imprisonment and fines) may be imposed together.

It should be noted that Article 51 of the TSE Law provides that this article will be replaced when the Penal Code comes into force. (See discussion under Article 51 below. See also the Penal Code, Book 1, Title 3, Chapter 4 "Rules Applicable in Case of Concurrent Offenses"). It should be noted that Article 6 of the TSE Law is consistent with Article 137 of the Penal Code, which provides that where the accused is found guilty of concurrent offences and faces several penalties of the same nature, the court shall pronounce only one offence of this nature to the extent of the legally allowed maximum.

"During the prosecution of a single offender, when the accused is found guilty of several concurrent offenses"

This article applies in either of two situations:

1) During a single trial, an offender is found guilty of concurrent offenses; or
2) During trials before different courts, the offender is found guilty of concurrent offenses prior to being sentenced by the last court.

"Concurrent offenses" means all offenses committed by a person before he has been definitively sentenced for another offense. This is consistent with the definition set out in the Penal Code (Book 1, Title 3, Chapter "Rules Applicable in Case of Concurrent Offenses").

For example, if an offender unlawfully removes a victim in order to deliver the victim to another country, and also confines the victim, then the offender is liable to be found guilty for two crimes under the TSE Law: unlawful removal for cross-border transfer (Article 11) and confinement (Article 21). If the offender is prosecuted for both crimes in a single trial, then these crimes are considered concurrent offenses because they were committed before the offender is sentenced.

If, prior to the trial described above, the above offender is also accused in another court of committing the crime of sexual intercourse with a minor under 15 years, and is tried for that crime (under Article 42) in a second court, then the second court will consider as "concurrent offenses" any crimes that the first court found the offender committed.

"when several penalties of the same nature are incurred"

"Penalties of the same nature" means punishments that may differ in length of imprisonment or in amount of fine, but what is important is that the punishments are of the same type, either imprisonment penalty or fine penalty.

For example, the penalty of imprisonment from 2 to 5 years and the penalty of imprisonment from 7 to 15 years are penalties of the same nature. Similarly, a fine of 10,000 riels and a fine of 250,000 riels are penalties of the same nature.

"only one penalty of that nature may be pronounced to the extent of the legally allowed higher maximum"

This provision means that where the court finds an offender guilty of different concurrent offenses, and sentences that offender to different punishments of the same nature for those concurrent offenses, the court may only impose a punishment that does not exceed the maximum penalty established for the most serious offense. In other words, the punishment imposed should be within the range of punishment permitted by law for the most serious of the concurrent offenses for which the offender has been found guilty.

Thus, if the court punishes an offender to different terms of prison for concurrent offenses, the offender will only serve the single longest prison term applicable. Likewise, if the offender is found guilty of different concurrent offenses and is fined different amounts, the highest fine is the one that will be applied. However, if an offender is punished with imprisonment for one offense, and with a fine for another related offense, then both punishments will be applied.

For example, if an offender is found to have committed sexual intercourse with a minor under 15 years and committed the act of selling, buying or exchanging a person, then under article 42 of the TSE law the offender is subject to imprisonment from 5 to 10 years, and under article 14 of the TSE Law the offender is also subject to imprisonment from 5 to 10 years. In this case, the court may only impose one sentence of a maximum of 10 years for both punishments.

Additionally, under the Penal Code article 138 (separate prosecutions) , if the offender was found guilty of committing concurrent offenses and charged separately by more than one court, the penalty of the same nature shall be pronounced to the extent of the legally allowed higher maximum. Then, it is the last court that determines the total sentence or penalty of the same nature.

For example, if the offender is found guilty by one court of confining a child for more than one month (TSE Law, article 21), and found guilty by another court of selling the child (TSE Law, article 14), the offender will be punished with imprisonment from 5 to 10 years under article 21 and from 2 to 5 years under article 14. In this case, if the first court sentences the offender to 9 years in prison and the second court sentences the offender to 5 years in prison, under the principle of concurrence of offense, the second court may pronounce the total penalty to be imposed for both offenses to the extent of the higher maximum (10 years), that is: the total punishment of 10 years imprisonment is applied for both offenses , since the second punishment (5 years) absorbs 4 years of the first punishment (9 years).

Article 7. Definition of Minor
A minor in this law shall mean a person under the age of 18 years.

A person who keeps a minor under his/her supervision or control shall be presumed to know the minor's age unless the person proves that he/she reasonably believes the minor's age to be 18 years or more.

For the purpose of the TSE Law, this article defines the term "minor", thus setting the age of majority at 18 years.

It is important to note that the age established by this article is not the same as the age of sexual consent, which is defined by Articles 42-43 as 15 years old. Thus, a person who is at least 15 years of age can consent to have voluntary sexual relations (but note that the practice of prostitution is limited to persons who are at least 18 years old). (See discussion under Articles 42-44 for more details.)

"A minor in this law shall mean a person under the age of eighteen years."

This article defines that the term "minor" in the TSE Law means a person who is under the age of 18 years. Thus, anywhere that the term "minor" appears in the TSE Law, it always refers to a person under the age of 18 years.

The age of majority established in this article is important for determining criminal responsibility and/or punishment of an offender who is a minor, or the degree of punishment for an adult offender who is found guilty of a crime against a minor. Where the victim is a minor, some articles of the TSE Law impose a higher penalty for persons found guilty of committing the offense against the minor.

For an offender who is a minor, note that the Penal Code (Book 1, Title 2, Chapter 3 "Criminal Responsibilities of Minors") provides for limited criminal responsibility and punishment where the offender is a minor between the ages of 14 years and 18 years old. However, under Article 44 of this TSE Law, a minor under the age of fifteen years shall not be punished for committing an offense under Article 42 ("Sexual Intercourse with a Minor under Fifteen Years") or Article 43 ("Indecent Act against a Minor under Fifteen Years").[7]

The age of a minor is to be calculated from the day of his birth, in accordance with the Civil Code (Article 986 "Method of Calculation of Age").

[7] Although note that where a minor under fifteen years of age commits a crime such as rape or another type of sexual assault (see, for example, the Penal Code, Book 2, Title 2 "Sexual Assaults"), then the minor offender is not liable under Articles 42-43 of the TSE Law, but may still be liable under the relevant article of the criminal law.

"A person who keeps a minor under his/her supervision or control"

This provision refers to a person who has supervision or control of a minor. "Supervision or control" means either of two situations:

1) The legal power that is conferred by law to the parents, guardians or curators of a minor.
2) The practical supervision or control over a minor, even where the adult does not have legal authority over the minor as in point 1 above.

For example, if a parent asks a relative or neighbor to take care of his minor child for a period of time, the relative or neighbor is considered to have supervision or control of the minor. Similarly, if a minor is employed then the employer is considered to have supervision or control of the minor during working hours or while the minor is at work; if the minor is at school, then the minor's teacher and school principal are considered to have supervision and control of the minor.

"shall be presumed to know the minor's age unless the person proves"

This provision means that where a person has supervision or control of the minor, the TSE Law presumes that the person knows the age of the minor. Thus, this article shifts the burden of proof to the person that has supervision or control of the minor.

For example, if an adult has supervision or control over a minor victim and is found guilty of committing an offense against the minor victim, then, in this case, the offender cannot easily plead as a defense that he did not know the victim was a minor, because this article presumes that the person knows the minor's age as a result of his supervision and control of the minor.

If the offender in this example wishes to claim as a defense that he did not know the minor's age, he must offer proof that he reasonably believed that the minor was 18 years or older.

Although this article is about the age of majority and not the age of sexual consent, the presumption of knowledge by a person who has supervision or control of a minor also covers questions relating to the age of sexual consent as well – and in particular, with regard to the offenses set out in Article 42 ("Sexual Intercourse with a Minor under Fifteen Years") and Article 43 ("Indecent Act against a Minor under Fifteen Years") of the TSE Law.

For example, where a person has supervision or control of a minor and has sexual relations with that minor, this article presumes that the person knows the minor's age, and so the person cannot easily claim as a defense that he did not know the minor was below 15 years old.

"that he/she reasonably believes the minor's age to be eighteen years or more"

Where a person, who has supervision or control of a minor, wishes to claim as a defense that he believed the minor was 18 years or older, it is not sufficient for the accused to merely claim that the minor looked 18 years or older. In such a case, the accused must prove that such belief was reasonable.

In interpreting what constitutes a "reasonable belief," it is recommended that courts apply an objective approach and make a case-by-case assessment based on the facts of the case. To be a reasonable belief, means that an average person with average judgment should believe the minor to be 18 years or older. In considering whether such a belief is reasonable, courts may look at a variety of factors, including (but not limited to) the real age of the victim, representations of age made by documentation (for example, where the minor presents a falsified birth certificate or ID card which states that he is 18 years or older), etc.

Chapter 2 - The Act of Selling/Buying or Exchanging a Person

This chapter defines the offenses and establishes the punishments for crimes of selling/buying or exchanging a human being. As such, this chapter is the primary means by which the TSE Law seeks to implement the Palermo Protocol.

However, the approach of the TSE Law differs from that of the Palermo Protocol. The Palermo Protocol addresses the combination of several different acts, means and purposes in order to define the crime of "trafficking in persons". The TSE Law, in contrast, seeks to separate out these acts into specific and distinct offenses: thus, this chapter differentiates between the offenses of unlawful removal; unlawful recruitment; buying, selling or exchanging a person; transportation of a trafficking victim; and receipt of a trafficking victim. The TSE Law clearly defines and provides punishments for each offense, and in many cases also sets out aggravating factors and the corresponding heightened punishments.

In some countries, the related laws include provisions on victim protection. But in Cambodia, the TSE Law is part of the general criminal law, and so those provisions are not included here. The Royal Government of Cambodia has established and continues to establish standards on victim protection through other legal instruments, including relevant regulations and agreements.

The Royal Government of Cambodia has issued decisions and guidelines on victim protection and, at the time of this writing, is preparing national minimum standards on victim protection. For example, the Cambodian National Council for Children issued the Decision on Guidelines for the Protection of the Rights of Trafficked Children of the Kingdom of Cambodia (Decision No. 107, 20 December 2007). That same year, the Ministries of Justice, Interior, Women's Affairs, Health and Social Affairs, Veterans and Youth signed an agreement with 24 NGOs on Guidelines for Practices and Cooperation between the Relevant Government Institutions and Victim Support Agencies in Cases of Human Trafficking.

Cambodia has also signed international agreements that contain provisions on victim protection. In 2007, Cambodia signed the ASEAN regional agreement on the protection of child victims of trafficking.[8] Prior to 2007, Cambodia also signed bilateral Memoranda of Understanding with Thailand[9] and Vietnam,[10] as well as a regional agreement for the Greater Mekong Sub-region.[11]

[8] Southeast Asian Guidelines for the Protection of the Rights of Children Victims of Trafficking (December 2007).

[9] Memorandum of Understanding between the government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand on Bilateral Cooperation for Eliminating Trafficking in Children and Women and Assisting Victims of Trafficking, signed in Siem Reap on 31 May 2003. This agreement was supplemented by the Guidelines for Cooperation between Cambodia and Thailand on the Criminal Justice Process of Trafficking-Related Crimes.

[10] Agreement between the Royal Government of Cambodia and the Government of the Socialist Republic of Vietnam on Bilateral Cooperation for Eliminating Trafficking in Women and Children and Assisting Victims of Trafficking, signed in Hanoi on 10 October 2005.

[11] Memorandum of Understanding on Cooperation against Trafficking in Persons in the Greater Mekong Sub-Region, signed by the Government of the Kingdom of Cambodia in Rangoon, Myanmar, on 29 October 2004.

Article 8. Definition of Unlawful Removal
The act of unlawful removal in this law shall mean to:

1. remove a person from his/her current place of residence to a place under the actor's or a third person's control by means of force, threat, deception, abuse of power, or enticement, or
2. without legal authority or any other legal justification to do so, take a minor or a person under general guardianship or curatorship or legal custody away from the legal custody of the parents, care taker or guardian.

This article defines the term "unlawful removal", which is also referred to in Articles 9 to 11 of this chapter of the TSE Law. This article does not establish the crime of unlawful removal, and no prosecutions should be commenced under this article. Charges for the crimes relating to unlawful removal should be brought under the appropriate article (see Articles 9-11).

Unlawful removal is essentially similar to the crime of "kidnapping" as defined in the 1996 Trafficking Law and some other criminal laws.

This article defines "unlawful removal" in two different ways, although in both cases the key issue is that the victim cannot, as a matter of law, consent to his removal. Paragraph 1 requires that the offender carry out an act using certain means which nullify the victim's ability to give consent (e.g., through force or threat, or the use of drugs which nullify the victim's ability to consent), or which negate the victim's consent if it is fraudulently obtained (e.g. through deception, enticement). Paragraph 2 does not require any specific means, but requires that the offender commit the act against a victim of limited legal capacity who is under the custody or curatorship of another. Paragraph 2 is most commonly applied in situations involving the removal of a minor – who, by law, lacks the capacity to give consent. An offender commits the crime of unlawful removal when he fulfills either the first or the second definition.

Another difference between the definitions established in Paragraph 1 and Paragraph 2 is that Paragraph 1 requires that the victim be removed from "his/her current place of residence to a place under the actor's or a third person's control". This requirement does not exist in Paragraph 2, which only specifies that the victim be "taken away from the legal custody of the parents, care taker or guardian."

Paragraph 1 of this article sets out three principle elements of the crime:
1) Removal
2) Control
3) Means

These elements are described in detail below.

"remove a person from his/her current place of residence"

To commit the crime of unlawful removal, the offender must physically remove or take away a person (the victim) from his or her place of residence.

For the TSE Law, the term "place of residence" does not mean only the victim's house or place of abode, but also his "base and center of living" – that is, where the person habitually carries out his life. This definition is consistent with that given in Articles 34 to 36 of the Civil Code. In other words, the term "place of residence" in this article is intended to be broadly understood, and to include all places in the vicinity of the victim's physical residence. Removal from such a place means that the victim is moved far enough away from his residence and/or is otherwise physically prevented from accessing his residence.

For example, if a person is unlawfully removed while he is at work, this is considered a removal from his "place of residence" (even though he is removed from his work and not his house) because he can no longer go home from work as he usually does. Similarly, if the victim is a homeless person with no fixed abode, the "place of residence" refers to the area or areas where he habitually spends his time.

The TSE Law considers that the offender is the one who carries out or directs the removal, and not merely the person who transports the victim.

For example, an employer tells a taxi driver to take his female employee to a guesthouse where the employee is placed under a third person's control by one of the means specified in this article. The taxi driver merely transports the employee, without any knowledge of the offense and without using any of the means specified. In this case, the taxi driver is not liable, but the employer may be considered the offender and held liable under this article.

"to a place under the actor's or a third person's control"

For unlawful removal to take place, the victim must be removed to a place under the control of the offender or a third person. This means that the victim is placed under the control of another person, and is not able to voluntarily leave the place to which he is removed.

"by means of"

The definition of unlawful removal set out in Paragraph l requires that the offender use one of the following means to accomplish the removal of the victim. The shared characteristic of all of these means is that the victim has not freely or fully consented to his removal.

"force"

"Force" means the use of physical or psychological force, against the will of the victim. This article does not require that the offender use violence, nor that the victim resist or suffer injury as a result of the force used.

For example, if an offender takes hold of a person and pushes or pulls him, this is still considered using force even if the victim was not hurt in the process.

The courts may take note of the increased vulnerability of the victim and thus also especially consider the use of non-physical force, such as psychological force or coercion.

"threat"

"Threat" means both explicit and implied threats, which make the victim afraid of physical or psychological harm, or any other danger to himself or a third party.

For example, it is a threat if an offender removes a victim by convincing the victim that the offender will harm the victim's relative if the victim does not go with the offender.

The offender does not need to threaten the victim or a third party with physical harm; it is enough that the offender threaten to commit a felony or misdemeanor will be committed against a person (the victim or a third party). This is consistent with the section on "threats" in the new Penal Code (Articles 231-234).

Where the offender threatens to carry out a legal act, but uses the threat to carry out an offense, this is still considered a threat.

For example, if the offender loans money and threatens to enforce the loan in order to carry out an offense under the TSE Law, then this is still considered an offense.

Likewise, if the offender threatens to denounce an illegal immigrant to the competent authorities, and uses this threat to achieve the objective of committing any offense under the TSE Law, then this is still considered an offense.

"deception"

"Deception" means the situation where the offender uses lies, omissions or untruths, in words or conduct, to convince the victim to do something.

"abuse of power"

"Abuse of power" means any situation where a public official (including civil servants, persons in an elected position, or other appointed officials), uses his position or takes advantage of his position in order to carry out a wrongful act. This definition is consistent with that found in the new Penal Code

(see Book 4, Title 3, Chapter 1, Section 1, Sub-Section 2, "Abuse of Power against Individuals"). Often this abuse of power serves to exploit one or more persons who are in vulnerable circumstances, to convince the victim to do something.

It should be noted that the TSE Law as a whole shows a clear intent to punish severely any involvement by public officials in human trafficking. This includes but is not limited to positions such as officials of the government, police, military, teachers and staff in public schools or universities, doctors and staff of public hospitals or health centers, and persons holding an elected public position at any level.

"enticement"

"Enticement" refers to a situation where the offender lures the victim with false promises or by not providing full information, thereby convincing the victim to do something.

"Enticement" does not refer to legitimate offers of employment or legitimate advertisements of other sorts.

Paragraph 2 of this article has different elements than Paragraph 1. Paragraph 2 does not require that the offender use any specific means, but does require that the victim not have full legal capacity. Likewise, Paragraph 2 does not require that the victim be removed from "his/her current place of residence to a place under the actor's or a third person's control", but only specifies that the victim be "taken away from the legal custody of the parents, care taker or guardian."

Paragraph 2 of this article sets out three principle elements of the crime:

1) The offender has no legal authority or justification
2) The victim is a minor or other person under custody or curatorship
3) The offender takes the victim away from his parents, guardian or curator.

These elements are described in detail below.

"without legal authority"

This provision does not mean whether or not the accused holds a position of legal authority, such as being a public official. Rather, this phrase refers to the question of whether, according to law, the accused is legally entitled to remove the victim (a minor or other person lacking full capacity) from the legal custody of their parents, care taker or guardian.

Thus, unlawful removal without legal authority can occur in different ways:

- A person who possesses no legal authority removes a victim.

  For example, if a private citizen (someone who is not an official, and who has no authority under law) removes a minor victim without the consent of the minor's parents and also has no legal justification for doing so, then that removal has been done "without legal authority".

- A public official (such as a police or government official), who normally possesses the required legal authority, removes the victim in a manner prohibited by law.

  For example, if a police or government official removes a minor victim without the consent of the minor's parents and that removal is not allowed by law, then the TSE Law considers that the official has acted "without legal authority".

It should be noted that in some circumstances, private individuals or organizations may be specifically authorized to remove a person without full capacity against his/her will from a particular place.

For example, if an orphanage has been granted legal custody over the minors (the orphans) in its care, it may remove them to or from the orphanage.

"or any other legal justification to do so"

"Any other legal justification" refers to other justifications that are recognized by law.

For example, where a person acting within the scope of the law removes a child from the custody of

abusive parents, this removal is done in consideration of the best interests of the child and so may be recognized as such in the law.

"take a minor"

The term "minor" means any person under the age of 18 years, as set out in Article 7.

"or a person under general guardianship or curatorship or legal custody"

A person under "**general guardianship**" refers to a person who remains in a habitual condition of lacking the ability to recognize and understand the legal consequences of his actions due to mental disability. This definition is consistent with Article 24 of the Civil Code.

A person under "**curatorship**" refers to a person who has limited ability to recognize and understand the legal consequences of his actions due to mental disability. This definition is consistent with Article 28 of the Civil Code.

"Legal custody" refers to the exercise of rights and obligations belonging to parents of a minor. Where the minor's parents are dead or otherwise unable to care for the minor, legal custody may be granted by law to a guardian. This definition is consistent with the Civil Code (Book Seven "Relatives", Chapter 6 "Guardianship"). A legal guardian may be designated by the minor's parents by will (to take effect upon death) or determined by a court or by law.

For example, in the case of a divorce, the court may award legal custody of a child to one of the parents.

As another example, an orphanage that is owned or registered by the state has legal custody over the orphans who have been placed in its care in accordance with law.

However, it is important to note that the law does not allow parents to simply relinquish their parental rights by designating a guardian, without approval by the court or competent authority.

"away from the legal custody of the parents, care taker or guardian"

To commit the crime of unlawful removal, the offender must remove the victim from the legal custody of his parents, care taker or guardian.

This provision does not require that the offender use any specific means, nor that the victim be removed from "his/her current place of residence to a place under the actor's or a third person's control."

As noted above, the law does not allow parents to simply relinquish their parental rights without approval of the court or competent authority, and so a person who removes a minor may be an offender under this provision even if the minor's parent consents to the removal of the minor, if such removal is made in a manner not permitted by law.

For example, if a parent gives her child away, including her parental rights, to another person without following legal procedures, then the person may be considered to be an offender under this paragraph since he has no legal authority to assume parental or guardianship rights over the minor (unless he has a legal justification).

In the case of a minor without known parents or guardian (e.g. an abandoned street child), the minor may be considered to be under the general care and protection of the state. Thus, if a person who does not have legal authority or legal justification takes away the abandoned street child without approval of the competent authorities, then the person may be considered an offender under this paragraph.

Article 9. Unlawful Removal, inter alia, of Minor
A person who unlawfully removes a minor or a person under general guardianship or curatorship or legal custody shall be punished with imprisonment from 2 to 5 years.

The punishment for the offence stipulated in this article shall be remitted or mitigated when all of the following conditions are met:

1. the person taken under custody, being not less than fifteen (15) years of age, voluntarily gives genuine consent to the criminal act;
2. none of the means stipulated in subparagraph 1) of Article 8 of this law is used; and
3. the offender does not have any intent to commit an offense.

The prosecution for the offence stipulated in this article may be commenced only upon the filing of a complaint from the parent, custodian/care taker or lawful guardian concerned, unless any of the means stipulated in subparagraph 1) of Article 8 of this law is used.

This article establishes the offense and sets the punishment for unlawful removal of a minor or other person lacking legal capacity, which is defined in Article 8 above, with particular reference to Article 8 paragraph 2. Offenders must be prosecuted and punished under this article, not under Article 8. However, to find the offender guilty under this article, the prosecutor and court must ensure that the offender meets all the conditions under the definition of unlawful removal, as set out in either Paragraph 1 or Paragraph 2 of Article 8.

Where the offender carries out the act of unlawful removal of a person who possesses full legal capacity, and the unlawful removal is for the purpose of sexual exploitation, forced labor or certain other forms of exploitation, then the offender shall be prosecuted, and punished under Article 10.

Where the offender carries out the act of unlawful removal of a person with the purpose of transferring the victim across an international border, then the offender shall be prosecuted and punished under Article 11.

If an offender is found guilty of the offense in this article, he shall be punished with imprisonment for 2 to 5 years.

"The punishment …shall be remitted or mitigated when all of the following conditions are met"

When all the conditions listed in Paragraph 2 are met, this article requires the mitigation of the punishment imposed by the court. If only one or two of the conditions are met, the punishment is not mitigated or remitted.

The conditions required to mitigate punishment are the following:

"1. the person taken under custody, being not less than fifteen (15) years of age, voluntarily gives genuine consent to the criminal act;"

To meet this condition:

a) The victim must be at least 15 years of age, and
b) The victim must have agreed to be removed by the offender. For the purpose of this article only, a minor aged 15 years or older, or an adult person of limited capacity is deemed able to give consent to his or her own removal. Because of the vulnerability of the victim, the court should make special efforts to determine that the victim genuinely agreed.

"2. none of the means stipulated in subparagraph 1) of Article 8 of this law is used;" and

To mitigate the punishment, the court must also find that the offender did not remove the victim by means of force, threat, deception, abuse of power, or enticement. (For definitions of these terms, see discussion under Article 8 above).

"3. the offender does not have any intent to commit an offense."

The third condition required to mitigate punishment is that the court must find that the offender who unlawfully removes a minor doesn't have any intent to commit an offense.

For example, if an actor is in a romantic relationship with a minor aged 16 years, and the couple decides to run away from home (the minor is not compelled to leave against her will), the actor should not be prosecuted and is not liable for punishment under this article, because:

a) i. the minor was at least 15 years old;
   ii. the minor agreed to leave with the actor;
b) The actor did not remove the minor by means of force, threat, deception, abuse of power, or enticement
c) The actor did not intend to commit any crime.

On the contrary, if the actor does not comply with any one of the above conditions, then the punishment shall not be remitted or mitigated.

For example, the parents of a 15 year old child divorce, and the court gives full custody to the mother. The father is unhappy, and one day when the mother is out of the house, the father comes and takes the child away; and the child agrees to leave with the father. But the father knew that the court gave custody to the mother, and the father intentionally interfered with this custody. Therefore this act can be punished under this article because the father intended to commit a crime, and so did not meet all of the conditions listed above.

Paragraph 3 of this article establishes the conditions under which the prosecution of the offense may commence.

"The prosecution for the offence stipulated in this article may be commenced only upon"

According to this provision, a prosecution can start in either of the following two ways:

1) **"the filing of a complaint from the parent, custodian/care taker or lawful guardian concerned"**

The parent, custodian/care taker or lawful guardian files a complaint claiming that the victim has been unlawfully removed; or

2) **"and if any of the means stipulated in subparagraph 1) of Article 8 of this law is used."**

Before any complaint is made, the prosecutor can act if he reasonably believes that the victim was removed by means of force, threat, deception, abuse of power, or enticement. (For definitions of these terms, see discussion under Article 8 paragraph 1 above). In these cases, the police or prosecutor does not need to wait for the parents, care taker or guardian to complain, before the police or prosecutor can act (to investigate or to prosecute, etc.).

"shall be punished with imprisonment from 2 to 5 years"

This article provides a punishment from 2 to 5 years imprisonment. It should be noted that a similar provision exists in the new Penal Code, under Book 2, Title 3, Chapter 3, "Interference with the Custody of Minors". Article 327 (Taking Away a Minor) of the Penal Code provides a penalty of 1 month to 1 year and a fine of from 100,000 riels to 2,000,000 riels for the act of "taking away a minor from the person who has legal custody".

The penalties provided for in Article 9 of the TSE Law and Article 327 of the Penal Code contradict each other with respect to unlawful removal of minors. Following the principles of statutory interpretation and the rules set out in Articles 671 and 668 of the Penal Code (see discussion on "principles of statutory intepretation" in the Introduction and in Art. 50 below), the lower penalty under the newer Penal Code generally supersedes the penalty under the TSE Law with respect to the act of unlawful removal of minors. However, if the unlawful removal of minor is done within the context of human trafficking, then the TSE Law (which is a special law) will prevail and thus, the perpetrator must be charged and punished with the higher penalty under the TSE Law.

For example, if a divorced father of a 7-year old boy, eager to spend time with his son, takes away the child from the custody of his mother, who was awarded legal custody of the child in a court divorce proceeding, without permission from the boy's mother, and the father has no intention to exploit the child and commit child trafficking, the father should be prosecuted and punished under Art. 327 (Taking Away a Minor) of the Penal Code.

As another example, if a trafficker works in a factory illegally employing child workers and unlawfully removes a minor from the custody of the boy's parents for the purpose of child labour, the perpetrator should be charged under Article 10, "Unlawful Removal with Purpose" of the TSE Law.

Article 10. Unlawful Removal with Purpose
A person who unlawfully removes another for the purpose of profit making, sexual aggression, production of pornography, marriage against will of the victim, adoption or any form of exploitation shall be punished with imprisonment from 7 years to 15 years.

The offence stipulated in this article shall be punished with imprisonment from 15 to 20 years when:
- the victim is a minor,
- the offence is committed by a public official who abuses his/her authority over the victim,
- the offence is committed by an organized group.

The terms "any form of exploitation" in this Article and Article 12, 15, 17, and 19 of this law shall include the exploitation of the prostitution of others, pornography, commercial sex act, forced labor or services, slavery or practices similar to slavery, debt bondage, involuntary servitude, child labor or the removal of organs.

The consent of the victim to any of the intended purpose set forth in paragraph 1 of this article shall be irrelevant where any of the means set forth in subparagraph 1) of Article 8 of this law is used.

This shall apply to the offences stipulated in Article 15, 17, and 19 of this law as well.

This article establishes the offense and sets the punishment for unlawful removal of a person, and where the unlawful removal is done for the purpose of sexual exploitation, forced labor or certain other forms of exploitation.

Offenders must be prosecuted and punished under this article, not under Article 8. However, to find the offender guilty under this article, the prosecutor and court must ensure that the offender meets all the conditions under the definition of unlawful removal, as set out in Article 8. If the offender unlawfully removed the victim by means of force, threat, deception, abuse of power, or enticement, then the offender is liable even if the victim consented (or appeared to consent) to the removal.

Where the offender carries out the act of unlawful removal of a person with the purpose of transferring the victim across an international border, then the offender shall be prosecuted, tried and punished under Article 11.

If an offender is found guilty of the offense in this article, the court shall punish the offender with imprisonment for 7 to 15 years. However, if the court finds any one of the aggravating factors listed below, then the punishment is raised to 15 to 20 years.

The offense established in this article has two main elements, both of which must be fulfilled:

1) **Unlawful removal** (see Art 8 for definition)
   The offender must have committed an act of unlawful removal, which means that the offender must meet all the conditions in definition of unlawful removal as set out in Article 8(1) for persons possessing full legal capacity or Article 8(2) for persons not possessing full legal capacity. (See discussion under Article 8 for details.)

2) **For the purpose of…**

In addition to committing unlawful removal, the offender must have the specific intent to carry out any one of the following acts. The TSE Law does not require that the offender have successfully carried out these acts, but only that he have the intent to do so. Likewise, the law does not require that the offender have more than one of the following purposes; it is sufficient to have only one.

If the offender had one of the following purposes, and carried out the unlawful removal by means of force, threat, deception, abuse of power, or enticement, then according to Paragraph 4 of this article, the offender is liable even if the victim consented to this purpose.

"profit making"

The term "profit-making", as used in this article, means that the offender has carried out the unlawful removal in exchange for or in order to receive something of value, including but not limited to money, other items of value (gold, jewelry, etc.), services or persons. If the offender commits unlawful removal for this purpose, then he should be punished under this article.

"sexual aggression"

The term "sexual aggression", as used in this article, means that the offender has carried out the unlawful removal with the purpose of committing a sexual crime against the victim, such as rape or other sexual assault (see definitions of these crimes according to the applicable criminal law); or, in the case of a minor under 15 years, an indecent act as defined in Chapter 6 of this law. If the offender commits unlawful removal for this purpose, then he should be punished under this article.

If the offender commits unlawful removal for this purpose and then carries out the sexual aggression, he can be prosecuted for both offenses.

For example, if an actor unlawfully removes a person for the purpose of raping her, and then carries out the rape, he should be charged with the offense set out in this article (Unlawful Removal with Purpose) as well as for the crime of sexual aggression that he committed (Rape) as defined in the relevant article of the criminal law.

"production of pornography"

The offender is liable for punishment under this article if he commits unlawful removal for the purpose of creating or contributing to the creation of pornography. "Pornography" means the definition set out in Article 38 of this law.

It is not required that the offender receive or intend to receive any financial benefit from this act.

"marriage against will of the victim"

The offender is liable for punishment under this article if he commits unlawful removal for the purpose of compelling the victim to marry against his or her will.

It is not required that the offender receive or intend to receive any financial benefit from this act.

"adoption"

If the offender commits unlawful removal for the purpose of giving or selling the victim into adoption, then he should be punished under this article. (Regarding adoption, see Civil Code, Book Seven "Relatives", Chapter Four "Parents and Children", Section II "Adoption", as well as the Law on Inter-Country Adoption). It is not required that the offender receive any financial benefit from the adoption; it is enough that he have the purpose to give the victim directly to another person in adoption, or to give the victim to a person who will facilitate an adoption.

"any form of exploitation"
"The terms "any form of exploitation" … shall include"

The term "any form of exploitation" includes but is not limited to the acts listed in Paragraph 3 of this article: the exploitation of the prostitution of others, pornography, commercial sex act, forced labor or

services, slavery or practices similar to slavery, debt bondage, involuntary servitude, child labor or the removal of organs. For definitions of these terms, see discussion below. The court may also include other types of exploitation not listed here. If the offender commits unlawful removal for any of these purposes, then he should be punished under this article.

"the exploitation of the prostitution of others"

The term "the exploitation of the prostitution of others" refers to drawing financial benefit from prostitution, or committing the crimes set out in Articles 26 to 37 of this law.

"Prostitution" is defined in Article 23 of this law, and means having sexual intercourse with an unspecified person or other sexual conduct of all kinds in exchange for anything of value. (For the discussion of the definition, see the explanation of Article 23 below).

"pornography"

Because this article already penalizes unlawful removal for the purpose of the production of pornography, the use of the term "pornography" here refers to other offenses related to pornography, as set out in Article 39, such as the distribution, sale or lease of pornography.

"Pornography" means the definition set out in Article 38 of this law. The use of the term "pornography" here also refers to offenses related to child pornography, which are defined in Article 41 of this law. Where the pornography depicts a minor, such material is child pornography as defined in Article 40 of this law.

For more details, see discussions under Article 38 to Article 41.

"commercial sex act"

The term "commercial sex act" refers to any other sexual activity on account of which anything of value is given to or received by any person. This is a broader meaning than the term "prostitution", and may include other activities such as live sex performances.

"forced labor or services"

"Forced labor or services" means all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily. This definition is consistent with the International Labor Organization's Convention No. 29 on forced labor, adopted in 1930 and ratified by the Kingdom of Cambodia on February 24, 1969. Forced labor is prohibited under Cambodian[12] and international law.

"slavery or practices similar to slavery"

"Slavery" means the status or condition of a person over whom control is exercised to the extent that the person is treated like property.

"debt bondage"

"Debt bondage" means a system by which a person is kept in bondage or under the control of another person by making it impossible for the victim to pay off his or her real, imposed or imagined debts.

"involuntary servitude"

"Involuntary servitude" means the labor conditions and/or the obligation to work or to render services, from which the person in question cannot escape and which he or she cannot change.

"child labor"

The term "child labor" means any labor performed by a minor (a person under 18 years) and which is prohibited by law. The Labor Law allows minors to work in certain circumstances (see Articles 172 to 181 of the Labor Law), and such work is legal and therefore not covered by this term.

[12] Article 15 of Cambodia's Labor Law states that "forced or compulsory labor is absolutely forbidden."

"the removal of organs"

The "removal of organs" means taking out any body part from a person without his or her free, full and prior informed consent.

Punishment and aggravating factors

If an offender is found guilty of the offense in this article, he shall be punished with imprisonment for 7 to 15 years. Additional penalties may also be applied at the discretion of the court, as per Article 48.

As per Article 4 (Criminal Responsibility) paragraph 4, if the representative, agent or employee of a legal entity or principal is found guilty of this offense, the court may also punish the legal entity or principal with the additional penalties that are provided by Article 48 of the TSE Law. These additional penalties, if warranted, include punishments such as confiscation of materials or property (Article 48(1)-(3)), or closure of a business (Article 48(4)). (See discussion under Article 48 for more detail.)

However, if the court finds any one of the aggravating factors listed below, then the punishment is raised to 15 to 20 years.

The law does not require that all the aggravating factors be met; it is enough that any one of the factors be present for the offender to receive the heightened punishment.

- **the victim is a minor,**

If the victim is under 18 years of age, the offender shall receive the heightened punishment.

If the offender had supervision or control over the victim, then the TSE Law presumes that the offender knows the victim's age. See discussion under Article 7 (Definition of Minor) above.

- **the offence is committed by a public official who abuses his/her authority over the victim,**

If the offender is a public official, and carried out the act by means of an abuse of his power, then the offender shall receive the heightened punishment.

"Public official" means a civil servant or a citizen entrusted with an elected mandate. This includes but is not limited to positions such as officials of the government, police, military, teachers and staff in public schools or universities, doctors and staff of public hospitals or health centers, and persons holding an elected public position at any level.

"Abuse of authority" means the same as the term "abuse of power" that is discussed under Article 8 – that is, the situation where a civil servant or a citizen entrusted with an elected mandate, uses his position inappropriately or takes advantage of his position in order to carry out a wrongful act. This definition is consistent with that found in the new Penal Code (see Part 4, Book 4, Title 3, Chapter 1, Section 1, Sub-Section 2 "Abuse of Power against Individuals"). Often this abuse of power serves to exploit one or more persons who are in vulnerable circumstances, to convince the victim to do something that the victim would not do willingly.

It should be noted that the TSE Law as a whole shows a clear intent to punish severely any involvement by public officials in human trafficking.

- **the offence is committed by an organized group.**

If the offender acted as part of an organized group to commit the offense, then the offender shall receive the heightened punishment.

In Article 77 of the Penal Code, an "organized criminal group" means "any group or conspiracy that is established with a view to plan or to commit one or more offenses".

In relevant international law, the definition is similar, with the added requirement that the organized group must include three or more persons. For example, the UN Convention Against Transnational Organized Crime, to which the Palermo Protocol is attached and which Cambodia has ratified, defines an "organized

criminal group" in Article 2(a) as "a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit."

Therefore, an "organized group" means a formal or informal group of three or more people that is established to plan or commit a crime.

"The consent of the victim to any of the intended purpose set forth in paragraph 1 of this article shall be irrelevant where any of the means set forth in subparagraph 1) of Article 8 of this law is used."

If the offender unlawfully removed the victim by means of force, threat, deception, abuse of power, or enticement, then the offender is liable even if the victim consented (or appeared to consent) to the removal. This is because legally the victim cannot consent when one of the specified means is used.

Article 11. Unlawful Removal for Cross-border Transfer

A person who unlawfully removes another for the purpose of delivering or transferring that person to outside of the Kingdom of Cambodia shall be punished with imprisonment from 7 to 15 years.

A person who unlawfully removes another in a country outside of the Kingdom of Cambodia for the purpose of delivering or transferring that person to another country shall be punished the same as set out in the above-stated paragraph 1.

The offence stipulated in this article shall be punished with imprisonment from 15 to 20 years when :

- the victim is a minor,
- the offence is committed by a public official who abuses his/her authority over the victim,
- the offence is committed by an organized group.

This article establishes the offense and sets the punishment for unlawful removal of a person for the purpose of transferring that person across an international border. Offenders should be punished under this article, not under Article 8.

If the offender does not intend to transfer the victim across an international border, then the unlawful removal should be punished under Article 9 (Unlawful Removal of a Minor) or Article 10 (Unlawful Removal with Purpose).

The offense established in this article has two main elements, both of which must be fulfilled:

1) **Unlawful removal** (see Art 8 for definition)
   The offender must have committed an act of unlawful removal, which means that the offender must meet all the conditions in definition of unlawful removal as set out in Article 8(1) for persons possessing full legal capacity or Article 8(2) for persons not possessing full legal capacity. (See discussion under Article 8 for details.)

2) **For the purpose of cross-border transfer**
   The offender must have committed the unlawful removal for the purpose of transferring the victim across an international border. The offender does not need to cross or intend to cross an international border himself; what matters is that the offender intended to transfer the victim across a border. There is no requirement that the victim have actually crossed a border; it is sufficient to show that the offender intended to transfer the victim across the border.

It should be noted that this article does not refer to the act of smuggling or illegally transporting a person who voluntarily wishes to cross a border. If a person with full legal capacity wants to cross the border, then the element of unlawful removal (defined in Article 8 (1)) is not present, and so the offense in this article has not been committed. If the person lacks full legal capacity, then there may be liability if the conditions of unlawful removal specified in Article 8(2) are fulfilled.

"cross-border transfer"

According to this article, the term "cross-border transfer" means any of the following:

"for the purpose of delivering or transferring that person to outside of the Kingdom of Cambodia"

This provision penalizes the intent to transfer a victim from Cambodia to a foreign country.

"A person who unlawfully removes another in a country outside of the Kingdom of Cambodia for the purpose of delivering or transferring that person to another country"

This provision penalizes either of the following intents:

- To transfer a victim from one foreign country to another foreign country
- To transfer a victim from a foreign country to Cambodia

This article should be read together with the jurisdictional provisions of Article 2 and Article 3 above. For example, this article may be used to punish an act that occurs entirely outside of the territory of Cambodia, where either the victim or the offender is a Cambodian citizen. (See discussion under Article 3 for more details.) Likewise, if the victim is transferred between two foreign countries via a ship flying the Cambodian flag, jurisdiction is proper under Article 2. (See discussion under Article 2 for more details.)

Punishment and aggravating factors

If an offender is found guilty of the offense in this article, he shall be punished with imprisonment for 7 to 15 years. Additional penalties may also be applied at the discretion of the court, as per Article 48.

As per Article 4 (Criminal Responsibility) paragraph 4, if the representative, agent or employee of a legal entity or principal is found guilty of this offense, the court may also punish the legal entity or principal with the additional penalties that are provided by Article 48 of the TSE Law. These additional penalties, if warranted, include punishments such as confiscation of materials or property (Article 48(1)-(3)), or closure of a business (Article 48(4)). (See discussion under Article 48 for more detail.)

However, if the court finds any one of the aggravating factors listed below, then the punishment is raised to 15 to 20 years. The law does not require that all the aggravating factors be met; it is enough that any one of the factors be present for the offender to receive the heightened punishment.

- **the victim is a minor,**

If the victim is under 18 years of age, the offender shall receive the heightened punishment.

If the offender had supervision or control over the victim, then the TSE Law presumes that the offender knows the victim's age. See discussion under Article 7 (Definition of Minor) above.

- **the offence is committed by a public official who abuses his/her authority over the victim,**

If the offender is a public official, and carried out the act by means of an abuse of his power, then the offender shall receive the heightened punishment.

"Public official" means a civil servant or a citizen entrusted with an elected mandate. This includes but is not limited to positions such as officials of the government, police, military, teachers and staff in public schools or universities, doctors and staff of public hospitals or health centers, and persons holding an elected public position at any level.

"Abuse of authority" means the same as the term "abuse of power" that is discussed under Article 8 – that is, the situation where a civil servant or a citizen entrusted with an elected mandate, uses his position inappropriately or takes advantage of his position in order to carry out a wrongful act. This definition is consistent with that found in the new Penal Code (see Book 4, Title 3, Chapter 1, Section 1, Sub-Part 2

"Abuse of Power against Individuals"). Often this abuse of power serves to exploit one or more persons who are in vulnerable circumstances, to convince the victim to do something that the victim would not do willingly.

It should be noted that the TSE Law as a whole shows a clear intent to punish severely any involvement by public officials in human trafficking.

- **the offence is committed by an organized group.**

If the offender acted as part of an organized group to commit the offense, then the offender shall receive the heightened punishment.

In Article 77 of the Penal Code, an "organized criminal group" means "any group or conspiracy that is established with a view to plan or commit one or more offenses".

In relevant international law, the definition is similar, with the added requirement that the organized group must include three or more persons. For example, the UN Convention Against Transnational Organized Crime, to which the Palermo Protocol is attached and which Cambodia has ratified, defines an "organized criminal group" in Article 2(a) as "a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit."

Therefore, an "organized group" means a formal or informal group of three or more people that is established to plan or commit a crime.

It should be noted that a provision similar to this article can be found in Article 327 (Taking Away a Minor) of the Penal Code (see Book 2, Title 3, Chapter 3, "Interference with the Custody of Minors"). Compared to paragraph 1 of Article 327, paragraph 2 of Article 327 provides an aggravated penalty of 1 year to 3 years imprisonment and a fine of 2 million to 6 million riels for the act of "taking away a minor from the person who has legal custody…if the minor is kept outside the Kingdom of Cambodia." Paragraph 2 of Article 327 of the Penal Code is slightly different from Article 11 of the TSE Law in that the TSE Law merely requires an intent to transfer the minor across international borders, whereas the Penal Code requires that the minor be kept outside Cambodia. Article 327 of the Penal Code also provides a very light penalty compared to Article 11 of the TSE Law.

Due to the difference in the elements of the two offences, the two articles may be said to be complementary instead of conflicting. Thus, in the case of a minor who is unlawfully removed from Cambodia and then transferred to and kept in another country by the same perpetrator, the perpetrator may be charged under the Penal Code and the TSE Law.

Note that if the unlawful removal of minor is done within the context of human trafficking, then the perpetrator should be charged and punished with the heavier penalty under Article 11 of the TSE Law (which is a special law), pursuant to the rule set out in Article 668 of the Penal Code regarding special laws (see discussion on "principles of statutory intepretation" in the Introduction and in Art. 50 below).

Article 12. Unlawful Recruitment for Exploitation

The act of unlawful recruitment in this law shall mean to induce, hire or employ a person to engage in any form of exploitation with the use of deception, abuse of power, confinement, force, threat or any coercive means.

A person who unlawfully recruits another shall be punished with imprisonment from 7 to 15 years.

The offence stipulated in this article shall be punished with imprisonment from 15 to 20 years when:

- the victim is a minor,
- the offence is committed by a public official who abuses his/her authority over the victim,
- the offence is committed by an organized group.

This article establishes the offense and sets the punishment for unlawful recruitment.

It should be noted that unlawful recruitment does not refer to whether the employer is a legal entity or not, or whether or not the employer is properly registered or licensed with the Ministry of Labor or other relevant authorities.

It should also be noted that the offense of unlawful recruitment does not include any element of removal, transportation or transfer. A victim can be unlawfully recruited even when he has not been removed or transported to any other location. If a victim has been unlawfully removed and also unlawfully recruited, then the offender can be prosecuted and tried for both offenses under one of the Articles 9 to 11 (Unlawful Removal) and this article (Unlawful Recruitment). As per Article 6 (Concurrence of Offenses), offenders should be prosecuted, and punished under the most severe article that applies to their offense.

The offense of unlawful recruitment has three main elements, all of which must be fulfilled:

1) To induce, hire or employ a person
2) For the purpose of exploitation
3) By means of deception, abuse of power, confinement, force, threat or any coercive means

These elements are defined as follows:

"to induce, hire or employ a person"

This provision means to persuade a person to undertake an act, or to engage a person for the purpose of employment, or to enter into an employment relationship with the person. "Employment" as used here does not refer only to legitimate forms of work but also to illegal work.

"to engage in any form of exploitation"

The term "any form of exploitation" includes but is not limited to the acts listed in Article 10 Paragraph 3: **the exploitation of the prostitution of others, pornography, commercial sex act, forced labor or services, slavery or practices similar to slavery, debt bondage, involuntary servitude, child labor or the removal of organs**. For definitions of these terms, see discussion under Article 10(3). In addition, the court has the discretion to consider other types of exploitation not listed here. If the offender commits unlawful recruitment for any of these purposes, then he should be punished under this article.

"with the use of"

The definition of unlawful recruitment set out in Paragraph 1 requires that the offender use one of the following means to accomplish the recruitment of the victim. The shared characteristic of all of these means is that the victim has not freely or fully consented to his recruitment, either because he has been recruited against his will, because he has been deceived or because he was not given full information about the work.

"deception"

"Deception" means the situation where the offender uses lies, omissions or untruths, in words or conduct, to convince the victim to do something.

"abuse of power"

"Abuse of power" means any situation where a public official (including civil servants, persons in an elected position, or other appointed officials), uses his position or takes advantage of his position in order to carry out a wrongful act. This definition is consistent with that found in the new Penal Code (see Book 4, Title 3, Chapter 1, Section 1, Sub-Section 2 "Abuse of Power against Individuals"). Often this abuse of power serves to exploit one or more persons who are in vulnerable circumstances, to convince the victim to do something.

It should be noted that the TSE Law as a whole shows a clear intent to punish severely any involvement by public officials in human trafficking. This includes but is not limited to positions such as officials of the government, police, military, teachers and staff in public schools or universities, doctors and staff of public hospitals or health centers, and persons holding an elected public position at any level.

"confinement"

"Confinement" is defined in Chapter 3 of this law, and refers to a situation where the offender maintains custody over a victim against his will, thereby preventing the victim from leaving the place where he is confined.

"force"

"Force" means the use of physical or psychological force, against the will of the victim. This article does not require that the offender use violence, nor that the victim resist or suffer injury as a result of the force used.

For example, if an offender takes hold of a person and pushes or pulls him, this is still considered using force even if the victim was not hurt in the process.

The courts may take note of the increased vulnerability of the victim and thus also especially consider the use of non-physical force, such as psychological force or coercion.

"threat"

"Threat" means both explicit and implied threats, which make the victim afraid of physical or psychological harm, or any other danger to himself or a third party.

For example, it is a threat if an offender removes a victim by convincing the victim that the offender will harm the victim's relative if the victim does not go with the offender.

The offender does not need to threaten the victim or a third party with physical harm; it is enough that the offender threaten to commit a felony or misdemeanor against a person (the victim or a third party). This is consistent with the section on "threats" in the new Penal Code (Articles 231-234).

Where the offender threatens to carry out a legal act, but uses the threat to carry out an offense, this is still considered a threat.

For example, if the offender loans money and threatens to enforce the loan in order to carry out an offense under the TSE Law, then this is still considered an offense.

Likewise, if the offender threatens to denounce an illegal immigrant to the competent authorities, and uses this threat to achieve the objective of committing an offense under the TSE Law, then this is still considered an offense.

"coercion"

"Coercion" means the use of force or the use of a threat, express or implied, including some forms of non-violent or psychological use of force or threat. This includes:

a) The use of force or threat of harm (including death, physical injury or rape and sexual assault) or physical restraint of any person;
b) Any scheme, plan or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person;
c) Abuse or any threat linked to the legal status of a person;
d) Psychological pressure, including causing a person to believe that he, she or another person will be illegally removed, sold or confined.

Coercion in this sense is an act that is carried out against another person, such that they cannot exercise their free will.

Punishment and aggravating factors

If an offender is found guilty of the offense in this article, he shall be punished with imprisonment for 7 to 15 years. Additional penalties may also be applied at the discretion of the court, as per Article 48.

As per Article 4 (Criminal Responsibility) paragraph 4, if the representative, agent or employee of a

legal entity or principal is found guilty of this offense, the court may also punish the legal entity or principal with the additional penalties that are provided by Article 48 of the TSE Law. These additional penalties, if warranted, include punishments such as confiscation of materials or property (Article 48(1)-(3)), or closure of a business (Article 48(4)). (See discussion under Article 48 for more detail.)

However, if the court finds any one of the aggravating factors listed below, then the punishment is raised to 15 to 20 years. The law does not require that all the aggravating factors be met; it is enough that any one of the factors be present for the offender to receive the heightened punishment.

- **the victim is a minor,**

If the victim is under 18 years of age, the offender shall receive the heightened punishment.

If the offender had supervision or control over the victim, then the TSE Law presumes that the offender knows the victim's age. See discussion under Article 7 (Definition of Minor) above.

- **the offence is committed by a public official who abuses his/her authority over the victim,**

If the offender is a public official, and carried out the act by means of an abuse of his power, then the offender shall receive the heightened punishment.

"Public official" means a civil servant or a citizen entrusted with an elected mandate. This includes but is not limited to positions such as officials of the government, police, military, teachers and staff in public schools or universities, doctors and staff of public hospitals or health centers, and persons holding an elected public position at any level.

Abuse of authority" means the same as the term "abuse of power" that is discussed under Article 8 – that is, the situation where a civil servant or a citizen entrusted with an elected mandate, uses his position inappropriately or takes advantage of his position in order to carry out a wrongful act. This definition is consistent with that found in the new Penal Code (see Book 4, Title 3, Chapter 1, Section 1, Sub-Section 2 "Abuse of Power against Individuals"). Often this abuse of power serves to exploit one or more persons who are in vulnerable circumstances, to convince the victim to do something that the victim would not do willingly.

It should be noted that the TSE Law as a whole shows a clear intent to punish severely any involvement by public officials in human trafficking.

- **the offence is committed by an organized group.**

If the offender acted as part of an organized group to commit the offense, then the offender shall receive the heightened punishment.

In Article 77 of the Penal Code, an "organized criminal group" means "any group or conspiracy that is established with a view to plan or to commit one or more offenses".

In relevant international law, the definition is similar, with the added requirement that the organized group must include three or more persons. For example, the UN Convention Against Transnational Organized Crime, to which the Palermo Protocol is attached and which Cambodia has ratified, defines an "organized criminal group" in Article 2(a) as "a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit."

Therefore, an "organized group" means a formal or informal group of three or more people that is established to plan or to commit a crime.

Article 13. Definition of the Act of Selling, Buying or Exchanging a Person
The act of selling, buying or exchanging a person shall mean to unlawfully deliver the control over a person to another, or to unlawfully receive the control over a person from another, in exchange for anything of value including any services and human beings.

The act of procuring the act of selling, buying or exchanging a human being as an intermediary shall be punished the same as the act of selling, buying or exchanging a human being.

This article defines the act of "selling, buying or exchanging a human being", which is also referred to in Articles 14 to 16 of this chapter of the TSE Law. The punishment for this is also established in Articles 14 to 16 of this law. An offender should be charged and punished for the crimes relating to selling, buying or exchanging a human being under the appropriate article (see Articles 14 to 16).

It should be noted that both the buyer and the seller are liable for the offense committed.

The offense of selling, buying or exchanging a human being has two main elements, both of which must be fulfilled:

1) Unlawful delivery (selling) of control over a person or unlawful receipt (buying) of control over a person, and
2) In exchange of anything of value.

"to unlawfully deliver the control over a person to another"

To unlawfully deliver the control over a person (the trafficking victim) to another person (the buyer), means that the offender (the seller), who has already obtained control over a person, conveys that control to another person (the buyer) in exchange for anything of value.

Delivery is "unlawful" when it is done by unlawful means (for example, by force, threat, deception, abuse of power or enticement), when it is done for an unlawful purpose or, with respect to minors or other persons of limited legal capacity, when carried out in a manner that contains the elements of Article 8(2).

"to unlawfully receive the control over a person from another"

To unlawfully receive the control over a person (the trafficking victim) from another person (the seller) means that the offender (the buyer) is given that control by another person (the seller).

The receiving of control over the trafficking victim must be for an unlawful purpose or by unlawful means, such as by means of force, threat, deception, abuse of power or enticement or, with respect to minors or other persons of limited legal capacity, when carried out in a manner that contains the elements of Article 8(2). This is generally the case in a trafficking situation, but there might be exceptions. For example, if a person or NGO purchases a trafficking victim in order to free the victim, then this act should not be punished because it is not done for an unlawful purpose.

"control over a person"

The term "control over a person" should be interpreted broadly. It generally means that the act is done without any regard to the willingness or desire of the victim, and that the victim cannot refuse or prevent the transaction or any further instructions from the buyer or seller. However, control should not necessarily be limited to cases where the body of a victim is physically handed over or transferred between two people.

For example, if the seller A tells a trafficked sex worker B, to go and wait in front of a place, and A also tells the buyer C, a brothel owner, to pick up B at that place, delivery and receipt of the control over a person have occurred.

Another example of delivery and receipt of the control over a person that does not involve a physical hand-over would be a transfer of rights to control, for instance via a contract document. If the seller A, the owner of a brothel, transfers the contract document that binds B, a sex-worker, to work for A for a certain duration, to C, the owner of a different brothel, then this should be considered as delivery and receipt of the control over a person.

"in exchange for anything of value"

Buying a human being requires that the buyer provide "anything of value" in exchange for receiving the control over the victim from the seller.

Selling a human being requires that the seller receive "anything of value" in exchange for delivering the control over the victim to the buyer.

Exchanging a human being refers to the situation where the offender trades his control over one human being for control over another human being.

The term "anything of value" includes but is not limited to remuneration in cash or in kind; money; valuable items; property (including rights to own, use, sell or lease any kind of movable and immovable property); services; direct or indirect payments or fees (fees paid to, through or on behalf of another person); valuable information or control over another person.

The act of procuring … as an intermediary shall be punished the same

Paragraph 2 of this article provides that a person who acts as an intermediary to procure the purchase, sale or exchange of a human being (as defined in Paragraph 1 of this article), will receive the same punishment as a person who sells, buys or exchanges directly.

Article 14. The Act of Selling, Buying or Exchanging a Person

A person who sells, buys or exchanges another person shall be punished with imprisonment from 2 to 5 years.

This article sets the punishment for selling, buying or exchanging a human being, which is defined in Article 13 above. Offenders must be punished under this article, not Article 13.

This article applies only where there is no evidence of purpose. In general, it is expected that in cases of human trafficking, there will be some evidence of purpose. Thus, if there is any evidence that the offender sold, bought or exchanged a human being for the purpose of profit making, sexual aggression, production of pornography, marriage against will of the victim, adoption or any form of exploitation, then the offender should be prosecuted, and punished under Article 15 (The Act of Selling, Buying or Exchanging a Human Being with Purpose).

Likewise, if there is any evidence that the offender sold, bought or exchanged a human being for the purpose of cross-border transfer, then the offender should be prosecuted, and punished under Article 16 (The Act of Selling, Buying or Exchanging a Human Being for Cross-Border Transfer).

The article punishes the offense of selling, buying or exchanging a human being with a prison term of 2 to 5 years. Additional penalties may also be applied at the discretion of the court, as per Article 48.

As per Article 4 (Criminal Responsibility) paragraph 4, if the representative, agent or employee of a legal entity or principal is found guilty of this offense, the court may also punish the legal entity or principal with the additional penalties that are provided by Article 48 of the TSE Law. These additional penalties, if warranted, include punishments such as confiscation of materials or property (Article 48(1)-(3)), or closure of a business (Article 48(4)). (See discussion under Article 48 for more detail.)

Article 15. The Act of Selling, Buying or Exchanging a Person with Purpose

A person who sells, buys or exchanges another person for the purpose of profit making, sexual aggression, production of pornography, marriage against will of the victim, adoption or any form of exploitation shall be punished with imprisonment from 7 years to 15 years.

The offence stipulated in this article shall be punished with imprisonment from 15 to 20 years when:

- the victim is a minor,

- the offence is committed by a public official who abuses his/her authority over the victim,
- the offence is committed by an organized group.

This article establishes the offense and sets the punishment for the act of selling, buying or exchanging a human being, where the act is done for the purpose of sexual exploitation, forced labor or certain other forms of exploitation.

Offenders must be prosecuted and punished under this article, not under Article 13. However, to find the offender guilty under this article, the prosecutor and court must ensure that the offender meets all the conditions under the definition of selling, buying or exchanging a human being, as set out in Article 13.

Where the offender bought, sold or exchanged a human being but did not have any of the purposes listed in this article, the offender can be prosecuted under Article 14.

Where the offender carries out the act of selling, buying or exchanging a human being with the purpose of transferring the victim across an international border, then the offender must be prosecuted and punished under Article 16.

The offense established in this article has two main elements, both of which must be fulfilled:

1) **The Act of Selling, Buying or Exchanging a Person** (see Article 13 for definition)
   The offender must have committed an act of selling, buying or exchanging a human being, which means that the offender must meet all the conditions as set out in Article 13. (See discussion under Article 13 for details.)

2) **For the purpose of…**
   In addition to committing the act of selling, buying or exchanging a human being, the offender must have the specific intent to carry out any one of the following acts. The TSE Law does not require that the offender have successfully carried out these acts, but only that he have the intent to do so. Likewise, the law does not require that the offender have more than one of the following purposes; it is sufficient to have only one.

"profit making"

The term "profit-making", as used in this article, means that the offender has carried out the act of selling, buying or exchanging a human being in exchange for or in order to receive something of value, including but not limited to money, other items of value (gold, jewelry, etc.), services or persons. If the offender commits the act of selling, buying or exchanging a human being for this purpose, then he should be punished under this article.

"sexual aggression"

The term "sexual aggression", as used in this article, means that the offender has carried out the act of selling, buying or exchanging a human being with the purpose of committing a sexual crime against the victim, such as rape or other sexual assault (see definitions of these crimes according to the applicable criminal law); or, in the case of a minor under 15 years, an indecent act as defined in Chapter 6 of this law. If the offender commits the act of selling, buying or exchanging a human being for this purpose, then he should be punished under this article.

If the offender commits the act of selling, buying or exchanging a human being for this purpose and then carries out the sexual aggression, he should be prosecuted for both offenses.

For example, if an actor unlawfully buys a person for the purpose of raping her, and then carries out the rape, he should be charged with the offense set out in this article (The Act of Selling, Buying or Exchanging a Human Being with Purpose) as well as for the crime of sexual aggression that he committed (Rape) as defined in the relevant article of the criminal law.

"production of pornography"

The offender is liable for punishment under this article if he commits the act of selling, buying or

exchanging a human being for the purpose of creating or contributing to the creation of pornography. "Pornography" means the definition set out in Article 38 of this law.

It is not required that the offender receive or intend to receive any financial benefit from this act.

"marriage against will of the victim"

The offender is liable for punishment under this article if he commits the act of selling, buying or exchanging a human being for the purpose of compelling the victim to marry against his or her will.

It is not required that the offender receive or intend to receive any financial benefit from this act.

"adoption"

If the offender commits the act of selling, buying or exchanging a human being for the purpose of giving or selling the victim into adoption, then he should be punished under this article. (Regarding adoption, see Civil Code, Book Seven "Relatives", Chapter Four "Parents and Children", Section II "Adoption", and the Law on Inter-Country Adoption). It is not required that the offender receive any financial benefit from the adoption; it is enough that he have the purpose to give the victim directly to another person in adoption, or to give the victim to a person who will facilitate an adoption.

"any form of exploitation"

The term "any form of exploitation" includes but is not limited to the acts listed in Article 10 Paragraph 3: **the exploitation of the prostitution of others, pornography, commercial sex act, forced labor or services, slavery or practices similar to slavery, debt bondage, involuntary servitude, child labor or the removal of organs**. For definitions of these terms, see discussion under Article 10(3). In addition, the court has the discretion to consider other types of exploitation not listed here. If the offender commits the act of selling, buying or exchanging a human being for any of these purposes, then he should be punished under this article.

Punishment and aggravating factors

If an offender is found guilty of the offense in this article, he shall be punished with imprisonment for 7 to 15 years. Additional penalties may also be applied at the discretion of the court, as per Article 48.

As per Article 4 (Criminal Responsibility) paragraph 4, if the representative, agent or employee of a legal entity or principal is found guilty of this offense, the court may also punish the legal entity or principal with the additional penalties that are provided by Article 48 of the TSE Law. These additional penalties, if warranted, include punishments such as confiscation of materials or property (Article 48(1)-(3)), or closure of a business (Article 48(4)). (See discussion under Article 48 for more detail.)

However, if the court finds any one of the aggravating factors listed below, then the punishment is raised to 15 to 20 years.

The law does not require that all the aggravating factors be met; it is enough that any one of the factors be present for the offender to receive the heightened punishment.

- **the victim is a minor,**

If the victim is under 18 years of age, the offender shall receive the heightened punishment.

If the offender had supervision or control over the victim, then the TSE Law presumes that the offender knows the victim's age. See discussion under Article 7 (Definition of Minor) above.

- **the offence is committed by a public official who abuses his/her authority over the victim,**

If the offender is a public official, and carried out the act by means of an abuse of his power, then the offender shall receive the heightened punishment.

"Public official" means a civil servant or a citizen entrusted with an elected mandate. This includes but is not limited to positions such as officials of the government, police, military, teachers and staff in public schools or universities, doctors and staff of public hospitals or health centers, and persons holding an elected public position at any level.

Abuse of authority" means the same as the term "abuse of power" that is discussed under Article 8 – that is, the situation where a civil servant or a citizen entrusted with an elected mandate, uses his position inappropriately or takes advantage of his position in order to carry out a wrongful act. This definition is consistent with that found in the new Penal Code (see Book 4, Title 3, Chapter 1, Section 1, Sub-Part 2 "Abuse of Power against Individuals"). Often this abuse of power serves to exploit one or more persons who are in vulnerable circumstances, to convince the victim to do something that the victim would not do willingly.

It should be noted that the TSE Law as a whole shows a clear intent to punish severely any involvement by public officials in human trafficking.

- **the offence is committed by an organized group.**

If the offender acted as part of an organized group to commit the offense, then the offender shall receive the heightened punishment.

In Article 77 of the Penal Code, an "organized criminal group" means "any group or conspiracy that is established with a view to plan or to commit one or more offenses".

In relevant international law, the definition is similar, with the added requirement that the organized group must include three or more persons. For example, the UN Convention Against Transnational Organized Crime, to which the Palermo Protocol is attached and which Cambodia has ratified, defines an "organized criminal group" in Article 2(a) as "a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit."

Therefore, an "organized group" means a formal or informal group of three or more people that is established to plan or to commit a crime.

Article 16. The Act of Selling, Buying or Exchanging a Person for Cross-border Transfer

A person who sells, buys or exchanges another person for the purpose of delivering or transferring that person to outside of the Kingdom of Cambodia shall be punished with imprisonment from 7 to 15 years.

A person who sells, buys or exchanges another person in a country outside of the Kingdom of Cambodia for the purpose of delivering or transferring that person to another country shall be punished the same as set out in the above-stated paragraph 1.

The offence stipulated in this article shall be punished with imprisonment from 15 to 20 years when: - the victim is a minor,
- the offence is committed by a public official who abuses his/her authority over the victim,
- the offence is committed by an organized group.

This article establishes the offense and sets the punishment for selling, buying or exchanging a human being for the purpose of transferring that person across an international border. Offenders should be punished under this article, not under Articles 13 to 15.

If the offender does not intend to transfer the victim across an international border, then the act of selling, buying or exchanging a human being should be punished under Article 14 (The Act of Selling, Buying or Exchanging a Person) or Article 15 (The Act of Selling, Buying or Exchanging a Person with

Purpose).

The offense established in this article has two main elements, both of which must be fulfilled:

1) **The Act of Selling, Buying or Exchanging a Person** (see Article 13 for definition)

   The offender must have committed an act of selling, buying or exchanging a human being, which means that the offender must meet all the conditions for that act as set out in Article 13. (See discussion under Article 13 for details.)

2) **For the purpose of cross-border transfer**

   The offender must have committed the act of selling, buying or exchanging a human being for the purpose of transferring the victim across an international border. The offender does not need to cross or intend to cross an international border himself; what matters is that the offender intended to transfer the victim across a border. There is no requirement that the victim have actually crossed a border; it is sufficient to show that the offender intended to transfer the victim across the border.

It should be noted that this article does not refer to the act of smuggling or illegally transporting a person who voluntarily wishes to cross a border. To commit the offense in this article, the person being transferred across the border must come from or enter into a trafficked situation against his or her will.

For example, a Cambodian worker wants to go to Thailand, and so pays a smuggler to take him across the border, where he is free to go by himself to look for work. This is not a trafficking offense, and so cannot be punished by this law.[13] However, if upon reaching Thailand, the smuggler sells the worker into forced labor on a fishing boat, then this constitutes the offense set out in this article.

"cross-border transfer"

According to this article, the term "cross-border transfer" means any of the following:

1) "for the purpose of delivering or transferring that person to outside of the Kingdom of Cambodia"

This provision penalizes the intent to transfer a victim from Cambodia to a foreign country.

2) "A person who unlawfully removes another in a country outside of the Kingdom of Cambodia for the purpose of delivering or transferring that person to another country"

This provision penalizes either of the following intents:

- To transfer a victim from one foreign country to another foreign country
- To transfer a victim from a foreign country to Cambodia

This article should be read together with the jurisdictional provisions of Article 2 and Article 3 above. For example, this article may be used to punish an act that occurs entirely outside of the territory of Cambodia, where either the victim or the offender is a Cambodian citizen. (See discussion under Article 3 for more details.) Likewise, if the victim is transferred between two foreign countries via a ship flying the Cambodian flag, jurisdiction is proper under Article 2. (See discussion under Article 2 for more details.)

Punishment and aggravating factors

If an offender is found guilty of the offense in this article, he shall be punished with imprisonment for 7 to 15 years. Additional penalties may also be applied at the discretion of the court, as per Article 48.

As per Article 4 (Criminal Responsibility) paragraph 4, if the representative, agent or employee of a legal entity or principal is found guilty of this offense, the court may also punish the legal entity or principal with the additional penalties that are provided by Article 48 of the TSE Law. These additional penalties, if warranted, include punishments such as confiscation of materials or property (Article 48(1)-

[13] This may be an offense under other laws, however, such as those relating to immigration.

(3)), or closure of a business (Article 48(4)). (See discussion under Article 48 for more detail.)

However, if the court finds any one of the aggravating factors listed below, then the punishment is raised to 15 to 20 years.

The law does not require that all the aggravating factors be met; it is enough that any one of the factors be present for the offender to receive the heightened punishment.

- **the victim is a minor,**

If the victim is under 18 years of age, the offender shall receive the heightened punishment.

If the offender had supervision or control over the victim, then the TSE Law presumes that the offender knows the victim's age. See discussion under Article 7 (Definition of Minor) above.

- **the offence is committed by a public official who abuses his/her authority over the victim,**

If the offender is a public official, and carried out the act by means of an abuse of his power, then the offender shall receive the heightened punishment.

"Public official" means a civil servant or a citizen entrusted with an elected mandate. This includes but is not limited to positions such as officials of the government, police, military, teachers and staff in public schools or universities, doctors and staff of public hospitals or health centers, and persons holding an elected public position at any level.

Abuse of authority" means the same as the term "abuse of power" that is discussed under Article 8 – that is, the situation where a civil servant or a citizen entrusted with an elected mandate, uses his position inappropriately or takes advantage of his position in order to carry out a wrongful act. This definition is consistent with that found in the new Penal Code (see Book 4, Title 3, Chapter 1, Section 1, Sub-Section 2, "Abuse of Power against Individuals"). Often this abuse of power serves to exploit one or more persons who are in vulnerable circumstances, to convince the victim to do something that the victim would not do willingly.

It should be noted that the TSE Law as a whole shows a clear intent to punish severely any involvement by public officials in human trafficking.

- **the offence is committed by an organized group.**

If the offender acted as part of an organized group to commit the offense, then the offender shall receive the heightened punishment.

In Article 77 of the Penal Code, an "organized criminal group" means "any group or conspiracy that is established to plan or to commit one or more offenses".

In relevant international law, the definition is similar, with the added requirement that the organized group must include three or more persons. For example, the UN Convention Against Transnational Organized Crime, to which the Palermo Protocol is attached and which Cambodia has ratified, defines an "organized criminal group" in Article 2(a) as "a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit."

Therefore, an "organized group" means a formal or informal group of three or more people that is established to plan or commit a crime.

Article 17. Transportation with Purpose
A person who transports another person knowing that he or she has been unlawfully removed, recruited, sold, bought, exchanged or transported for the purpose of profit making, sexual aggression, production of pornography, marriage against will of the victim, adoption, or any form of exploitation shall be punished with imprisonment from 7 to 15 years.

The offence stipulated in this article shall be punished with imprisonment from 15 to 20 years when:
- the offence is committed by a public official who abuses his/her authority over the victim,
- the offence is committed by an organized group.

Article 17 establishes the offense and punishes a person who transports, for the purpose of profit making, sexual aggression, production of pornography, marriage against will of the victim, adoption, or any form of exploitation, another person who has been unlawfully removed, recruited, sold, bought, exchanged or transported.

The offense established in this article has three main elements, all of which must be fulfilled:

1) **The offender transports another person**
Transporting means conveying the other person from one place to another, in any sort of vehicle or by accompanying the person while walking.

2) **The offender knows that the person being transported has been unlawfully removed, recruited, sold, bought, exchanged or transported**
To be punishable under this Article, the transporter is required to have knowledge that the person or persons he or she transports have been unlawfully removed, recruited, sold, bought, exchanged or transported and the transporter must have the purpose of profit making, sexual aggression, production of pornography, marriage against will of the victim, adoption, or any form of exploitation.

For example, A unlawfully recruited or sold B, and then A hires C to transport B somewhere. Then in this case, if C knows that B was unlawfully recruited or sold by A, and C still transported B for the purpose of profit-making, sexual aggression, production of pornography, marriage against will of the victim, adoption or any form of exploitation, then C shall be liable under this article. But if C has no knowledge that B was unlawfully recruited or sold by A, then C shall not be liable under this article.

The offender who transports the victim may be the same offender who previously unlawfully removed, recruited, sold, bought or exchanged the victim. In this case, the offender can be prosecuted and punished for those offenses under the relevant articles of this law.

"unlawfully removed, recruited, sold, bought, exchanged, or transported"

"Unlawful removal" means the act defined in Article 8.

"Unlawful recruitment" means the act defined in Article 12.

"Sold, bought or exchanged" means the act defined in Article 13.

"Transported" means the act defined in Article 17.

3) **The offender transports the other person for the purpose of…**
In addition to committing the act of transportation, the offender must have the specific intent to carry out any one of the following acts. The TSE Law does not require that the offender have successfully carried out these acts, but only that he have the intent to do so. Likewise, the law does not require that the offender have more than one of the following purposes; it is sufficient to have only one.

Additionally, it should be noted that it is the act of transportation that must have been carried out with purpose. The person being transported does not have to have been unlawfully removed, recruited, sold, bought, exchanged or transported for the purpose of profit making, sexual aggression, production of pornography, marriage against will of the victim, adoption or any form of exploitation for this Article to be applicable.

For example, if B is a victim of a simple unlawful removal that is not combined with the purpose to commit any further crime, but is transported by A who has the purpose to exploit B, then A is still punishable under this Article.

"profit making"

The term "profit-making", as used in this article, means that the offender has carried out the act of transportation in exchange for or in order to receive something of value, including but not limited to money, other items of value (gold, jewelry, etc.), services or persons. If the offender commits the act of selling, buying or exchanging a person for this purpose, then he should be punished under this article.

"sexual aggression"

The term "sexual aggression", as used in this article, means that the offender has carried out the act of transportation with the purpose of committing a sexual crime against the victim, such as rape or other sexual assault (see definitions of these crimes according to the applicable criminal law); or, in the case of a minor under 15 years, an indecent act as defined in Chapter 6 of this law. If the offender commits the act of transportation for this purpose, then he should be punished under this article.

If the offender commits the act of transportation for this purpose and then carries out the sexual aggression, he can be prosecuted for both offenses.

For example, if an actor unlawfully transports a person for the purpose of raping her, and then carries out the rape, he can be charged with the offense set out in this article (Transportation with Purpose) as well as for the crime of sexual aggression that he committed (Rape) as defined in the relevant article of the criminal law.

"production of pornography"

The offender is liable for punishment under this article if he commits the act of transportation for the purpose of creating or contributing to the creation of pornography. "Pornography" means the definition set out in Article 38 of this law.

It is not required that the offender receive or intend to receive any financial benefit from this act.

"marriage against will of the victim"

The offender is liable for punishment under this article if he commits the act of transportation for the purpose of compelling the victim to marry against his or her will.

It is not required that the offender receive or intend to receive any financial benefit from this act.

"adoption"

If the offender commits the act of transportation for the purpose of giving or selling the victim into adoption, then he should be punished under this article. (Regarding adoption, see Civil Code, Book Seven "Relatives", Chapter Four "Parents and Children", Section II "Adoption", and the Law on Inter-Country Adoption). It is not required that the offender receive any financial benefit from the adoption; it is enough that he have the purpose to give the victim directly to another person in adoption, or to give the victim to a person who will facilitate an adoption.

"any form of exploitation"

The term "any form of exploitation" includes but is not limited to the acts listed in Article 10 Paragraph 3: **the exploitation of the prostitution of others, pornography, commercial sex act, forced labor or services, slavery or practices similar to slavery, debt bondage, involuntary servitude, child labor or**

the removal of organs. For definitions of these terms, see discussion under Article 10(3). In addition, the court has the discretion to consider other types of exploitation not listed here. If the offender commits unlawful transportation for any of these purposes, then he should be punished under this article.

Punishment and aggravating factors

If an offender is found guilty of the offense in this article, he shall be punished with imprisonment for 7 to 15 years. Additional penalties may also be applied at the discretion of the court, as per Article 48.

As per Article 4 (Criminal Responsibility) paragraph 4, if the representative, agent or employee of a legal entity or principal is found guilty of this offense, the court may also punish the legal entity or principal with the additional penalties that are provided by Article 48 of the TSE Law. These additional penalties, if warranted, include punishments such as confiscation of materials or property (Article 48(1)-(3)), or closure of a business (Article 48(4)). (See discussion under Article 48 for more detail.)

However, if the court finds either of the aggravating factors listed below, then the punishment is raised to 15 to 20 years.

The law does not require that both the aggravating factors be met; it is enough that either one of the factors be present for the offender to receive the heightened punishment.

- **the offence is committed by a public official who abuses his/her authority over the victim,**

If the offender is a public official, and carried out the act by means of an abuse of his power, then the offender shall receive the heightened punishment.

"Public official" means a civil servant or a citizen entrusted with an elected mandate. This includes but is not limited to positions such as officials of the government, police, military, teachers and staff in public schools or universities, doctors and staff of public hospitals or health centers, and persons holding an elected public position at any level.

Abuse of authority" means the same as the term "abuse of power" that is discussed under Article 8 – that is, the situation where a civil servant or a citizen entrusted with an elected mandate, uses his position inappropriately or takes advantage of his position in order to carry out a wrongful act. This definition is consistent with that found in the new Penal Code (see Book 4, Title 3, Chapter 1, Section 1, Sub-Section 2, "Abuse of Power against Individuals"). Often, this abuse of power serves to exploit one or more persons who are in vulnerable circumstances, to convince the victim to do something that the victim would not do willingly.

It should be noted that the TSE Law as a whole shows a clear intent to punish severely any involvement by public officials in human trafficking.

- **the offence is committed by an organized group.**

If the offender acted as part of an organized group to commit the offense, then the offender shall receive the heightened punishment.

In Article 77 of the Penal Code, an "organized criminal group" means "any group or conspiracy that is established with a view to plan or to commit one or more offenses".

In relevant international law, the definition is similar, with the added requirement that the organized group must include three or more persons. For example, the UN Convention Against Transnational Organized Crime, to which the Palermo Protocol is attached and which Cambodia has ratified, defines an "organized criminal group" in Article 2(a) as "a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit."

Therefore, an "organized group" means a formal or informal group of three or more people that is established to plan or to commit a crime.

Article 18. Cross-border Transportation (The Act of Bringing a Person Cross-border)
A person who transports (brings) another person to outside of the Kingdom of Cambodia knowing that he or she has been unlawfully removed, recruited, sold, bought, exchanged or transported shall be punished with imprisonment from 7 to 15 years.

A person who transports/brings another person in a country outside of the Kingdom of Cambodia to another country knowing that he or she has been unlawfully removed, recruited, sold, bought, exchanged or transported shall be punished the same as set out in paragraph 1 above.

The offence stipulated in this article shall be punished with imprisonment from 15 to 20 years when:
- the offence is committed by a public official who abuses his/her authority over the victim,
- the offence is committed by an organized group.

This article establishes the offense and sets the punishment for transporting a person across an international border, where the offender knows that the person has been unlawfully removed, recruited, sold, bought, exchanged or transported.

If the offender does not transport the victim across an international border, but instead transports the person for the purpose of exploitation, then the act may be punished under Article 17 (Transportation with Purpose).

The offense established in this article has three main elements, all of which must be fulfilled:

1) **The offender transports another person**
Transporting means conveying the other person from one place to another, in any sort of vehicle, by accompanying the person while walking or directing them across the border and ensuring that they cross.

2) **The offender knows that the person being transported has been unlawfully removed, recruited, sold, bought, exchanged or transported**
To be punishable under this Article, the transporter must transport the victim across an international border and must have knowledge that the person or persons he or she transports across the border have been unlawfully removed, recruited, sold, bought, exchanged or transported.

For example, A unlawfully recruited or sold B, and then A hires C to transport B to Thailand. Then in this case, if C knows that B was unlawfully recruited or sold by A, and C still transported B across the international border, then C shall be liable under this article. But if C has no knowledge that B was unlawfully recruited or sold by A, then C shall not be liable under this article.

"unlawfully removed, recruited, sold, bought, exchanged, or transported"

"Unlawful removal" means the act defined in Article 8.

"Unlawful recruitment" means the act defined in Article 12.

"Sold, bought or exchanged" means the act defined in Article 13.

"Transported" means the act defined in Article 17.

3) **Across an international border**
The offender must have transported the victim across an international border or (via the application of Article 4(1)) attempted to do so.

It should be noted that this article does not refer to the act of smuggling or illegally transporting a person who voluntarily wishes to cross a border. To commit the offense in this article, the person being transferred across the border must come from a trafficked situation.

For example, a Cambodian worker wants to go to Thailand, and so pays a smuggler to take him across the border, where he is free to go by himself to look for work. This is not a trafficking offense, and so cannot be punished by this law. However, if the smuggler is hired to transport across a border a person who was unlawfully removed and the transporter knows this, then this act would constitute the offense set out in this article.

"cross-border transportation"

According to this article, the term "cross-border transportation" means any of the following:

"transports (brings) another person to outside of the Kingdom of Cambodia"

This provision penalizes transporting a victim from Cambodia to a foreign country.

"A person who transports/brings another person in a country outside of the Kingdom of Cambodia to another country"

This provision penalizes either of the following acts:

- Transporting a victim from one foreign country to another foreign country
- Transporting a victim from a foreign country to Cambodia

This article should be read together with the jurisdictional provisions of Article 2 and Article 3 above. For example, this article may be used to punish an act that occurs entirely outside of the territory of Cambodia, where either the victim or the offender is a Cambodian citizen. (See discussion under Article 3 for more details.) Likewise, if the victim is transported between two foreign countries via a ship flying the Cambodian flag, jurisdiction is proper under Article 2. (See discussion under Article 2 for more details.)

Punishment and aggravating factors

If an offender is found guilty of the offense in this article, he shall be punished with imprisonment for 7 to 15 years. Additional penalties may also be applied at the discretion of the court, as per Article 48.

As per Article 4 (Criminal Responsibility) paragraph 4, if the representative, agent or employee of a legal entity or principal is found guilty of this offense, the court may also punish the legal entity or principal with the additional penalties that are provided by Article 48 of the TSE Law. These additional penalties, if warranted, include punishments such as confiscation of materials or property (Article 48(1)-(3)), or closure of a business (Article 48(4)). (See discussion under Article 48 for more detail.)

However, if the court finds either of the aggravating factors listed below, then the punishment is raised to 15 to 20 years.

The law does not require that both the aggravating factors be met; it is enough that either one of the factors be present for the offender to receive the heightened punishment.

- **the offence is committed by a public official who abuses his/her authority over the victim,**

If the offender is a public official, and carried out the act by means of an abuse of his power, then the offender shall receive the heightened punishment.

"Public official" means a civil servant or a citizen entrusted with an elected mandate. This includes but is not limited to positions such as officials of the government, police, military, teachers and staff in public schools or universities, doctors and staff of public hospitals or health centers, and persons holding an elected public position at any level.

Abuse of authority" means the same as the term "abuse of power" that is discussed under Article 8 – that is, the situation where a civil servant or a citizen entrusted with an elected mandate, uses his position inappropriately or takes advantage of his position in order to carry out a wrongful act. This definition is consistent with that found in the new Penal Code (see Book 4, Title 3, Chapter 1, Section 1 "Abuse of Power against Individuals"). Often this abuse of power serves to exploit one or more persons who are in vulnerable circumstances, to convince the victim to do something that the victim would not do willingly.

It should be noted that the TSE Law as a whole shows a clear intent to punish severely any involvement by public officials in human trafficking.

- **the offence is committed by an organized group**

If the offender acted as part of an organized group to commit the offense, then the offender shall receive the heightened punishment.
In Article 77 of the Penal Code, an "organized criminal group" means "any group or conspiracy that is established with the view to plan or to commit one or more offenses".

In relevant international law, the definition is similar, with the added requirement that the organized group must include three or more persons. For example, the UN Convention Against Transnational Organized Crime, to which the Palermo Protocol is attached and which Cambodia has ratified, defines an "organized criminal group" in Article 2(a) as "a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit."

Therefore, an "organized group" means a formal or informal group of three or more people that is established to plan or to commit a crime.

Article 19. Receipt of Person with Purpose
A person who receives, harbors, or conceals another person who has been unlawfully removed, recruited, sold, bought, exchanged, or transported for the purpose of profit-making, sexual aggression, production of pornography, marriage against the will of the victim, adoption or any form of exploitation shall be punished with imprisonment from 7 to 15 years.

The offence stipulated in this article shall be punished with imprisonment from more than 15 to 20 years when:
- the victim is a minor,
- the offence is committed by a public official who abuses his/her authority over the victim,
- the offence is committed by an organized group.

This article establishes the offense and punishes a person who receives, harbors or conceals, for the purpose of profit making, sexual aggression, production of pornography, marriage against will of the victim, adoption, or any form of exploitation, another person who has been unlawfully removed, recruited, sold, bought, exchanged or transported.

The offense established in this article has three main elements, all of which must be fulfilled:

1) **The offender receives, harbors or conceals another person**
The offender shall be punished under this article if he or she receives harbors or conceals the victim for the purpose of exploitation.

"A person who receives, harbors, or conceals another person"

"Receiving" means accepting or taking in.

"Harboring" means giving shelter to another person.

"Concealing" means hiding another person, either physically (for example by placing the victim in a secret place where he or she cannot be seen or found) or by other means such as deception (for example, lying to a third party about the identity of the victim).

2) The person, who was received, harbored or concealed by the offender, was previously unlawfully removed, recruited, sold, bought, exchanged or transported

This offense applies where the victim was received, harbored or concealed by the offender , but before this, the victim was unlawfully removed, recruited, sold, bought, exchanged or transported

To be liable under this Article, the offender is not required to have knowledge that the person or persons he or she receives, harbors or conceals have been unlawfully removed, recruited, sold, bought, exchanged or transported. What is important is the purpose of the offender in receiving, harboring or concealing the victim. Thus, if the offender receives, harbors or conceals a person for the purpose of exploitation, but is unaware that the person was unlawfully removed, then the offender is still punishable under this Article.

"who was unlawfully removed, recruited, sold, bought, exchanged, or transported"

"Unlawful removal" means the act defined in Article 8.

"Unlawful recruitment" means the act defined in Article 12.

"Sold, bought or exchanged" means the act defined in Article 13.

"Transported" means the act defined in Article 17.

3) The offender receives, harbors or conceals the other person for the purpose of…

In addition to committing the act of receiving, harboring or concealing, the offender must have the specific intent to carry out any one of the following acts. The TSE Law does not require that the offender have successfully carried out these acts, but only that he have the intent to do so. Likewise, the law does not require that the offender have more than one of the following purposes; it is sufficient to have only one.

Additionally, it should be noted that it is the act of receiving, harboring or concealing that must have been carried out with purpose. For this Article to be applicable, the person being received, harbored or concealed has to have been unlawfully removed, recruited, sold, bought, exchanged or transported for the purpose of profit making, sexual aggression, production of pornography, marriage against will of the victim, adoption or any form of exploitation.

For example, if B is a victim of a simple unlawful removal that was not committed for the purpose to commit any further crime, but is received, harbored or concealed by A who has the purpose to exploit B, then A is still punishable under this Article.

"profit making"

The term "profit-making", as used in this article, means that the offender has carried out the act of receiving, harboring or concealing in exchange for or in order to receive something of value, including but not limited to money, other items of value (gold, jewelry, etc.), services or persons. If the offender commits the act of receiving, harboring or concealing for this purpose, then he should be punished under this article.

"sexual aggression"

The term "sexual aggression", as used in this article, means that the offender has carried out the act of

receiving, harboring or concealing with the purpose of committing a sexual crime against the victim, such as rape or other sexual assault (see definitions of these crimes according to the applicable criminal law); or, in the case of a minor under 15 years, an indecent act as defined in Chapter 6 of this law. If the offender commits the act of receiving, harboring or concealing for this purpose, then he should be punished under this article.

If the offender commits the act of receiving, harboring or concealing for this purpose and then carries out the sexual aggression, he should be prosecuted for both offenses.

For example, if an actor unlawfully receives, harbors or conceals a person for the purpose of raping her, and then carries out the rape, he should be charged with the offense set out in this article (Receipt of Person with Purpose) as well as for the crime of sexual aggression that he committed (Rape) as defined in the relevant article of the criminal law.

"production of pornography"

The offender is liable for punishment under this article if he commits the act of receiving, harboring or concealing for the purpose of creating or contributing to the creation of pornography. "Pornography" means the definition set out in Article 38 of this law.

It is not required that the offender receive or intend to receive any financial benefit from this act.

"marriage against will of the victim"

The offender is liable for punishment under this article if he commits the act of receiving, harboring or concealing for the purpose of compelling the victim to marry against his or her will.

It is not required that the offender receive or intend to receive any financial benefit from this act.

"adoption"

If the offender commits the act of receiving, harboring or concealing for the purpose of giving or selling the victim into adoption, then he should be punished under this article. (Regarding adoption, see Civil Code, Book Seven "Relatives", Chapter Four "Parents and Children", Section II "Adoption", and the Law on Inter-Country Adoption). It is not required that the offender receive any financial benefit from the adoption; it is enough that he have the purpose to give the victim directly to another person in adoption, or to give the victim to a person who will facilitate an adoption.

"any form of exploitation"

The term "any form of exploitation" includes but is not limited to the acts listed in Article 10 Paragraph 3: **the exploitation of the prostitution of others, pornography, commercial sex act, forced labor or services, slavery or practices similar to slavery, debt bondage, involuntary servitude, child labor or the removal of organs**. For definitions of these terms, see discussion under Article 10(3). In addition, the court has the discretion to consider other types of exploitation not listed here. If the offender commits the act of receiving, harboring or concealing for any of these purposes, then he should be punished under this article.

Punishment and aggravating factors

If an offender is found guilty of the offense in this article, he shall be punished with imprisonment for 7 to 15 years. Additional penalties may also be applied at the discretion of the court, as per Article 48.

As per Article 4 (Criminal Responsibility) paragraph 4, if the representative, agent or employee of a legal entity or principal is found guilty of this offense, the court may also punish the legal entity or principal with the additional penalties that are provided by Article 48 of the TSE Law. These additional penalties, if warranted, include punishments such as confiscation of materials or property (Article 48(1)-(3)), or closure of a business (Article 48(4)). (See discussion under Article 48 for more detail.)

However, if the court finds any one of the aggravating factors listed below, then the punishment is raised to 15 to 20 years.

The law does not require that all the aggravating factors be met; it is enough that any one of the factors be present for the offender to receive the heightened punishment.

- **the victim is a minor,**

If the victim is under 18 years of age, the offender shall receive the heightened punishment.

If the offender had supervision or control over the victim, then the TSE Law presumes that the offender knows the victim's age. See discussion under Article 7 (Definition of Minor) above.

- **the offence is committed by a public official who abuses his/her authority over the victim,**

If the offender is a public official, and carried out the act by means of an abuse of his power, then the offender shall receive the heightened punishment.

"Public official" means a civil servant or a citizen entrusted with an elected mandate. This includes but is not limited to positions such as officials of the government, police, military, teachers and staff in public schools or universities, doctors and staff of public hospitals or health centers, and persons holding an elected public position at any level.

Abuse of authority" means the same as the term "abuse of power" that is discussed under Article 8 – that is, the situation where a civil servant or a citizen entrusted with an elected mandate, uses his position inappropriately or takes advantage of his position in order to carry out a wrongful act. This definition is consistent with that found in the new Penal Code (see , Book 4, Title 3, Chapter 1, Section 1, Sub-Part 2 "Abuse of Power against Individuals"). Often this abuse of power serves to exploit one or more persons who are in vulnerable circumstances, to convince the victim to do something that the victim would not do willingly.

It should be noted that the TSE Law as a whole shows a clear intent to punish severely any involvement by public officials in human trafficking.

- **the offence is committed by an organized group.**

If the offender acted as part of an organized group to commit the offense, then the offender shall receive the heightened punishment.

In Article 77 of the Penal Code, an "organized criminal group" means "any group or conspiracy that is established with a view to plan or to commit one or more offenses".

In relevant international law, the definition is similar, with the added requirement that the organized group must include three or more persons. For example, the UN Convention Against Transnational Organized Crime, to which the Palermo Protocol is attached and which Cambodia has ratified, defines an "organized criminal group" in Article 2(a) as "a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit."

Therefore, an "organized group" means a formal or informal group of three or more people that is established to plan or to commit a crime.

Article 20. Receipt of a Person for the Purpose of Assisting the Offender
A person who receives, harbors, or conceals a victim who has been unlawfully removed, recruited, sold, bought, exchanged, or transported for the purpose of assisting the offender who has unlawfully removed, recruited, sold, bought, exchanged or transported that victim shall be punished with imprisonment from 2 to 5 years and a fine from 4,000,000 to 10,000,000 riels.

The offence stipulated in this article shall be punished with imprisonment from 5 to 10 years when the victim is a minor.

This article establishes the offense and punishes a person who receives, harbors or conceals another person who has been unlawfully removed, recruited, sold, bought, exchanged or transported by another offender, with the purpose of assisting the other offender.

The offense established in this article has three main elements, all of which must be fulfilled:

1) **The offender receives, harbors or conceals another person**
To be punished under this article, the offender must receive, harbor or conceal the victim.

"A person who receives, harbors, or conceals another person"

"Receiving" means accepting or taking in.

"Harboring" means giving shelter to another person.

"Concealing" means hiding another person, either physically (for example by placing the victim in a secret place where he or she cannot be seen or found) or by other means such as deception (for example, lying to a third party about the identity of the victim).

2) **The person received, harbored or concealed by the offender was previously unlawfully removed, recruited, sold, bought, exchanged or transported**

For this offense to apply, the person who was received, harbored or concealed by the offender must have previously been unlawfully removed, recruited, sold, bought, exchanged or transported.

"who was unlawfully removed, recruited, sold, bought, exchanged, or transported"

"Unlawful removal" means the act defined in Article 8.

"Unlawful recruitment" means the act defined in Article 12.

"Sold, bought or exchanged" means the act defined in Article 13.

"Transported" means the act defined in Article 17.

3) **The offender acts with the purpose of assisting the initial offender who unlawfully removed, recruited, sold, bought, exchanged or transported the victim.**
In addition to committing the act of receiving, harboring or concealing, the offender must have the specific intent to assist the original offender – that is, the person who unlawfully removed, recruited, sold, bought, exchanged or transported the victim.

"To assist" means to act as an accomplice, as defined in Article 4.

The TSE Law does not require that the offender successfully provide this assistance, but only that he have the intent to do so.

Additionally, it should be noted that this intent to assist the initial offender presumes

knowledge that the victim was previously subject to unlawful removal, recruitment, sale, purchase, exchange or transportation committed by the initial offender. In other words, the person who receives, harbors or conceals the victim in order to assist the initial offender is presumed to know about the initial offender's acts against the victim.

Punishment and aggravating factors

If an offender is found guilty of the offense in this article, the court shall punish the offender with imprisonment from 2 to 5 years and a fine from 4,000,000 to 10,000,000 riels.

If the victim is a minor (a person under 18 years) then the punishment of imprisonment is raised to 5 to 10 years.

If the offender had supervision or control over the victim, then the TSE Law presumes that the offender knows the victim's age. See discussion under Article 7 (Definition of Minor) above.

Additional penalties may also be applied at the discretion of the court, as per Article 48.

As per Article 4 (Criminal Responsibility) paragraph 4, if the representative, agent or employee of a legal entity or principal is found guilty of this offense, the court may also punish the legal entity or principal with the additional penalties that are provided by Article 48 of the TSE Law. These additional penalties, if warranted, include punishments such as confiscation of materials or property (Article 48(1)-(3)), or closure of a business (Article 48(4)). (See discussion under Article 48 for more detail.)

Chapter 3 - Confinement

This chapter defines the punishments for the crimes of arrest, detention or confinement, and provides for an increased penalty where the crime is committed under aggravating circumstances. The provisions in this chapter of the TSE Law are similar to the crime of illegal confinement as set out in Article 35 of the UNTAC Law, and to the provisions on illegal arrest, detention and confinement in the Penal Code (see Book 2, Title 2, Chapter 4, Section 1 "Illegal Arrest, Detention and Confinement").[14]

Article 21. Abduction (Arrest), Detention or Confinement
A person who, without legal authority, arrests, detains or confines another person shall be punished with imprisonment from:

1. 3 to 5 years when the arrest, detention or confinement lasts less than one month;
2. 5 to 10 years when the arrest, detention or confinement lasts one month or longer.

This article defines the offense and punishment for a person who unlawfully arrests, detains or confines another person. This offense has several specific elements.

"without legal authority"

The phrase "without legal authority" refers to a person who acts without possessing any authority at all to conduct a particular act, or to a person with legal authority but who acts beyond the scope of the authority conferred by law or by the state.

Thus, arrest, detention or confinement without legal authority can occur in different ways:

- A person who possesses no legal authority arrests, detains or confines a victim.

  For example, if a private citizen (someone who is not an official, and who has no authority under law) confines a victim, then that confinement has been done "without legal authority".

- A person (generally a police or government official) who normally possesses the required legal authority arrests or detains or confines in a manner that the person knows is not allowed by law.

  For example, if a police or government official arrests or detains a victim, knowing that arrest or detention is not allowed by law (such as where the victim has committed no wrongful act, or where a wrongful act is committed by the victim but the law does not authorize arrest or detention for that act), then the TSE Law considers that the official has acted "without legal authority".

  For example, if a police officer detains a person beyond the time limit permitted by the Criminal Procedure Code[15] and with no further legal authorization (such as a court order), then such an act may be considered an illegal detention.

It should be noted that in some circumstances, private individuals or organizations may be granted by law the authority to keep someone against their will in a particular place, when the person being confined does not by law have full capacity (such as minors or persons who have been declared by the court to lack full capacity).

For example, if an orphanage has been granted legal custody over the minors (the orphans) in its care, it thus can require that they not leave the orphanage.

However, it is important to note that the right to take care of a person is different from the right to

[14] It should be noted, however, that the punishments stipulated in the Penal Code are different in some respects from those stipulated in this chapter.
[15] The Criminal Procedure Code generally permits the police to detain a suspect in custody for 48 hours; for persons suspected of committing a felony, this period can be extended another 24 hours provided that the relevant legal authorities give their permission. See Criminal Procedure Code, Article 96 ("Police Custody").

confine the person.

For example, an organization that works on social rehabilitation and which obtains the legal authorization to receive and take care of certain persons (such as trafficking victims, drug users, street children, etc.), nonetheless does not have the legal authority to confine them against their will or prevent them from leaving the organization's facilities.

Employers also do not have any right to confine a worker against his will. The employer can require as a condition of employment that the worker not leave the workplace during the working hours (except during break times), but the employer has no legal authority to detain or confine the worker, or to require that the worker remain in the workplace beyond the legal and agreed working hours. (If the worker chooses to leave during working hours, the employer can only discipline or dismiss the worker from his job, to the extent permitted by the Labor Law.)

Thus, for example, a household employer may not prohibit a domestic worker from leaving the house.

"arrests, detains or confines another person"

This article punishes an offender who unlawfully arrests, detains or confines another person. The terms arrest, detain or confine mean as follows:

- "Arrest" in this article refers to taking custody of another person by the police, competent official or a private citizen without authority or beyond the authority conferred to him/her by law and then keeping the victim or transferring the victim to another place where the victims is not free to leave.
- "Detain" and "confine" in this article both refer to maintaining custody or control over another person, by the police, competent official or private person, without authority or beyond the authority conferred to him/her by law, and preventing the victim from leaving the place where he/she is detained.

With respect to the means listed above, it is important to note that "threat" means both explicit and implied threats.

Similarly, the concept of "confinement" should be broadly interpreted, and does not refer only to physical confinement of the victim (e.g., keeping the victim in a locked room). There are many other forms of confinement which also qualify, such as psychological confinement (confinement based on threats), professional confinement (e.g., an employer who keeps the worker's passport or other documentation in the employer's possession as a guarantee, or who keeps the worker from leaving by threatening to fire him).

"shall be punished with imprisonment"

This article specifies that the applicable punishment is imprisonment only. The article does not allow the offender to avoid imprisonment by paying a fine.

"3 to 5 years when the arrest, detention or confinement lasts less than one month"

This article does not specify a minimum duration of the arrest, detention or confinement; the punishment (3 to 5 years imprisonment) is the same for all offenses where the victim has been arrested, detained or confined for less than one month. However, as in the sentencing for any criminal act, courts have discretion to consider mitigating circumstances and reduce the sentence as appropriate and as allowed by law. (See, the section on mitigating circumstances in the new Penal Code, , Book 1, Title 3, Chapter 2, Section 2 "Mitigating Circumstances").

It should be noted that the new Penal Code sets out a ifferent range of punishments for the offenses of unlawful arrest, detention and confinement (see, Book 2, Title 2, Chapter 4, Section 1 "Unlawful Arrest, Detention and Confinement"). In particular, Article 253 of the Penal Code prescribes a penalty of 1 to 3 years imprisonment in case the unlawful arrest, detention or confinement is for less than 48 hours. Such penalty is lighter than that of Article 21 of the TSE Law which prescribes an imprisonment of 3 to 5 years when the arrest, detention or confinement lasts (for any period) less than 1 month. Following the principles of statutory interpretation and the rules set out in Articles 671 and 668 of the Penal Code (see discussion on "principles of statutory intepretation" in the Introduction and in Art. 50 below), the lower

penalty under the newer Penal Code generally supersedes the penalty under the TSE Law in so far as the unlawful arrest, detention and confinement are for less than 48 hours. However, if the unlawful arrest, detention and confinement (less than 48 hours) is committed within the context of human trafficking, the TSE Law (which is a special law) will prevail and thus, the perpetrator may be charged and punished with the higher penalty of the TSE Law.

For example, A, an owner of a printing company, unlawfully confines B, an employee, inside the printing room for suspecting B to have stolen company money intended for a supplier. A refuses to release B until B returns the money stolen. After 45 hours, A releases B upon learning that the money has in fact been taken by C, the office manager, and paid to their supplier. This case does not involve an element of trafficking, and thus, the perpetrator should be prosecuted under Article 253 of the Penal Code for the offence of unlawful detention and confinement.

As another example, X, a trafficker, lures Y, a young lady, to leave her hometown with her to go to work as a waitress in a restaurant in Phnom Penh, which doubles as a brothel in the evenings. Z, the brothel owner, then pays X some money and locks up Y for almost two days before Y is rescued by her parents. In this case, Z may be prosecuted under Article 21, paragraph 1.1 of the TSE Law for the unlawful detention and confinement of Y and punished with 3 to 5 years imprisonment, as it is a trafficking-related offense.

Article 22. Aggravating Circumstances
A person who, without legal authority, arrests, detains or confines another person shall be punished with life imprisonment when:
1. the offense is accompanied with torture or barbarous act;
2. the offense is followed by the death of that person;
3. the offense is committed to obtain payment of money.

This article mandates that an offender be punished with life imprisonment if he has arrested, detained or confined another person under certain specific circumstances.

It should be noted that the new Penal Code sets out a different range of punishments for aggravating circumstances relating to the offenses of unlawful arrest, detention and confinement (see Book 2, Title 2, Chapter 4, Section 1 "Unlawful Arrest, Detention and Confinement"). In particular, aggravating circumstances of Article 254 of the Penal Code prescribes a lower prison term of 15 to 30 years compared to Article 22 of the TSE Law which prescribes a higher prison term of life imprisonment. Following the principles of statutory interpretation and the rules set out in Articles 671 and 668 of the Penal Code (see discussion on "principles of statutory interpretation" in the Introduction and in Art. 50 below), the lower penalty under the newer Penal Code generally supersedes the penalty under the TSE Law. However, if the offense involved is committed within the context of human trafficking, the TSE Law (which is a special law) will prevail and thus, the offender may be charged and punished with the penalty under the TSE Law.

"the offense is accompanied with torture or barbarous act"

If the offender arrests, detains or confines another person, and in connection with that arrest, detention or confinement also commits torture or a barbarous act, then the offender must be punished with life imprisonment.

The TSE Law does not define "torture" or "barbarous act". However, the term "torture" is used in Cambodian criminal law, including the laws in force at the time the TSE Law was promulgated (see e.g. Article 12 of the UNTAC Law, and Article 7 of the Law on Aggravating Circumstances) as well as the new Penal Code (see e.g., Book 2, Title 2, Chapter 2 , Section 1 "Torture and Barbarous Acts"). Although these laws do not define the term "torture", the TSE Law is understood to incorporate (through reference to implementation of other international treaties, in Article 1 of the TSE Law) the definition set out in the Convention against Torture. Cambodia ratifed the Convention against Torture on 15 October 1992. Article 1 of the Convention against Torture defines "torture" as:

> "…any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or

a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind..."

For the TSE Law, the term "torture" is defined by two key elements:

1) severe pain and suffering, whether physical or mental;
2) that is intentionally inflicted.

It should be noted that while international law considers that torture can only be committed in connection with a public official or a person acting in an official capacity, in Cambodian law the crime of torture also applies to acts committed by private individuals. This is consistent with the approach set out in relevant provisions of the new Penal Code (see , Book 2, Title 2, Chapter 2, Section 1 "Torture and Barbarous Acts").

The term "barbarous acts" is not defined in Cambodian or international law, but is presumed to refer to other ill-treatment that is of a similar level of severity as torture. In this sense, it can be understood as similar to the term "cruel, inhuman or degrading treatment", which is also used (but not defined) in the Convention against Torture.

"the offense is followed by the death of that person"

If a person is arrested, detained or confined, and then dies in connection with the arrest, detention or confinement, then the offender (the person who arrests, detains or confines the victim) must be punished with life imprisonment.

In such a case, it is not enough that the victim dies after being arrested, detained or confined; rather, the victim must have died as the result of the arrest, detention or confinement. However, this article does not require that the offender have intended to cause the death of the victim. If the offender did not intend to kill the victim, but the victim still died as the result of the arrest, detention or confinement (for example, the victim is sick or injured and is not allowed to leave to seek medical care or take needed medicine), then the offender must be sentenced to life imprisonment. This approach is consistent with the approach found in the new Penal Code, which specifies heightened punishment for an offender who illegally arrests, detains or confines a person and, in so doing, "causes the death of the victim without having intention of so doing." (See new Penal Code, Book 2, Title 2, Chapter 4, Section 1 "Illegal Arrest, Detention and Confinement").

"the offense is committed to obtain payment of money"

If a person is arrested, detained or confined in order to obtain money, then the offender (the person who arrests, detains or confines the victim) must be punished with life imprisonment.

Chapter 4 - Prostitution and Child Prostitution

This chapter of the TSE Law is about sexual exploitation for commercial purposes. The chapter defines the terms "prostitution" and "child prostitution", and establishes the offenses and punishments for activities related to prostitution and child prostitution.

It is important to note that the TSE Law does not punish a person for engaging in prostitution (neither the prostitute nor the client[16]), but instead criminalizes only certain related activities. Even in such cases, the TSE Law does not consider the prostitutes as offenders; the offenders under the TSE Law are the pimps, heads of prostitution and others who draw a profit from the prostitution of others (that is, from the activities of the prostitutes). Therefore prostitutes are never offenders: persons who are voluntarily engaging in commercial sex work (and who are therefore, by definition, not victims of trafficking) are not punished under this law. Trafficking victims are also not punished under this law for those acts. However, prostitutes may be punished if found guilty of the offence of soliciting for prostitution in a public place (see Article 24). In the latter case, they are punished not for engaging in prostitution but for soliciting in public, which is considered as affecting public order.[17]

The TSE Law punishes all persons who engage in child prostitution (including the client), but it does not consider the child who commits prostitution as the offender. The child who commits prostitution is a victim, and as such is to be protected. The TSE Law considers that the offender for a crime of child prostitution is the person who procures, manages, recruits, induces or otherwise profits from the activity of the child prostitute. A person who purchases child prostitution is also considered an offender.

Article 23. Definition of Prostitution and Child Prostitution
"Prostitution" in this law shall mean having sexual intercourse with an unspecified person or other sexual conduct of all kinds in exchange for anything of value.

"Child prostitution" in this law shall mean having sexual intercourse or other sexual conduct of all kinds between a minor and another person in exchange for anything of value.

This article defines the terms "prostitution" and "child prostitution", which are used extensively throughout this chapter of the TSE Law. This article does not criminalize prostitution or child prostitution, and no prosecutions should be commenced under this article.

It should be noted that prostitution by freely consenting adults is not illegal under the TSE Law, although certain other related activities are criminalized in Article 24, Articles 26-27 and Articles 29-32.

Child prostitution is illegal under the TSE Law but, as noted above, the child prostitute is not punished. The child prostitute is considered by law to be a victim and not an offender. Crimes related to child prostitution are set out directly in Article 28 and Articles 33-37, and by incorporation in Articles 26-27 (through the operation of Article 28) and Articles 30-32 (though the operation of Article 33). Article 29 (Procurement of Prostitution by Torture) may also be applied to cases of child prostitution. Article 24 (Solicitation) does not apply in cases of child prostitution.

Prostitution
The definition of prostitution set out in the first paragraph of this article has several important elements:

1) An actor (the person practicing prostitution)

[16] The only prostitution-related offense for which a client is punished is the purchase of child prostitution. See discussion on Article 34 ("Purchase of Child Prostitution") below.
[17] This approach is consistent with the Penal Code, which classifies the offence of "soliciting other person in public" together with the offence of "apparent intoxication" in public. See Penal Code, Book 2, Title 2, Chapter 5, Section 6 "Other Types of Infringement on Dignity".

2) has sexual activity (sexual intercourse or other sexual conduct)
3) with another person (an "unspecified person")
4) in exchange for anything of value

The key terms used in the first paragraph of this article are defined below.

Actor (adult)

The first paragraph of this article does not explicitly mention the actor, but by the logical operation of the second paragraph (defining child prostitution) it is understood that this first paragraph refers to prostitution conducted by an adult actor.

"sexual intercourse"

The term "sexual intercourse" means the insertion of one person's genital into another person's genital, mouth or anus, or the insertion of any tools or instruments into a person's genital.[18] Sexual intercourse can take place between two or more persons of the same or opposite sex.

The term "tools" or "instruments" should be interpreted broadly to include, among other things, a stick, pen, toy penis, vibrator, bottle, or parts of the body such as finger, tongue, hand, etc..

The term "genital" is generally defined as a person's penis or vagina, but to have stronger protection for victims, in this law, the word "genital" is understood to mean, penis or, vagina or anus.
The term "sexual intercourse" therefore includes vaginal sex, anal sex and oral sex, whether between males and females, males and males, or females and females.

"or other sexual conduct of all kinds"

The term "other sexual conduct of all kinds" means any other type of conduct which stimulates or satisfies the actor's sexual desires.[19]

Such conduct includes physical contact between the prostitute and another person, and also may include cases where there is no physical contact between the prostitute and another person.

For example, if a person pays to see a child's genitals or to see the child masturbate, that person can be prosecuted under Article 34 (Purchase of Child Prostitution) even if there has been no touching or other physical contact between the client and the child.

To qualify as "other sexual conduct", the act must be carried out for the purpose of stimulating or satisfying the client's sexual desire. It does not matter how the client seeks to stimulate or satisfy sexual desire; this can be by the client initiating sexual contact with the prostitute, or by directing the prostitute to initiate sexual contact with or exposure to the client or a third party, or by directing a third party to initiate sexual contact with the prostitute.

"with an unspecified person"

This term refers to a person who is not the prostitute. Usually (though not always) the unspecified person is the client: that is, a person who engages in sexual activity with the prostitute is also the person who gives or promises to give something of value to the prostitute in exchange for the sexual intercourse or other sexual conduct. In some circumstances, however, the person who pays may be different from the person who engages in sexual activity with the prostitute: for example, one person may pay for sexual services to be rendered to a third party. This type of circumstance does not disqualify the situation from being deemed as one of prostitution.

"in exchange for anything of value"

The term "anything of value" includes but is not limited to remuneration in cash, valuable items (for example, jewelry, clothing, etc.), corporeal property (for example, house, land, apartment, etc.), non-

[18] This definition is consistent with the Ministry of Justice Instruction No. 01/09, dated 23 February 2009, which defines sexual intercourse with respect to Articles 42 and 43 of the TSE Law.
[19] The definition for this term is based on related definitions for the term "indecent act" as used in Article 43 of this law and as defined in Ministry of Justice Instruction No. 01/09, dated 23 February 2009.

corporeal property or real rights (for example, rights to own, use, sell or lease any kind of movable and immovable property), services, direct or indirect payments or fees (fees paid to, through or on behalf of another person), valuable information, or control over persons.

Child Prostitution

The definition of child prostitution set out in the second paragraph of this article uses the same definition as for adult prostitution (defined in the first paragraph), with the important difference that the sexual intercourse or other sexual conduct must take place with a minor.

Therefore, the definition of child prostitution set out in this article applies whenever the following elements are present:

1) An actor (either an adult or a minor)
2) has sexual activity (sexual intercourse or other sexual conduct)
3) with a minor (any person aged under 18 years)
4) in exchange for anything of value.

It should be noted that the actor (the one who purchases child prostitution) may be an adult or a minor.

As per Article 7 of the TSE Law, a minor is any person under the age of 18 years. It should be noted that Chapter 6 (Articles 42-44) of the TSE Law grants minors who are 15 years and older (that is, persons aged from 15 years to under 18 years) the capacity to consent to engage in sexual relations, but the law does not grant such minors the capacity to engage in prostitution. All prostitution involving any minor (anyone under the age of 18 years) is considered child prostitution, and is illegal under the TSE Law.

The other elements are defined according to the explanations given for the first paragraph (on adult prostitution) of this article.

Article 24. Soliciting

A person who willingly solicits another in public for the purpose of prostituting himself or herself shall be punished with imprisonment from 1 to 6 days and a fine from 3,000 to 10,000 riels.

A minor shall be exempted from punishment of the offense stipulated in this article.

This article establishes the offense of soliciting, which is defined as willing solicitation of prostitution in public. This means that the TSE Law does not consider to be an offense any soliciting for prostitution that is a) not willing or b) not done in public. Therefore, the law generally does not punish a victim of trafficking for soliciting, because in most instances a trafficking victim is not a willing participant. Likewise, the law does not punish soliciting that is done in a private place.

This article is based on a similar article in the new Penal Code (see Book 2, Title 2, Chapter 5, Section 6 "Other Types of Infringement on Dignity").

In the classification of offenses set out in the new Penal Code, soliciting is classified as a petty crime and is not a felony or misdemeanor. As such, the following articles of the TSE Law do not apply to cases of soliciting:

- Article 3 (Application of this Law outside the Territory) only applies to felonies and misdemeanors, and so does not apply to soliciting. The police and the courts therefore are not empowered to investigate, prosecute or punish any soliciting that occurs entirely outside of the territory of the Kingdom of Cambodia.
- Article 4 (Criminal Responsibility), paragraphs 1-3, only applies to felonies and misdemeanors, and so does not apply to soliciting. The police and the courts therefore are not empowered to investigate, prosecute or punish any attempted soliciting, nor any accomplice or instigator of soliciting.

This article sets out the following elements for the offense of soliciting.

"Willingly"

The use of the term "willingly" means that the actor, voluntarily and with his or her free will, solicits another person.

If a person solicits another person due to duress, coercion, threat or being forced by another person to solicit, then the act is not carried out willingly. For example, if an actor is forced or coerced to solicit another person for the purpose of prostitution, the actor cannot be considered to have willingly solicited and thus cannot be prosecuted or punished under this article.

Victims of human trafficking are generally exempted from prosecution and punishment under this article, because in most instances human trafficking is an act that is compelled by another person against the will of the victim.

"solicits"

This article punishes soliciting for the purpose of prostitution. The term "to solicit" means that there must be a specific communication or behavior by the offender that interferes with the public, which leads to public disorder and which conveys that the offender is willing to engage in sexual activity in exchange for anything of value.

It is important to note that, as with any criminal statute, there must be proof of the offender's intent to prostitute him- or herself. In general, the following are <u>not</u> considered soliciting or proof of intent to solicit:

- standing or waiting in a public place
- wearing revealing, provocative or "sexy" clothes
- smiling or waving to a person
- possessing or carrying condoms, lubricant or other material related to the promotion of safe sex and the reduction of HIV/AIDS[20]
- working at a particular place (such as a beer garden, karaoke club, massage parlor, etc.)

Even where the above acts have been committed, there must still be other facts that can serve as proof that the accused intended willingly to prostitute him- or herself in public.

"in public"

This article only punishes soliciting that is done in public. Soliciting that is done in private is not punished under the TSE Law. (Note that Article 32 of the TSE Law punishes a person, such as a property owner, who knowingly provides a private place to be used for prostitution, but it does not punish the prostitute – that is, the person who solicits for prostitution.)

The term "in public" means any state-owned, public or private land, facilities, buildings and transportation which are either open to all members of the public or which provide services to all members of the public. This definition is consistent with that found in Article 4 of the Law on the Protection and Promotion of the Rights of Persons with Disability (2009).

For the purposes of this law, the term "in public" also means that solicitation can also be punished if it is carried out in a private place but can be seen or heard by a person who is in a public place.

For example, if a prostitute solicits while standing just inside the door of a private place, such that people on the street can easily see or hear the solicitation, then the act can be punished.

It is worthwhile to note that the provision on solicitation in the new Penal Code is not placed in the

[20] In fact, education activities on prevention and control of spread of HIV/AIDS, including the promotion and use of condoms, are encouraged by the laws and policies of the Royal Government of Cambodia, including the Prime Minister's Order on 100% Condom Use Program, the 2002 Law on the Prevention and Control of HIV/AIDS and its Implementing Guidelines. (See further discussion on the provisions of the HIV/AIDS Law, its Implementing Guidelines and the policies on condom use under the Explanatory Notes sections on Articles 25, 31 and 32 below.)

chapter on procurement of prostitution, but rather in a later chapter titled "Other Types of Infringement on Dignity", where it is located just after the article which penalizes people who are apparently drunk in public (see Book 2, Title 2, Chapter 5, Section 6 of the Penal Code). Such placement suggests that the objective of this article is not to punish prostitutes (since prostitution is not itself illegal) but is in fact to protect the right of the general public to use and enjoy public spaces, and (consistent with the TSE Law's objective, as stated in Article 1) to preserve and enhance good national customs. This means that Article 24 of the TSE Law should therefore be applied only when the soliciting is carried out in such a way that it interferes with the public's use and enjoyment of public space.

This understanding (that the offense of soliciting is related to concerns about the right to use and enjoy public space) is reinforced by the 2008 Guidelines on the Implementation of the Law on Suppression of Human Trafficking and Sexual Exploitation (hereinafter, "the Guidelines on Implementation"), which were issued in November 2008 by the Ministry of Interior on behalf of the High-Level Working Group. The Guidelines on Implementation make clear that action by the authorities regarding prostitution should be undertaken only in the following four cases:

- If there is a complaint from the people in the neighborhood about prostitution activities that affect their daily lives
- If there is a complaint from a victim that has been forced into prostitution in that location
- If there is child prostitution
- If prostitution leads to public disorder and insecurity

"for the purpose of prostituting himself/herself"

This article punishes soliciting when it is carried out for the purpose of prostitution. "Prostitution" means the definition that is set out in Article 23.

"shall be punished with imprisonment from 1 to 6 days"

If an offender is found guilty of the offense set out in this article, the offender shall be imprisoned from 1 to 6 days. This imprisonment requires a court order; the police may not impose this imprisonment without a judgment by the court that the offender is guilty of the offense in this article.

It should be noted that, according to Article 5 of this law, the court may choose to punish the offender with only the fine, or only the imprisonment or both the fine and imprisonment

The provision on solicitation in the new Penal Code does not provide for any imprisonment of offenders (see Book 2, Title 2, Chapter 5, Section 6 "Other Types of Infringement on Dignity"). However, article 298 of the Penal Code only penalizes a person for inciting another person in public to have sexual relations, without the purpose of prostituting oneself. If the person incites another person in public to have sexual relations for the purpose of prostituting oneself, then Article 24 of the TSE Law shall apply. This article requires that the offender receives or agrees to receive something of value in exchange for sexual relations with the unspecified person.

"and a fine from 3,000 to 10,000 riels"

If an offender is found guilty of the offense set out in this article, the court may order the offender to pay a fine from 3,000 to 10,000 riels. This fine requires a court order; the police may not impose this fine without a judgment by the court that the offender is guilty of the offense in this article.

"A minor shall be exempted from punishment of the offense stipulated in this article."

This provision specifies that minors are not to be punished for soliciting.

According to Article 7 (see above), a minor is any person aged less than 18 years.

It should be noted that Chapter 6 (Articles 42-44) of the TSE Law grants minors who are 15 years and older (that is, persons aged at least 15 but under 18 years) the capacity to consent to engage in sexual relations, but the law does not grant such minors the capacity to engage in prostitution, including

soliciting in public for prostitution. All prostitution involving any minor (anyone under the age of 18) is considered child prostitution, and is illegal under the TSE Law.

Under the TSE Law, a minor does not have legal capacity to consent to engage in prostitution. Therefore, minors cannot be prosecuted for this offense..

If a minor is found to be soliciting in public for the purpose of prostitution, the police and the courts should arrest, prosecute and try the pimp or head of prostitution that has directed the actions of the minor. The minor is to be considered a victim of child prostitution, and is therefore entitled to protection, as well as any normal procedures or services for rehabilitation and reintegration.[21]

Article 25. Definition of Procuring Prostitution
The act of procuring prostitution in this law shall mean:

1. drawing a financial profit from the prostitution of others;
2. assisting or protecting the prostitution of others;
3. recruiting, inducing or training a person with a view to practice prostitution;
4. exercising pressure upon a person to become a prostitute.

The following acts shall be deemed equivalent to the act of procuring prostitution:

1. serving as an intermediary between one person who engages in prostitution and a person who exploits or remunerates the prostitution of others;
2. facilitating or covering up resources knowing that such resources were obtained from a procurement;
3. hindering the act of prevention, assistance or re-education undertaken either by a public agency or by a competent private organization for the benefit of persons engaging in prostitution or being in danger of prostitution.

This article defines the terms "procuring prostitution", which is used extensively throughout this chapter of the TSE Law. Article 25 is similar to the following articles in the new Penal Code (see Book 2, Title 2, Chapter 5, Section 5 "Procuring"): Article 284 (Procuring); Article 285 (Acting as Intermediary between Prostitute and Procurer); Article 286 (Justification of Resources from Procuring); and Article 287 (Obstructing Measures Designed to Prevent Prostitution).

Articles 26-29 of the TSE Law set out the offenses and corresponding punishments related to procuring prostitution.

Procuring prostitution is a complex concept which can be realized in different ways, and this article includes several different definitions for procurement of prostitution. However, the intent of all the definitions is to punish any person who receives or expects to receive a financial benefit from the prostitution of others, or who intends to further the business activity of prostitution. This basic idea should be considered part of <u>all</u> the definitions provided in this article. Thus, if an actor does not receive or expect to receive any financial benefit from the prostitution of others, or does not intend to further the business activity of prostitution, then the actor should not be held liable for procurement.

It is important to note that this article does not punish people who engage in the activity of prostitution itself, nor does this article punish the individual prostitutes. The TSE Law does not punish prostitutes (individually or in groups) for engaging in prostitution. Likewise, this law does not punish the clients of prostitution.

This article defines procurement of prostitution in the following ways:

"1. drawing a financial profit from the prostitution of others"[22]

Subsection (1) covers the cases where the actor derives a financial profit from the prostitution of others.

[21] Note that any such protection, rehabilitation or reintegration should be based on the consent of the child (where applicable) and/or his/her parents or legal guardian.
[22] This provision is identical to Art. 284(1) on Procuring, of the Penal Code.

"Financial profit" means anything of value to the actor who derives such profit. Generally this is in the form of money, but it could also be considered of something else of value, including other remuneration in kind, valuable items (for example, jewelry, clothing, etc.), corporeal property (for example, house, land, apartment, etc.), non-corporeal property or real rights (for example, the rights to own, use, sell or lease any kind of movable and immovable property), services, direct or indirect payments or fees (fees paid to, through or on behalf of another person), valuable information or control over persons.

The whole term "drawing a financial profit from the prostitution of others" refers to the business activity of prostitution (rather than helping the individual prostitutes).

The term means that the actor receives the profit directly from prostitution services performed by other persons. This means it is not for any prostitution services that the actor performs by himself or herself.

For example, an owner of a brothel draws a financial profit from the prostitution performed by the brothel's prostitutes. Likewise, an intermediary who gets a commission from the prostitute's prostitution service is drawing a financial profit from the prostitution of others. But a prostitute who gets paid by his/her client is not subjected to the punishment in this subsection, because the prostitute is drawing a profit from his or her own prostitution and not that of others.

In order for an actor to be covered by this subsection, he or she must have both knowledge and intent. That is, the actor a) must know that the financial profit that he or she receives derives from the prostitution of others, and b) must intend to draw the profit from that prostitution. In other words, this subsection does not cover cases where a financial profit is drawn by someone who does not know that the profit comes from the prostitution of others, or by someone who (even if he or she knows the profit comes from prostitution) does not intend for others to engage in prostitution.

For example, a landlord who rents a building to a brothel, but who does not know that it is used for prostitution, is not liable under this subsection for the rent payments that he or she receives.

Similarly, the support staff (cashier, cook, cleaner, parking attendant, etc.) employed by a brothel receives a salary (and thus a financial profit) from the brothel; but because these workers do not intend that the prostitutes in the brothel engage in prostitution, they should not be punished under this subsection.

"2. assisting or protecting the prostitution of others"[23]

Subsection (2) covers the cases where the actor assists or protects the prostitution of others.

"Assisting or protecting" means any form of helping, protecting, promoting or facilitating.

"The prostitution of others" means the business activity of prostitution (rather than helping the individual prostitutes).

For example, if a manager of a brothel hired security guards to protect prostitutes in the brothel from harassment and so that they can carry out their work, the manager would be protecting prostitution of others. If an actor informed a brothel owner of an upcoming police raid so that the owner can cover up the prostitution in the brothel, the actor would be protecting the prostitution of others.

In order for an actor to be covered by this subsection, he or she must have both knowledge and intent. That is, the actor a) must know that the assistance or protection is for the benefit of the prostitution of others, and b) must intend to assist or protect that prostitution. Therefore, a person who unknowingly assists or protects the prostitution of others is not liable under this subsection.

Similarly, a person who assists or protects a prostitute, but who does not intend for such assistance or protection to further that person's prostitution activity, is not liable under this subsection.

[23] This provision is similar to Art. 284(2) on Procuring, of the Penal Code.

For example, a doctor who treats a sick prostitute is not liable under this subsection, because the doctor does not provide the service with the intent to assist or protect the prostitution activity. Likewise, an NGO or other agency that provides services to individual prostitutes is not liable under this subsection.

Similarly, the fact that a police officer stopped a client of a prostitute from assaulting the prostitute, does not mean that the police officer protected the prostitute's prostitution.

"3. recruiting, inducing or training a person with a view to practice prostitution"[24]

Subsection (3) covers the cases where the actor recruits, induces or trains a person with a view to practice prostitution.

For example, if a brothel owner or employee asked a person to work for the brothel for a monthly pay of 300 dollars, that act would constitute recruitment with a view to practice prostitution.

If an actor taught a person how to work in a brothel and deal with prostitution patrons, that act would constitute training with a view to practice prostitution.

If brothel owner or employee induces a person to work in the brothel as a prostitute by offering or promising money, that act of inducement is procurement of prostitution.

In order to be covered by this subsection, an actor has to have the purpose for another person to practice prostitution in his or her act of recruiting, inducement or training. Therefore, a person who unknowingly recruits, induces or trains someone is not liable under this subsection. Likewise, if the recruitment, induction or training is not done with the intent to further the recipient's practice of prostitution, then that act is not liable under this subsection.

For example, public health organizations that conduct outreach or education activities to combat HIV/AIDS (in accordance with the 2002 Law on Prevention and Control of HIV/AIDS[25] and its Implementing Guidelines,[26] and the Prime Minister's order on 100% Condom Usage Program) may conduct awareness-raising activities on the use of condoms or safe sex techniques. However, the intent behind these activities is to prevent the spread of HIV/AIDS, and not to further the practice of prostitution; therefore such activities are not liable under this subsection.

Similarly, this subsection does not prohibit organizations that advocate for the rights of prostitutes, or any activities carried out by such organizations, because the intent is to protect the individual prostitutes and to defend their rights, rather than to promote the prostitutes' business activity. In fact, private health organizations are mandated by the Law on Prevention and Control of HIV/AIDS and its Implementing Guidelines to conduct education activities to promote respect for the human rights of people with HIV/AIDS and people who are vulnerable to HIV infection, such as sex workers.[27]

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[24] This provision is similar to Art. 284(3) on Procuring, of the Penal Code.

[25] Article 3 of the HIV/AIDS law calls for the mobilization of people in the community, as well as organizations and associations, in the design and implementation of HIV/AIDS education and information programs, including on prevention measures and control of the spread of HIV/AIDS. Article 4 of the Law states that "HIV/AIDS education and other refresher courses are the responsibility of private healthcare providers to take part in the HIV/AIDS epidemics prevention and control program." Article 11 of the HIV/AIDs law requires that all HIV prevention materials, such as condoms, be accompanied by information, which explains the proper method for using the equipment.

[26] Chapter 5 of the Implementing Guidelines of the HIV/AIDs Law provides that "[u]nder the Ministry of Health's guidelines…STI clinical services should be combined with the delivery of information and education such as condom promotion and distribution."

[27] Article 4 of the HIV/AIDS Law mandates private healthcare providers to provide "refresher courses, including discussions on ethical issues involved with HIV/AIDS, particularly on confidentiality and dignity of human rights." Chapter 2 of the HIV/AIDS Law's Implementing Guidelines requires that "all information and education materials should promote respect for the human rights of people living with HIV/AIDS and people who are vulnerable to HIV infection…and how respect for (their) human rights…is essential to

"4. exercising pressure upon a person to become a prostitute"[28] (Note: In the original Khmer text of the TSE Law, the term used is "exercising pressure upon a person to engage in prostitution".)

This subsection punishes a person who has exercised pressure upon another person to engage in prostitution. The term "pressure" in this article includes but is not limited to physical force, pressure or restraint, as well as other kinds of pressure, including financial or psychological pressure.

For example, if an actor threatened to withdraw support from his daughter if the daughter did not prostitute herself, then the actor would have exercised pressure for the daughter to become a prostitute.

This subsection requires that the actor have intent: that the actor exercise the pressure with the intent of having the other person engage in prostitution, regardless of whether the person being pressured was a prostitute before or not. It also does not matter if the person who was pressured yielded to the pressure; the actor cannot claim as a defense that the person who was pressured consented to engagein prostitution, if the consent was vitiated/defective.

Where violence is used in the course of procurement against a person who is already a prostitute (rather than as a form of pressure to induce the person to become a prostitute), then the offender may be liable under Article 27.3 (Aggravated Procurement of Prostitution).

Note also that where "deception, abuse of power, confinement, force, threat or any coercive means" is used to recruit or induce a person to engage in prostitution, the offender may, in addition, also be liable under Article 12 (Unlawful Recruitment for Exploitation) of the TSE Law.

Paragraph 2 of this article sets forth three types of acts that are also equivalent to the act of procuring prostitution.

"1. serving as an intermediary between one person who engages in prostitution and a person who exploits or remunerates the prostitution of others"[29]

This subsection (1) covers the cases where the actor serves as an intermediary between two people: (a) a prostitute and (b) a person who exploits or remunerates the prostitute.

"Exploit" in this subsection means that the person draws a financial profit from the prostitutes activity. (See discussion above regarding "drawing a financial profit from the prostitution of others".)

"Remunerate" in this subsection means that the person pays the prostitute for his or her activity as a prostitute.

In order to be covered by this subsection, the person who serves as an intermediary must intend for his actions as an intermediary to promote or facilitate prostitution.

For example, if a person introduces a prostitute to a brothel owner or manager in the hope that the prostitute can work at the brothel, then this act of introduction may be punished under this subsection because the brothel owner or manager is a person who exploits or remunerates the prostitution of others.

However, if a person introduces a prostitute to a brothel owner or manager in the hope that the prostitute can work at the brothel as a cook, then this act is not covered by this subsection.

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successfully combating the HIV/AIDS epidemic."

[28] This provision is identical to Art. 284(4) on Procuring, of the Penal Code.

[29] This provision is similar to Art. 285 (Acting as Intermediary Between Prostitute and Procurer), of the Penal Code.

Consistent with the idea of being an intermediary to procurement, the intermediary actor must also derive or expect some financial benefit from his act.

For example, a taxi driver who takes a client to a brothel, and who gets a commission from the brothel, is liable for punishment under this subsection.

But a friend who takes another friend to a brothel, and who does not receive any commission from the brothel, is not liable for punishment under this subsection.

"2. facilitating or covering up resources knowing that such resources were obtained from a procurement"[30]

This subsection (2) covers the cases where the actor facilitates or covers up resources that came from the procurement of prostitution, with knowledge that the resources were so obtained.

This provision echoes Article 6 of United Nations Convention against Transnational Organized Crime (UNTOC), which criminalizes the laundering of proceeds of crime, and the concealment and disguise of the proceeds from crime.

"Facilitating…resources" means engaging in transactions (including transporting, transferring, paying or receiving) with respect to resources that were obtained from the procurement of prostitution.

The term "resources" as used here includes but is not limited to remuneration received in cash or in kind, monetary instruments (including cash, checks, money orders, electronic money transfers, etc.), valuable items (for example, jewelry, clothing, etc.), corporeal property (for example, house, land, apartment, etc.), non-corporeal property or real rights (for example, the rights to own, use, sell or lease any kind of movable and immovable property), services, direct or indirect payments or fees (fees paid to, through or on behalf of another person), valuable information or control over persons.

"Covering up…resources" means disguising or concealing the amount, nature, source, location, ownership or control of the resources.

In order for an actor to be covered by this subsection, he or she must have both knowledge and intent. That is, the actor a) must know that the resources were obtained from the procurement of prostitution, and b) must intend to facilitate or cover up those resources, in order to promote the procurement of prostitution.

Therefore, a person who unknowingly or unintentionally facilitates or covers up the resources that were obtained from the procurement of prostitution is not liable under this subsection.

For example, if a brothel owner deposits money that he earned from procuring prostitution into a bank account, or transfers that money between bank accounts, the bank is not liable for prosecution under this subsection because it is assumed that the bank does not know that the money was obtained from the procurement of prostitution.

But if a brothel manager takes money earned from the procurement of prostitution, and deposits it in a bank account (or hides it in another location, or disguises it to appear as having been obtained from another source), then the brothel manager may be punished under this subsection.

"3. hindering the act of prevention, assistance or re-education undertaken either by a public agency or by a competent private organization for the benefit of persons engaging in prostitution or being in danger of prostitution"[31]

Subsection (3) covers the cases where the actor hinders the effort of a public agency or a private

[30] This provision is similar to Art. 286 (Justification of Resources from Procuring), of the Penal Code.

[31] This provision is identical to Art. 287 (Obstructing Measures Designed to Prevent Prostitution), of the Penal Code.

organization, where the agency or organization acts to assist or re-educate persons engaging in prostitution or to prevent them from being in danger of prostitution.

In order to be covered by this subsection, a person who hinders the effort of a public agency or a private organization has to intend to facilitate or promote prostitution. Any act that incidentally hinders the act of prevention, assistance or re-education for the benefit of persons engaging in prostitution or being in danger of prostitution by itself, does not constitute procurement of prostitution under this subsection. In particular, this provision does not apply to NGOs or other entities that work to protect or for the benefit of prostitutes, even in the case where their acts hinder the assistance provided by another entity.

For example, an NGO-run shelter takes over custody of prostitutes from the police and encourages them to enter a re-education program which requires that they do not leave the shelter. A legal aid lawyer comes and wants his client, a prostitute, released due to what the lawyer claims are unlawful restrictions on his client's liberty (illegal confinement). Even though the NGO-run shelter and the lawyer are both attempting to hinder the other part, neither of them can be held liable under this provision, because neither party acts with the intent to facilitate or promote prostitution.

Article 26. Procurement (of Prostitution)
A person who commits procurement of prostitution shall be punished with imprisonment from 2 to 5 years.

This article sets the punishment for procurement of prostitution, which is defined in Article 25 above. Offenders must be punished under this article, not under Article 25.

The article punishes the offense of procurement of prostitution with a prison term of 2 to 5 years. Additional penalties may also be applied at the discretion of the court, as per Article 48 of this law.

It should also be noted that longer prison terms are possible in cases where the procurement of prostitution is found to be aggravated (Article 27), or is carried out with regard to child prostitution (Article 28), or is achieved by torture or barbarous acts (Article 29).

As per Article 4 (Criminal Responsibility) paragraph 4, if the representative, agent or employee of a legal entity or principal is found guilty of this offense, the court may also punish the legal entity or principal with the additional penalties that are provided by Article 48 of the TSE Law. These additional penalties, if warranted, include punishments such as confiscation of materials or property (Article 48(1)-(3)), or closure of a business (Article 48(4)). (See discussion under Article 48 for more detail.)

It should be noted that Articles 284, 285, 286 and 287 of the Penal Code, which pertain to the same acts of procuring defined in Article 25 of the TSE Law, prescribe the same penalty of imprisonment from 2 to 5 years as Article 26 of the TSE Law. The Penal Code articles, however, include an additional penalty of a fine from 4,000,000 riels to 10,000,000 riels. Due to the rule set out in Article 97 of the Penal Code – that in all cases where an offence is punished concurrently with a prison term and a fine, the court may pronounce a ruling of 1) either a prison term and a fine concurrently; 2) a prison term only; or 3) a fine only -- the judge may sometimes impose the penalty of fine only for Procuring Prostitution under the Penal Code.

The inconsistency in penalties between the TSE Law and Penal Code provisions on procurement may be resolved following the principles of statutory interpretation and the rules set out in Articles 671 and 668 of the Penal Code (see discussion on "principles of statutory interpretation" in the Introduction and in Art. 50 below). Based on these rules, the penalty for procurement under the newer Penal Code generally supersedes the penalty for procurement under the TSE Law.

Nevertheless, in accordance with the principle of "individualization of penalties" under Article 96 of the Penal Code, it is suggested that for serious cases of procurement, the penalty of imprisonment should be imposed in lieu of fine alone, based on factors such as the size of operation or number of prostitutes involved, amount of money earned by the procurer, the length of time the perpetrator has been engaged in the activity, recidivism, etc..

However, if the procurement is committed within the context of human trafficking, the perpetrator should be charged and punished with the heavier penalty of imprisonment under the TSE Law (which is a special law that prevails over the Penal Code in connection with trafficking-related offences).

Article 27. Aggravated Procurement (of Prostitution)
A person who commits procurement of prostitution shall be punished with imprisonment from 5 to 10 years:

1. when it is committed by a male or female procurer or head of prostitution who is an ascendant, descendant, either legitimate or illegitimate, natural or adoptive, of the prostitute;
2. when it is committed by a male or female procurer or head of prostitution who abuses his or her authority over the prostitute;
3. when a male or female procurer or head of prostitution uses violence or coercion against the prostitute;
4. when the procurement of prostitution is committed by an organized group;
5. when the procurement of prostitution is committed against several persons.

This article establishes the offense and sets the punishment for five types of aggravated procurement of prostitution. A person who commits any one of the five types of aggravated procurement of prostitution is punished more severely, by being imprisoned from 5 to 10 years, rather than from 2 to 5 years as set out in Article 26.

Note that this article is similar to Article 288 of the new Penal Code (see Book 2, Title 2, Chapter 5, Section 5 "Procuring", Article 288 "Aggravating Circumstances – Status of the Perpetrator"), which provides the same penalty of 5 to to 10 years imprisonment.

In order to be punished under this article, an offender must:

a) be guilty of procurement of prostitution as defined in Article 25 above, and
b) fulfill any one of the below types of aggravated procurement.

In such cases, an offender should be prosecuted and punished under this article, not under Article 25-26.

It is important to note that this article must be read together with Article 25 (Definition of Procurement of Prostitution) and Article 26 (Procurement). For example, where the provisions under this article refer to "the prostitute", it does not only refer to someone who is already a prostitute; through the operation of Article 25, the provisions in this article also apply to cases involving someone who may not yet be a prostitute, but who is being recruited, induced or trained to practice prostitution (Article 25, paragraph 3), or someone who is pressured to become a prostitute (Article 25, paragraph 4).

Procurement of prostitution is aggravated in any one of the following cases:

"1. when it is committed by a male or female procurer or head of prostitution who is an ascendant, descendant, either legitimate or illegitimate, natural or adoptive, of the prostitute;"

Procurement of prostitution is aggravated if the offender is related to the prostitute by blood, marriage or adoption. This provision accentuates that crimes committed by one family member against another are considered more grave, and thus deserving of heightened punishment. The relative may be an older or younger relative of the prostitute, and may be a legitimate or illegitimate relative of the prostitute.

Note that if the procurement is committed with respect to a minor relative, then the offender should also be prosecuted and punished under Article 28 (Procurement with regard to Child Prostitution).

"2. when it is committed by a male or female procurer or head of prostitution who abuses his or her authority over the prostitute;"

Procurement of prostitution is aggravated if the offender abuses his authority as a public official in order to procure prostitution.

"3. when a male or female procurer or head of prostitution uses violence or coercion against the prostitute;"

Procurement of prostitution is aggravated if the offender uses violence or coercion (threats) against the prostitute.

For example, if a brothel owner or manager beats up prostitutes who work at his brothel because they are not willing to serve certain clients, this use of violence will be covered by this subsection.

Similarly, if a brothel owner or manager threatens to rape, threatens to injure or threatens to kill prostitutes working for his brothel if they do not follow orders, this is considered coercion against the prostitutes and is punished under this subsection.

"**Violence**" means the use of force which may result in death, pain or physical injury, whether long-lasting or transitory (including rape or other forms of sexual assault, or drugs administered against the victim's will, etc.) as well as psychological abuse. Violence in this sense is an act that is carried out against another person's physical or psychological integrity or health. Violence that rises to the level of torture or a barbarous act should be prosecuted and punished under Article 29 (Procurement of Prostitution by Torture).

"**Coercion**" in this subsection means the use of force or the use of a threat, express or implied, including some forms of non-violent or psychological use of force or threat. This includes:

a) The use of force or threat of harm (including death, physical injury or rape and sexual assault) or physical restraint of any person;
b) Any scheme, plan or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person;
c) Abuse or any threat linked to the legal status of a person;
d) Psychological pressure, including causing a person to believe that he, she or another person will be illegally removed, sold or confined.

Coercion in this sense is an act that is carried out against another person, such that they cannot exercise their free will.

In the absence of these aggravating circumstances, less serious threats made to pressure a person to become a prostitute may still be considered "pressure", as defined in Article 25(4) ("exercising pressure upon a person to become a prostitute"), and thus would be punished under Article 26.

"4. when the procurement of prostitution is committed by an organized group;"

Procurement of prostitution is aggravated if it is committed by an "organized group".

In Article 77 of the Penal Code, an " organized criminal group" means "any group or conspiracy that is established with the view to plan or to commit one or more offenses".

In relevant international law, the definition is similar, with the added requirement that the organized group must include three or more persons. For example, the UN Convention Against Transnational Organized Crime, to which the Palermo Protocol is attached and which Cambodia has ratified, defines an "organized criminal group" in Article 2(a) as "a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit."

Therefore, an "organized group" means a formal or informal group of three or more people that is established to plan or commit a crime.

"5. when the procurement of prostitution is committed against several persons."

Procurement of prostitution is aggravated if it is committed against "several persons".

This means that an offender who is found guilty of procuring prostitution with respect to several persons is to be punished more severely. This aggravating circumstance means that there is no need for the prosecution to bring multiple charges as concurrent offenses. Under this provision the heightened punishment can be imposed, if the offender is found guilty.

Article 28. Procurement with regard to Child Prostitution
Procurement of prostitution shall be punished with imprisonment from 7 to 15 years when the prostitute is a minor.

The term "prostitution" in the relevant provisions of this Chapter shall be replaced with the term "child prostitution," when the offense set forth in Paragraph 1 of this article applies.

This article establishes the offense and sets the punishment for procurement of child prostitution. A person who commits procurement of child prostitution is punished more severely, by being imprisoned for 7 to 15 years rather than 2 to 5 years as set out in Article 26.

Note that paragraph 1 of this article is identical to Article 289 of the new Penal Code (see Book 2, Title 2, Chapter 5, Section 5 "Procuring", Article 289 "Aggravating Circumstances – Status of the Victim"), which provides the same aggravated penalty of 7 to 15 years imprisonment for procurement if the person engaging in prostitution is a minor.

In order to be punished under this article, an offender must:
a) be guilty of procurement of prostitution as defined in Article 25 above,
b) where the prostitute is a minor (under 18 years of age).
In such cases, an offender should be prosecuted, and punished under this article, not under Article 26.

A minor is any person under the age of 18 years, as per Article 7. It should be noted that Chapter 6 (Articles 42-44) of the TSE Law grants minors who are 15 years and older (that is, persons aged from 15 to under 18 years) the capacity to consent to engage in sexual relations, but the law does not grant such minors the capacity to engage in prostitution. All prostitution involving any minor (anyone under the age of 18) is considered child prostitution, and is illegal under the TSE Law.

Where the offense of procuring child prostitution applies, this article also acts to replace the term "prostitution" with the term "child prostitution" for all articles in this chapter.

Article 29. Procurement of Prostitution by Torture
Procurement of prostitution shall be punished with imprisonment from 10 to 20 years when a male or female procurer or head of prostitution committed such offense by recourse to torture or barbarous act on the prostitute.

This article establishes the offense and sets the punishment for procurement of prostitution by committing torture or barbarous acts on the prostitute. A person who commits this offense is punished more severely, by being imprisoned for 10 to 20 years rather than 2 to 5 years as set out in Article 26.

Note that this article is similar to Article 290 of the new Penal Code (see Book 2, Title 2, Chapter 5, Section 5 "Procuring", Article 290 "Aggravating Circumstances – Torture or Acts of Cruelty"), which provides the same aggravated penalty of 10 to 20 years imprisonment for procurement if the procurer inflicts torture or acts of cruelty on the person engaging in prostitution.

If an offender intentionally inflicts severe pain or suffering on a prostitute, in order to punish, intimidate or coerce the prostitute, the offender should be punished under this article.

Where the violence that is inflicted does not rise to the level of torture, the offender may still be prosecuted under Article 27 (3).

The TSE Law does not define "torture" or "barbarous act". However, the term "torture" is used in Cambodian criminal law, including the laws in force at the time the TSE Law was promulgated (see e.g. Article 12 of the UNTAC Law, and Article 7 of the Law on Aggravating Circumstances) as well as the

new Penal Code (see e.g., Book 2, Title 2, Chapter 2, Section 1 "Torture and Barbarous Acts"). Although these laws do not define the term "torture", the TSE Law is understood to incorporate (through reference in Article 1 of the TSE Law to implementation of other international treaties) the definition set out in the Convention against Torture. Cambodia ratified the Convention against Torture on 15 October 1992. Article 1 of the Convention against Torture defines "torture" as:

> *"...any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind.."*

For the TSE Law, the term "torture" is defined by two key elements:

1) severe pain and suffering, whether physical or mental,
2) that is intentionally inflicted.

It should be noted that while international law considers that torture can only be committed in connection with a public official or a person acting in an official capacity, in Cambodian law the crime of torture also applies to acts committed by private individuals. This is consistent with the approach set out in relevant provisions of the new Penal Code (see Book 2, Title 2, Chapter 2, Section 1 "Torture and Barbarous Acts").

The term "barbarous acts" is not defined in Cambodian or international law, but is presumed to refer to ill-treatment that is of a similar level of severity as torture. In this sense, it may be similar to the term "cruel, inhuman or degrading treatment", which is also used (but not defined) in the Convention against Torture.

Article 30. Management of Prostitution
A person who, directly or through an intermediary, manages, exploits, operates or finances an establishment of prostitution shall be punished with imprisonment from 2 to 5 years.

This article establishes the offense and sets the punishment for the management, exploitation, operation or financing of an establishment of prostitution. This article is based on a similar provision in the new Penal Code, Article 291, pertaining to the offence of Operating a Place of Prostitution (see new Penal Code, Book 2, Title 2 Chapter 5, Section 5 "Procuring").

An offender may be found guilty of this offense for direct acts or for acting via an intermediary.

"management"

"Managing" means exercising control or authority over the establishment.

An actor may be considered to manage directly or for, via an intermediary.

For example, if a person A lets his brother B run a brothel for A, both A and B are involved in the management of an establishment of prostitution.

"exploitation"

"Exploitation" means drawing a financial benefit from the establishment, in order to use that benefit for other purposes.

For example, if an actor uses part of the proceeds from a brothel to fund his real estate business, he will be exploiting an establishment of prostitution.

"operation"

"Operation" means regularly maintaining the establishment as an on-going business, either for the actor's own benefit (that is, when it is his own business) or on behalf of another person who is the owner of the establishment.

"financing"

Financing means supplying money or other resources to enable the operation of the establishment.

For example, if an actor pays for or makes loans to a brothel, the actor will be financing an establishment of prostitution.

"establishment of prostitution"

"Establishment of prostitution" means a physical location (house, building, business, location, etc.) that is operated for the purpose of prostitution, as that term is defined in Article 23of this law. Such a place is generally called a brothel.

For establishments that are operated for another purpose (that is, prostitution is not the primary purpose of the establishment) and where prostitution nonetheless takes place, this article should not be used. However, the offense under Article 31 may apply.

"shall be punished with imprisonment from 2 to 5 years"

A person who commits this offense shall be punished with imprisonment from 2 to 5 years. Additional penalties may also be applied at the discretion of the court, as per Article 48 of this law.

If the offense is committed with regard to child prostitution, then the offender should be prosecuted, and punished more severely (7-15 years imprisonment), as per Article 33 (Offense with regard to Child Prostitution).

As per Article 4 (Criminal Responsibility) paragraph 4, if the representative, agent or employee of a legal entity or principal is found guilty of this offense, the court may also punish the legal entity or principal with the additional penalties that are provided by Article 48 of the TSE Law. These additional penalties, if warranted, include punishments such as confiscation of materials or property (Article 48(1)-(3)), or closure of a business (Article 48(4)). (See discussion under Article 48 for more detail.)

It should be noted that Article 291 (Operating a Place of Prostitution) of the Penal Code, which pertain to the same acts as Article 30 of the TSE Law, prescribes the same penalty of imprisonment from 2 to 5 years. The Penal Code, however, includes an additional penalty of a fine from 4,000,000 riels to 10,000,000 riels, which could be imposed by itself or together with imprisonment.

The inconsistency in penalties between the TSE Law and Penal Code may be resolved following the principles of statutory interpretation and the rules set out in Articles 671 and 668 of the Penal Code (see discussion on "principles of statutory interpretation" in the Introduction and in Art. 50 below). Based on these rules, the penalty for operating a place of prostitution under the newer Penal Code generally supersedes the penalty for the same act under the TSE Law. Nevertheless, in accordance with the principle of "individualization of penalties" under Article 96 of the Penal Code, it is suggested that the penalty of imprisonment under the Penal Code be imposed in lieu of fine alone, for more serious cases based on factors such as the size of operation or number of prostitutes involved, amount of money earned by the perpetrator, the length of time the perpetrator has been engaged in the activity, and recidivism.

However, if the offense is committed within the context of human trafficking, the perpetrator should be charged and punished with the penalty of imprisonment under the TSE Law (which is a special law that prevails over the Penal Code in connection with trafficking-related offences).

Article 31. Management of Establishment for Prostitution

Shall be punished with imprisonment from 2 to 5 years when a person accepts or tolerates that:

1. another person indulges in prostitution inside an establishment or its annexes; or
2. another person seeks clients with a view to do prostitution inside an establishment or its annexes.

This article establishes the offense and sets the punishment for a person (owner or manager) who accepts or tolerates that prostitution is carried out in any establishment or its annexes. This article is based on a similar provision in the new Penal Code, Article 292, pertaining to the offence of Authorizing

Prostitution Activities in an Establishment (see new Penal Code, Book 2, Title 2, Chapter 5, Section 5 "Procuring").

A person found guilty of this offense shall be punished with imprisonment from 2 to 5 years.

The offense established in this article has several elements:

"a person"

As used in this article, the term "a person" means someone who, directly or through an intermediary, manages, exploits, operates or finances an establishment and therefore has control or authority over the establishment. By contrast, a mere landlord or property owner who does not also manage, exploit, operate or finance the establishment should not be punished under this article, but may be liable under Article 32 (Provision of Premise for Prostitution) of this law.

"accepts or tolerates"

To be punished under this article, the actor both:

a) must know about the prostitution activity taking place in the establishment, and
b) must tolerate, condone or agree with that prostitution activity.

To be punished under this article, the actor must both a) know about and b) tolerate the prostitution activity.

For example, if a bar owner does not know that an employee engages in prostitution in the bar, then the owner is not subject to punishment under this article. Similarly, if the bar owner knows that the employee has engaged in prostitution but does not tolerate it (for example, the owner has warned the employee to stop or she will be fired), then the bar owner is not liable under this article even if the employee continues to engage in prostitution without the owner's agreement.

This article requires proof that the actor actually knew about and tolerated prostitution activity. However, the mere presence of condoms or material designed to raise awareness about sexually transmitted diseases is not proof that prostitution takes place in an establishment.[32] Similarly, the *lack* of condoms or other similar materials does not prove that there is no prostitution in an establishment. The promotion and use of condoms is encouraged by the policies of the Royal Government of Cambodia, pursuant to the 2002 Law on the Prevention and Control of HIV/AIDS[33] and its Implementing Guidelines,[34] and thus, prosecution or punishment under this provision requires other facts as proof that the offender accepted or tolerated prostitution.

"that another person indulges in prostitution"
"that another person seeks clients with a view to do prostitution"

"Another person" means a person who is a prostitute, pimp, procurer or intermediary, and who engages in prostitution or who seeks clients for prostitution in the establishment or its annexes.

"Prostitution" means the definition set out in Article 23 above.

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[32] In fact, entertainment establishments may even be subject to legal requirements that they have and display condoms or other materials. Such requirements may exist in accordance with regulations such as the Prime Minister's order on 100% Condom Usage Program, the Phnom Penh Municipality Regulation no. 01/08 on 100% Condom Use, or MoLVT Prakas no. 86 on Managing HIV/AIDS in the Workplace.

[33] Article 29 of the HIV/AIDS Law requires the State to take measures that will promote the prevention and control of sexually transmitted infections. Article 11 of the HIV/AIDS Law requires that all HIV prevention materials, such as condoms, be accompanied by information, which explains the proper method for using the equipment.

[34] Chapter 5 of the Implementing Guidelines of the HIV/AIDs Law provides that "[u]nder the Ministry of Health's guidelines…STI clinical services should be combined with the delivery of information and education such as condom promotion and distribution." Chapter 5 further sets out that to prevent HIV transmission through commercial sex work, Cambodia has adopted a '100% Condom Use Program' (which) mandates consistent condom use during all commercial sex acts, and imposes punishment on owners and operators of adult entertainment establishments (for example warnings and closure) for failure to comply with the requirements of the program.

It is important to note that this article does not criminalize the activity of prostitution itself, nor does this article punish the individual prostitutes. The TSE Law does not punish prostitutes (individually or in groups) for engaging in prostitution. Likewise, this law does not punish the clients of prostitution.

"inside"

This article punishes a person who accepts or tolerates that prostitution takes place inside their establishment. If the prostitution takes places outside, then the actor is not punished.

For example, if a beer promotion worker ends her shift at a bar, leaves the bar and, while outside on the street, solicits a person for the purpose of prostituting herself, the owner of the bar is not liable for the worker's act.

"an establishment"

"Establishment" means a physical location (house, building, business location, etc.) that is operated for another purpose (that is, prostitution is not the primary purpose of the establishment) but where prostitution takes place on its premises nonetheless.

For example, a karaoke club, massage parlor, guest house, bar or hotel where prostitution also takes place might be covered by this article.

For establishments that are operated for the purpose of prostitution (brothels), this article should not be used. However, the offense set out under Article 30 may apply.

"or its annexes"

"Annexes" means another building or group of buildings that:

a) Is owned or managed by the same person or entity as owns or manages the primary establishment, and
b) Is physically attached to, or on the same premises as the primary establishment.

For example, if the owner of a karaoke also owns a hotel that is located on the same lot, the hotel is considered an annex for the purposes of this article.

"shall be punished with imprisonment from 2 to 5 years"

A person who commits this offense shall be punished with imprisonment from 2 to 5 years. Additional penalties may also be applied at the discretion of the court, as per Article 48 of this law.

If the offense is committed with regard to child prostitution, then the offender should be prosecuted, and punished more severely (7-15 years imprisonment), as per Article 33 (Offense with regard to Child Prostitution).

As per Article 4 (Criminal Responsibility) paragraph 4, if the representative, agent or employee of a legal entity or principal is found guilty of this offense, the court may also punish the legal entity or principal with the additional penalties that are provided by Article 48 of the TSE Law. These additional penalties, if warranted, include punishments such as confiscation of materials or property (Article 48(1)-(3)), or closure of a business (Article 48(4)). (See discussion under Article 48 for more detail.)

It should be noted that Article 292 (Authorizing Prostitution Activities in an Establishment) of the Penal Code, which pertain to the same acts as this article, prescribes the same penalty of imprisonment from 2 to 5 years. The Penal Code, however, includes an additional penalty of a fine from 4,000,000 riels to 10,000,000 riels, which could be imposed by itself or together with imprisonment.

The inconsistency in penalties between the TSE Law and Penal Code may be resolved following the principles of statutory interpretation and the rules set out in Articles 671 and 668 of the Penal Code (see discussion on "principles of statutory interpretation" in the Introduction and in Art. 50 below). Based on these rules, the penalty for "authorizing prostitution activities in an establishment" under the newer Penal Code generally supersedes the penalty for the same act under the TSE Law. Nevertheless, in

accordance with the principle of "individualization of penalties" under Article 96 of the Penal Code, it is suggested that the penalty of imprisonment under the Penal Code be imposed in lieu of fine, for more serious cases based on factors such as the size of operation or number of prostitutes involved, amount of money earned by the perpetrator, the length of time the perpetrator has been engaged in the activity, and recidivism.

However, if the offense is committed within the context of human trafficking, the perpetrator should be charged and punished with the penalty of imprisonment under the TSE Law (which is a special law that prevails over the Penal Code in connection with trafficking-related offenses).

Article 32. Provision of Premise for Prostitution
A person who sells or makes available to another person premises not utilized by the public, knowing that they will be used by such person to indulge in prostitution shall be punished with imprisonment from 2 to 5 years.

This article establishes the offense and sets the punishment for a person (landlord, property owner or controlling tenant) who sells, rents or otherwise provides private premises to another person, while knowing that the other person will use the premises to engage in prostitution. This article is based on a similar provision in the new Penal Code. Article 293, pertaining to the offence of Making Premises Available for Prostitution (see new Penal Code, Book 2, Title 2, Chapter 5, Section 5 "Procuring").

A person found guilty of this offense shall be punished with imprisonment from 2 to 5 years.

The offense established in this article has several elements:

"a person"

As used in this article, the term "a person" means a landlord, property owner or controlling tenant of a property. In order to be held liable under this article, a person must have property rights over a place, including notably the right to utilize the property.

"who sells or makes available"

This means to sell, rent, lend or otherwise provide a property for the use of another person.

"premises not utilized by the public"

This article applies only to the use of private property, including land or buildings such as a house, business or other place that is privately owned or managed.

This article does not cover cases involving the sale, rental or other provision of public property. For the TSE Law, the term "public" (defined in the discussion on Article 24 above) means any state-owned, public or private land, facilities, buildings and transportation which are either open to all members of the public or which provide services to all members of the public. This definition is consistent with that found in Article 4 of the Law on the Protection and Promotion of the Rights of Persons with Disability (2009). "Private" property, therefore, is any property which is either not open to some members of the public, or which does not provide services to some members of the public.

"knowing that they will be used … to indulge in prostitution"

The offense set out in this article requires that the actor have actual knowledge that the premises will be used for prostitution.

For example, if a landlord sells or rents an apartment to a person that the landlord knows is a prostitute, and whom the landlord knows will practice prostitution inside the apartment, the landlord will be punished by imprisonment of 2 to 5 years under this article.

"Prostitution" means the activity defined in Article 23 of this law.

This article requires proof that the actor actually knew the premises would be used for prostitution. However, as discussed in Article 31 above, the mere presence of condoms or material designed to raise

awareness about sexually transmitted diseases is not proof that prostitution takes place in the premises.[35] Similarly, the *lack* of condoms or other similar materials does not prove that there is no prostitution in the premises. The promotion and use of condoms is encouraged by the policies of the Royal Government of Cambodia, pursuant to the 2002 Law on the Prevention and Control of HIV/AIDS[36] and its Implementing Guidelines[37], and thus, prosecution or punishment under this provision requires other facts to be proof that the offender had knowledge of the prostitution activity.

It should be noted that the knowledge requirement is slightly different for the sale versus the rental of a property:

a) Sale.
To be punished under this article in the case where a property is sold, the seller must know at the time of the sale that the property will be used for prostitution. If the seller does not know at the time of the sale, but finds out after the sale, then the seller is not liable under this article, because the seller no longer has ownership of the property.

b) Rental.
To be punished under this article in the case where a property is rented, the landlord is liable to be punished if he learns at any time during the rental that the property is being used for prostitution. In the case of rental, the landlord has ongoing liability because he continues to have ownership of the property.

Finally, it is important to note that this article does not punish a person who sells, rents or otherwise provides a property to a prostitute who will not use the premises to engage in prostitution.

For example, where a prostitute resides in a rented house or apartment, but does not engage in prostitution on the premises, the landlord in such a case would not be subject to punishment under this article.

"shall be punished with imprisonment from 2 to 5 years"

A person who commits this offense shall be punished with imprisonment from 2 to 5 years. Additional penalties may also be applied at the discretion of the court, as per Article 48 of this law.

If the offense is committed with regard to child prostitution, then the offender should be prosecuted, and punished more severely (7-15 years imprisonment), as per Article 33 (Offense with regard to Child Prostitution).

As per Article 4 (Criminal Responsibility) paragraph 4, if the representative, agent or employee of a legal entity or principal is found guilty of this offense, the court may also punish the legal entity or principal with the additional penalties that are provided by Article 48 of the TSE Law. These additional penalties, if warranted, include punishments such as confiscation of materials or property (Article 48(1)-(3)), or closure of a business (Article 48(4)). (See discussion under Article 48 for more detail.)

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[35] Entertainment establishments may even be subject to legal requirements that they have and display condoms or other materials. Such requirements may exist in accordance with regulations such as the Prime Minister's order on 100% Condom Usage Program, the Phnom Penh Municipality Regulation No. 01/08 on 100% Condom Use, or MoLVT Prakas no. 86 on Managing HIV/AIDS in the Workplace.

[36] Article 29 of the HIV/AIDS Law requires the State to take measures that will promote the prevention and control of sexually transmitted infections. Article 11 of the HIV/AIDS Law requires that all HIV prevention materials, such as condoms, be accompanied by information, which explains the proper method for using the equipment.

[37] Chapter 5 of the Implementing Guidelines of the HIV/AIDs Law provides that "[u]nder the Ministry of Health's guidelines…STI clinical services should be combined with the delivery of information and education such as condom promotion and distribution." Chapter 5 further sets out that to prevent HIV transmission through commercial sex work, Cambodia has adopted a '100% Condom Use Program' (which) mandates consistent condom use during all commercial sex acts, and imposes punishment on owners and operators of adult entertainment establishments (for example warnings and closure) for failure to comply with the requirements of the program.

It should be noted that Article 293 (Making Premises Available for Prostitution) of the Penal Code, which pertain to the same acts as this article, prescribes the same penalty of imprisonment from 2 to 5 years. The Penal Code, however, includes an additional penalty of a fine from 4,000,000 riels to 10,000,000 riels, which could be imposed by itself or together with imprisonment.

The inconsistency in penalties between the TSE Law and Penal Code may be resolved following the principles of statutory interpretation and the rules set out in Articles 671 and 668 of the Penal Code (see discussion on "principles of statutory interpretation" in the Introduction and in Art. 50 below). Based on these rules, the penalty for "making premises available for prostitution" under the newer Penal Code generally supersedes the penalty for the same act under the TSE Law. Nevertheless, in accordance with the principle of "individualization of penalties" under Article 96 of the Penal Code, it is suggested that the penalty of imprisonment under the Penal Code be imposed in lieu of fine. for more serious cases based on factors such as the size of operation or number of prostitutes involved, amount of money earned by the perpetrator, the length of time the perpetrator has been engaged in the activity, and recidivism.

However, if the offense is committed within the context of human trafficking, the perpetrator should be charged and punished with the penalty of imprisonment under the TSE Law (which is a special law that prevails over the Penal Code in connection with trafficking-related offenses).

Article 33. Offense with regard to Child Prostitution
A person who commits any of the offenses set forth in Articles 30, 31 and 32 of this law shall be punished with imprisonment from 7 to 15 years when the offense is committed with regard to child prostitution.

When the offense set forth in Paragraph 1 of this article applies, the term "prostitution" in the relevant provisions of this Chapter shall be replaced with the term "child prostitution."

This article establishes the offense and sets the punishment for managing, tolerating or providing premises used for child prostitution. A person who commits this offense is punished more severely, by being imprisoned for 7 to 15 years rather than 2 to 5 years as set out in Articles 30, 31 and 32.

In order to be punished under this article, an offender must:

a) be guilty of the offenses as defined in Articles 30, 31 and 32 above,
b) where those offenses involve child prostitution

In such cases, an offender should be prosecuted, and punished under this article, not under Articles 30, 31 or 32.

"Child prostitution" means the definition set out in Article 23 above, where the prostitution activity involves a minor (a person under 18 years of age).

It should be noted that Chapter 6 (Articles 42-44) of the TSE Law grants minors who are 15 years and older (that is, persons aged from 15 to under 18 years) the capacity to consent to engage in sexual relations, but the law does not grant such minors the capacity to engage in prostitution. All prostitution involving any minor (anyone under the age of 18) is considered child prostitution, and is illegal under the TSE Law.

Where the offenses of managing, tolerating or providing premises used for child prostitution apply, this article also acts to replace the term "prostitution" with the term "child prostitution" for all articles in this chapter.

Article 34. Purchase of Child Prostitution
A person who has sexual intercourse or other sexual conduct of all kinds with a minor who is 15 years of age or above by providing, or promising to provide, anything of value to the minor, an intermediary, a parent, a guardian or any other person who keeps the child under his or her supervision or control shall be punished with imprisonment from 2 to 5 years.

Any person who commits the above stated offense with a minor under the age of 15 years shall be punished with imprisonment from 7 to 15 years.

This article establishes the offense and sets the punishment for the purchase of child prostitution.

This article sets out two different ranges of punishment, depending on the age of the child prostitute at the time the offense is committed:

- If the child prostitute is from 15 to under 18 years old at the time of the offense, then the client is punished with imprisonment from 2 to 5 years.
- If the child prostitute is under 15 years old at the time of the offense, then the client is punished with imprisonment from 7 to 15 years.

Additional penalties may also be applied at the discretion of the court, as per Article 48 of this law.

This two-tiered scheme reflects the fact that, although the Chapter 6 of the TSE Law grants minors aged from 15 to under 18 years the capacity to consent to sexual relations, the law does not grant minors aged from 15 to under 18 years the capacity to engage in child prostitution. The purchase of child prostitution is illegal with respect to all minors (all persons under the age of 18 years). However, because minors under the age of 15 are considered to be more vulnerable, the TSE Law imposes heightened punishment on persons who purchase prostitution involving minors under the age of 15.

It is important to note that it does not matter if the minor involved in the act has previously engaged in child prostitution or if it is the first time for the minor to be in such a situation. Similarly, the offender cannot claim as a defense that the minor solicited or consented to the prostitution, because the TSE Law deems minors legally unable to consent to engage in prostitution.

The offense of purchasing child prostitution has several elements:

"a person"

This article punishes anyone who purchases or (via the operation of Article 4) attempts to purchase sexual services from a minor (a person under 18 years of age). Thus the term "a person" here means a prostitution client.

The offender may be an adult or a minor. For example, a 17-year old actor who purchases prostitution from a minor can be held liable under this article. It is important to distinguish the age provisions of this article from those in Chapter 6 (Indecency Against Minors Under Fifteen Years). In that Chapter, Articles 42 and 43 grant minors aged 15 or more the capacity to engage in sexual activity, but this does not mean that such minors are legally permitted to purchase prostitution from another minor. In other words, a minor aged 15 or more may engage in sexual relations with another minor aged 15 or more, but this article punishes that act if the sexual activity is carried out by providing or promising to provide anything of value.

It should be noted that this article is the only provision under the TSE Law that punishes a person (the client) who purchases prostitution.

"who has sexual intercourse or other sexual conduct of all kinds"

This article punishes a person who has already engaged, or who has attempted to engage, in sexual intercourse or other sexual conduct with a minor by providing or promising to provide anything of value.

According to the "attempt" provision of Article 4 (1), this article may also be used to punish a person who has attempted to purchase prostitution (that is, the sexual contact has not yet taken place).

"**Sexual intercourse**" means the insertion of one person's genital into another person's genital, mouth or anus, or the insertion of any tools or instruments into a person's genital.[38] Sexual intercourse can take

[38] This definition is consistent with the Ministry of Justice Instruction No. 1/09, dated 23 February 2009, which defines sexual intercourse with respect to Articles 42 and 43 of the TSE Law.

place between two or more persons of the same or opposite sex.

The term "tools" should be interpreted broadly to include, among other things, a finger or any other part of the body.

The term "genital" is generally defined as a person's penis or vagina, but to have stronger protection for victims, in this law, the word "genital" is understood to mean, penis or, vagina or anus. The term "sexual intercourse" therefore includes vaginal sex, anal sex and oral sex, whether between males and females, males and males, or females and females.

"**Other sexual conduct of all kinds**" means any other type of conduct which stimulates or satisfies the actor's sexual desires.[39]

Such conduct includes physical contact between the prostitute and another person, and also may include cases where there is no physical contact between the prostitute and another person.

For example, if a person pays to see a child's genitals or to see the child masturbate, that person can be prosecuted under this article even if there has been no touching or other physical contact between the client and the child.

To qualify as "other sexual conduct", the act must be carried out for the purpose of stimulating or satisfying the client's sexual desire. It does not matter how the client seeks to stimulate or satisfy sexual desire; this can be by the client initiating sexual contact with the prostitute, or by directing the prostitute to initiate sexual contact with or exposure to the client or a third party, or by directing a third party to initiate sexual contact with the prostitute.

"with a minor who is 15 years of age or above"

"A minor" means a person under the age of 18 years, as per the definition in Article 7.

If the child prostitute is minor aged from 15 to under 18 years old at the time the offense was committed, then the client is punished with 2 to 5 years imprisonment.

Chapter 6 of the TSE Law grants minors who are 15 years and older (that is, persons aged 15-17 years) the capacity to consent to engage in sexual relations, but, the law does not grant such minors the capacity to engage in prostitution. All prostitution involving any minor (anyone under the age of 18) is considered child prostitution, and is illegal under the TSE Law.

"by providing, or promising to provide"

This article punishes the client who has sexual contact with a minor in exchange for providing or promising to provide anything of value.

It is important to note that the article does not require that the client actually provide something of value. If the client makes a mere promise to provide something of value, and has sexual contact with the minor in exchange for that promise, then the client is liable to be punished under this article.

For example, if an actor promises to pay a minor's school fees in exchange for sexual intercourse, and has sexual intercourse with the minor but then does not pay the school fees, the actor is still liable to be punished under this article.

"anything of value"

As discussed under Article 23 above, the term "anything of value" includes but is not limited to remuneration in cash, valuable items (for example, jewelry, clothing, etc.), corporeal property (for example, house, land, apartment, etc.), non-corporeal property or real rights (for example, rights to own, use, sell or lease any kind of movable and immovable property), services, direct or indirect payments or fees (fees paid to, through or on behalf of another person), valuable information or control over persons.

[39] The definition for this term is based on related definitions for the term "indecent act" as used in Article 43 of this law and as defined in Ministry of Justice Instruction No. 1/09, dated 23 February 2009.

"to the minor, an intermediary, a parent, a guardian or any other person who keeps the child under his or her supervision or control"

This provision reflects the fact that in cases of child prostitution, the minor often does not receive any direct financial benefit. Instead, the financial benefit accrues to a parent, guardian or other third party that maintains supervision or control over the minor. This article therefore punishes the purchase of child prostitution in such situations.

For example, if A had sex with a minor by paying an intermediary, A would have committed the purchase of child prostitution. If A had sex with a minor by promising to pay the minor's parent or guardian, A would have committed the purchase of child prostitution. If A committed an indecent act with a minor by promising to work for the minor's parents for a week, A would have committed purchase of child prostitution because he promised to provide something of value (a service) to the minor's parents.

It should be noted that for all the examples in the above paragraph, the intermediary, parents or guardian would also be liable for punishment under Article 28 (Procurement with regard to Child Prostitution).

"supervision or control"

"Supervision or control" means either of two situations:

1. the legal power that is conferred by law to the parents, guardians or general curators of a minor, or
2. the practical supervision or control over a minor even where the adult does not have legal authority over that minor as in point 1 above.

For example, if a parent asks his relative or neighbor to take care of his minor child for a period of time, the relative or neighbor is considered to have supervision or control of the minor.

Similarly, if a minor is employed, then the employer is considered to have supervision or control of the minor during working hours or while the minor is at work.

If the minor is at school, then the minor's teacher and school principal are considered to have supervision and control of the minor.

Article 35. Soliciting for Child Prostitution

A person who solicits another for child prostitution, or advertises child prostitution, for the purpose of acting as intermediary of the child prostitution shall be punished with imprisonment from 2 to 5 years and fine from 4,000,000 to 10,000,000 riels.

A person who commits the above offense as business shall be punished with imprisonment from 5 to 10 years.

This article establishes the offense and sets the punishment for persons who solicit potential clients for child prostitution, or who advertise child prostitution, in order to receive a financial benefit as an intermediary.

It should be noted that this article is not about, and does not punish, a child prostitute who solicits another person (a client) for the purpose of prostituting himself or herself. Soliciting for the purpose of prostitution is covered by Article 24. According to Article 24 (2), minors are exempt from punishment of the offense of soliciting.

"solicits"

"Solicits" means the activity defined in Article 24 (Soliciting). This article punishes soliciting for the purpose of child prostitution.

The term "to solicit" means that there must be a specific communication between the offender and another person, or other behavior by the offender, which conveys that the offender is willing to procure a

child prostitute for the other person, or is advertising the services of a child prostitute, in exchange for anything of value.

"advertises"

In this provision, "advertises" means to promote child prostitution services to another person, or to inform another person about the availability of child prostitution services. The advertising (promotion or informing) can be done in any medium, including but not limited to being done verbally, in print or electronically.

"child prostitution"

"Child prostitution" means the definition set out in Article 23 above, where the prostitution activity involves a minor (a person under 18 years of age).

It should be noted that Chapter 6 (Articles 42-44) of the TSE Law grants minors who are 15 years and older (that is, persons aged from 15 to under 18 years) the capacity to consent to engage in sexual relations, but the law does not grant such minors the capacity to engage in prostitution. All prostitution involving any minor (anyone under the age of 18) is considered child prostitution, and is illegal under the TSE Law.

"for the purpose of acting as intermediary of the child prostitution"

The objective of this article is to punish a person who acts as an intermediary. In this article, "acting as an intermediary" means that the offender intends for his actions as an intermediary to promote or facilitate child prostitution.

"shall be punished with imprisonment from 2 to 5 years and fine from 4,000,000 to 10,000,000 riels"

A person who is found guilty of this offense shall be punished with imprisonment from 2 to 5 years and fined from 4,000,000 to 10,000,000 riels. As per Article 5 (Pronouncement of Principal Penalties), the court may impose either or both punishments. Additional penalties may also be applied at the discretion of the court, as per Article 48 of this law.

As per Article 4 (Criminal Responsibility) paragraph 4, if the representative, agent or employee of a legal entity or principal is found guilty of this offense, the court may also punish the legal entity or principal with the additional penalties that are provided by Article 48 of the TSE Law. These additional penalties, if warranted, include punishments such as confiscation of materials or property (Article 48(1)-(3)), or closure of a business (Article 48(4)). (See discussion under Article 48 for more detail.)

"A person who commits the above offense as business"

This provision increases the punishment for actors who commit the offense as a business. In such cases, the offender is subject to imprisonment for 5 to 10 years. Additional penalties may also be applied at the discretion of the court, as per Article 48 of this law.

"As a business" means that the actor solicits or advertises for child prostitution on a recurring or regular basis, with the purpose of drawing ongoing financial benefit from this activity.

As per Article 4 (Criminal Responsibility) paragraph 4, if the representative, agent or employee of a legal entity or principal is found guilty of this offense, the court may also punish the legal entity or principal with the additional penalties that are provided by Article 48 of the TSE Law. These additional penalties, if warranted, include punishments such as confiscation of materials or property (Article 48(1)-(3)), or closure of a business (Article 48(4)). (See discussion under Article 48 for more detail.)

Article 36. Conditional Money Loan in connection with Child Prostitution
A person who provides another with a money loan or anything of value on the condition that a minor engage in child prostitution business shall be punished with imprisonment from 5 to 10 years.

A person who provides a minor with money loan or anything of value on the condition that the latter engage in child prostitution business shall be punished the same as set out in paragraph 1 of this article.

This article establishes the offense and sets the punishment for persons who loan money or anything of value to a third party or a minor, on the condition that the minor engage in child prostitution.

"a money loan"

A "money loan" means any amount of money (in any currency) that is given to the recipient to use for a period of time, with the expectation and/or promise that it will be repaid to the giver (with or without interests).

"anything of value"

As discussed under Article 23 above, the term "anything of value" includes but is not limited to remuneration in cash, valuable items (for example, jewelry, clothing, etc.), corporeal property (for example, house, land, apartment, etc.), non-corporeal property or real rights (for example,s rights to own, use, sell or lease any kind of movable and immovable property), services, direct or indirect payments or fees (fees paid to, through or on behalf of another person), valuable information, or control over persons.

"Anything of value" should be interpreted broadly in order to cover all forms of conditional payment or offering in connection with child prostitution.

For example, if an actor provides a television to a mother on the condition that her minor daughter prostitute herself, the actor will be punished under this article.

If an employer offers work to a cleaner on the condition that the cleaner's minor daughter prostitute herself, the employer is also covered under this article.

Likewise, if an actor provides candy to a minor on the condition that the minor prostitute himself or herself, this act will be covered by this article.

"on the condition that a minor engage in child prostitution business"

The objective of this article is to punish a person who recruits, procures, induces or promotes child prostitution by providing a money loan or anything of value to a third party or to the minor, on the condition that the minor engage in the business of child prostitution. It is immaterial whether the minor actually engaged in child prostitution as a result of the actor's loan or payment.

"Child prostitution" means the term described in Article 23 of this law.

"Child prostitution business" includes any situation where the minor is obliged to engage in child prostitution, whether for a single occasion or on a recurring or regular basis.

It should be noted that this article does not seek to punish a person (a client) who pays a child prostitute in exchange for sexual contact with the child prostitute. Such behavior is punished under the offense set out in Article 34 (Purchase of Child Prostitution). Rather, this article seeks to punish those who attempt to induce or coerce a child to practice prostitution, by use of a money loan or other item of value.

"shall be punished with imprisonment from 5 to 10 years"

A person who is found guilty of this offense shall be punished with imprisonment from 5 to 10 years. Additional penalties may also be applied at the discretion of the court, as per Article 48 of this law.

As per Article 4 (Criminal Responsibility) paragraph 4, if the representative, agent or employee of a legal entity or principal is found guilty of this offense, the court may also punish the legal entity or principal with the additional penalties that are provided by Article 48 of the TSE Law. These additional penalties, if warranted, include punishments such as confiscation of materials or property (Article 48(1)-

(3)), or closure of a business (Article 48(4)). (See discussion under Article 48 for more detail.)

Article 37. Contract of Child Prostitution
A person who makes a contract with another in which a minor is obliged to engage in child prostitution business shall be punished with imprisonment from 5 years to 10 years.

A person who makes a contract with a minor in which the latter is obliged to engage in child prostitution business shall be punished the same as set out in paragraph 1 of this article.

This article establishes the offense and sets the punishment for a person who makes a contract with a third party or a minor, on the condition that the minor engage in child prostitution. An offender found guilty of this article is punished with 5 to 10 years of imprisonment.

"Child prostitution" means the term described in Article 23 of this law.

"A person who makes a contract with another"

The term "contract" here is defined by Cambodian law to mean any agreement between two or more parties to create, change or terminate one or more obligations which bind them. Such agreements may be written or verbal, entered into by a natural person or a legal entity, and may be made directly between the parties or via an intermediary.

This sort of contract is in fact void by law. Any agreement, verbal or written, to commit an illegal activity (including any form of human trafficking and sexual exploitation) is void and unenforceable.

This is consistent with the approach in the contract law in force at the time the TSE Law was promulgated. Article 5 of Decree No. 38 (Law referring to Contract and Other Liabilities) states that a contract:

...shall be deemed void when
- *it is illegal, and not consistent with public order or good customs.*
- *it is contrary to social interests or violating social ethics.*
- *[it is] a contract whose subject matter is impossible to perform.*

Similarly, the Civil Code, in Article 354, states that a contract shall be void "(a) where the contents of the contract violate a mandatory provision of the law; or (b) where the contents of the contract contravene the public order and good customs."

The language in the articles cited above is intentionally broad and is meant to invalidate any agreement that is illegal or in conflict with public order. This includes any contract that relates to child prostitution. Any agreement with the purpose to commit any such offenses is null, void, and unenforceable by any party to the agreement.

"on the condition that a minor engage in child prostitution business"

The objective of this article is to punish a person who obliges or attempts (via Article 4, paragraph 1) to oblige a child to practice prostitution, by use of a contract with a third party or with the minor. It is immaterial whether the minor actually engaged in child prostitution as a result of the contract.

"Child prostitution" means the term described in Article 23 of this law.

"Child prostitution business" includes any situation where the minor is obliged to engage in child prostitution, whether for a single occasion or on a recurring or regular basis.

It should be noted that this article does not seek to punish a person (a client) who pays a child prostitute in exchange for sexual contact with the child prostitute. Such behavior is punished under the offense set out in Article 34 (Purchase of Child Prostitution). Rather, this article seeks to punish those who, by use of a contract, oblige or attempt to oblige a child to practice prostitution.

"shall be punished with imprisonment from 5 to 10 years"

A person who is found guilty of this offense shall be punished with imprisonment from 5 to 10 years. Additional penalties may also be applied at the discretion of the court, as per Article 48 of this law.

As per Article 4 (Criminal Responsibility) paragraph 4, if the representative, agent or employee of a legal entity or principal is found guilty of this offense, the court may also punish the legal entity or principal with the additional penalties that are provided by Article 48 of the TSE Law. These additional penalties, if warranted, include punishments such as confiscation of materials or property (Article 48(1)-(3)), or closure of a business (Article 48(4)). (See discussion under Article 48 for more detail.)

Chapter 5 - Pornography

This chapter defines pornography and child pornography, and establishes the related offenses and punishments.

Article 38. Definition of Pornography
'Pornography' in this law shall mean a visible material such as a photograph or videotape, including a material in electronic form, depicting a genital or other similar pornography which excites or stimulates sexual desire.

This article defines the term "pornography". This article does not establish any offense relating to pornography; the offenses are established under Article 39. Therefore, an accused offender should be charged, and, if found guilty, punished for offenses set out under Article 39.

"visible material"

This article defines pornography primarily as a visible material. This includes, but is not limited to, photographs, drawings, texts, videos and movies in any physical or electronic form. Such visible material may also contain audio content that is pornographic in nature.

"depicting a genital"

To be considered pornography, the material must show a person's genitals and (as noted below) be intended to excite or stimulate sexual desire.

The word "genital" is generally defined as a person's penis or vagina, but to have stronger protection for victims, in this law, the word "genital" is understood to mean, penis or, vagina or anus.
For a text to be considered pornographic, it must include a written depiction of a person's genitals.

"other similar pornography"

By including the term "other similar pornography", the TSE Law means a visible material which does not depict a genital, but which is nonetheless pornographic because it is intended to excite or stimulate sexual desire. This includes but is not limited to material that depicts sexual acts or activity, or other sexual parts (including the buttocks or nipple area).

"which excites or stimulates sexual desire"

To be considered pornography, the material must be intended to excite or stimulate sexual desire on the part of the observer.

This requirement of intent is fundamental in order to exclude materials that show a person's genitals for a legitimate purpose (that is, they are not intended primarily to excite or stimulate sexual desire). Materials intended for use in fields such as medicine, public health, education, or art are not to be considered pornographic, because they are not intended primarily to excite or stimulate sexual desire.

For example, this article is not intended to apply to public health or other materials that are designed for outreach, awareness-raising and education in an attempt to promote safe sex or to reduce or prevent the spread of HIV/AIDS and other sexually transmitted diseases. Even where such materials are sexually

graphic, because the materials are intended for public health purposes, they are not considered pornographic.

Article 39. Pornography
A person who distributes, sells, leases, displays, projects or presents in a public place, pornography shall be punished with imprisonment from 7 days to 1 month and a fine from 100,000 to 200,000 riels.

A person who possesses, transports, imports, or exports pornography for the purpose of use in commission of the above offense shall be punished the same as in the above-stated paragraph 1.

A person who produces pornography for the purpose of use in commission of any offense stipulated in the first and second paragraphs of this article shall be punished with imprisonment from 1 month to 1 year and a fine from 200,000 to 2,000,000 riels.

This article establishes the offense and defines the punishments for persons who distribute, sell or lease pornography, or present pornography in public; or who possess, transport or produce pornography for the purpose of distributing, displaying or presenting it.

As with any criminal offense, the accused must have knowledge and intent. In this article, to be held liable, a person must know that the material is pornographic and must intend to engage in the prohibited behavior.

For example, if a vendor sells a magazine on the street without knowledge that it contains one page of pornography, he or she is not subjected to punishment under this article.

Similarly, if a person possesses pornography and unintentionally leaves it in plain view (he does not intend to display it), then he is not subject to punishment under this article.

This article prohibits the following acts:

"distributes, sells, leases,"
This provision prohibits commercial and non-commercial distribution (whether for free or in exchange for something of value), as well as the sale or lease of pornography.

"displays, projects or presents in a public place"
This provision prohibits the display, projection or presentation of pornography in public.

"Display" means that the person intends to make or allow another person to view the pornography; it does not apply to when the person views the material himself. However, because the objective of this provision is to prevent members of the public from being exposed to pornography against their will, an actor may also be found guilty if he display pornography in private but so that it is visible to a person who is in a public place.

The term "in a public place" means any state-owned, public or private land, facilities, buildings and transportation which are open to all members of the public or which provide services to all members of the public. This definition is consistent with Article 4 of the Law on the Protection and Promotion of the Rights of Persons with Disability (2009).

For the purposes of this law, the term "in a public place" also means that the display, projection or presentation of pornography can also be punished if it can be seen or heard[40] by a person who is in a public place.

[40] Although Article 38 defines "pornography" as a "visible material", the audio content of such a material may also be pornographic. If the visible material is presented in private but pornographic content can be heard by a person in a public place, then this may still be punished. For example, if a pornographic film is shown inside a house, but the volume is loud and it can be heard on the street, then the person who shows the film may be found liable under this article.

For example, if pornography is presented just inside the door to a private place, such that people on the street can easily see or hear the pornography, then the act can be punished.

"A person who possesses, transports, imports, or exports pornography for the purpose of"

This provision criminalizes the possession, transportation, import or export of pornography when these acts are done for the purpose of committing the offense set out in the first paragraph of this article. Because the activities of possession, transporting, importing or exporting are prohibited only when carried out with the intent to commit one of the offenses set out in the first paragraph of this article, the prosecution must show some evidence of the accused's intent.

"Possession" includes possession of the material in any form (including physical or electronic forms). It should be noted that if the possession is not carried out with the intent to commit the offense set out in the first paragraph of this article, then the activity is not prohibited.

For example, possession of pornography for personal use is not prohibited by this article.

"Transport", "import" and "export" are to be broadly understood in order to include their normal meanings (that is, the normal processes of physically transporting, importing or exporting) and also any acts connected with new technologies such as the internet, mobile phones or other new technologies. These terms therefore also prohibit the downloading, uploading or sending of pornography by email, mobile phone or other technologies, when done for the purpose of committing one of the offenses set out in the first paragraph of this article.

"A person who produces pornography for the purpose of use in commission of any offense stipulated in the first and second paragraphs of this article"

This provision heightens the punishment of a person who produces pornography for the purpose of use in the commission of any offense stipulated in Paragraphs 1 and 2.

To be liable under this paragraph, the offender is required to have two intents: 1) the intent to produce pornography (including the knowledge that the material produced is pornographic); and 2) the intent to use the pornography produced for the purpose of committing one of the offenses stated in Paragraphs 1 or 2.

Article 40. Definition of Child Pornography

'Child pornography' in this law shall mean 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.

This article defines child pornography. This article does not establish any offense relating to child pornography; the offense is established under Article 41. Therefore, an accused offender should be charged, and, if found guilty, punished under Article 41 of this law.

"visible material"

This article defines child pornography as a visible material. This includes, but is not limited to, photographs, drawings, texts, videos and movies in any physical or electronic form. Such visible material may also contain audio content that is pornographic in nature.

It should be noted that Arrangement by an Adult of Gatherings/Meetings Involving Indecent Exposure or Sexual Relations at which a Minor is Present or Participated is an offense under Article 346 of the new Penal Code (see new Penal Code, Book 2, Title 3, Chapter 5, Section 2, "Inciting a Minor to Commit Illegal or Dangerous Acts").

"depicting a minor's naked figure"

To be considered pornography, the material must show all or part of the naked body of a minor. This

means showing the minor fully or partially undressed. This may include showing the minor's genitals or other body parts. Such depiction must be , with an intent to excite or stimulate sexual desire.

For a text to be considered pornographic, it must include a depiction of a naked minor.

"which excites or stimulates sexual desire"

To be considered pornography, the material must be intended to excite or stimulate sexual desire on the part of the observer.

This requirement of intent is fundamental in order to exclude materials that show a naked minor for a legitimate purpose (that is, they are not intended primarily to excite or stimulate sexual desire). Materials intended for use in fields such as medicine, public health, education, or art are not to be considered pornographic.

Article 41. Child Pornography

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.

A person who possesses, transports, imports, or exports a child pornography for the purpose of use in commission of the offense stipulated in the above paragraph 1 shall be punished the same.

A person who produces a child pornography shall be punished with imprisonment from 5 to 10 years.

A person who produces a child pornography for the purpose of use in commission of any offense stipulated in the above-stated first and second paragraphs shall be punished with imprisonment from 10 to 20 years.

This article establishes the offense and defines the punishments for persons who distribute, sell or lease child pornography, or present child pornography in public; who produce child pornography; or who possess, transport or produce child pornography for the purpose of distributing, displaying or presenting it.

As with any criminal offense, the accused must have knowledge and intent. In this article, to be held liable, a person must know that the material contains child pornography and must intend to engage in the prohibited behavior.

For example, if a person unintentionally includes a pornographic picture of a child in a book or magazine, etc., he or she is not subjected to punishment under this article. This is true even if the person intends to distribute or produce a book or magazine that contains pornographic material of adults; in such a case, if the person did not intend to produce child pornography, he should be charged and punished under Article 39 of this law.

However, in accordance with Article 7, the producer of pornography may be considered to have supervision and control of the minor, and thus is presumed to know the minor's age. If the producer wishes to claim as a defense that he intended to produce only adult pornography, he must prove that he had a reasonable belief that the minor depicted in the pornography was 18 years or older. In considering whether such a belief is reasonable, courts may look at a variety of factors, including (but not limited to) the real age of the victim, representations of age made by documentation (for example, where the minor presents a falsified birth certificate or ID card which states that he is 18 years or older), etc. (For more detail, see discussion regarding Article 7 above.)

This article prohibits the following acts:

"distributes, sells, leases,"

This provision prohibits commercial and non-commercial distribution (whether for free or in exchange for something of value), as well as the sale or lease of child pornography.

"displays, projects or presents in a public place"

This provision prohibits the display, projection or presentation of child pornography in public.

"Display" means that the person intends to make or allow another person to view the pornography; it does not apply to when the person views the material himself. However, because the objective of this provision is to prevent members of the public from being exposed to child pornography against their will, an actor may also be found guilty if he displays child pornography in private but so that it is visible to a person who is in a public place.

The term "in a public place" means any state-owned, public or private land, facilities, buildings and transportation which are open to all members of the public or which provide services to all members of the public. This definition is consistent with Article 4 of the Law on the Protection and Promotion of the Rights of Persons with Disability (2009).

For the purposes of this law, the term "in a public place" also means that the display, projection or presentation of child pornography can also be punished if it can be seen or heard[41] by a person who is in a public place.

For example, if child pornography is presented just inside the door to a private place, such that people on the street can easily see or hear the pornography, then the act can be punished.

"A person who possesses, transports, imports, or exports child pornography for the purpose of"

This provision criminalizes the possession, transportation, import or export of child pornography when these acts are done for the purpose of committing the offense set out in the first paragraph of this article. Because the activities of possession, transporting, importing or exporting are prohibited only when carried out with the intent to commit one of the offenses set out in the first paragraph of this article, the prosecution must show some evidence of the accused's intent.

"Possession" includes possession of the material in any form (including physical or electronic forms). It should be noted that if the possession is not carried out with the intent to commit the offense set out in the first paragraph of this article, then the activity is not prohibited.

"Transport", "import" and "export" are to be broadly understood in order to include their normal meanings (that is, the normal processes of physically transporting, importing or exporting) and also any acts connected with new technologies such as the internet, mobile phones or other new technologies. These terms therefore also cover the downloading, uploading or sending of child pornography by email, mobile phone or other technologies, when done for the purpose of committing one of the offenses set out in the first paragraph of this article.

"A person who produces child pornography"

This provision criminalizes the mere production of child pornography, regardless of the use of the child pornography for commission of any offense.

To be liable under this paragraph, the producer of child pornography must have the intent to produce child pornography (including the knowledge that the material produced contains child pornography). In accordance with Article 7 of the TSE Law, the producer of child pornography may be considered to have supervision and control of the minor, and thus is presumed to know the minor's age. If the producer wishes to claim as a defense that he intended to produce only adult pornography, he must prove that he had a reasonable belief that the minor depicted in the pornography was 18 years or older. In considering whether such a belief is reasonable, courts may look at a variety of factors, including (but not limited to) the real age of the victim, representations of age made by documentation (for example, where the minor

[41] Although Article 40 defines "child pornography" as a "visible material", the audio content of such a material may also be pornographic. If the visible material is presented in private but pornographic content can be heard by a person in a public place, then this may still be punished. For example, if a film that is child pornography is shown inside a house, but the volume is loud and it can be heard on the street, then the person who shows the film may be found liable under this article.

presents a falsified birth certificate or ID card which states that he is 18 years or older), etc. (For more detail, see discussion regarding Article 7 above.)

"A person who produces child pornography for the purpose of use in commission of any offense stipulated in the first and second paragraphs of this article"

This provision heightens the punishment of a person who produces child pornography for the purpose of use in the commission of any offense stipulated in Paragraphs 1 and 2.

To be liable under this paragraph, the offender is required to have two intents: 1) the intent to produce child pornography (including the knowledge that the material produced contains child pornography); and 2) the intent to use the child pornography produced for the purpose of committing one of the offenses stated in Paragraphs 1 and 2.

Chapter 6 - Indecency against Minors under Fifteen Years

This chapter defines the offenses and related punishments for persons who have sexual contact of any sort with a minor under fifteen years.

By defining these offenses, this chapter also sets the age of sexual consent at fifteen years. Thus, the TSE Law grants a 15 year old the legal capacity to engage in voluntary sexual relations. This is consistent with Article 239 of the Penal Code which states that the "age of sexual consent is 15 years."

It should be noted that all minors (a person under the age of 18) are prohibited from engaging in prostitution. This is true even for a minor who is 15 years old or older, and thus has reached the age of sexual consent. In other words, the TSE Law grants minors aged 15 to under 18 years the capacity to agree to sexual relations, but not the capacity to consent to prostitute themselves. Therefore, if a person has any sexual contact with a minor (a person under the age of 18) by providing or promising to provide anything of value, then the person should be prosecuted and tried for the crime of purchasing child prostitution under Article 34, in addition to any possible prosecution and trial under this chapter..

It should also be noted that the Ministry of Justice has issued Instruction 1/09 (February 2009) to clarify the proper application of this chapter of the TSE Law.

Article 42. Sexual Intercourse with Minors under Fifteen Years
A person who has sexual intercourse with another person of the age of less than fifteen years shall be punished with imprisonment from 5 to 10 years.

This article punishes a person (man or woman) who has sexual intercourse with a minor under fifteen years old.

This article is to be applied even where the minor under the age of 15 years has fully agreed to such sexual intercourse or does not resist it in any way. Because the TSE Law does not grant minors under the age of 15 years the capacity to consent to sexual relations, any such agreement is not "consent".

If the offender has engaged in sexual intercourse with a minor under the age of 15 years by means of force, violence, coercion, threat or surprise, then the offender should be charged and punished for aggravated rape under Article 241 ("Aggravating circumstances (status of the victim)") of the Penal Code instead of being charged and punished under this article. (See Penal Code, Book 2, Title 2, Chapter 3, Section 1 "Rape".)[42]

If the offender has engaged in sexual intercourse with a minor under the age of 15 years by providing or promising to provide anything of value to the minor or to a third party, then the person should be prosecuted and tried for the crime of purchasing child prostitution under Article 34, in addition to prosecution and trial under this article.

As per Article 7 (Definition of Minor), a person who has supervision or control of a minor is presumed to know the minor's age unless the person proves that he/she reasonably believed the minor's age to be 18 years or more. This presumption also applies to questions relating to the age of sexual consent.

For example, where a person has supervision or control of a minor and has sexual intercourse with that minor, Article 7 presumes that the person knows the minor's age, and so the person cannot easily claim as a defense that he did not know the minor was below 15 years old.

[42] Under Articles 239 and 241 of the Penal Code, "rape" -- defined as an act of sexual penetration with a sexual organ or an object, committed against another person of either sex, by violence, coercion, threat or surprise –- is punishable by imprisonment from 7 to 15 years if it is committed against a person who is particularly vulnerable by reason of his or her age.

(For further information, including a discussion of "supervision and control", please see the text on Article 7 above.)

In accordance with Article 44, only a person who is aged fifteen years or older can be punished under this article.

In principle, according to article 38 and 39 of the Penal Code, a minor who is aged 14 years old may be held responsible for an offence; but in the case of article 42 of the TIPSE Law, only a minor who is at least 15 years old or more may be punished under this article.

In practice, some minors with similar age, or with a short age gap, engage in voluntary sexual relationships, without use of any violence, coercion, threat, surprise or deception.

For example, a 16 year old boy and a 14 year old girl are in a romantic relationship and agree to have consensual sex, without any physical force, injury or abuse of authority.

As in the example above, in the jurisprudence and/or laws of some countries, consensual sexual relationships between children close in age are considered as non-criminal relationships or a minor offence, because these countries believe that punishing children for consensual sexual relations is not in their best interests.[43]

Therefore, in the above cases, taking into account "the circumstances of the offence or the character of the minor" in accordance with article 39 of the Penal Code, the prosecutor or court may consider to prosecute or not to prosecute or to impose only alternative measures on the minor.

In case it is decided to prosecute the minor, the court should consider to apply alternatives to pre-trial detention and to impose a non-custodial sentence, or at the very least, consider to apply mitigated penalties as stipulated in article 96 of the Penal Code.

"sexual intercourse"

The term "sexual intercourse" means the insertion of one person's genital into another person's genital, mouth or anus, or the insertion of any tools or instruments into a person's genital. Sexual intercourse can take place between two or more persons of the same or opposite sex. This definition is consistent with the Ministry of Justice Instruction 01/09 dated 23 February 2009

The term "tools" should be interpreted broadly to include, among other things, a finger or any other part of the body.

The term "genital" is generally defined as a person's penis or vagina, but to have stronger protection for victims, in this law, the word "genital" is understood to mean, penis or, vagina or anus.
The term "sexual intercourse" therefore includes vaginal sex, anal sex and oral sex,[44] whether between males and females, males and males, or females and females.

An offender can be punished under this article regardless of whether the offender is the one penetrating the victim or is the one being penetrated.

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[43] Countries, such as England, maintain their statutory rape laws but have made it customary not to prosecute young offenders.

There has also been a growing trend toward enacting, what the United States refers to as, Romeo and Juliet Laws whereby consensual sexual relationships between individuals close in age are considered a non-criminal relationship, or still an offense but a less serious one than statutory rape. *(Steve James, "Romeo and Juliet Were Sex Offenders: An Analysis of the Age of Consent and A Call for Reform", 78 UMKC L. Rev. 241, 248 (2009))*

[44] Oral sex is considered "sexual intercourse" even when it is performed on a female and there is no penetration of the vagina or anus. This interpretation is necessary in order to ensure that female minors are not discriminated against, and are given the same rights and protection as males under the law.

Article 43. Indecent Act against Minors under Fifteen Years

'Indecent act' in this law shall mean an act of touching or exposing a genital or other sexual part of another, or of having another touch the actor's or a third person's genital or other sexual part, with the intent to stimulate or satisfy the actor's sexual desire.

A person who commits an indecent act against another person of the age of less than 15 years shall be punished with imprisonment from 1 to 3 years and a fine from 2,000,000 to 6,000,000 riels.

A person who repeatedly commits any offense stipulated in Article 42 or this article shall be punished with double the prison punishment.

This article defines an indecent act (sexual contact that does not rise to the level of intercourse as defined in Article 42) and punishes a person (man or woman) who engages in an indecent act with a minor under fifteen years old.

The penalty in Article 43 of 1 to 3 years imprisonment and fine from 2 million to 6 million riels is aggravated to double the punishment in case of repeat offending.

Note that paragraphs 1 and 2 of Article 43 of the TSE Law is identical to Article 341 of the Penal Code (see Book 2, Title 3, Chapter 5 "Endangering of Minors", Section 1 "Threat to Physical or Mental Health", Article 341 "Indecent Assault of Minor under 15 Years of Age").

Article 341 of the Penal Code provides the same penalty of 1 to 3 years imprisonment and a fine from 2 million to 6 million riels.

The penalty is increased to 2 to 5 years imprisonment and a fine of 4 million to 10 million riels in case of aggravating circumstances listed in Article 342 (Aggravating Circumstances) of the Penal Code.

This article is to be applied even where the minor under 15 years has fully agreed to such sexual contact or does not resist it in any way. Because the TSE Law does not grant minors under the age of 15 years the capacity to consent to sexual relations, any such agreement is not "consent".

If the offender has engaged in indecent act with a minor under 15 years old by means of force, violence, coercion, threat or surprise, then the offender should be charged and punished for aggravated indecent assault under Articles 247 or 248, in relation to Article 246 (Indecent Assault)[45], of the Penal Code, instead of being charged and punished under Article 43 of the TSE Law. (See new Penal Code, Book 2, Title 2, Chapter 3, Section 2 "Other Sexual Assault".) Articles 247 and 248 of the Penal Code prescribe an aggravated penalty of 2 to 5 years imprisonment and a fine of 4 million to 10 million riels in case of aggravating circumstances, including where the victim is particularly vulnerable by reason of his or her age.[46]

If the offender has engaged in sexual intercourse with the victim (who is a minor under the age of 15), then the offender should be charged, and punished under Article 42.

If the offender has committed an indecent act against a minor under 15 years by providing or promising to provide anything of value to the minor or to a third party, then the person should be prosecuted and tried for the crime of purchasing child prostitution under Article 34, in addition to prosecution and trial under this article. If convicted under Article 34 and under this article, then the offender should be

[45] Article 246 of the Penal Code defines indecent assault as "touching, fondling or caressing the sexual organs or other part of a person without that person's consent or coercing another person to perform such acts on the perpetrator himself or herself or a third person for the purpose of arousing the perpetrator or providing sexual pleasure to the perpetrator".

[46] Under Article 247 (Aggravating Circumstances – Means Used or Status of Perpetrator) of the Penal Code, the offense of indecent assault is aggravated by the use of a weapon, threat of use of a weapon, use of narcotics or other means to weaken the victim's resistance, abuse of authority, etc.. Under Article 248 (Aggravating Circumstances – Status of the Victim) of the Penal Code, indecent assault is aggravated if committed against a person who is particularly vulnerable by reason of his or her age, among others.

sentenced with the higher applicable punishment.[47] This is in accordance with the provision on concurrent offenses set out in Article 6 above.

As per Article 7 (Definition of Minor), a person who has supervision or control of a minor is presumed to know the minor's age unless the person proves that he/she reasonably believed the minor's age to be 18 years or more. This presumption also applies to questions relating to the age of sexual consent.

For example, where a person has supervision or control of a minor and has sexual contact with that minor, Article 7 presumes that the person knows the minor's age, and so the person cannot easily claim as a defense that he did not know the minor was below 15 years old.

(For further information, including a discussion of "supervision and control", please see the text on Article 7 above.)

In accordance with Article 44, only a person who is aged fifteen years or older can be punished under this article.

"'Indecent act' in this law shall mean…"

This article defines an indecent act in several ways, which are discussed below. It is important, however, to bear in mind that to qualify as an indecent act, the activity must be carried out with the intent to stimulate or satisfy the actor's sexual desire.

"an act of touching…"

The term "indecent act" includes any touch between any part of the body of one person and the genital or other sexual part of another person, when done with the intent to stimulate or satisfy the actor's sexual desire.

"Touching" includes any form of physical contact, including but not limited to rubbing, caressing, kissing or other types of contact. Touching includes direct (skin to skin) contact with a genital or other sexual part, as well as touching a genital or other sexual part on top of or through clothing.

"an act of…exposing…"

The term "indecent act" also includes any act by one person to expose the genital or other sexual part of another person, when done with the intent to stimulate or satisfy the actor's sexual desire.

"Exposure" means removing the clothes or other covering, so that any person (the actor or another person) may view the genital or other sexual part. Exposure includes situations where the actor physically removes the clothes or other covering of another person, or where the actor instructs or induces another person to physically remove his or her own clothes or those of a third person.

"…a genital or other sexual part of another…"

The term "genital" is generally defined as a person's penis or vagina, but to have stronger protection for victims, in this law, the word "genital" is understood to mean, penis or, vagina or anus.
The term "other sexual part" is to be broadly understood, and includes the buttocks and nipple area.

"…or of having another touch the actor's or a third person's genital or other sexual part…"

This article also prohibits any act by a person by which the victim is made to touch the genitals or another sexual part of the offender or a third party with the intent to stimulate or satisfy the actor's sexual desire.

"Touching" includes any form of physical contact, including but not limited to rubbing, caressing, kissing or other types of contact. Touching includes direct (skin to skin) contact with a genital or other sexual part, as well as touching a genital or other sexual part on top of or through clothing.

[47] This is in accordance with the provision of the Penal Code, Article 36 on "Concurence of Offenses".

"…with the intent to stimulate or satisfy the actor's sexual desire."

To be liable for punishment under this article, the offender must carry out the act of touching or exposing, or of directing another person to touch or expose, with the purpose of stimulating or satisfying his own sexual desire. It does not matter how the offender seeks to stimulate or satisfy his own sexual desire; this can be by using his own actions against the victim, by directing the victim to act against the offender or a third party, or by directing a third party's actions against the victim.

Article 44. Exemption from Punishment
A person under the age of 15 years shall be exempted from punishment of the offenses stipulated in Articles 42 and 43 of this law.

This article provides that a person under the age of 15 years shall not be punished for the offenses setout in Articles 42 (Sexual Intercourse with Minors under 15 years) and Article 43 (Indecent Act against Minors under 15 years). However, this exemption only applies to charges brought under Articles 42 and 43; it does not exclude a 14 year old person from being held liable for rape or sexual assault under the applicable criminal law.

It should be noted that this exemption from punishment only applies to charges under Articles 42 and 43, where the sexual acts are voluntarily agreed to by all participants.

If the participants do not all agree to participate in the acts covered under Articles 42 and 43, and the actor has used force, violence, coercion, threat or surprise, then the actor should be prosecuted for rape or other forms of sexual assault under the relevant provisions of the applicable criminal law. (See new Penal Code, , Book 2, Title 2, Chapter 3, Section 1 "Rape" and Section 2 "Other Sexual Assaults".) In this case, it should be noted that the criminal law provides for some (limited) punishments for minor offenders who are as young as 14 years. (See, for example, the new Penal Code in Book 1, Title 2, Chapter 3 "Penalties Applicable to Minors".)

For example, if a person who is 14 years old has sexual intercourse with a minor under the age of 15 years, and that sexual intercourse is achieved by means of force, violence, coercion, threat or surprise, then the offender should be charged and punished for rape in the criminal law instead of being charged and punished under Article 42.

Chapter 7 - Civil Remedy

The TSE Law is primarily a criminal law, but this chapter sets out the available civil remedies.

Article 45. Contract for the Act of Selling/Buying or Exchanging a Personand Sexual Exploitation
A contract shall be null and void if it is made for the purpose of selling/buying or exchanging a human being or sexual exploitation.

A loan contract shall be null and void if it is made in connection with the act of selling/buying or exchanging a human being or sexual exploitation.

'Act of Selling/Buying or Exchanging a Human Being' or 'Sexual Exploitation' in this and the following articles shall mean any unlawful act concerning the offenses as stipulated in this law.

This article provides that a contract or loan contract shall be null and void if it is made for the purpose of, or in connection with, any offense under the TSE Law.

This is consistent with the approach in the contract law in force at the time the TSE Law was promulgated. Article 5 of Decree No. 38 (Law referring to Contract and Other Liabilities) states that a contract:

...shall be deemed void when
- *it is illegal, and not consistent with public order or good customs.*
- *it is contrary to social interests or violating social ethics.*
- *[it is] a contract whose subject matter is impossible to perform.*

Similarly, the Civil Code, in Article 354, states that a contract shall be void "(a) where the contents of the contract violate a mandatory provision of the law; or (b) where the contents of the contract contravene the public order and good customs."

The language in the articles cited above is intentionally broad and is meant to invalidate any agreement that is illegal or in conflict with public order. This includes any agreement made for the purpose of any act across the spectrum of trafficking, including every offense mentioned in the entirety of this statute. Any agreement with the purpose to commit any of these offenses is null, void, and unenforceable by any party to the agreement.

"A loan contract shall be null and void…"

This paragraph means that a loan made in connection with trafficking and exploitation is unenforceable. Any loan made in connection with these offenses is invalid, regardless of whether the lender was a private individual or a financial institution. The purpose of this provision is to encourage lenders to verify that loans they disperse are not used to finance trafficking or sexual exploitation.

The term "contracts" mentioned here and in Article 37 should be interpreted broadly. Any agreement, verbal or written, to commit an illegal activity (including any form of human trafficking or sexual exploitation) is invalid and unenforceable per se.

"any unlawful act concerning the offenses as stipulated in this law"

This provision means that a contract or loan contract is null and void if it is made for the purpose of, or in connection with, any offense in the TSE Law, or any other offense defined in Cambodian law that is carried out in relation to any offense in the TSE Law.

Article 46. Restitution of Unjust Enrichment
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 human being or sexual exploitation shall be liable for restitution of the whole unjust enrichment along with accrued interests.

An aggrieved person (a person being exploited) may claim for damages in addition to the restitution of such unjust enrichment.

A person who has made a contract of loan or any other provision to another person for the purpose of committing the act of selling/buying or exchanging a human being or sexual exploitation may not claim for restitution of the provision.

This article attempts to prevent individuals from profiting from human trafficking and sexual exploitation. It requires full restitution of any enrichment derived from sexual exploitation or human trafficking. This means that anyone who knowingly profits from human trafficking or sexual exploitation (other than victims of those crimes) must restore all profits to the persons at whose expense the offender was enriched.

"A person who obtains enrichment without a legal cause…"
This provision applies to all persons who obtain enrichment illegally or from an illegal source.

"…knowing that the enrichment has been obtained from the act of selling/buying or exchanging a human being or sexual exploitation…"
This article requires that the person obtaining the enrichment know that it comes from an act related to human trafficking or sexual exploitation. It does not cover cases where a person is enriched but is unaware that the enrichment comes from an offense under the TSE Law.

"…shall be liable for restitution of the whole unjust enrichment along with accrued interests."
This provision allows a victim of an offense under the TSE Law, or any other person at whose expense the offender was unjustly enriched, to bring a claim for restitution of unjust enrichment.

"Unjust enrichment" means any benefit or profit derived illegally from the property or services of another person, and thereby causing harm or loss to the other person. This definition is consistent with the concept of unjust enrichment set out in the Civil Code, (see Book 5, Chapter 15 "Unjust Enrichment").

The court shall order the person who was unjustly enriched to pay restitution to the claimant for the entire amount, including accrued interests which are to be calculated by the court.

"An aggrieved person (a person being exploited) may claim for damages in addition to the restitution of such unjust enrichment."
This provision allows victims of an offense under the TSE Law, or any other person at whose expense the offender was unjustly enriched, to bring a claim for damages in addition to any claim for restitution of unjust enrichment.

"A person who has made a contract of loan or any other provision to another person for the purpose of committing the act of selling/buying or exchanging of human being or sexual exploitation may not claim for restitution of the provision."
The third paragraph of this article explains that if one agrees to loan money for the purpose of furthering human trafficking or sexual exploitation, the lender may not legally enforce payment of the loan. The purpose of this provision is to prevent lenders from funding trafficking and exploitation, and to punish them in cases where they have loaned money for such purposes.

This paragraph functions as an exception to the provisions set out in the first two paragraphs of this

article. In other words, the first two paragraphs provide that a person who profits by the commission of an offense set out in the TSE Law, and where such profit is at the expense of another person, is liable to the other person for restitution and damages. However, this third paragraph states that where the other person loaned the offender money for the purpose of committing the offense, then the lender may not claim for payment of the loan or any other form of restitution.

This is consistent with the Civil Code, Article 741 ("Performance for Illegal Cause"), which states that claims for restitution of unjust enrichment are prohibited if granting such a claim would be in breach of public order or any law regarding public order.

Article 47. Preference to Confiscated Property
Victims shall have preference over property confiscated by the state for their compensation and restitution.

This article gives victims the right to claim property confiscated in connection with the offense as compensation and restitution for their victimization. The purpose of this provision is to provide a mechanism for compensating victims, and to ensure that the victims have the first preference over such compensation.

"preference"

The term "preference" means that the victim has a preferential right over the confiscated property. The preferential right held by the victim takes priority over any other rights to the confiscated property, including any rights held by creditors under the Civil Code (see Book 6, Chapter 3 "Preferential Rights"). In other words, a claim presented by a victim for compensation and restitution will take priority over any other claims to the confiscated property, including over any claims by the state or any creditors. If the value of the confiscated property does not fully compensate the victim, the victim has a continuing claim.

"property"

The term "property" is defined broadly. In accordance with Article 2(d) of the UN Transnational Organized Crime Convention, the term "property" means "assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets."

Chapter 8 - Supplemental Provisions

Article 48. Additional Penalties
For the offenses stipulated in this law, the following additional penalties may be imposed:

1. the confiscation of any equipment, materials or objects which have served, or been intended to serve, to commit the offense;
2. the confiscation of any materials which are constituent objects of the offenses;
3. the confiscation of the proceeds or the properties earned by or which resulted from the offense;
4. the closure of a business that has served to commit the offense; the restriction of civil rights; and
5. the ban on stay.

This article sets out the additional penalties that the court may apply to offenders found guilty under the TSE Law.

The purpose of this article is to provide courts with more tools to deter human trafficking and sexual exploitation. This article allows for confiscation of property with a close connection to offenses covered in this Law, forced closures of implicated businesses, restriction of civil rights, and restrictions on mobility. These penalties should be used at the court's discretion and should only be applied to perpetrators of these crimes, and not their victims.

Where a representative, agent or employee of a legal entity (e.g. a company) or a principal is found guilty of an offense under the TSE Law, the court may consider imposing some of the penalties listed in this article on the legal entity, in accordance with Article 4 above. (See discussion under Article 4 for more detail.)

"confiscation of any equipment, materials or objects which have served, or been intended to serve, to commit the offense"
"confiscation of any materials which are constituent objects of the offenses"
"confiscation of the proceeds or the properties earned by or which resulted from the offense"

These provisions permit the court to confiscate the equipment, materials, objects, proceeds or properties that have a close connection to the offense, and which were either used by the offender in committing the offense or which the offender obtained as a result of committing the offense.

These provisions are not intended to be used to confiscate property not belonging to the offender; property belonging to a third party (including the victim) may not be confiscated under this article. This is consistent with the new Penal Code, which prohibits any confiscation that affects the rights of third parties. (See new Penal Code, Book 1, Title 3 "Penalties", Chapter 1, Section 1 "Principal Penalties", Chapter 7, "Penalties Applicable to Legal Entities".

The scope of confiscation and court's discretion is greater in this article than the confiscation provisions of the 1996 Trafficking Law. The 1996 Trafficking Law stated that any property used in connection with the offense would be confiscated for the government. Under the TSE Law, confiscation is optional (a tool used at the court's discretion to enhance justice and equity).

As per Article 47 (Preference to Confiscated Property) of this law, the material, proceeds or properties confiscated must first be used to compensate victims, who under the TSE Law have a preferential claim over confiscated property for their compensation and restitution. If the victims have already been compensated, then the confiscated property becomes government property, consistent with the new Penal Code (Book 1, Title 3 "Penalties", Chapter 1, Section 1 "Principal Penalties", and Chapter 7, "Penalties Applicable to Legal Entities").

"the closure of a business that has served to commit the offense"

This provision means that if a business has been used to commit the offense, the court can order the business to close. This penalty may be applied by the court where the representative, agent or employee of a business is found guilty of an offense, and is found by the court to have used the business to commit the offense. Consistent with the new Penal Code (Book 1, Title 3, Chapter 7 "Penalties Applicable to Legal Entities"), the penalty of closure may be either permanent or temporary for a period of up to five years. (See also discussion of criminal responsibility for legal entities under Article 4 above.)

"restriction of civil rights"

Under this provision, the court may punish the offender by restricting his civil rights. These punishments are defined in the new Penal Code (Book 1, Title 3 "Penalties", Chapter 1, Section 2 "Additional Penalties"), which states:

> *The civil rights that may be deprived as provided for in point 1 of Article 59 (Categories of Additional Penalties) include:*
>
> 1. *rights to vote;*
> 2. *rights to stand for election;*
> 3. *rights to work in public function;*
> 4. *rights to be designated as an expert, arbitrator and proxy in court;*
> 5. *rights to receive all official decorations;*
> 6. *rights to serve as a witness under oath at court;*
>
> *This penalty may either be definitive or temporary for a duration of 5 (five) years at the most.*

"ban on stay"

Under this provision, the court may punish the offender by prohibiting or restricting him from residing in a particular place, by prohibiting the offender from leaving the Kingdom of Cambodia, or (for convicted foreigners) from entering or residing in the Kingdom of Cambodia. It is important to note that these punishments are to be applied differently to offenders who are Cambodian citizens and to offenders who are foreigners.

When applied to a Cambodian or a foreign offender, this means that the court may prohibit the offender from residing in a particular place or list of places. The court may apply this prohibition in a manner similar to that defined in Article 59 of the new Penal Code (Book 1, Title 3 "Penalties", Chapter 1, Section 2 "Additional Penalties"), which states:

> *The penalty of local exclusion shall mean the prohibition imposed upon the convicted person from being in certain places in the territory of the Kingdom of Cambodia. The period of local exclusion may not exceed 10 (Ten) years in the case of a felony, and 5 (Five) years in the case of a misdemeanour.*
>
> *The court shall list the places where the exclusion applies and the duration of such exclusion.*
>
> *Local exclusion shall be accompanied by supervision. The convicted person must:*
>
> 1. *Appear when summoned by the judicial or administrative authorities designated by the court;*
> 2. *Report periodically at the offices of the police or royal gendarmerie designated by the court;*
>
> *The court shall determine how the supervision shall be carried out.*
>
> *The Prosecutor shall notify the court decision to the Ministry of Interior and the Ministry of National Defence.*

For a Cambodian offender, the court may also prohibit the offender from leaving Cambodia for a period of time. The court may apply this prohibition in a manner similar to that defined in Article 60 of the new Penal Code (Book 1, Title 3 "Penalties", Chapter 1, Section 2 "Additional Penalties"), which states:

The period of prohibition from leaving the territory of Cambodia must not exceed 5 (Five) years.

The convicted person must hand over his/her passport to the clerk of the court. The passport shall be kept as specified by Prakas of the Minister of Justice.

The convicted person cannot, during the period of the penalty, obtain a passport.

For a foreign offender, the court may also prohibit the offender from entering or residing in Cambodia. For an offender who is already in Cambodia, this means that the court may order the offender to be deported. If this punishment is imposed along with imprisonment, this means that the offender will be deported from Cambodia after he finishes serving his sentence of imprisonment.

The court may not prohibit a foreigner from leaving Cambodia except in cases where the foreigner is also punished with imprisonment, or in cases where a foreigner is accused but the trial has not yet concluded. If the foreigner is found guilty and punished with imprisonment, the law generally requires that the prison term be served in a Cambodian prison.

The court may apply this punishment in a manner similar to that defined in Article 61 of the new Penal Code (Book 1, Title 3 "Penalties", Chapter 1, Section 2 "Additional Penalties"), which states:

The prohibition of a convicted foreigner, from entering and remaining in the territory of the Kingdom of Cambodia may be permanent or temporary. In the latter case, the period of prohibition may not exceed 5 (Five) years. Such prohibition shall entail the expulsion of the convicted person at the end of his or her sentence of imprisonment.

It should be noted that the law does not allow the court to deport or expel a Cambodian from the territory of the Kingdom of Cambodia. The Constitution in Article 33 provides that Khmer citizens cannot be exiled or deported except where they are extradited to another country pursuant to an agreement.

Article 49. Concealment of Identity of Victim
Newspapers and all other mass media shall be prohibited from publishing or broadcasting or disseminating any information which can lead to public knowledge of the identities of the victims of offenses stipulated in this law.

This article prohibits the media (including newspapers and other forms of mass media) from publishing, broadcasting or disseminating any information which might identify the victim of an offense under the TSE Law.

The purpose of this article is to shield victims of trafficking and exploitation from unnecessary embarrassment and social harm and to encourage them to cooperate with investigations and prosecutions against perpetrators of human trafficking and sexual exploitation. This Article is therefore consistent with the TSE Law's overall objective to protect victims of sexual exploitation and human trafficking offenses.

"publishing or broadcasting or disseminating"

Here, the terms "publishing," "broadcasting" or "disseminating" mean any form of distributing information, whether in print (including newspapers and magazines), electronic transmission (including television, radio, loudspeaker or internet), posting in a public place or other means of passing the information onto the general public or third parties.

"shall be prohibited"

It should be noted that although this article prohibits the media from publishing, broadcasting or disseminating such information, there are no punishments specified. This article therefore does not define a criminal offense. However, a victim of an offense in the TSE Law, whose honor or reputation has been damaged by publication of the information, may be able to bring a civil action against the persons or institutions that have published, broadcast or disseminated the prohibited information, for

compensation under tort law. (See Civil Code, Book 5, Chapter 16 "Torts", and in particular Articles 744, 757(3) and 762.)

In this sense, this article is similar to Article 15 of the Press Law (1995), which states that:

> *The press may not publish information, photographs or drawings which may make it possible for the readers to identify or know the name of :*
>
> *(3) a woman who is a victim of molestation or rape.*
>
> *...Any individual whose rights under this article are violated by the press are entitled to file a civil action in court for compensation.*

However, in contrast to Article 15 in the Press Law, the TSE Law does not restrict the prohibition to cases of molestation or rape; nor does it require that the victim be a woman. Under the TSE Law, there is a broad prohibition against publishing, broadcasting or disseminating any information that could identify any victim (man or woman, adult or minor) of any trafficking or sexual exploitation offense under the TSE Law.

This prohibition does not apply where the victim gives free, full and informed prior consent to the publication of identifying information. This exception is important, as some government agencies and NGOs may obtain the victim's consent to use identifying information – for example, as part of public information campaigns to raise awareness about the dangers of human trafficking and sexual exploitation.

In cases where the victim gives consent for such information to be used, "consent" means that the victim must give his or her consent freely, having been fully and truthfully informed of the proposed use of the information, prior to any publication of the information. The consent must be given in writing.

Even if the victim gives consent, the court may prohibit the publication, broadcast or dissemination of the information if it will affect an on-going investigation of the court.
These exceptions regarding consent are similar to those found in Article 15 of the Pres Law, which states that:

> "*except in cases in which the publication may affect the investigation of the court, the press may publish the above information if the concerned person or custodian agrees in writing*."

Nevertheless, in accordance with the law, only persons with legal capacity to act may give their consent to such publication of identifying information. Under the Civil Code, an act performed by a person who was unable to recognize and understand the legal consequences of his actions is voidable. Therefore, minors, adults in guardianship or persons under curatorship are generally not able to give such consent (see Civil Code, Book 2, Chapter 1, Section III "Capacity" and Section IV "Capacity to Act").

The publication or dissemination of information that may lead to identification of a child victim or witness should be prohibited regardless of the consent of the child's parents or guardians. This is consistent with the UN Guidelines on Justice in matters involving Child Victims and Witnesses of Crime (2005), which states that:

> *"child victims and witnesses should have their privacy protected as a matter of primary importance" and "information relating to a child's involvement in the justice process should be protected...through maintaining confidentiality and restricting disclosure of information that may lead to identification of a child who is a victim or witness in the justice process".*

"any information which can lead to public knowledge of the identity of the victim"

This provision prohibits the distribution of any type of information that might identify the victim to the public, including but not limited to photographs, drawings, names, addresses or other personal information. This also includes such information about the victim's family members, since by identifying the family members of the victim, the victim might also be identified.

Chapter 9 - Final Provisions

Article 50. Repeal of Law
The Law on Suppression of Kidnapping, Human Trafficking/Sale of a Human Being and Exploitation of a Human Being, which was promulgated by Royal Kram No: cs/rkm/0296/01 shall be repealed by this law.

This law shall prevail if a provision of any other law is in contradiction with the provisions of this law.

This article repeals the 1996 Law that was previously applicable in cases of human trafficking and sexual exploitation. As of 15 February 2008, the date of the promulgation of the TSE Law, the 1996 Law on Suppression of Kidnapping, Human Trafficking/Sale of a Human Being and Exploitation of a Human Being (promulgated by Royal Kram No: cs/rkm/0296/01) is therefore no longer in force.

"This law shall prevail if a provision of any other law is in contradiction with the provisions of this law"

This article's second paragraph states that if a conflict exists between a provision in the TSE Law and a provision of any other law, the TSE Law provision shall apply. However, this paragraph must be understood in light of the Cambodian legal framework and the hierarchy of laws, and with regard to accepted principles of statutory interpretation.

The Cambodian legal framework establishes a hierarchy of laws and regulations. Where a conflict occurs between the provisions of different laws that are at different levels of the hierarchy, then the provision from the higher-ranking law prevails over the provision from the lower-ranking law. The TSE Law is a law (chhbab) that was adopted by the National Assembly and Senate, and promulgated by the King in his capacity as Head of State. So this article means that, in the context of the Cambodian legal hierarchy, if a provision of the TSE Law is in conflict with a provision of a lower-ranking legal instrument, the TSE Law will prevail.

Where the conflicting provisions arise in legal instruments that are at the same level, the principles of statutory interpretation (see discussion in the Introduction above) offer some guidance. In particular, two rules should be kept in mind:

1) New vs. Old. The more recent law will prevail over the older law.
2) Specific vs. General. The more specific law will prevail over the more general law.

However, where a newer but more general law has a provision that is in direct conflict with an older but more specific law, then the newer law prevails. However, if a newer general law is silent on a particular issue and that particular issue is contained in the old specific law (and therefore there is no conflict), then the relevant provisions of the older law are generally considered to be still valid.

Under Article 50(2), the TSE Law shall prevail if a provision of any other older law is in conflict with the provisions of the TSE Law.

The principles of statutory interpretation help to resolve the conflict between, for example, the TSE Law's Article 22 (which imposes a life sentence for aggravated confinement) and Article 7 of the old Law on Aggravating Circumstances (which allows the same crime to be punished by 15 years of imprisonment). Since the TSE Law is more recent and, arguably, more specific than the old Law on Aggravating Circumstances, the sentencing provisions in Article 22 of the TSE Law prevail over those in Article 7 of the old Law on Aggravating Circumstances.

However, despite the text of Article 50(2) of the TSE Law, the TSE Law will not prevail where there is a conflict with the provisions of a higher-ranking legal instrument, such as the Constitution, or if the TSE Law has a conflict with the provisions of a new law that was promulgated and adopted after the

TSE Law. In such cases, the higher-ranking legal instrument or later-in-time law will prevail over the TSE Law.

The new Penal Code, which was adopted after the TSE Law and entered into full force in December 2010, may contain provisions that may conflict with the TSE Law. Under the Penal Code (Book 6 "Final Provisions", Article 671 "Abrogation and effect of previous criminal provisions"), provisions of pre-existing criminal laws, that are contrary to the provisions of the new Penal Code, shall be considered as invalid with regard only to the contradictory provisions. Accordingly, while the TSE Law will remain in force, where a provision in the TSE Law is contradictory to a provision in the Penal Code, the provision in the TSE Law will be superseded to the extent only of the contrary wording.

However, with respect to illegal acts related to trafficking offenses, the TSE Law may be invoked despite a conflict with the Penal Code provisions, in recognition of the principle of statutory interpretation that, in general, a special law prevails over a general law. It should be noted that the Penal Code does not contain offences "specific" to human trafficking and, therefore, the TSE Law remains the core legislation governing offences relevant to human trafficking. In fact, the Penal Code recognizes the primacy of special laws over general laws in Article 668 (Application of Other Criminal Legislation), Book 5 "Transitional Provisions", which states that:

> *"Criminal offences defined and punished by other separate criminal legislation and provisions in force shall be implemented in accordance with such criminal legislation and provisions.*
>
> *In the event of conflict between other criminal laws and provisions and the provisions of this Code, application shall be done accordingng to the rules set out in Book 1 (General Provisions) of this Code.*
>
> *The provisions of paragraph 2 above shall not be applicable to special criminal laws."*

The TSE Law may be considered as a special criminal law, based on the law's objective set out in Article 1, to "suppress the acts of human trafficking" and to "implement the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children". Accordingly, where a clear direct conflict arises between the Penal Code and the TSE Law criminal provisions, the TSE Law provisions may still be applied to cases that involve trafficking-related acts.

Furthermore, the provisions of the TSE Law should be interpreted in a way that they do not conflict with the provisions of international human rights treaties that Cambodia is a party to. This approach has been recognized by Cambodia's own Constitutional Council, which (in a decision of July 2007) has interpreted Cambodian laws so that they are kept consistent with the provisions of international human rights treaties.

Article 51. Replacement by Penal Code
Article 2, article 3, article 4 and article 6 of this law shall be replaced with the relevant provisions in the Penal Code when the Penal Code comes into force.

This article explicitly provides that certain specific articles (articles 2, 3, 4 and 6) of the TSE Law will be replaced by the new Penal Code when the new Penal Code enters into force.

At the time the TSE Law was adopted, the Penal Code was still in draft form. The Penal Code was later promulgated by Royal Kram No. –NS/RKM/1109/022, dated 30 November 2009. Book 1 of the Penal Code came into effect on 11 December 2009 for Phnom Penh and 21 December 2009 nationwide. Books 2 to 6 of the Penal Code entered into force one year after or on 11 December 2010 for Phnom Penh and 21 December 2010 nationwide.

It should be noted that Article 2 (Application of this Law within the Territory), Article 3 (Application of this Law Outside the Territory), Article 4 (Criminal Responsibility) and Article 6 (Concurrence of Offences) are general provisions in Chapter 1 of the TSE Law. These articles are now replaced by Book

1 of the new Penal Code, which sets out the General Provisions for the Implementation of Criminal Law. This is consistent with Article 670 (Expansion of the Application of Book 1"General Provisions") of the Penal Code, which sets out that *"all other separate criminal provisions shall be governed by the provisions of Book 1(General Provisions) of this Code, except where otherwise provided for by other provisions"*

However besides articles 2, 3, 4 and 6 of the TSE Law, there may also be other articles and/or provisions of the TSE Law that are also replaced by the new Penal Code through the application of generally accepted principles of statutory interpretation. According to this principle, if there is a conflict between the provisions of two different laws, the provisions of the more recent law generally prevails. (See discussion on this topic under Article 50(2) above.)

Article 52. Enforcement of this Law
This law shall be promulgated as urgent.

This article means that the TSE Law took effect throughout the country immediately upon its promulgation on 15 February 2008. This is consistent with Article 93 (2) of the Constitution.

Kingdom of Cambodia
Nation Religion King
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MINISTRY OF JUSTICE

EXPLANATORY NOTES
FOR THE
LAW ON SUPPRESSION OF HUMAN TRAFFICKING AND SEXUAL EXPLOITATION

Produced by The Ministry of Justice of the Kingdom of Cambodia

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Finalization of the Explanatory Notes for the Law on Suppression of Human Trafficking and Sexual Exploitation by:

1. Her Excellency Chan Sotheavy, Secretary of State , Ministry of Justice
2. Mr. Ku Khemlin, Deputy Director of Ministry of Justice
3. Miss. Lay Lyna, Assistant to Secretary of State, Ministry of Justice
4. Mr. Michael Lerner, Legal Consultant
5. Ms. Ana Janet Suga, Child Protection Specialist, Unicef
6. Ms. So Serey Vathana, Child Protection Officer, Unicef

FORWARD

Kingdom of Cambodia
Nation Religion King

H.E AngVongVathana
Minister of Justice

The Royal Government of Cambodia under the wise leadership of Prime Minister Samdech Akka Moha Sena Padei Techo Hun Sen has been giving significant attention to the suppression of human trafficking and sexual exploitation in Cambodia.

Stemming from the attention and strong responsibility of the Royal Government of Cambodia to further strengthen the protection of the rights and freedoms of and seek justice for its citizens, the Ministry of Justice, as an arm of the Royal Government, endeavored to conduct studies and researches on the national and international provisions relating to human trafficking, in order to reform the law in conformity with the legal and judicial reform policy of the Royal Government.

The Law on Suppression of Human Trafficking and Sexual Exploitation (TSE Law) was adopted and promulgated by the King on February 15, 2008.

After this law came into force, the Ministry of Justice understood the need to ensure that the law is implemented effectively. Thus, it was necessary to develop the Explanatory Notes to serve as a guidebook for all citizens, law enforcement officials and researchers to easily understand and abide by the law, and to avoid misunderstanding and misinterpretation of the content of each of the Law's provisions, which affect the rights and freedom of citizens, especially the right of access to justice.

Recognizing this important need, the Ministry of Justice, in cooperation with UNICEF, has set-up a working group to develop the Explanatory Notes. The Explanatory Notes for the Law on Suppression of Human Trafficking and Sexual Exploitation has now been finalized, as a result of the joint efforts and strong responsibility of the team.

I acknowledge that it was not easy to develop this Explanatory Notes. It was a complicated job that required a highly capacitated and experienced team with knowledge of national and international laws.

In the process of developing the Explanatory Notes, the working group explained each provision in accordance with national laws as well as international laws that Cambodia has ratified. The working group also carefully reviewed each provision and provided clear examples and explanations on those provisions.

This Explanatory Notes also serves as a guide for training and awareness-raising on the TSE law and its relevant provisions.

After finalizing this Explanatory Notes, the Ministry of Justice will take further measures to educate and disseminate the Explanatory Notes to all judicial and law enforcement officials nationwide.

Availing myself of this opportunity, on behalf of the Ministry of Justice and in my own name, I express my most profound thanks to all the members of the working group, consultants and advisers who gave their serious attention, tireless efforts, and commitment, and who dedicated their physical, intellectual and spiritual faculties to develop and complete the Explanatory Notes.

I fervently believe that the Explanatory Notes will become a very useful instrument to help implement the TSE Law more effectively, towards greater protection and fulfillment of the rights of Cambodian citizens.

Phnom Penh, 4 April 2013

Ang Vongvathana
Minister of Justice

Table of Contents

The Royal Government of Cambodia under the wise leadership of Prime Minister Samdech Akka Moha Sena Padei Techo Hun Sen has been giving significant attention to the suppression of human trafficking and sexual exploitation in Cambodia.....3
Stemming from the attention and strong responsibility of the Royal Government of Cambodia to further strengthen the protection of the rights and freedoms of and seek justice for its citizens, the Ministry of Justice, as an arm of the Royal Government, endeavored to conduct studies and researches on the national and international provisions relating to human trafficking, in order to reform the law in conformity with the legal and judicial reform policy of the Royal Government. 3
The Law on Suppression of Human Trafficking and Sexual Exploitation (TSE Law) was adopted and promulgated by the King on February 15, 2008. 3
Introduction.....8
General overview 8
Principles of statutory interpretation 11
Article 1. Objective of This Law 13
Article 2. Application of This Law within the Territory 14
Article 3. Application of This Law outside the Territory 15
Article 4. Criminal Responsibility 18
Article 5. Pronouncement of Principal Penalties.....21
Article 6. Concurrence of Offences.....21
Article 7. Definition of Minor.....23
Chapter 2 - The Act of Selling/Buying or Exchanging a Person 24
Article 8. Definition of Unlawful Removal.....25
Article 9. Unlawful Removal, inter alia, of Minor.....29
Article 10. Unlawful Removal with Purpose.....31
Article 11. Unlawful Removal for Cross-border Transfer 35
Article 12. Unlawful Recruitment for Exploitation.....2
Article 13. Definition of the Act of Selling, Buying or Exchanging a Person 1
Article 14. The Act of Selling, Buying or Exchanging a Person 2
Article 15. The Act of Selling, Buying or Exchanging a Person with Purpose.....2
Article 16. The Act of Selling, Buying or Exchanging a Person for Cross-border Transfer 1
Article 17. Transportation with Purpose.....4
Article 18. Cross-border Transportation (The Act of Bringing a Person Cross-border)7
Article 19. Receipt of Person with Purpose.....9
Article 20. Receipt of a Person for the Purpose of Assisting the Offender.....4
Chapter 3 - Confinement.....6
Article 21. Abduction (Arrest), Detention or Confinement 6
Article 22. Aggravating Circumstances.....8
Chapter 4 - Prostitution and Child Prostitution.....10
Article 23. Definition of Prostitution and Child Prostitution 10
Article 24. Soliciting.....12
Article 25. Definition of Procuring Prostitution 15
Article 26. Procurement (of Prostitution).....20
Article 27. Aggravated Procurement (of Prostitution) 21
Article 28. Procurement with regard to Child Prostitution.....1
Article 29. Procurement of Prostitution by Torture 1
Article 30. Management of Prostitution 2
Article 31. Management of Establishment for Prostitution.....1
Article 32. Provision of Premise for Prostitution.....3
Article 33. Offense with regard to Child Prostitution 5
Article 34. Purchase of Child Prostitution 6
Article 35. Soliciting for Child Prostitution 8
Article 36. Conditional Money Loan in connection with Child Prostitution.....10
Article 37. Contract of Child Prostitution.....11
Chapter 5 - Pornography 12
Article 38. Definition of Pornography 12

Article 39. Pornography....13
Article 40. Definition of Child Pornography....14
Article 41. Child Pornography....15
Chapter 6 - Indecency against Minors under Fifteen Years....18
Article 42. Sexual Intercourse with Minors under Fifteen Years....18
Article 43. Indecent Act against Minors under Fifteen Years....20
Article 44. Exemption from Punishment....22
Chapter 7 - Civil Remedy....23
Article 45. Contract for the Act of Selling/Buying or Exchanging a Personand Sexual Exploitation 23
Article 46. Restitution of Unjust Enrichment....23
Article 47. Preference to Confiscated Property....25
Chapter 8 - Supplemental Provisions....26
Article 48. Additional Penalties....26
Article 49. Concealment of Identity of Victim....28
Chapter 9 - Final Provisions....30
Article 50. Repeal of Law....30
Article 51. Replacement by Penal Code....31
Article 52. Enforcement of this Law....32

Abbreviations and Acronyms

CAT	The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.
CEDAW	The Convention on the Elimination of all forms of Discrimination against Women.
COMMIT	Coordinated Mekong Ministerial Initiative against Trafficking
CRC	The Convention on the Rights of the Child
HIV	Human Immunodeficiency virus
MoI	Ministry of Interior
MoJ	Ministry of Justice
MoLVT	Ministry of Labour and Vocational Training
MoWA	Ministry of Women's Affairs
NGOs	Non-Governmental Organizations
UN	United Nations Organization
UNICEF	United Nations Children's Fund
UNTAC	United Nations Transitional Authority in Cambodia
UNTOC	United Nations Convention against Transnational Organized Crime
Palermo Protocol	The protocol to prevent, Suppressed and Punish Trafficking in Persons, especially Women and Children
Prakas	Ministerial Regulation
TSE Law	Law on the Suppression of Human Trafficking and Sexual Exploitation.

Introduction

This document comprises the Explanatory Notes on Cambodia's Law on Suppression of Human Trafficking and Sexual Exploitation (hereinafter referred to as the "TSE Law").

The goal of these Explanatory Notes is to inform judicial and law enforcement officials of the intent and meaning of the provisions of the TSE Law. These Explanatory Notes are therefore intended to serve as a supporting material to help criminal justice officials understand and clarify the law's provisions, and to assist relevant ministries, training institutions and their partners in developing training and awareness-raising materials on the new law.

General overview

On 15 February 2008, the Kingdom of Cambodia promulgated the Law on Suppression of Human Trafficking and Sexual Exploitation (TSE Law).

As set out in the TSE Law's Article 1, the objective of the law is "to suppress the acts of human trafficking and sexual exploitation." Human trafficking and sexual exploitation are serious crimes, and many Cambodians have both suffered as victims and been involved as perpetrators. For this reason, it is in the interests of the Kingdom of Cambodia and its Royal Government to prohibit and suppress such criminal acts.

The TSE Law has additional objectives: "to protect the rights and dignity of human beings, to improve the health and welfare of citizens, to preserve and enhance good national customs, and to implement the United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention against Transnational Organized Crime…" This protocol – also known as the Palermo Protocol – is the chief international legal instrument in the fight against human trafficking, and was signed by Cambodia in December 2003.

In addition to implementing Cambodia's obligations under the Palermo Protocol, the TSE Law is also intended to implement obligations under "other international instruments or agreements with regard to human trafficking that the Kingdom of Cambodia has ratified or signed." These include, notably, the Convention on the Rights of the Child (CRC) and its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography; the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (the CAT); and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Cambodia is also a party to the Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT) Memorandum of Understanding on Cooperation against Trafficking in Persons in the Greater Mekong Sub-Region, to which the People's Republic of China, the Lao People's Democratic Republic, the Union of Myanmar, the Kingdom of Thailand, and the Socialist Republic of Vietnam are also parties.

History of the TSE Law

The TSE Law was developed by the Ministry of Justice (MoJ) starting in 1999, in collaboration with the Institute of Japanese Legal Development, and with financial support from UNICEF, in order to replace the "1996 Law on Suppression of the Kidnapping, Trafficking and Exploitation of Human Persons" with a revised legislation that would comply with the CRC and its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, which was signed by Cambodia in June 2000. In addition to meeting Cambodia's new obligations under international law, the new law was intended to be more precise than the 1996 law, which was considered by many to be vague, with definitions and offenses that were too broad.

The TSE law was initially drafted by a working group comprised of three MoJ officials and an international legal adviser. After finishing the draft, the working group submitted it to a new working group comprised of twelve officials from the MoJ, Supreme Court, Court of Appeal, Phnom Penh Court of First Instance and Provincial Courts for consultation and discussion. The working group examined the content of the draft law article by article many times until the whole

draft was finalized, and thereafter submitted it to a consultation workshop. The national workshop on human trafficking and sexual exploitation was held in August 2002 in Phnom Penh, with broad participation from the National Assembly, Senate, relevant government institutions and national and international NGOs. The workshop recommendations were considered and incorporated into the draft law by three national and international experts -- Mr. Yoichi Yamada (Japanese legal expert), H.E. Hy Sophea and H.E. Chan Sotheavy- with an assistant, Mr. Seng Puthy. This draft was returned to the 12-member working group for another discussion. After approval by the working group, the draft law was submitted to the Council of Ministers in March 2003. During the Council of Minister's inter-ministerial meetings in 2004, recommendations were made to add other matters to the draft law, pursuant to which the draft was revised by MoJ. After the revisions at the inter-ministerial meetings, the Ministry of Justice held another (consultation) workshop on 24 August 2006 in Phnom Penh. Thereafter, the MoJ working group reviewed and finalized the draft law and re-submitted it to the Council of Ministers for discussion at its inter-ministerial meetings. This draft law was approved by the Council of Minister's plenary meeting on 24 August 2007. The law was adopted by the National Assembly on 20 December 2007 and by the Senate on 18 January 2008, and promulgated by the King on 15 February 2008.

Following the adoption of the TSE Law in 2008, the Ministry of Justice (H.E Ang Vong Vathana, H.E Hy Sophea and H.E Chan Sotheavy) initiated the development of Explanatory Notes to serve as a guide (intellectual-support material) for all law enforcement officials, who are mandated to abide by the law's provisions and continued its cooperation with UNICEF to develop the Explanatory Notes with strong support from UNICEF representative, Mr. Richard Bridle and Chief of Child Protection Section, Ms. Lesley Miller.
To ensure an effective process in developing the Explanatory Notes, MoJ set up a working group comprised of MoJ senior officials, the President of the Court of Appeals and the President of the Phnom Penh Municipal Court, who have high capacity and work experience, as well as representatives of the Ministry of Interior (MoI) and the Ministry of Women Affairs (MoWA). The working group was set-up under Prakas No.40 ky.Rbk 09 dated 21 April 2009 and comprised of the following members:

1.	H.E. Ang Vong Vathana, Minister of Justice	Chair
2.	H.E. Hy Sophea, Secretary of State, MoJ	Deputy Chair
3.	H.E. Chan Sotheavy, Secretary of State, MoJ	Deputy Chair in charge of project.
4.	H.E. You Bun Leng, President of Court of Appeals	Member
5.	Secretary of State, MoI	Member
6.	Secretary of State, MoWA	Member
7.	H.E. Chiv Keng, President of the Court of First Instance of Phnom Penh	Member
8.	Mr. Ku Khemlin, Deputy Director of MoJ	Member

There was also participation from the international legal expert Mr. Yoichi Yamada, who helped prepare the Law on Suppression of Human Trafficking and Sexual Exploitation from its first stage of development; legal protection consultant on the Explanatory Notes, Mr. Michael Lerner; child protection specialist, Ms. Ana Janet Sunga; child protection officers, Mr. Keo Sokea and Ms. So Serey Vathana; and translator, Mr. Nop Tong Hay.

The TSE Law in the Cambodian Legal Framework
After coming into force, the TSE Law can only be fully understood if it is considered in light of the broader Cambodian legal framework. When the TSE Law was prepared, the Penal Code was still in draft. Despite the fact that the Penal Code was still under development, it was considered important and has nonetheless greatly influenced the drafting of the TSE law (for example, in many offenses relating to sexual exploitation) and other laws. The drafting team for the TSE Law looked carefully at these and other Cambodian laws, as well as relevant provisions of international law and laws of other countries.

It should be noted as well that this law is part of the criminal law: that is, the TSE Law defines a range of offenses that are understood as related to human trafficking and sexual exploitation, and establishes the punishments (fines and/or imprisonment) for those found guilty of these offenses. While anti-trafficking laws in some other countries have a broader reach – with, for example,

provisions on victim protection – this is not the case for Cambodia's TSE Law. In the future Cambodia may develop laws or provisions on victim protection or other aspects related to human trafficking and sexual exploitation. The Royal Government of Cambodia has issued decisions and guidelines on victim protection. For example, the Cambodian National Council for Children issued the Decision on Guidelines for the Protection of the Rights of Trafficked Children of the Kingdom of Cambodia (Decision No. 107, 20 December 2007). That same year, the Ministries of Justice, Interior, Women's Affairs, Health and Social Affairs, Veterans and Youth signed an agreement with 24 NGOs on Guidelines for Practices and Cooperation between the Relevant Government Institutions and Victim Support Agencies in Cases of Human Trafficking in 6 February 2007).The Royal Government of Cambodia has also developed a "Policy and National Minimum Standards for the Protection of the Rights of Victims of Human Trafficking, No. 062 S.V.Y., 31 August 2009.

Cambodia has also signed international agreements that contain provisions on victim protection. For example, in 2007, Cambodia signed the ASEAN regional agreement on the protection of child victims of trafficking.[1] Prior to 2007, Cambodia also signed bilateral Memoranda of Understanding with Thailand[2] and Vietnam,[3] as well as a regional agreement for the Greater Mekong Sub-region.[4] In 2009, Cambodia further signed an agreement with Vietnam on the identification and repatriation of trafficked victims, dated 03 December 2009.[5]

In the TSE Law, the offenses are defined in a more narrow and precise manner (compared to the Palermo Protocol) For example, the Palermo Protocol conceptualizes "trafficking in persons" as a combination of specific *acts*, *means* and *purposes*. The Protocol's definition of human trafficking covers a range of acts, such as "the recruitment, transportation, transfer, harbouring or receipt of persons". In contrast, the TSE Law seeks to separate out these acts into different offenses. Thus, Chapter 2 of this law differentiates between the offenses of unlawful removal; unlawful recruitment; buying, selling or exchanging a person; transportation of a trafficking victim; and receipt of a trafficking victim. The TSE Law treats separately each step of the Palermo Protocol's definition of trafficking in persons, providing for different offenses and different punishments.

In the same vein, the TSE law separates out different crimes of sexual exploitation and crimes of sexual relations with minors. Under the 1996 anti-trafficking law, there was only one offense of debauchery with a minor below 15 years of age, which provided the same punishment for all offenders convicted of having sexual relations with minors under 15 years old, regardless of the nature of those relations. In contrast, the TSE Law provides a number of specific offenses pertaining to sexual relations with minors, including purchase of child prostitution, indecent acts with minors under the age of 15, and sexual intercourse with minors under 15 – and each of these offenses carries a different range of punishment.

One result of this precise listing of offenses is that police, prosecutors and judges must make careful determinations as to what is the most appropriate offense for which to investigate, charge and try the accused. It is hoped that these Explanatory Notes will help clarify this issue, among

[1] Southeast Asian Guidelines for the Protection of the Rights of Children Victims of Trafficking (December 2007).

[2] Memorandum of Understanding between the Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand on Bilateral Cooperation for Eliminating Trafficking in Children and Women and Assisting Victims of Trafficking, signed in Siem Reap on 31 May 2003. This agreement was supplemented by the Guidelines for Cooperation between Cambodia and Thailand on the Criminal Justice Process of Trafficking-Related Crimes.

[3] Agreement between the Royal Government of Cambodia and the Government of the Socialist Republic of Vietnam on Bilateral Cooperation for Eliminating Trafficking in Women and Children and Assisting Victims of Trafficking, signed in Hanoi on 10 October 2005.

[4] Memorandum of Understanding on Cooperation against Trafficking in Persons in the Greater Mekong Sub-Region, signed by the Government of the Kingdom of Cambodia in Rangoon, Myanmar, on 29 October 2004.

[5] Cooperation Agreement between the Royal Government of the Kingdom of Cambodia and the Government of the Socialist Republic of Vietnam on Cooperation on the Identification and Repatriation of Trafficked Victims, December 2009.

others.

Principles of statutory interpretation

No matter how careful the law-making process may be, drafters of new laws cannot foresee all the situations that will inevitably arise, and which will require the judicial system – the judges, prosecutors and lawyers – to examine and interpret the law in order to apply it to the facts.

All jurisdictions – whether civil or common law – face this challenge, and jurists have developed a set of tools to assist them in interpreting laws. Some principles of statutory interpretation may vary from one jurisdiction to another, but there are several foundational principles which are widely accepted around the world. This section will review some of the basic principles of statutory interpretation, which have guided the development of these Explanatory Notes.

The *purposive principle* states that when interpreting a legal provision, the interpretation should lead to a result that is consistent with and does not conflict with the objective and purpose of that law. For the TIPSE Law, Article 1 sets out this law's objective very clearly. Consistency with this stated purpose should always be the first test of any interpretation of the law.

Internal consistency should always be kept in mind when interpreting a legal provision. Where provisions or terms must be interpreted (perhaps because they are vague or undefined, or because the provision must be applied in a situation not foreseen by the drafters), this should be done such that the interpretation does not conflict with how that provision or term is used elsewhere in the same law.

A second goal is *consistency with other laws in the same jurisdiction*. When engaging in statutory interpretation, all efforts should be made to ensure that an interpretation of a provision or terms does not conflict with how that provision or term is used elsewhere in the applicable body of law. For this reason it is important to examine all relevant laws. In developing these Explanatory Notes, it was important to review the relevant provisions of a wide range of Cambodian laws, including the Constitution, the criminal laws (including the Penal Code and the Criminal Procedure Code), the Press Law, the Labour Law, the Law on Aggravating Circumstances, and a range of sub-decrees, prakas, circulars and guidelines.

Given the wide-ranging subject matter present within a set of laws, there will no doubt be conflicts in how different laws use the same provisions and terms. Where such conflicts are found, the generally accepted rule is that a higher-ranking legal instrument will prevail over a lower-ranking one. For conflicts between the provisions of legal instruments that are at the same level, two rules should be kept in mind:

1) New vs. Old. The more recent law will prevail over the older law.
2) Specific vs. General. The more specific law will prevail over the more general law.

However, where a newer but more general law has a provision that is in direct conflict with an older but more specific law, then the newer law prevails. However, if a newer general law is silent on a particular issue and that particular issue is contained in the old specific law (and therefore there is no direct conflict), then the relevant provisions of the older law are generally considered still to be valid.

These principles of statutory interpretation help to resolve the conflict between, for example, the TSE Law's Article 22 (which imposes a life sentence for aggravated confinement) and Article 7 of the old Law on Aggravating Circumstances (which allows the same crime to be punished by 15 years of imprisonment). Since the TSE Law is more recent and, arguably, more specific than the old Law on Aggravating Circumstances, the sentencing provisions in Article 22 of the TSE Law prevail over those in Article 7 of the old Law on Aggravating Circumstances.

As another example, the new Penal Code, which was adopted after the TSE Law and entered into full force in December 2010, may contain provisions that may conflict with the TSE Law. Under the Penal Code (Book 6 "Final Provisions", Article 671 "Abrogation and effect of previous

criminal provisions"), provisions of pre-existing criminal laws, that are contrary to the provisions of the new Penal Code, shall be considered as invalid with regard only to the contradictory provisions. Accordingly, while the TSE Law will remain in force, where a provision in the TSE Law is contradictory to a provision in the Penal Code, the provision in the TSE Law will be superseded to the extent only of the contrary wording.

However, with respect to illegal acts related to trafficking offenses, the TSE Law may be invoked despite a conflict with the Penal Code provisions, in recognition of the principle of statutory interpretation that, in general, a special law prevails over a general law. It should be noted that the Penal Code does not contain offences "specific" to human trafficking and, therefore, the TSE Law remains the core legislation governing offences relevant to human trafficking. In fact, the Penal Code recognizes the primacy of special laws over general laws in Article 668 (Application of Other Criminal Legislation), Book 5 "Transitional Provisions", which states that:

> *"Criminal offences defined and punished by other separate criminal legislation and provisions in force shall be implemented in accordance with such criminal legislation and provisions.*
>
> *In the event of conflict between other criminal laws and provisions and the provisions of this Code, application shall be done according to the rules set out in Book 1 (General Provisions) of this Code.*[6]
>
> *The provisions of paragraph 2 above shall not be applicable to special criminal laws."*

The TSE Law may be considered as a special criminal law, based on the law's objective set out in Article 1, to "suppress the acts of human trafficking" and to "implement the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children". Accordingly, where a clear direct conflict arises between the Penal Code and the TSE Law criminal provisions, the TSE Law provisions may still be applied to cases that involve trafficking-related acts.

Finally, it is crucial to remember that Cambodia's legal system exists within a broader international legal framework – one where Cambodia has certain obligations under international law. Cambodia's Constitution recognizes these obligations, with Article 31 of that document binding "The Kingdom of Cambodia [to] recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights, women's and children's rights." This provision of the Constitution creates a binding legal obligation for Cambodia to incorporate these rights into its domestic law – and, therefore, to ensure that its laws are interpreted so that they do not conflict with these international treaty obligations. This approach has been recognized by Cambodia's own Constitutional Council, which (most recently, in a decision No 092/003/2007 dated 10 July 2007) has interpreted Cambodian laws so that they are kept consistent with international human rights.

This last point is especially relevant when interpreting the TSE Law, as this law is explicitly intended to implement an international protocol (the Palermo Protocol). The development of these Explanatory Notes included a careful review of the relevant international instruments – and the drafters of this document encourage the courts, when called upon to interpret the TSE Law, to examine the relevant international human rights conventions and interpret the law in a manner consistent with the provisions of the protocols or conventions.

Chapter 1 - General Provisions

[6] Under the Penal Code, Book 1 "General Provisions", Title 1, Chapter 2, Article 10 (Application of criminal law which is less severe or more severe), *"A new provision that prescribes a lighter penalty shall be applicable immediately….A new provision that prescribes a heavier penalty shall be applicable only to acts committed after the provision came into force."*

Chapter 1 of the TSE Law covers the law's objective, its application inside and outside of Cambodia, certain relevant principles of Cambodian criminal law, and the definition of a minor under the TSE Law.

Article 1. Objective of This Law
The objective of this law is to suppress the acts of human trafficking and sexual exploitation in order to protect the rights and dignity of human beings, to improve the health and welfare of citizens, to preserve and enhance good national customs, and to implement the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, or other international instruments or agreements with regard to human trafficking that the Kingdom of Cambodia has ratified or signed.

This Article explains the objective and purpose of this Law. It calls for the implementation of the United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (hereinafter, the "Palermo Protocol"), supplementing the United Nations Convention against Transnational Organized Crime (hereinafter, the "Transnational Organized Crime Convention"). The Palermo Protocol was first adopted by the United Nations in Palermo, Italy in 2000; it later entered into force in December, 2003. By 2006, the Palermo Protocol had been signed by 117 states and ratified by 110. Cambodia signed the Protocol on December 25, 2003 and has undertaken to implement its provisions through this Law.

The TSE Law's objective, however, is slightly broader than that of the Palermo Protocol.

"to suppress the acts of human trafficking and sexual exploitation"

The Palermo Protocol defines and prohibits human trafficking, but the TSE Law goes further, as it also defines and penalizes a number of offenses related to sexual exploitation. These offenses are not generally found in the Palermo Protocol.

It is important to clarify that these two categories of offenses – human trafficking and sexual exploitation – sometimes happen together and sometimes happen separately. For example, the two categories overlap in the case of sex trafficking, where vulnerable persons (generally young women and children) are trafficked into sex work or for the purpose of sexual exploitation. But there are also many cases of trafficking that is not associated with sexual exploitation, such as persons trafficked into forced labor situations that do not involve sex work or sexual exploitation. For example, there have been numerous cases documented of Cambodians who are trafficked into forced labor on fishing boats or as househelpers or other domestic workers. Likewise, sexual exploitation offenses can take place in the absence of human trafficking – such as in the case of pornography, or sexual relations with minors under 15 years old.

"to protect the rights and dignity of human beings, to improve the health and welfare of citizens"

Another objective for the TSE Law is the protection of human rights and the improvement of citizens' health and welfare. When interpreting the provisions of the TSE Law, this objective should be kept in mind and all interpretations that result should be consistent with the protection of human rights and the promotion of citizens' health and welfare. To this end, it is crucial that victims of trafficking and sexual exploitation are protected, rather than punished for any offenses or activities relating to their having been trafficked.

"to implement the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime"

The implementation of the United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (the "Palermo Protocol") is a key objective of the TSE Law. After Cambodia signed the Palermo Protocol on December 25, 2003, the draft of the TSE Law was revised in order to make it consistent with the provisions of the Palermo Protocol. This means that, where questions arise, the TSE Law must be interpreted and applied in a manner consistent with the Palermo Protocol.

"or other international instruments or agreements with regard to human trafficking"

These international instruments or agreements, as far as they are relevant for the present purpose, include, but are not limited to, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (the CAT), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Rights of the Child (CRC). Cambodia is also a party to multilateral and bilateral Memoranda of Understanding regarding human trafficking in the Greater Mekong Sub-Region.

This provision is consistent with Cambodian law. The Constitution, which is the supreme law of Cambodia, states in Article 31(1) that:

> *The Kingdom of Cambodia recognizes and respects human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights, women's and children's rights.*

In July of 2007, Cambodia's Constitutional Council affirmed this proposition in a decision regarding an apparent conflict between Article 8 of the old Law on Aggravating Circumstances (2002) and Cambodia's obligations under the Convention on the Rights of the Child. The Constitutional Council reviewed a petition by civil society organizations challenging Article 8 of the old Law on Aggravating Circumstances of Felonies as to be in breach of the Constitution and the Convention on the Rights of the Child, which states that "imprisonment of a child shall be used only as a measure of last resort and only for the shortest appropriate period of time." However, Article 8 of the Law on Aggravating Circumstances of Felonies removed the power of judges to reduce the sentence of persons (all persons including minors) convicted of felonies.

Previous to this law, judges were obliged by the 1992 transitional Criminal Law and Procedure of Cambodia (UNTAC Law), to take into account age as a mitigating factor when sentencing, and to reduce by one half any sentence imposed on a minor. But, after the 2002 Law on Aggravating Circumstances of Felonies was adopted, many children were sentenced to long imprisonment terms disproportional to their age and the crimes they have committed.

In deciding this petition, the Constitutional Council found that Cambodian law included the international human rights treaties to which Cambodia is party and that such treaties are directly applicable to domestic court proceedings. The Constitutional Council noted that

> *… at case trial, in principle, a judge … also relies on law. The term law here refers to the national law including the Constitution, which is the supreme law, and other applicable laws as well as the international conventions that Cambodia has recognized…*

This decision was therefore invoked by judges to once again mitigate or reduce the sentences imposed on minors, based upon the Convention on the Rights of the Child.

Thus, in the same vein, when enforcing the TSE Law, the courts should take international treaties into account, to the extent that they are relevant and contribute to the prevention and suppression of any kind of human trafficking and the protection of trafficking victims.

Article 2. Application of This Law within the Territory

This law shall apply to any offense committed in the territory of the Kingdom of Cambodia.

For the purposes of this law, the territory of the Kingdom of Cambodia is deemed to include any vessel or aircraft entitled to fly the flag of Cambodia.

An offense shall be considered to be committed in the territory of the Kingdom of Cambodia whenever one of its constituent acts (elements) takes place within the territory of the Kingdom of Cambodia.

This article provides for the application of the TSE Law within Cambodian territory, and also expands the definition of Cambodia's territorial jurisdiction for the purposes of applying the TSE Law. It is also important to note that this article grants application of the TSE Law even if only a single element of an

offense takes place within Cambodian territory.

It should be noted, however, that Article 51 of the TSE Law provides that this article will be replaced when the Penal Code comes into force. (See discussion under Article 51 below.) Article 2 of the TSE Law is consistent with the new Penal Code (Book 1, Title 1, Section 1, "Offences Committed or Deemed to Have Been Committed in the Territory of the Kingdom of Cambodia") in particular, Article 13 ("Place where offence is committed"), Article 14 ("Offence committed on board a Cambodian vessel"), and Article 16 ("Offence committed on board a Cambodian registered aircraft") of the Penal Code.

"any offense committed in the territory of the Kingdom of Cambodia"

This article states that the TSE Law shall apply to any offense. The UNTAC Law in force at the time the TSE Law was promulgated sets out two categories of offenses: felonies and misdemeanors. The Penal Code, in contrast, establishes three categories of offenses: felonies, misdemeanors and petty crimes. However, these distinctions are irrelevant for any offense defined by the TSE Law that is committed within Cambodia, as this article provides that all such offenses may be punished.

"the Kingdom of Cambodia is deemed to include any vessel or aircraft entitled to fly the flag of Cambodia"

If an offense (or a constituent act or objective element of an offense – see below) defined by this law takes place on a Cambodia-flagged vessel or Cambodian registered aircraft, then the TSE Law shall apply. It does not matter where the vessel or aircraft is located at the time: even if the vessel or aircraft is physically located outside of the territory of the Kingdom of Cambodia when the offense or act is committed, then jurisdiction is still proper under this law.

"Whenever one of its constituent acts (elements) takes place within the territory of the Kingdom of Cambodia"

The third paragraph of this article is crucial, as it expands the application of this law in a fundamental way. This provision means that the offense is considered to have been committed in Cambodia whenever all or part of the crime has been committed in Cambodia – that is, whenever any one of the objective elements of the offense has been committed in Cambodia.

It should be noted that this means that all constituent elements of an offense still must be fulfilled for an offense to have been committed, but not all of those elements need to have been committed in Cambodia.

For example, Article 19 of this Law punishes a person who receives a victim who has been unlawfully removed for the purpose of profit making. If an offender in Thailand receives a victim who was unlawfully removed from a place in Cambodia, the Cambodian courts shall have jurisdiction over the offender, because one objective element of the crime (the unlawful removal of the victim) took place in Cambodia, even though the offender's act was committed in Thailand – and so, according to this article, the TSE Law shall be applied.

The terms "constituent acts" and "elements" are understood to refer to the objective elements of the crimes, not the subjective elements such as the offender's intent.

It is also important to note that the act or acts need not be committed by or against someone of Cambodian nationality. This article refers to territorial jurisdiction, and so the nationality of the offender and/or victim are not relevant; the only thing that matters is whether one or more constituent acts of an offense have taken place in Cambodian territory.

Article 3. Application of This Law outside the Territory

This law shall apply to any felonies or misdemeanors committed outside the territory of the Kingdom of Cambodia by a Khmer citizen.

This law shall apply to any felonies or misdemeanors committed outside the territory of the Kingdom of

Cambodia by a foreigner if the victim is a Khmer citizen at the time of commission of the offense.

This article provides for the application of the TSE Law with respect to offenses that are committed entirely outside Cambodian territory, provided that either the offender or the victim is Cambodian.

This article does not mean that Cambodian police or judicial powers will be applied within the territory of a foreign state, but rather that Cambodia may choose to prosecute, and punish offenses under the TSE Law if and when the offender enters Cambodia. This is consistent with accepted principles of international law: a state generally does not enforce its law within the territory of a foreign state, but it may choose to punish crimes when the offender comes to the state's own jurisdiction.

However, under certain circumstances and/or as provided by relevant international treaties or agreements, Cambodian authorities might also choose to seek extradition or transfer of an accused offender so that the person can be tried in the Cambodian courts. Such extradition or transfer is generally governed by a treaty or memorandum of understanding that has been signed with the country from which Cambodia seeks to extradite or transfer the accused. However, in addition to the relevant legal issues, the decision to seek and grant extradition has a strong political and diplomatic dimension, and as such is generally beyond the scope of this document.

It should be noted that Article 51 of the TSE Law provides that this article will be replaced when the new Penal Code comes into force and is implemented. (See discussion under Article 51 below.) The new Penal Code (Book 1, Title 1, Chapter 3, Section 2, "Offences Committed Outside the Territory of the Kingdom of Cambodia") limits the scope of the application of the TSE Law outside the territory of Cambodia.

For example, Article 19 ("Felony or misdemeanour committed by a Cambodian national") of the Penal Code provides:

> *"Cambodian law is applicable to any felony committed by a Cambodian national outside the territory of the Kingdom of Cambodia.*
>
> *Cambodian law is applicable to misdemeanours committed by Cambodian nationals in a foreign country if the conduct is also punishable under the law of that country."*

In comparison, Article 3, paragraph 1, of the TSE Law provides:

> *"This law shall apply to any felonies or misdemeanors committed outside the territory of the Kingdom of Cambodia by a Khmer citizen."*

Moreover, Article 20 (Where the victim is a Cambodian national) of the new Penal Code sets forth that:

> *"Cambodian law is applicable to any felony committed by a Cambodian or foreign national outside the territory of the Kingdom of Cambodia if the victim is a Cambodian national at the time of the commission of the offence."*

Thus, under Article 20 of the Penal Code, misdemeanours and petty crimes committed against a Cambodian national outside Cambodia are not covered by Cambodian law, including the TSE Law.

"any felonies or misdemeanors"

This provision means that the TSE Law will only be applied to offenses committed outside the territory of Cambodia if those offenses are classified as felonies or misdemeanors. The TSE Law will not apply to lesser offenses (such as soliciting, as defined by Article 24) that are committed outside the territory of Cambodia.

It should be noted, however, that with the entry into force of the new Penal Code, the TSE Law will no longer apply to misdemeanors committed outside Cambodia, unless the misdemeanor is committed by a Cambodian national and is also an offense punishable under the law of the foreign country, in which case

the offender may be prosecuted in Cambodia in accordance with the TSE Law.

"committed outside the territory of the Kingdom of Cambodia"

Article 2 already provides that where any constituent act or objective element of an offense is committed in the territory (including flag vessels and aircraft) of the Kingdom of Cambodia, the TSE Law considers that the offense has been committed in Cambodia and, therefore, that the TSE Law shall be applied. This article, therefore, refers to situations where all constituent acts or elements of an offense have been committed outside Cambodian territory. In such circumstances, the TSE Law will be applied in two circumstances:

1) where the offense is committed by a Khmer citizen, or
2) where the victim is a Khmer citizen at the time of the commission of the offense.

These circumstances are described in greater detail below.

"committed…by a Khmer (Cambodian) citizen"

The provisions of the TSE Law shall be applied where someone who is a Cambodian citizen commits an offense against a foreigner, and the commission of the offense takes place outside Cambodia. This is an articulation of the *nationality principle* – a broadly accepted principle in international law, by which states seek to punish crimes committed by their nationals, even when those crimes were committed on the territory of a foreign state. Note that, under this paragraph, the application of the law is not limited by the perpetrator being Cambodian at the time the offense is committed (compare with Art 3(3) below). Under this provision, an offender who is not Cambodian at the time of the offense may still be prosecuted if that person later takes on Cambodian citizenship. This is consistent with the new Penal Code (Book 1, Title 1, Chapter 3, Section 2, Article 19 "Felony or misdemeanor committed by a Cambodian national"). Paragraph 3 of Article 19 provides that "these provisions shall be applicable even if the accused acquired Cambodian nationality after the acts which he or she is alleged to have committed".

It should be noted that the term "Khmer citizen" is used here to refer to a citizen of the Kingdom of Cambodia, regardless of that person's ethnicity. The use of this term does not mean that only ethnic Khmers are subject to the jurisdiction of the law; it is understood that there are members of many different ethnic groups (such as Cham, Vietnamese, Brou, Phnong, etc.) who are also citizens of the Kingdom of Cambodia. If a question arises regarding the citizenship of the accused offender or the victim, the courts should answer this question by looking at the relevant Cambodian laws and regulations. In particular the Law on Nationality (1996) defines that a person may acquire Khmer citizenship through birth (Article 4), either to a parent possessing Khmer citizenship (Article 4(1)) or to foreign parents who were themselves born and living legally in Cambodia (Article 4(2)(a)); through marriage (Article 5), or by naturalization (Articles 7-17).

"committed … by a foreigner if the victim is a Khmer (Cambodian) citizen"

The provisions of the TSE Law shall be applied where a foreigner commits an offense against a victim who is a Cambodian citizen at that time. This is an articulation of the *passive personality principle* in international law, whereby a state may assert jurisdiction over acts which, although committed abroad by a foreign national, have affected one or more citizens of the state.

As noted above, if a question arises regarding the citizenship of the accused offender or the victim, the courts should answer this question by looking at the relevant Cambodian laws and regulations. In particular the Law on Nationality (1996) defines that a person may acquire Khmer citizenship through birth (Article 4), either to a parent possessing Khmer citizenship (Article 4(1)) or to foreign parents who were themselves born and living legally in Cambodia (Article 4(2)(a)); through marriage (Article 5), or by naturalization (Articles 7-17).

"at the time of commission of the offense."

In the case where the law is applied to offenses committed outside the territory of the Kingdom of Cambodia because the victim is Cambodian, the application of the TSE Law is limited to cases where the victim is a Cambodian citizen at the time the offense is committed. This means that the TSE Law cannot be applied in the case of victims who are not Cambodian at the time of the offense although those victims later acquire Cambodian citizenship. This provision is consistent with the provisions of the new Penal

Code (Book 1, Title 1, Chapter 3, Section 2 "Offences Committed Outside the Territory of the Kingdom of Cambodia), in particular, Article 20 ("Where the victims is a Cambodian national").

Article 4. Criminal Responsibility

An attempt to commit the felonies or misdemeanors stipulated in this law shall be punished and liable to the same punishment as if the offence has been committed.

An accomplice and instigator of the felonies or misdemeanors stipulated in this law shall be punished and liable to the same punishment as a principal who commits it.

An accomplice and instigator shall include, but not be limited to, the form of organizing or directing another to commit any of the felonies or misdemeanours stipulated in this law.

When a representative, agent, or employee for a legal entity or a principal commits any offense stipulated in this law in the scope of its business, or in the interest of the legal entity or the principal, the legal entity or the principal shall be punished with fine and additional penalties in accordance with the punishment stipulated in the relevant article.

This article defines the scope of criminal responsibility for persons who either attempt to commit one or more offenses defined by the TSE Law, or for those persons who assist or instigate a principal offender to commit an offense.

It should be noted that Article 51 of the TSE Law provides that this article will be replaced when the Penal Code comes into force. (See discussion under Article 51 below.)

"the felonies or misdemeanors stipulated in this law"

This provision means that criminal responsibility is borne by those who attempt, assist or instigate an offense under the TSE Law only if those offenses are classified as felonies or misdemeanors. Under the TSE Law, persons who attempt, assist or instigate a lesser offense (such as soliciting, as defined by Article 24) do not bear criminal responsibility.

"An attempt … shall be punished…"
"An accomplice and instigator … shall be punished…"

These provisions explicitly state that if a person attempts, assists or instigates the commission of a felony or misdemeanor defined by the TSE Law, that person will be punished.

The TSE Law does not define the terms "attempt", "accomplice" or "instigator", but definitions for these terms may be found elsewhere in Cambodian criminal law, including the new Penal Code, as follows:

- **Attempt.**

The new Penal Code provides a clear definition in Article 27 on Definition of Attempt, located in Book 1 (General Provisions for the Implementation of Criminal Law), Title 2 (Criminal Responsibility), Chapter 1 (General Provisions):

> *An attempt to commit a felony or, in the cases provided for by law, a misdemeanor is punishable when the following conditions are fulfilled:*
>
> 1. *the perpetrator has started to commit the offence, which means, that the perpetrator has carried out acts which lead directly to the commission of the offence;*
> 2. *the perpetrator did not stop his/her act voluntarily but was interrupted solely by circumstances outside his/her will.*
>
> *A preparatory act that does not directly lead to the commission of the offence does not constitute the commencement of execution (of the offence).*
>
> *An attempt to commit a petty crime shall not be punishable.*

- **Accomplice.**

The new Penal Code, provides a clear definition, in Article 29 on Definition of an Accomplice, located in Book 1 (General Provisions for the Implementation of Criminal Law), Title 2 (Criminal Responsibility), Chapter 1 (General Provisions):

> Described as an accomplice is *a person who knowingly, by aiding or abetting, facilitates an attempt to commit a felony or a misdemeanor, or its commission.*
>
> *An accomplice is punishable only if the felony or the misdemeanour was committed or was attempted.*
>
> *An accomplice to a felony or a misdemeanour shall incur the same penalties as the perpetrator.*

- **Instigator.**

The new Penal Code provides a clear definition, in Article 28 on Definition of Instigator, located in Book 1 (General Provisions for the Implementation of Criminal Law), Title 2 (Criminal Responsibility), Chapter 1 (General Provisions):

> Described as an instigator of a felony or a misdemeanor is *a person who:*
>
> *1. gives an instruction or order to commit a felony or misdemeanor;*
>
> *2. provokes the commission of a felony or a misdemeanour by means of a gift, promise, threat, incitement, persuasion or abuse of his/her authority or power.*
>
> *An instigator is punishable only if the felony or the misdemeanour was committed or was attempted.*
>
> *An instigator of a felony or a misdemeanor shall incur the same penalties as the perpetrator.*

"…and liable to the same punishment"

This provision mandates that a person who attempts a felony or misdemeanor shall be "liable to the same punishment" as if the offense had been committed, and that an accomplice or instigator shall be "liable to the same punishment" as the principal.

This approach emphasizes criminal intent. Attempt, complicity and instigation all require criminal intent, and the TSE Law punishes this intent. Thus, even if a person merely attempted (but did not successfully complete) a trafficking or exploitation-related crime, the person bears the same liability of punishment as though the crime was successfully committed.

This does not mean that the person found guilty of attempt, complicity or instigation will necessarily receive the same degree of punishment: although the offender is liable to the same punishment, the judge may still exercise discretion with respect to the degree of punishment.

For example, for commission of the crime of "transportation with purpose", Article 17 of the TSE Law imposes a punishment of 7 to 15 years. A person who merely assists a principal offender to carry out the crime is liable to the same punishment as the principal: to be imprisoned for any length of time between 7 to 15 years; but the judge may sentence the accomplice to a lesser period of time than the principal within that range.

For cases that involve attempts, in considering the actor's intent at the time of attempt, courts should look at why the action in question did not ultimately result in the successful commission of the crime. Where the actor voluntarily and completely renounced his plan to commit the crime before any substantial step to the commission of the crime has been taken, he may be presumed not to have the same intent as someone who although intending to carry out the plan to its successful commission, was prevented from doing so by some circumstance. If the court considers that the offender's intent was less, then the judge may choose to apply a lighter sentence within the available range of punishment. However, if the actor could not carry

out his criminal plan due to external circumstances that made the successful commission of the crime impossible or more difficult, or if the actor did not carry out his criminal plan but rather decided to wait for a "better time," the court may consider that the criminal intent is the same as that of a successful offender – and so the judge may apply a higher sentence within the available range of punishment.

For cases that involve complicity or instigation, the focus should also be on intent. Courts should consider whether an alleged accomplice or instigator intended to aid a principal in the commission of a crime or possessed knowledge that his action would likely aid the principal in committing the crime. If the alleged accomplice had neither purpose nor knowledge, it may be presumed that he did not have the required intent to be an accomplice or instigator. In theory, the definition of complicity or instigation requires possession of mutual knowledge between the principal and the accomplice or instigator. This means that the principal possessed knowledge that the accomplice or instigator intended to aid him or her in the commission of a crime and vice versa.

"An accomplice or instigator shall include, but not be limited to the form of organizing … to commit any of the felonies or misdemeanors stipulated in this law"

The TSE Law does not define the term "organizing", but the word organized in this article is understood to mean arranging with another person to commit a crime.

"When a representative, agent, or employee for a legal entity or a principal…"

The last provision of this Article can be applied to punish and to deter (impersonal) legal entities (for example, companies, organizations or associations) or principals involved in crimes stipulated in the TSE Law, even if the crimes were committed by the representative, agent or employee of the legal entity or principal, provided that the acts where done in the scope of the business or in the interest of the legal entity or principal.

Consistent with the new Penal Code (Book 1, Title 2, Chapter 4 "Criminal Responsibilities of a Legal Entity"), the criminal responsibility of a legal entity does not exclude or negate the criminal responsibility of the natural person for the same act.

"Representative" or "agent" refers to a person who is authorized to act on behalf of the legal entity or principal.

"Employee" as defined in Article 3 of the Labour Law means "any person of any sex or nationality, who has signed an employment contract in return for remuneration, under the direction and management of another person, whether that person is a natural person or legal entity, public or private. Neither the jurisdictional status of the employer nor that of the worker, nor the amount of remuneration, have any effect in determining whether or not a person is considered an employee".

"Legal entity" is explained in the Civil Code, Book 2 "Persons", Chapter 2 "Juristic Persons", and defined in its glossary as "any group of people or foundation which is granted jurisdictional status of being the subject of rights and obligations, such as, associations, companies, organizations, foundations, etc."; whether the legal entity is for profit or not for profit, and whether of limited or unlimited liability, including companies, partnerships, associations, organizations, foundations, etc.. Consistent with the new Penal Code (Book 1, Title 2, Chapter 4 "Criminal Responsibilities of a Legal Entity"), organs of the state are not considered legal entities with regard to questions of criminal responsibility.

"Principal" refers to a person who authorizes a representative or agent to act on the principal's own behalf.

For example, A is a hotel owner who authorizes B to recruit staff. A knows that B recruited female as staff to provide sexual services for hotel customers. In this case, both A, the principal, and B, the agent, are liable for the crime of procurement of prostitution.

"…commits any offense stipulated in this law in the scope of its business, or in the interest of the legal entity or the principal…"

According to this law, the legal entity or principal may be held liable only if the offender (representative,

agent or employee) committed the offense in the same field of business as that carried out by the legal entity or principal, or in furtherance of the interests of the legal entity or principal.

For example, A is the agent of "B Company", which recruits Cambodians to work overseas. In this case, if A unlawfully removes a victim in order to send that person to work overseas through B Company's services, then B Company may also be held liable because the offense was committed in the scope of business of B Company and in furtherance of its interests.

"the legal entity or the principal shall be punished with fine"

If it is necessary to punish the legal entity or the principal, then this punishment should generally be imposed with a fine. In the case of a legal entity, the imposition of financial punishment is an appropriate punishment since a legal entity cannot be punished by imprisonment. This is also consistent with the new Penal Code (Book 1, Title 3, Chapter 7 "Penalties Applicable to Legal Entities"), which states that fines are the principal penalties to be imposed on a legal entity.

"and additional penalties"

This term refers to the additional penalties that are provided by Article 48 of the TSE Law. Some of these penalties – such as confiscation of materials or property that have a strong connection to the commission of the offense (Article 48(1)-(3)), or closure of a business (Article 48(4)) – may be appropriate when imposing punishment on a legal entity. (See discussion under Article 48 for more details.)

Article 5. Pronouncement of Principal Penalties

In all cases where an offence is punishable with both imprisonment and fine, the court may pronounce:

1. concurrence of imprisonment and fine
2. only imprisonment or
3. only fine.

Where the TSE Law provides for punishment through imprisonment and fines, this article gives the court discretion to impose either or both punishments. If the court finds an offender guilty of a crime that is punishable with imprisonment and a fine, the court may impose only the imprisonment, or only the fine or both the imprisonment and the fine.

Where an offense established by this law provides for penalties of imprisonment and fine, then, to be consistent with the objective of the law, in deciding whether or not to imprison offenders, the judge should consider imprisonment in order to ensure victim safety and prevent the offender from retaliating against a victim who has testified in court against the offender.

Article 6. Concurrence of Offences

During the prosecution of a single offender, when the accused is found guilty of several concurrent offenses, each of the penalties incurred may be pronounced. However, when several penalties of the same nature are incurred, only one penalty of that nature may be pronounced to the extent of the legally allowed higher maximum.

This article provides that, if an offender is found guilty of several concurrent offenses and sentenced to different punishments of the same nature, the punishment that is applied may not exceed the highest penalty provided for the most serious offense. However, punishments of different natures (for example, imprisonment and fines) may be imposed together.

It should be noted that Article 51 of the TSE Law provides that this article will be replaced when the Penal Code comes into force. (See discussion under Article 51 below. See also the Penal Code, Book 1, Title 3, Chapter 4 "Rules Applicable in Case of Concurrent Offenses"). It should be noted that Article 6 of the TSE Law is consistent with Article 137 of the Penal Code, which provides that where the accused is found guilty of concurrent offences and faces several penalties of the same nature, the court shall pronounce only one offence of this nature to the extent of the legally allowed maximum.

"During the prosecution of a single offender, when the accused is found guilty of several concurrent offenses"

This article applies in either of two situations:

1) During a single trial, an offender is found guilty of concurrent offenses; or
2) During trials before different courts, the offender is found guilty of concurrent offenses prior to being sentenced by the last court.

"Concurrent offenses" means all offenses committed by a person before he has been definitively sentenced for another offense. This is consistent with the definition set out in the Penal Code (Book 1, Title 3, Chapter "Rules Applicable in Case of Concurrent Offenses").

For example, if an offender unlawfully removes a victim in order to deliver the victim to another country, and also confines the victim, then the offender is liable to be found guilty for two crimes under the TSE Law: unlawful removal for cross-border transfer (Article 11) and confinement (Article 21). If the offender is prosecuted for both crimes in a single trial, then these crimes are considered concurrent offenses because they were committed before the offender is sentenced.

If, prior to the trial described above, the above offender is also accused in another court of committing the crime of sexual intercourse with a minor under 15 years, and is tried for that crime (under Article 42) in a second court, then the second court will consider as "concurrent offenses" any crimes that the first court found the offender committed.

"when several penalties of the same nature are incurred"

"Penalties of the same nature" means punishments that may differ in length of imprisonment or in amount of fine, but what is important is that the punishments are of the same type, either imprisonment penalty or fine penalty.

For example, the penalty of imprisonment from 2 to 5 years and the penalty of imprisonment from 7 to 15 years are penalties of the same nature. Similarly, a fine of 10,000 riels and a fine of 250,000 riels are penalties of the same nature.

"only one penalty of that nature may be pronounced to the extent of the legally allowed higher maximum"

This provision means that where the court finds an offender guilty of different concurrent offenses, and sentences that offender to different punishments of the same nature for those concurrent offenses, the court may only impose a punishment that does not exceed the maximum penalty established for the most serious offense. In other words, the punishment imposed should be within the range of punishment permitted by law for the most serious of the concurrent offenses for which the offender has been found guilty.

Thus, if the court punishes an offender to different terms of prison for concurrent offenses, the offender will only serve the single longest prison term applicable. Likewise, if the offender is found guilty of different concurrent offenses and is fined different amounts, the highest fine is the one that will be applied. However, if an offender is punished with imprisonment for one offense, and with a fine for another related offense, then both punishments will be applied.

For example, if an offender is found to have committed sexual intercourse with a minor under 15 years and committed the act of selling, buying or exchanging a person, then under article 42 of the TSE law the offender is subject to imprisonment from 5 to 10 years, and under article 14 of the TSE Law the offender is also subject to imprisonment from 5 to 10 years. In this case, the court may only impose one sentence of a maximum of 10 years for both punishments.

Additionally, under the Penal Code article 138 (separate prosecutions) , if the offender was found guilty of committing concurrent offenses and charged separately by more than one court, the penalty of the same nature shall be pronounced to the extent of the legally allowed higher maximum. Then, it is the last court that determines the total sentence or penalty of the same nature.

For example, if the offender is found guilty by one court of confining a child for more than one month (TSE Law, article 21), and found guilty by another court of selling the child (TSE Law, article 14), the

offender will be punished with imprisonment from 5 to 10 years under article 21 and from 2 to 5 years under article 14. In this case, if the first court sentences the offender to 9 years in prison and the second court sentences the offender to 5 years in prison, under the principle of concurrence of offense, the second court may pronounce the total penalty to be imposed for both offenses to the extent of the higher maximum (10 years), that is: the total punishment of 10 years imprisonment is applied for both offenses , since the second punishment (5 years) absorbs 4 years of the first punishment (9 years).

Article 7. Definition of Minor
A minor in this law shall mean a person under the age of 18 years.

A person who keeps a minor under his/her supervision or control shall be presumed to know the minor's age unless the person proves that he/she reasonably believes the minor's age to be 18 years or more.

For the purpose of the TSE Law, this article defines the term "minor", thus setting the age of majority at 18 years.

It is important to note that the age established by this article is not the same as the age of sexual consent, which is defined by Articles 42-43 as 15 years old. Thus, a person who is at least 15 years of age can consent to have voluntary sexual relations (but note that the practice of prostitution is limited to persons who are at least 18 years old). (See discussion under Articles 42-44 for more details.)

"A minor in this law shall mean a person under the age of eighteen years."

This article defines that the term "minor" in the TSE Law means a person who is under the age of 18 years. Thus, anywhere that the term "minor" appears in the TSE Law, it always refers to a person under the age of 18 years.

The age of majority established in this article is important for determining criminal responsibility and/or punishment of an offender who is a minor, or the degree of punishment for an adult offender who is found guilty of a crime against a minor. Where the victim is a minor, some articles of the TSE Law impose a higher penalty for persons found guilty of committing the offense against the minor.

For an offender who is a minor, note that the Penal Code (Book 1, Title 2, Chapter 3 "Criminal Responsibilities of Minors") provides for limited criminal responsibility and punishment where the offender is a minor between the ages of 14 years and 18 years old. However, under Article 44 of this TSE Law, a minor under the age of fifteen years shall not be punished for committing an offense under Article 42 ("Sexual Intercourse with a Minor under Fifteen Years") or Article 43 ("Indecent Act against a Minor under Fifteen Years").[7]

The age of a minor is to be calculated from the day of his birth, in accordance with the Civil Code (Article 986 "Method of Calculation of Age").

"A person who keeps a minor under his/her supervision or control"

This provision refers to a person who has supervision or control of a minor. "Supervision or control" means either of two situations:

1) The legal power that is conferred by law to the parents, guardians or curators of a minor.
2) The practical supervision or control over a minor, even where the adult does not have legal authority over the minor as in point 1 above.

For example, if a parent asks a relative or neighbor to take care of his minor child for a period of time, the relative or neighbor is considered to have supervision or control of the minor. Similarly, if a minor is employed then the employer is considered to have supervision or control of the minor during working hours or while the minor is at work; if the minor is at school, then the minor's teacher and school principal are considered to have supervision and control of the minor.

[7] Although note that where a minor under fifteen years of age commits a crime such as rape or another type of sexual assault (see, for example, the Penal Code, Book 2, Title 2 "Sexual Assaults"), then the minor offender is not liable under Articles 42-43 of the TSE Law, but may still be liable under the relevant article of the criminal law.

"shall be presumed to know the minor's age unless the person proves"

This provision means that where a person has supervision or control of the minor, the TSE Law presumes that the person knows the age of the minor. Thus, this article shifts the burden of proof to the person that has supervision or control of the minor.

For example, if an adult has supervision or control over a minor victim and is found guilty of committing an offense against the minor victim, then, in this case, the offender cannot easily plead as a defense that he did not know the victim was a minor, because this article presumes that the person knows the minor's age as a result of his supervision and control of the minor.

If the offender in this example wishes to claim as a defense that he did not know the minor's age, he must offer proof that he reasonably believed that the minor was 18 years or older.

Although this article is about the age of majority and not the age of sexual consent, the presumption of knowledge by a person who has supervision or control of a minor also covers questions relating to the age of sexual consent as well – and in particular, with regard to the offenses set out in Article 42 ("Sexual Intercourse with a Minor under Fifteen Years") and Article 43 ("Indecent Act against a Minor under Fifteen Years") of the TSE Law.

For example, where a person has supervision or control of a minor and has sexual relations with that minor, this article presumes that the person knows the minor's age, and so the person cannot easily claim as a defense that he did not know the minor was below 15 years old.

"that he/she reasonably believes the minor's age to be eighteen years or more"

Where a person, who has supervision or control of a minor, wishes to claim as a defense that he believed the minor was 18 years or older, it is not sufficient for the accused to merely claim that the minor looked 18 years or older. In such a case, the accused must prove that such belief was reasonable.

In interpreting what constitutes a "reasonable belief," it is recommended that courts apply an objective approach and make a case-by-case assessment based on the facts of the case. To be a reasonable belief, means that an average person with average judgment should believe the minor to be 18 years or older. In considering whether such a belief is reasonable, courts may look at a variety of factors, including (but not limited to) the real age of the victim, representations of age made by documentation (for example, where the minor presents a falsified birth certificate or ID card which states that he is 18 years or older), etc.

Chapter 2 - The Act of Selling/Buying or Exchanging a Person

This chapter defines the offenses and establishes the punishments for crimes of selling/buying or exchanging a human being. As such, this chapter is the primary means by which the TSE Law seeks to implement the Palermo Protocol.

However, the approach of the TSE Law differs from that of the Palermo Protocol. The Palermo Protocol addresses the combination of several different acts, means and purposes in order to define the crime of "trafficking in persons". The TSE Law, in contrast, seeks to separate out these acts into specific and distinct offenses: thus, this chapter differentiates between the offenses of unlawful removal; unlawful recruitment; buying, selling or exchanging a person; transportation of a trafficking victim; and receipt of a trafficking victim. The TSE Law clearly defines and provides punishments for each offense, and in many cases also sets out aggravating factors and the corresponding heightened punishments.

In some countries, the related laws include provisions on victim protection. But in Cambodia, the TSE Law is part of the general criminal law, and so those provisions are not included here. The Royal

Government of Cambodia has established and continues to establish standards on victim protection through other legal instruments, including relevant regulations and agreements.

The Royal Government of Cambodia has issued decisions and guidelines on victim protection and, at the time of this writing, is preparing national minimum standards on victim protection. For example, the Cambodian National Council for Children issued the Decision on Guidelines for the Protection of the Rights of Trafficked Children of the Kingdom of Cambodia (Decision No. 107, 20 December 2007). That same year, the Ministries of Justice, Interior, Women's Affairs, Health and Social Affairs, Veterans and Youth signed an agreement with 24 NGOs on Guidelines for Practices and Cooperation between the Relevant Government Institutions and Victim Support Agencies in Cases of Human Trafficking.

Cambodia has also signed international agreements that contain provisions on victim protection. In 2007, Cambodia signed the ASEAN regional agreement on the protection of child victims of trafficking.[8] Prior to 2007, Cambodia also signed bilateral Memoranda of Understanding with Thailand[9] and Vietnam,[10] as well as a regional agreement for the Greater Mekong Sub-region.[11]

Article 8. Definition of Unlawful Removal
The act of unlawful removal in this law shall mean to:

1. remove a person from his/her current place of residence to a place under the actor's or a third person's control by means of force, threat, deception, abuse of power, or enticement, or
2. without legal authority or any other legal justification to do so, take a minor or a person under general guardianship or curatorship or legal custody away from the legal custody of the parents, care taker or guardian.

This article defines the term "unlawful removal", which is also referred to in Articles 9 to 11 of this chapter of the TSE Law. This article does not establish the crime of unlawful removal, and no prosecutions should be commenced under this article. Charges for the crimes relating to unlawful removal should be brought under the appropriate article (see Articles 9-11).

Unlawful removal is essentially similar to the crime of "kidnapping" as defined in the 1996 Trafficking Law and some other criminal laws.

This article defines "unlawful removal" in two different ways, although in both cases the key issue is that the victim cannot, as a matter of law, consent to his removal. Paragraph 1 requires that the offender carry out an act using certain means which nullify the victim's ability to give consent (e.g., through force or

[8] Southeast Asian Guidelines for the Protection of the Rights of Children Victims of Trafficking (December 2007).
[9] Memorandum of Understanding between the government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand on Bilateral Cooperation for Eliminating Trafficking in Children and Women and Assisting Victims of Trafficking, signed in Siem Reap on 31 May 2003. This agreement was supplemented by the Guidelines for Cooperation between Cambodia and Thailand on the Criminal Justice Process of Trafficking-Related Crimes.
[10] Agreement between the Royal Government of Cambodia and the Government of the Socialist Republic of Vietnam on Bilateral Cooperation for Eliminating Trafficking in Women and Children and Assisting Victims of Trafficking, signed in Hanoi on 10 October 2005.
[11] Memorandum of Understanding on Cooperation against Trafficking in Persons in the Greater Mekong Sub-Region, signed by the Government of the Kingdom of Cambodia in Rangoon, Myanmar, on 29 October 2004.

threat, or the use of drugs which nullify the victim's ability to consent), or which negate the victim's consent if it is fraudulently obtained (e.g. through deception, enticement). Paragraph 2 does not require any specific means, but requires that the offender commit the act against a victim of limited legal capacity who is under the custody or curatorship of another. Paragraph 2 is most commonly applied in situations involving the removal of a minor – who, by law, lacks the capacity to give consent. An offender commits the crime of unlawful removal when he fulfills either the first or the second definition.

Another difference between the definitions established in Paragraph 1 and Paragraph 2 is that Paragraph 1 requires that the victim be removed from "his/her current place of residence to a place under the actor's or a third person's control". This requirement does not exist in Paragraph 2, which only specifies that the victim be "taken away from the legal custody of the parents, care taker or guardian."

Paragraph 1 of this article sets out three principle elements of the crime:

1) Removal
2) Control
3) Means

These elements are described in detail below.

"remove a person from his/her current place of residence"

To commit the crime of unlawful removal, the offender must physically remove or take away a person (the victim) from his or her place of residence.

For the TSE Law, the term "place of residence" does not mean only the victim's house or place of abode, but also his "base and center of living" – that is, where the person habitually carries out his life. This definition is consistent with that given in Articles 34 to 36 of the Civil Code. In other words, the term "place of residence" in this article is intended to be broadly understood, and to include all places in the vicinity of the victim's physical residence. Removal from such a place means that the victim is moved far enough away from his residence and/or is otherwise physically prevented from accessing his residence.

For example, if a person is unlawfully removed while he is at work, this is considered a removal from his "place of residence" (even though he is removed from his work and not his house) because he can no longer go home from work as he usually does. Similarly, if the victim is a homeless person with no fixed abode, the "place of residence" refers to the area or areas where he habitually spends his time.

The TSE Law considers that the offender is the one who carries out or directs the removal, and not merely the person who transports the victim.

For example, an employer tells a taxi driver to take his female employee to a guesthouse where the employee is placed under a third person's control by one of the means specified in this article. The taxi driver merely transports the employee, without any knowledge of the offense and without using any of the means specified. In this case, the taxi driver is not liable, but the employer may be considered the offender and held liable under this article.

"to a place under the actor's or a third person's control"

For unlawful removal to take place, the victim must be removed to a place under the control of the offender or a third person. This means that the victim is placed under the control of another person, and is not able to voluntarily leave the place to which he is removed.

"by means of"

The definition of unlawful removal set out in Paragraph l requires that the offender use one of the following means to accomplish the removal of the victim. The shared characteristic of all of these means is that the victim has not freely or fully consented to his removal.

"force"

"Force" means the use of physical or psychological force, against the will of the victim. This article does not require that the offender use violence, nor that the victim resist or suffer injury as a result of the force used.

For example, if an offender takes hold of a person and pushes or pulls him, this is still considered using force even if the victim was not hurt in the process.

The courts may take note of the increased vulnerability of the victim and thus also especially consider the use of non-physical force, such as psychological force or coercion.

"threat"

"Threat" means both explicit and implied threats, which make the victim afraid of physical or psychological harm, or any other danger to himself or a third party.

For example, it is a threat if an offender removes a victim by convincing the victim that the offender will harm the victim's relative if the victim does not go with the offender.

The offender does not need to threaten the victim or a third party with physical harm; it is enough that the offender threaten to commit a felony or misdemeanor will be committed against a person (the victim or a third party). This is consistent with the section on "threats" in the new Penal Code (Articles 231-234).

Where the offender threatens to carry out a legal act, but uses the threat to carry out an offense, this is still considered a threat.

For example, if the offender loans money and threatens to enforce the loan in order to carry out an offense under the TSE Law, then this is still considered an offense.

Likewise, if the offender threatens to denounce an illegal immigrant to the competent authorities, and uses this threat to achieve the objective of committing any offense under the TSE Law, then this is still considered an offense.

"deception"

"Deception" means the situation where the offender uses lies, omissions or untruths, in words or conduct, to convince the victim to do something.

"abuse of power"

"Abuse of power" means any situation where a public official (including civil servants, persons in an elected position, or other appointed officials), uses his position or takes advantage of his position in order to carry out a wrongful act. This definition is consistent with that found in the new Penal Code (see Book 4, Title 3, Chapter 1, Section 1, Sub-Section 2, "Abuse of Power against Individuals"). Often this abuse of power serves to exploit one or more persons who are in vulnerable circumstances, to convince the victim to do something.

It should be noted that the TSE Law as a whole shows a clear intent to punish severely any involvement by public officials in human trafficking. This includes but is not limited to positions such as officials of the government, police, military, teachers and staff in public schools or universities, doctors and staff of public hospitals or health centers, and persons holding an elected public position at any level.

"enticement"

"Enticement" refers to a situation where the offender lures the victim with false promises or by not providing full information, thereby convincing the victim to do something.

"Enticement" does not refer to legitimate offers of employment or legitimate advertisements of other sorts.

Paragraph 2 of this article has different elements than Paragraph 1. Paragraph 2 does not require that the offender use any specific means, but does require that the victim not have full legal capacity. Likewise, Paragraph 2 does not require that the victim be removed from "his/her current place of residence to a place under the actor's or a third person's control", but only specifies that the victim be "taken away from the legal custody of the parents, care taker or guardian."

Paragraph 2 of this article sets out three principle elements of the crime:

1) The offender has no legal authority or justification
2) The victim is a minor or other person under custody or curatorship
3) The offender takes the victim away from his parents, guardian or curator.

These elements are described in detail below.

"without legal authority"

This provision does not mean whether or not the accused holds a position of legal authority, such as being a public official. Rather, this phrase refers to the question of whether, according to law, the accused is legally entitled to remove the victim (a minor or other person lacking full capacity) from the legal custody of their parents, care taker or guardian.

Thus, unlawful removal without legal authority can occur in different ways:

- A person who possesses no legal authority removes a victim.

  For example, if a private citizen (someone who is not an official, and who has no authority under law) removes a minor victim without the consent of the minor's parents and also has no legal justification for doing so, then that removal has been done "without legal authority".

- A public official (such as a police or government official), who normally possesses the required legal authority, removes the victim in a manner prohibited by law.

  For example, if a police or government official removes a minor victim without the consent of the minor's parents and that removal is not allowed by law, then the TSE Law considers that the official has acted "without legal authority".

It should be noted that in some circumstances, private individuals or organizations may be specifically authorized to remove a person without full capacity against his/her will from a particular place.

For example, if an orphanage has been granted legal custody over the minors (the orphans) in its care, it may remove them to or from the orphanage.

"or any other legal justification to do so"

"Any other legal justification" refers to other justifications that are recognized by law.

For example, where a person acting within the scope of the law removes a child from the custody of abusive parents, this removal is done in consideration of the best interests of the child and so may be recognized as such in the law.

"take a minor"

The term "minor" means any person under the age of 18 years, as set out in Article 7.

"or a person under general guardianship or curatorship or legal custody"

A person under "**general guardianship**" refers to a person who remains in a habitual condition of lacking the ability to recognize and understand the legal consequences of his actions due to mental disability. This definition is consistent with Article 24 of the Civil Code.

A person under "**curatorship**" refers to a person who has limited ability to recognize and understand the legal consequences of his actions due to mental disability. This definition is consistent with Article 28 of the Civil Code.

"Legal custody" refers to the exercise of rights and obligations belonging to parents of a minor. Where the minor's parents are dead or otherwise unable to care for the minor, legal custody may be granted by law to a guardian. This definition is consistent with the Civil Code (Book Seven "Relatives", Chapter 6 "Guardianship"). A legal guardian may be designated by the minor's parents by will (to take effect upon death) or determined by a court or by law.

For example, in the case of a divorce, the court may award legal custody of a child to one of the parents.

As another example, an orphanage that is owned or registered by the state has legal custody over the orphans who have been placed in its care in accordance with law.

However, it is important to note that the law does not allow parents to simply relinquish their parental rights by designating a guardian, without approval by the court or competent authority.

"away from the legal custody of the parents, care taker or guardian"

To commit the crime of unlawful removal, the offender must remove the victim from the legal custody of his parents, care taker or guardian.

This provision does not require that the offender use any specific means, nor that the victim be removed from "his/her current place of residence to a place under the actor's or a third person's control."

As noted above, the law does not allow parents to simply relinquish their parental rights without approval of the court or competent authority, and so a person who removes a minor may be an offender under this provision even if the minor's parent consents to the removal of the minor, if such removal is made in a manner not permitted by law.

For example, if a parent gives her child away, including her parental rights, to another person without following legal procedures, then the person may be considered to be an offender under this paragraph since he has no legal authority to assume parental or guardianship rights over the minor (unless he has a legal justification).

In the case of a minor without known parents or guardian (e.g. an abandoned street child), the minor may be considered to be under the general care and protection of the state. Thus, if a person who does not have legal authority or legal justification takes away the abandoned street child without approval of the competent authorities, then the person may be considered an offender under this paragraph.

Article 9. Unlawful Removal, inter alia, of Minor

A person who unlawfully removes a minor or a person under general guardianship or curatorship or legal custody shall be punished with imprisonment from 2 to 5 years.

The punishment for the offence stipulated in this article shall be remitted or mitigated when all of the following conditions are met:

1. the person taken under custody, being not less than fifteen (15) years of age, voluntarily gives genuine consent to the criminal act;
2. none of the means stipulated in subparagraph 1) of Article 8 of this law is used; and
3. the offender does not have any intent to commit an offense.

The prosecution for the offence stipulated in this article may be commenced only upon the filing of a complaint from the parent, custodian/care taker or lawful guardian concerned, unless any of the means stipulated in subparagraph 1) of Article 8 of this law is used.

This article establishes the offense and sets the punishment for unlawful removal of a minor or other person lacking legal capacity, which is defined in Article 8 above, with particular reference to Article 8 paragraph 2. Offenders must be prosecuted and punished under this article, not under Article 8. However, to find the offender guilty under this article, the prosecutor and court must ensure that the offender meets all the conditions under the definition of unlawful removal, as set out in either Paragraph 1 or Paragraph 2 of Article 8.

Where the offender carries out the act of unlawful removal of a person who possesses full legal capacity,

and the unlawful removal is for the purpose of sexual exploitation, forced labor or certain other forms of exploitation, then the offender shall be prosecuted, and punished under Article 10.

Where the offender carries out the act of unlawful removal of a person with the purpose of transferring the victim across an international border, then the offender shall be prosecuted and punished under Article 11.

If an offender is found guilty of the offense in this article, he shall be punished with imprisonment for 2 to 5 years.

"The punishment …shall be remitted or mitigated when all of the following conditions are met"

When all the conditions listed in Paragraph 2 are met, this article requires the mitigation of the punishment imposed by the court. If only one or two of the conditions are met, the punishment is not mitigated or remitted.

The conditions required to mitigate punishment are the following:

"1. the person taken under custody, being not less than fifteen (15) years of age, voluntarily gives genuine consent to the criminal act;"

To meet this condition:

a) The victim must be at least 15 years of age, and
b) The victim must have agreed to be removed by the offender. For the purpose of this article only, a minor aged 15 years or older, or an adult person of limited capacity is deemed able to give consent to his or her own removal. Because of the vulnerability of the victim, the court should make special efforts to determine that the victim genuinely agreed.

"2. none of the means stipulated in subparagraph 1) of Article 8 of this law is used;" and

To mitigate the punishment, the court must also find that the offender did not remove the victim by means of force, threat, deception, abuse of power, or enticement. (For definitions of these terms, see discussion under Article 8 above).

"3. the offender does not have any intent to commit an offense."

The third condition required to mitigate punishment is that the court must find that the offender who unlawfully removes a minor doesn't have any intent to commit an offense.

For example, if an actor is in a romantic relationship with a minor aged 16 years, and the couple decides to run away from home (the minor is not compelled to leave against her will), the actor should not be prosecuted and is not liable for punishment under this article, because:

a) i. the minor was at least 15 years old;
   ii. the minor agreed to leave with the actor;
b) The actor did not remove the minor by means of force, threat, deception, abuse of power, or enticement
c) The actor did not intend to commit any crime.

On the contrary, if the actor does not comply with any one of the above conditions, then the punishment shall not be remitted or mitigated.

For example, the parents of a 15 year old child divorce, and the court gives full custody to the mother. The father is unhappy, and one day when the mother is out of the house, the father comes and takes the child away; and the child agrees to leave with the father. But the father knew that the court gave custody to the mother, and the father intentionally interfered with this custody. Therefore this act can be punished under this article because the father intended to commit a crime, and so did not meet all of the conditions listed above.

Paragraph 3 of this article establishes the conditions under which the prosecution of the offense may commence.

"The prosecution for the offence stipulated in this article may be commenced only upon"

According to this provision, a prosecution can start in either of the following two ways:

1) **"the filing of a complaint from the parent, custodian/care taker or lawful guardian concerned"**

The parent, custodian/care taker or lawful guardian files a complaint claiming that the victim has been unlawfully removed; or

2) **"and if any of the means stipulated in subparagraph 1) of Article 8 of this law is used."**

Before any complaint is made, the prosecutor can act if he reasonably believes that the victim was removed by means of force, threat, deception, abuse of power, or enticement. (For definitions of these terms, see discussion under Article 8 paragraph 1 above). In these cases, the police or prosecutor does not need to wait for the parents, care taker or guardian to complain, before the police or prosecutor can act (to investigate or to prosecute, etc.).

"shall be punished with imprisonment from 2 to 5 years"

This article provides a punishment from 2 to 5 years imprisonment. It should be noted that a similar provision exists in the new Penal Code, under Book 2, Title 3, Chapter 3, "Interference with the Custody of Minors". Article 327 (Taking Away a Minor) of the Penal Code provides a penalty of 1 month to 1 year and a fine of from 100,000 riels to 2,000,000 riels for the act of "taking away a minor from the person who has legal custody".

The penalties provided for in Article 9 of the TSE Law and Article 327 of the Penal Code contradict each other with respect to unlawful removal of minors. Following the principles of statutory interpretation and the rules set out in Articles 671 and 668 of the Penal Code (see discussion on "principles of statutory intepretation" in the Introduction and in Art. 50 below), the lower penalty under the newer Penal Code generally supersedes the penalty under the TSE Law with respect to the act of unlawful removal of minors. However, if the unlawful removal of minor is done within the context of human trafficking, then the TSE Law (which is a special law) will prevail and thus, the perpetrator must be charged and punished with the higher penalty under the TSE Law.

For example, if a divorced father of a 7-year old boy, eager to spend time with his son, takes away the child from the custody of his mother, who was awarded legal custody of the child in a court divorce proceeding, without permission from the boy's mother, and the father has no intention to exploit the child and commit child trafficking, the father should be prosecuted and punished under Art. 327 (Taking Away a Minor) of the Penal Code.

As another example, if a trafficker works in a factory illegally employing child workers and unlawfully removes a minor from the custody of the boy's parents for the purpose of child labour, the perpetrator should be charged under Article 10, "Unlawful Removal with Purpose" of the TSE Law.

Article 10. Unlawful Removal with Purpose

A person who unlawfully removes another for the purpose of profit making, sexual aggression, production of pornography, marriage against will of the victim, adoption or any form of exploitation shall be punished with imprisonment from 7 years to 15 years.

The offence stipulated in this article shall be punished with imprisonment from 15 to 20 years when:

- the victim is a minor,
- the offence is committed by a public official who abuses his/her authority over the victim,
- the offence is committed by an organized group.

The terms "any form of exploitation" in this Article and Article 12, 15, 17, and 19 of this law shall include the exploitation of the prostitution of others, pornography, commercial sex act, forced labor or services, slavery or practices similar to slavery, debt bondage, involuntary servitude, child labor or the removal of

organs.

The consent of the victim to any of the intended purpose set forth in paragraph 1 of this article shall be irrelevant where any of the means set forth in subparagraph 1) of Article 8 of this law is used.

This shall apply to the offences stipulated in Article 15, 17, and 19 of this law as well.

This article establishes the offense and sets the punishment for unlawful removal of a person, and where the unlawful removal is done for the purpose of sexual exploitation, forced labor or certain other forms of exploitation.

Offenders must be prosecuted and punished under this article, not under Article 8. However, to find the offender guilty under this article, the prosecutor and court must ensure that the offender meets all the conditions under the definition of unlawful removal, as set out in Article 8. If the offender unlawfully removed the victim by means of force, threat, deception, abuse of power, or enticement, then the offender is liable even if the victim consented (or appeared to consent) to the removal.

Where the offender carries out the act of unlawful removal of a person with the purpose of transferring the victim across an international border, then the offender shall be prosecuted, tried and punished under Article 11.

If an offender is found guilty of the offense in this article, the court shall punish the offender with imprisonment for 7 to 15 years. However, if the court finds any one of the aggravating factors listed below, then the punishment is raised to 15 to 20 years.

The offense established in this article has two main elements, both of which must be fulfilled:

1) **Unlawful removal** (see Art 8 for definition)
   The offender must have committed an act of unlawful removal, which means that the offender must meet all the conditions in definition of unlawful removal as set out in Article 8(1) for persons possessing full legal capacity or Article 8(2) for persons not possessing full legal capacity. (See discussion under Article 8 for details.)

2) **For the purpose of…**
   In addition to committing unlawful removal, the offender must have the specific intent to carry out any one of the following acts. The TSE Law does not require that the offender have successfully carried out these acts, but only that he have the intent to do so. Likewise, the law does not require that the offender have more than one of the following purposes; it is sufficient to have only one.

   If the offender had one of the following purposes, and carried out the unlawful removal by means of force, threat, deception, abuse of power, or enticement, then according to Paragraph 4 of this article, the offender is liable even if the victim consented to this purpose.

“profit making”

The term “profit-making”, as used in this article, means that the offender has carried out the unlawful removal in exchange for or in order to receive something of value, including but not limited to money, other items of value (gold, jewelry, etc.), services or persons. If the offender commits unlawful removal for this purpose, then he should be punished under this article.

“sexual aggression”

The term “sexual aggression”, as used in this article, means that the offender has carried out the unlawful removal with the purpose of committing a sexual crime against the victim, such as rape or other sexual assault (see definitions of these crimes according to the applicable criminal law); or, in the case of a minor under 15 years, an indecent act as defined in Chapter 6 of this law. If the offender commits unlawful removal for this purpose, then he should be punished under this article.

If the offender commits unlawful removal for this purpose and then carries out the sexual aggression, he

can be prosecuted for both offenses.

For example, if an actor unlawfully removes a person for the purpose of raping her, and then carries out the rape, he should be charged with the offense set out in this article (Unlawful Removal with Purpose) as well as for the crime of sexual aggression that he committed (Rape) as defined in the relevant article of the criminal law.

"production of pornography"

The offender is liable for punishment under this article if he commits unlawful removal for the purpose of creating or contributing to the creation of pornography. "Pornography" means the definition set out in Article 38 of this law.

It is not required that the offender receive or intend to receive any financial benefit from this act.

"marriage against will of the victim"

The offender is liable for punishment under this article if he commits unlawful removal for the purpose of compelling the victim to marry against his or her will.

It is not required that the offender receive or intend to receive any financial benefit from this act.

"adoption"

If the offender commits unlawful removal for the purpose of giving or selling the victim into adoption, then he should be punished under this article. (Regarding adoption, see Civil Code, Book Seven "Relatives", Chapter Four "Parents and Children", Section II "Adoption", as well as the Law on Inter-Country Adoption). It is not required that the offender receive any financial benefit from the adoption; it is enough that he have the purpose to give the victim directly to another person in adoption, or to give the victim to a person who will facilitate an adoption.

"any form of exploitation"
"The terms "any form of exploitation" … shall include"

The term "any form of exploitation" includes but is not limited to the acts listed in Paragraph 3 of this article: the exploitation of the prostitution of others, pornography, commercial sex act, forced labor or services, slavery or practices similar to slavery, debt bondage, involuntary servitude, child labor or the removal of organs. For definitions of these terms, see discussion below. The court may also include other types of exploitation not listed here. If the offender commits unlawful removal for any of these purposes, then he should be punished under this article.

"the exploitation of the prostitution of others"

The term "the exploitation of the prostitution of others" refers to drawing financial benefit from prostitution, or committing the crimes set out in Articles 26 to 37 of this law.

"Prostitution" is defined in Article 23 of this law, and means having sexual intercourse with an unspecified person or other sexual conduct of all kinds in exchange for anything of value. (For the discussion of the definition, see the explanation of Article 23 below).

"pornography"

Because this article already penalizes unlawful removal for the purpose of the production of pornography, the use of the term "pornography" here refers to other offenses related to pornography, as set out in Article 39, such as the distribution, sale or lease of pornography.

"Pornography" means the definition set out in Article 38 of this law. The use of the term "pornography" here also refers to offenses related to child pornography, which are defined in Article 41 of this law. Where the pornography depicts a minor, such material is child pornography as defined in Article 40 of this law.

For more details, see discussions under Article 38 to Article 41.

"commercial sex act"

The term "commercial sex act" refers to any other sexual activity on account of which anything of value is given to or received by any person. This is a broader meaning than the term "prostitution", and may include other activities such as live sex performances.

"forced labor or services"

"Forced labor or services" means all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily. This definition is consistent with the International Labor Organization's Convention No. 29 on forced labor, adopted in 1930 and ratified by the Kingdom of Cambodia on February 24, 1969. Forced labor is prohibited under Cambodian[12] and international law.

"slavery or practices similar to slavery"

"Slavery" means the status or condition of a person over whom control is exercised to the extent that the person is treated like property.

"debt bondage"

"Debt bondage" means a system by which a person is kept in bondage or under the control of another person by making it impossible for the victim to pay off his or her real, imposed or imagined debts.

"involuntary servitude"

"Involuntary servitude" means the labor conditions and/or the obligation to work or to render services, from which the person in question cannot escape and which he or she cannot change.

"child labor"

The term "child labor" means any labor performed by a minor (a person under 18 years) and which is prohibited by law. The Labor Law allows minors to work in certain circumstances (see Articles 172 to 181 of the Labor Law), and such work is legal and therefore not covered by this term.

"the removal of organs"

The "removal of organs" means taking out any body part from a person without his or her free, full and prior informed consent.

Punishment and aggravating factors

If an offender is found guilty of the offense in this article, he shall be punished with imprisonment for 7 to 15 years. Additional penalties may also be applied at the discretion of the court, as per Article 48.

As per Article 4 (Criminal Responsibility) paragraph 4, if the representative, agent or employee of a legal entity or principal is found guilty of this offense, the court may also punish the legal entity or principal with the additional penalties that are provided by Article 48 of the TSE Law. These additional penalties, if warranted, include punishments such as confiscation of materials or property (Article 48(1)-(3)), or closure of a business (Article 48(4)). (See discussion under Article 48 for more detail.)

However, if the court finds any one of the aggravating factors listed below, then the punishment is raised to 15 to 20 years.

The law does not require that all the aggravating factors be met; it is enough that any one of the factors be present for the offender to receive the heightened punishment.

- **the victim is a minor,**

If the victim is under 18 years of age, the offender shall receive the heightened punishment.

If the offender had supervision or control over the victim, then the TSE Law presumes that the offender knows the victim's age. See discussion under Article 7 (Definition of Minor) above.

[12] Article 15 of Cambodia's Labor Law states that "forced or compulsory labor is absolutely forbidden."

- **the offence is committed by a public official who abuses his/her authority over the victim,**

If the offender is a public official, and carried out the act by means of an abuse of his power, then the offender shall receive the heightened punishment.

"Public official" means a civil servant or a citizen entrusted with an elected mandate. This includes but is not limited to positions such as officials of the government, police, military, teachers and staff in public schools or universities, doctors and staff of public hospitals or health centers, and persons holding an elected public position at any level.

"Abuse of authority" means the same as the term "abuse of power" that is discussed under Article 8 – that is, the situation where a civil servant or a citizen entrusted with an elected mandate, uses his position inappropriately or takes advantage of his position in order to carry out a wrongful act. This definition is consistent with that found in the new Penal Code (see Part 4, Book 4, Title 3, Chapter 1, Section 1, Sub-Section 2 "Abuse of Power against Individuals"). Often this abuse of power serves to exploit one or more persons who are in vulnerable circumstances, to convince the victim to do something that the victim would not do willingly.

It should be noted that the TSE Law as a whole shows a clear intent to punish severely any involvement by public officials in human trafficking.

- **the offence is committed by an organized group.**

If the offender acted as part of an organized group to commit the offense, then the offender shall receive the heightened punishment.

In Article 77 of the Penal Code, an "organized criminal group" means "any group or conspiracy that is established with a view to plan or to commit one or more offenses".

In relevant international law, the definition is similar, with the added requirement that the organized group must include three or more persons. For example, the UN Convention Against Transnational Organized Crime, to which the Palermo Protocol is attached and which Cambodia has ratified, defines an "organized criminal group" in Article 2(a) as "a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit."

Therefore, an "organized group" means a formal or informal group of three or more people that is established to plan or commit a crime.

"The consent of the victim to any of the intended purpose set forth in paragraph 1 of this article shall be irrelevant where any of the means set forth in subparagraph 1) of Article 8 of this law is used."

If the offender unlawfully removed the victim by means of force, threat, deception, abuse of power, or enticement, then the offender is liable even if the victim consented (or appeared to consent) to the removal. This is because legally the victim cannot consent when one of the specified means is used.

Article 11. Unlawful Removal for Cross-border Transfer

A person who unlawfully removes another for the purpose of delivering or transferring that person to outside of the Kingdom of Cambodia shall be punished with imprisonment from 7 to 15 years.

A person who unlawfully removes another in a country outside of the Kingdom of Cambodia for the purpose of delivering or transferring that person to another country shall be punished the same as set out in the above-stated paragraph 1.

The offence stipulated in this article shall be punished with imprisonment from 15 to 20 years when:

- the victim is a minor,

- the offence is committed by a public official who abuses his/her authority over the victim,
- the offence is committed by an organized group.

This article establishes the offense and sets the punishment for unlawful removal of a person for the purpose of transferring that person across an international border. Offenders should be punished under this article, not under Article 8.

If the offender does not intend to transfer the victim across an international border, then the unlawful removal should be punished under Article 9 (Unlawful Removal of a Minor) or Article 10 (Unlawful Removal with Purpose).

The offense established in this article has two main elements, both of which must be fulfilled:

1) **Unlawful removal** (see Art 8 for definition)
   The offender must have committed an act of unlawful removal, which means that the offender must meet all the conditions in definition of unlawful removal as set out in Article 8(1) for persons possessing full legal capacity or Article 8(2) for persons not possessing full legal capacity. (See discussion under Article 8 for details.)

2) **For the purpose of cross-border transfer**
   The offender must have committed the unlawful removal for the purpose of transferring the victim across an international border. The offender does not need to cross or intend to cross an international border himself; what matters is that the offender intended to transfer the victim across a border. There is no requirement that the victim have actually crossed a border; it is sufficient to show that the offender intended to transfer the victim across the border.

It should be noted that this article does not refer to the act of smuggling or illegally transporting a person who voluntarily wishes to cross a border. If a person with full legal capacity wants to cross the border, then the element of unlawful removal (defined in Article 8 (1)) is not present, and so the offense in this article has not been committed. If the person lacks full legal capacity, then there may be liability if the conditions of unlawful removal specified in Article 8(2) are fulfilled.

"cross-border transfer"

According to this article, the term "cross-border transfer" means any of the following:

"for the purpose of delivering or transferring that person to outside of the Kingdom of Cambodia"

This provision penalizes the intent to transfer a victim from Cambodia to a foreign country.

"A person who unlawfully removes another in a country outside of the Kingdom of Cambodia for the purpose of delivering or transferring that person to another country"

This provision penalizes either of the following intents:

- To transfer a victim from one foreign country to another foreign country
- To transfer a victim from a foreign country to Cambodia

This article should be read together with the jurisdictional provisions of Article 2 and Article 3 above. For example, this article may be used to punish an act that occurs entirely outside of the territory of Cambodia, where either the victim or the offender is a Cambodian citizen. (See discussion under Article 3 for more details.) Likewise, if the victim is transferred between two foreign countries via a ship flying the Cambodian flag, jurisdiction is proper under Article 2. (See discussion under Article 2 for more details.)

Punishment and aggravating factors

If an offender is found guilty of the offense in this article, he shall be punished with imprisonment for 7 to 15 years. Additional penalties may also be applied at the discretion of the court, as per Article 48.

As per Article 4 (Criminal Responsibility) paragraph 4, if the representative, agent or employee of a legal entity or principal is found guilty of this offense, the court may also punish the legal entity or principal with the additional penalties that are provided by Article 48 of the TSE Law. These additional penalties, if warranted, include punishments such as confiscation of materials or property (Article 48(1)-(3)), or closure of a business (Article 48(4)). (See discussion under Article 48 for more detail.)

However, if the court finds any one of the aggravating factors listed below, then the punishment is raised to 15 to 20 years. The law does not require that all the aggravating factors be met; it is enough that any one of the factors be present for the offender to receive the heightened punishment.

- **the victim is a minor,**

If the victim is under 18 years of age, the offender shall receive the heightened punishment.

If the offender had supervision or control over the victim, then the TSE Law presumes that the offender knows the victim's age. See discussion under Article 7 (Definition of Minor) above.

- **the offence is committed by a public official who abuses his/her authority over the victim,**

If the offender is a public official, and carried out the act by means of an abuse of his power, then the offender shall receive the heightened punishment.

"Public official" means a civil servant or a citizen entrusted with an elected mandate. This includes but is not limited to positions such as officials of the government, police, military, teachers and staff in public schools or universities, doctors and staff of public hospitals or health centers, and persons holding an elected public position at any level.

"Abuse of authority" means the same as the term "abuse of power" that is discussed under Article 8 – that is, the situation where a civil servant or a citizen entrusted with an elected mandate, uses his position inappropriately or takes advantage of his position in order to carry out a wrongful act. This definition is consistent with that found in the new Penal Code (see Book 4, Title 3, Chapter 1, Section 1, Sub-Part 2 "Abuse of Power against Individuals"). Often this abuse of power serves to exploit one or more persons who are in vulnerable circumstances, to convince the victim to do something that the victim would not do

willingly.

It should be noted that the TSE Law as a whole shows a clear intent to punish severely any involvement by public officials in human trafficking.

- **the offence is committed by an organized group.**

If the offender acted as part of an organized group to commit the offense, then the offender shall receive the heightened punishment.

In Article 77 of the Penal Code, an "organized criminal group" means "any group or conspiracy that is established with a view to plan or commit one or more offenses".

In relevant international law, the definition is similar, with the added requirement that the organized group must include three or more persons. For example, the UN Convention Against Transnational Organized Crime, to which the Palermo Protocol is attached and which Cambodia has ratified, defines an "organized criminal group" in Article 2(a) as "a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit."

Therefore, an "organized group" means a formal or informal group of three or more people that is established to plan or commit a crime.

It should be noted that a provision similar to this article can be found in Article 327 (Taking Away a Minor) of the Penal Code (see Book 2, Title 3, Chapter 3, "Interference with the Custody of Minors"). Compared to paragraph 1 of Article 327, paragraph 2 of Article 327 provides an aggravated penalty of 1 year to 3 years imprisonment and a fine of 2 million to 6 million riels for the act of "taking away a minor from the person who has legal custody…if the minor is kept outside the Kingdom of Cambodia." Paragraph 2 of Article 327 of the Penal Code is slightly different from Article 11 of the TSE Law in that the TSE Law merely requires an intent to transfer the minor across international borders, whereas the Penal Code requires that the minor be kept outside Cambodia. Article 327 of the Penal Code also provides a very light penalty compared to Article 11 of the TSE Law.

Due to the difference in the elements of the two offences, the two articles may be said to be complementary instead of conflicting. Thus, in the case of a minor who is unlawfully removed from Cambodia and then transferred to and kept in another country by the same perpetrator, the perpetrator may be charged under the Penal Code and the TSE Law.

Note that if the unlawful removal of minor is done within the context of human trafficking, then the perpetrator should be charged and punished with the heavier penalty under Article 11 of the TSE Law (which is a special law), pursuant to the rule set out in Article 668 of the Penal Code regarding special laws (see discussion on "principles of statutory intepretation" in the Introduction and in Art. 50 below).

Article 12. Unlawful Recruitment for Exploitation

The act of unlawful recruitment in this law shall mean to induce, hire or employ a person to engage in any form of exploitation with the use of deception, abuse of power, confinement, force, threat or any coercive means.

A person who unlawfully recruits another shall be punished with imprisonment from 7 to 15 years.

The offence stipulated in this article shall be punished with imprisonment from 15 to 20 years when:

- the victim is a minor,
- the offence is committed by a public official who abuses his/her authority over the victim,
- the offence is committed by an organized group.

This article establishes the offense and sets the punishment for unlawful recruitment.

It should be noted that unlawful recruitment does not refer to whether the employer is a legal entity or not, or whether or not the employer is properly registered or licensed with the Ministry of Labor or other relevant authorities.

It should also be noted that the offense of unlawful recruitment does not include any element of removal, transportation or transfer. A victim can be unlawfully recruited even when he has not been removed or transported to any other location. If a victim has been unlawfully removed and also unlawfully recruited, then the offender can be prosecuted and tried for both offenses under one of the Articles 9 to 11 (Unlawful Removal) and this article (Unlawful Recruitment). As per Article 6 (Concurrence of Offenses), offenders should be prosecuted, and punished under the most severe article that applies to their offense.

The offense of unlawful recruitment has three main elements, all of which must be fulfilled:

1) To induce, hire or employ a person
2) For the purpose of exploitation
3) By means of deception, abuse of power, confinement, force, threat or any coercive means

These elements are defined as follows:

"to induce, hire or employ a person"

This provision means to persuade a person to undertake an act, or to engage a person for the purpose of employment, or to enter into an employment relationship with the person. "Employment" as used here does not refer only to legitimate forms of work but also to illegal work.

"to engage in any form of exploitation"

The term "any form of exploitation" includes but is not limited to the acts listed in Article 10 Paragraph 3: **the exploitation of the prostitution of others, pornography, commercial sex act, forced labor or services, slavery or practices similar to slavery, debt bondage, involuntary servitude, child labor or the removal of organs**. For definitions of these terms, see discussion under Article 10(3). In addition, the court has the discretion to consider other types of exploitation not listed here. If the offender commits unlawful recruitment for any of these purposes, then he should be punished under this article.

"with the use of"

The definition of unlawful recruitment set out in Paragraph l requires that the offender use one of the following means to accomplish the recruitment of the victim. The shared characteristic of all of these means is that the victim has not freely or fully consented to his recruitment, either because he has been recruited against his will, because he has been deceived or because he was not given full information about the work.

"deception"

"Deception" means the situation where the offender uses lies, omissions or untruths, in words or conduct, to convince the victim to do something.

"abuse of power"

"Abuse of power" means any situation where a public official (including civil servants, persons in an elected position, or other appointed officials), uses his position or takes advantage of his position in order to carry out a wrongful act. This definition is consistent with that found in the new Penal Code (see Book 4, Title 3, Chapter 1, Section 1, Sub-Section 2 "Abuse of Power against Individuals"). Often this abuse of power serves to exploit one or more persons who are in vulnerable circumstances, to convince the victim to do something.

It should be noted that the TSE Law as a whole shows a clear intent to punish severely any involvement by public officials in human trafficking. This includes but is not limited to positions such as officials of the government, police, military, teachers and staff in public schools or universities, doctors and staff of public hospitals or health centers, and persons holding an elected public position at any level.

"confinement"

"Confinement" is defined in Chapter 3 of this law, and refers to a situation where the offender maintains custody over a victim against his will, thereby preventing the victim from leaving the place where he is confined.

"force"

"Force" means the use of physical or psychological force, against the will of the victim. This article does not require that the offender use violence, nor that the victim resist or suffer injury as a result of the force used.

For example, if an offender takes hold of a person and pushes or pulls him, this is still considered using force even if the victim was not hurt in the process.

The courts may take note of the increased vulnerability of the victim and thus also especially consider the use of non-physical force, such as psychological force or coercion.

"threat"

"Threat" means both explicit and implied threats, which make the victim afraid of physical or psychological harm, or any other danger to himself or a third party.

For example, it is a threat if an offender removes a victim by convincing the victim that the offender will harm the victim's relative if the victim does not go with the offender.

The offender does not need to threaten the victim or a third party with physical harm; it is enough that the offender threaten to commit a felony or misdemeanor against a person (the victim or a third party). This is consistent with the section on "threats" in the new Penal Code (Articles 231-234).

Where the offender threatens to carry out a legal act, but uses the threat to carry out an offense, this is still considered a threat.

For example, if the offender loans money and threatens to enforce the loan in order to carry out an offense under the TSE Law, then this is still considered an offense.

Likewise, if the offender threatens to denounce an illegal immigrant to the competent authorities, and uses this threat to achieve the objective of committing an offense under the TSE Law, then this is still considered an offense.

"coercion"

"Coercion" means the use of force or the use of a threat, express or implied, including some forms of non-violent or psychological use of force or threat. This includes:

a) The use of force or threat of harm (including death, physical injury or rape and sexual assault) or physical restraint of any person;
b) Any scheme, plan or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person;
c) Abuse or any threat linked to the legal status of a person;
d) Psychological pressure, including causing a person to believe that he, she or another person will be illegally removed, sold or confined.

Coercion in this sense is an act that is carried out against another person, such that they cannot exercise their free will.

Punishment and aggravating factors

If an offender is found guilty of the offense in this article, he shall be punished with imprisonment for 7 to 15 years. Additional penalties may also be applied at the discretion of the court, as per Article 48.

As per Article 4 (Criminal Responsibility) paragraph 4, if the representative, agent or employee of a legal entity or principal is found guilty of this offense, the court may also punish the legal entity or principal with the additional penalties that are provided by Article 48 of the TSE Law. These additional penalties, if warranted, include punishments such as confiscation of materials or property (Article 48(1)-(3)), or

closure of a business (Article 48(4)). (See discussion under Article 48 for more detail.)

However, if the court finds any one of the aggravating factors listed below, then the punishment is raised to 15 to 20 years. The law does not require that all the aggravating factors be met; it is enough that any one of the factors be present for the offender to receive the heightened punishment.

- **the victim is a minor,**

If the victim is under 18 years of age, the offender shall receive the heightened punishment.

If the offender had supervision or control over the victim, then the TSE Law presumes that the offender knows the victim's age. See discussion under Article 7 (Definition of Minor) above.

- **the offence is committed by a public official who abuses his/her authority over the victim,**

If the offender is a public official, and carried out the act by means of an abuse of his power, then the offender shall receive the heightened punishment.

"Public official" means a civil servant or a citizen entrusted with an elected mandate. This includes but is not limited to positions such as officials of the government, police, military, teachers and staff in public schools or universities, doctors and staff of public hospitals or health centers, and persons holding an elected public position at any level.

Abuse of authority" means the same as the term "abuse of power" that is discussed under Article 8 – that is, the situation where a civil servant or a citizen entrusted with an elected mandate, uses his position inappropriately or takes advantage of his position in order to carry out a wrongful act. This definition is consistent with that found in the new Penal Code (see Book 4, Title 3, Chapter 1, Section 1, Sub-Section 2 "Abuse of Power against Individuals"). Often this abuse of power serves to exploit one or more persons who are in vulnerable circumstances, to convince the victim to do something that the victim would not do willingly.

It should be noted that the TSE Law as a whole shows a clear intent to punish severely any involvement by public officials in human trafficking.

- **the offence is committed by an organized group.**

If the offender acted as part of an organized group to commit the offense, then the offender shall receive the heightened punishment.

In Article 77 of the Penal Code, an "organized criminal group" means "any group or conspiracy that is established with a view to plan or to commit one or more offenses".

In relevant international law, the definition is similar, with the added requirement that the organized group must include three or more persons. For example, the UN Convention Against Transnational Organized Crime, to which the Palermo Protocol is attached and which Cambodia has ratified, defines an "organized criminal group" in Article 2(a) as "a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit."

Therefore, an "organized group" means a formal or informal group of three or more people that is established to plan or to commit a crime.

Article 13. Definition of the Act of Selling, Buying or Exchanging a Person
The act of selling, buying or exchanging a person shall mean to unlawfully deliver the control over a person to another, or to unlawfully receive the control over a person from another, in exchange for anything of value including any services and human beings.

The act of procuring the act of selling, buying or exchanging a human being as an intermediary shall be punished the same as the act of selling, buying or exchanging a human being.

This article defines the act of "selling, buying or exchanging a human being", which is also referred to in Articles 14 to 16 of this chapter of the TSE Law. The punishment for this is also established in Articles 14 to 16 of this law. An offender should be charged and punished for the crimes relating to selling, buying or exchanging a human being under the appropriate article (see Articles 14 to 16).

It should be noted that both the buyer and the seller are liable for the offense committed.

The offense of selling, buying or exchanging a human being has two main elements, both of which must be fulfilled:

1) Unlawful delivery (selling) of control over a person or unlawful receipt (buying) of control over a person, and
2) In exchange of anything of value.

"to unlawfully deliver the control over a person to another"

To unlawfully deliver the control over a person (the trafficking victim) to another person (the buyer), means that the offender (the seller), who has already obtained control over a person, conveys that control to another person (the buyer) in exchange for anything of value.

Delivery is "unlawful" when it is done by unlawful means (for example, by force, threat, deception, abuse of power or enticement), when it is done for an unlawful purpose or, with respect to minors or other persons of limited legal capacity, when carried out in a manner that contains the elements of Article 8(2).

"to unlawfully receive the control over a person from another"

To unlawfully receive the control over a person (the trafficking victim) from another person (the seller) means that the offender (the buyer) is given that control by another person (the seller).

The receiving of control over the trafficking victim must be for an unlawful purpose or by unlawful means, such as by means of force, threat, deception, abuse of power or enticement or, with respect to minors or other persons of limited legal capacity, when carried out in a manner that contains the elements of Article 8(2). This is generally the case in a trafficking situation, but there might be exceptions. For example, if a person or NGO purchases a trafficking victim in order to free the victim, then this act should not be punished because it is not done for an unlawful purpose.

"control over a person"

The term "control over a person" should be interpreted broadly. It generally means that the act is done without any regard to the willingness or desire of the victim, and that the victim cannot refuse or prevent the transaction or any further instructions from the buyer or seller. However, control should not necessarily be limited to cases where the body of a victim is physically handed over or transferred between two people.

For example, if the seller A tells a trafficked sex worker B, to go and wait in front of a place, and A also tells the buyer C, a brothel owner, to pick up B at that place, delivery and receipt of the control over a person have occurred.

Another example of delivery and receipt of the control over a person that does not involve a physical hand-over would be a transfer of rights to control, for instance via a contract document. If the seller A, the owner of a brothel, transfers the contract document that binds B, a sex-worker, to work for A for a certain duration, to C, the owner of a different brothel, then this should be considered as delivery and receipt of the control over a person.

"in exchange for anything of value"

Buying a human being requires that the buyer provide "anything of value" in exchange for receiving the control over the victim from the seller.

Selling a human being requires that the seller receive "anything of value" in exchange for delivering the control over the victim to the buyer.

Exchanging a human being refers to the situation where the offender trades his control over one human being for control over another human being.

The term "anything of value" includes but is not limited to remuneration in cash or in kind; money; valuable items; property (including rights to own, use, sell or lease any kind of movable and immovable property); services; direct or indirect payments or fees (fees paid to, through or on behalf of another person); valuable information or control over another person.

The act of procuring … as an intermediary shall be punished the same

Paragraph 2 of this article provides that a person who acts as an intermediary to procure the purchase, sale or exchange of a human being (as defined in Paragraph 1 of this article), will receive the same punishment as a person who sells, buys or exchanges directly.

Article 14. The Act of Selling, Buying or Exchanging a Person
A person who sells, buys or exchanges another person shall be punished with imprisonment from 2 to 5 years.

This article sets the punishment for selling, buying or exchanging a human being, which is defined in Article 13 above. Offenders must be punished under this article, not Article 13.

This article applies only where there is no evidence of purpose. In general, it is expected that in cases of human trafficking, there will be some evidence of purpose. Thus, if there is any evidence that the offender sold, bought or exchanged a human being for the purpose of profit making, sexual aggression, production of pornography, marriage against will of the victim, adoption or any form of exploitation, then the offender should be prosecuted, and punished under Article 15 (The Act of Selling, Buying or Exchanging a Human Being with Purpose).

Likewise, if there is any evidence that the offender sold, bought or exchanged a human being for the purpose of cross-border transfer, then the offender should be prosecuted, and punished under Article 16 (The Act of Selling, Buying or Exchanging a Human Being for Cross-Border Transfer).

The article punishes the offense of selling, buying or exchanging a human being with a prison term of 2 to 5 years. Additional penalties may also be applied at the discretion of the court, as per Article 48.

As per Article 4 (Criminal Responsibility) paragraph 4, if the representative, agent or employee of a legal entity or principal is found guilty of this offense, the court may also punish the legal entity or principal with the additional penalties that are provided by Article 48 of the TSE Law. These additional penalties, if warranted, include punishments such as confiscation of materials or property (Article 48(1)-(3)), or closure of a business (Article 48(4)). (See discussion under Article 48 for more detail.)

Article 15. The Act of Selling, Buying or Exchanging a Person with Purpose
A person who sells, buys or exchanges another person for the purpose of profit making, sexual aggression, production of pornography, marriage against will of the victim, adoption or any form of exploitation shall be punished with imprisonment from 7 years to 15 years.

The offence stipulated in this article shall be punished with imprisonment from 15 to 20 years when:
- the victim is a minor,

- the offence is committed by a public official who abuses his/her authority over the victim,
- the offence is committed by an organized group.

This article establishes the offense and sets the punishment for the act of selling, buying or exchanging a human being, where the act is done for the purpose of sexual exploitation, forced labor or certain other forms of exploitation.

Offenders must be prosecuted and punished under this article, not under Article 13. However, to find the offender guilty under this article, the prosecutor and court must ensure that the offender meets all the conditions under the definition of selling, buying or exchanging a human being, as set out in Article 13.

Where the offender bought, sold or exchanged a human being but did not have any of the purposes listed in this article, the offender can be prosecuted under Article 14.

Where the offender carries out the act of selling, buying or exchanging a human being with the purpose of transferring the victim across an international border, then the offender must be prosecuted and punished under Article 16.

The offense established in this article has two main elements, both of which must be fulfilled:

1) **The Act of Selling, Buying or Exchanging a Person** (see Article 13 for definition)
   The offender must have committed an act of selling, buying or exchanging a human being, which means that the offender must meet all the conditions as set out in Article 13. (See discussion under Article 13 for details.)

2) **For the purpose of…**
   In addition to committing the act of selling, buying or exchanging a human being, the offender must have the specific intent to carry out any one of the following acts. The TSE Law does not require that the offender have successfully carried out these acts, but only that he have the intent to do so. Likewise, the law does not require that the offender have more than one of the following purposes; it is sufficient to have only one.

"profit making"

The term "profit-making", as used in this article, means that the offender has carried out the act of selling, buying or exchanging a human being in exchange for or in order to receive something of value, including but not limited to money, other items of value (gold, jewelry, etc.), services or persons. If the offender commits the act of selling, buying or exchanging a human being for this purpose, then he should be punished under this article.

"sexual aggression"

The term "sexual aggression", as used in this article, means that the offender has carried out the act of selling, buying or exchanging a human being with the purpose of committing a sexual crime against the victim, such as rape or other sexual assault (see definitions of these crimes according to the applicable criminal law); or, in the case of a minor under 15 years, an indecent act as defined in Chapter 6 of this law. If the offender commits the act of selling, buying or exchanging a human being for this purpose, then he should be punished under this article.

If the offender commits the act of selling, buying or exchanging a human being for this purpose and then carries out the sexual aggression, he should be prosecuted for both offenses.

For example, if an actor unlawfully buys a person for the purpose of raping her, and then carries out the rape, he should be charged with the offense set out in this article (The Act of Selling, Buying or Exchanging a Human Being with Purpose) as well as for the crime of sexual aggression that he committed (Rape) as defined in the relevant article of the criminal law.

"production of pornography"

The offender is liable for punishment under this article if he commits the act of selling, buying or exchanging a human being for the purpose of creating or contributing to the creation of pornography. "Pornography" means the definition set out in Article 38 of this law.

It is not required that the offender receive or intend to receive any financial benefit from this act.

"marriage against will of the victim"

The offender is liable for punishment under this article if he commits the act of selling, buying or exchanging a human being for the purpose of compelling the victim to marry against his or her will.

It is not required that the offender receive or intend to receive any financial benefit from this act.

"adoption"

If the offender commits the act of selling, buying or exchanging a human being for the purpose of giving or selling the victim into adoption, then he should be punished under this article. (Regarding adoption, see Civil Code, Book Seven "Relatives", Chapter Four "Parents and Children", Section II "Adoption", and the Law on Inter-Country Adoption). It is not required that the offender receive any financial benefit from the adoption; it is enough that he have the purpose to give the victim directly to another person in adoption, or to give the victim to a person who will facilitate an adoption.

"any form of exploitation"

The term "any form of exploitation" includes but is not limited to the acts listed in Article 10 Paragraph 3: **the exploitation of the prostitution of others, pornography, commercial sex act, forced labor or services, slavery or practices similar to slavery, debt bondage, involuntary servitude, child labor or the removal of organs**. For definitions of these terms, see discussion under Article 10(3). In addition, the court has the discretion to consider other types of exploitation not listed here. If the offender commits the act of selling, buying or exchanging a human being for any of these purposes, then he should be punished under this article.

Punishment and aggravating factors

If an offender is found guilty of the offense in this article, he shall be punished with imprisonment for 7 to 15 years. Additional penalties may also be applied at the discretion of the court, as per Article 48.

As per Article 4 (Criminal Responsibility) paragraph 4, if the representative, agent or employee of a legal entity or principal is found guilty of this offense, the court may also punish the legal entity or principal with the additional penalties that are provided by Article 48 of the TSE Law. These additional penalties, if warranted, include punishments such as confiscation of materials or property (Article 48(1)-(3)), or closure of a business (Article 48(4)). (See discussion under Article 48 for more detail.)

However, if the court finds any one of the aggravating factors listed below, then the punishment is raised to 15 to 20 years.

The law does not require that all the aggravating factors be met; it is enough that any one of the factors be present for the offender to receive the heightened punishment.

- **the victim is a minor,**

If the victim is under 18 years of age, the offender shall receive the heightened punishment.

If the offender had supervision or control over the victim, then the TSE Law presumes that the offender knows the victim's age. See discussion under Article 7 (Definition of Minor) above.

- **the offence is committed by a public official who abuses his/her authority over the victim,**

If the offender is a public official, and carried out the act by means of an abuse of his power, then the offender shall receive the heightened punishment.

"Public official" means a civil servant or a citizen entrusted with an elected mandate. This includes but is not limited to positions such as officials of the government, police, military, teachers and staff in public schools or universities, doctors and staff of public hospitals or health centers, and persons holding an elected public position at any level.

Abuse of authority" means the same as the term "abuse of power" that is discussed under Article 8 – that is, the situation where a civil servant or a citizen entrusted with an elected mandate, uses his position inappropriately or takes advantage of his position in order to carry out a wrongful act. This definition is consistent with that found in the new Penal Code (see Book 4, Title 3, Chapter 1, Section 1, Sub-Part 2 "Abuse of Power against Individuals"). Often this abuse of power serves to exploit one or more persons who are in vulnerable circumstances, to convince the victim to do something that the victim would not do willingly.

It should be noted that the TSE Law as a whole shows a clear intent to punish severely any involvement by public officials in human trafficking.

- **the offence is committed by an organized group.**

If the offender acted as part of an organized group to commit the offense, then the offender shall receive the heightened punishment.

In Article 77 of the Penal Code, an "organized criminal group" means "any group or conspiracy that is established with a view to plan or to commit one or more offenses".

In relevant international law, the definition is similar, with the added requirement that the organized group must include three or more persons. For example, the UN Convention Against Transnational Organized Crime, to which the Palermo Protocol is attached and which Cambodia has ratified, defines an "organized criminal group" in Article 2(a) as "a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit."

Therefore, an "organized group" means a formal or informal group of three or more people that is established to plan or to commit a crime.

Article 16. The Act of Selling, Buying or Exchanging a Person for Cross-border Transfer

A person who sells, buys or exchanges another person for the purpose of delivering or transferring that person to outside of the Kingdom of Cambodia shall be punished with imprisonment from 7 to 15 years.

A person who sells, buys or exchanges another person in a country outside of the Kingdom of Cambodia for the purpose of delivering or transferring that person to another country shall be punished the same as set out in the above-stated paragraph 1.

The offence stipulated in this article shall be punished with imprisonment from 15 to 20 years when: - the victim is a minor,

- the offence is committed by a public official who abuses his/her authority over the victim,
- the offence is committed by an organized group.

This article establishes the offense and sets the punishment for selling, buying or exchanging a human being for the purpose of transferring that person across an international border. Offenders should be punished under this article, not under Articles 13 to 15.

If the offender does not intend to transfer the victim across an international border, then the act of selling, buying or exchanging a human being should be punished under Article 14 (The Act of Selling, Buying or Exchanging a Person) or Article 15 (The Act of Selling, Buying or Exchanging a Person with Purpose).

The offense established in this article has two main elements, both of which must be fulfilled:

1) **The Act of Selling, Buying or Exchanging a Person** (see Article 13 for definition)
   The offender must have committed an act of selling, buying or exchanging a human being, which means that the offender must meet all the conditions for that act as set out in Article 13. (See discussion under Article 13 for details.)

2) **For the purpose of cross-border transfer**
   The offender must have committed the act of selling, buying or exchanging a human being for the purpose of transferring the victim across an international border. The offender does not need to cross or intend to cross an international border himself; what matters is that the offender intended to transfer the victim across a border. There is no requirement that the victim have actually crossed a border; it is sufficient to show that the offender intended to transfer the victim across the border.

It should be noted that this article does not refer to the act of smuggling or illegally transporting a person who voluntarily wishes to cross a border. To commit the offense in this article, the person being transferred across the border must come from or enter into a trafficked situation against his or her will.

For example, a Cambodian worker wants to go to Thailand, and so pays a smuggler to take him across the border, where he is free to go by himself to look for work. This is not a trafficking offense, and so cannot be punished by this law.[13] However, if upon reaching Thailand, the smuggler sells the worker into forced labor on a fishing boat, then this constitutes the offense set out in this article.

"cross-border transfer"

According to this article, the term "cross-border transfer" means any of the following:

1) "for the purpose of delivering or transferring that person to outside of the Kingdom of Cambodia"

This provision penalizes the intent to transfer a victim from Cambodia to a foreign country.

2) "A person who unlawfully removes another in a country outside of the Kingdom of Cambodia for the purpose of delivering or transferring that person to another country"

This provision penalizes either of the following intents:

- To transfer a victim from one foreign country to another foreign country
- To transfer a victim from a foreign country to Cambodia

This article should be read together with the jurisdictional provisions of Article 2 and Article 3 above. For example, this article may be used to punish an act that occurs entirely outside of the territory of Cambodia, where either the victim or the offender is a Cambodian citizen. (See discussion under Article 3 for more details.) Likewise, if the victim is transferred between two foreign countries via a ship flying the Cambodian flag, jurisdiction is proper under Article 2. (See discussion under Article 2 for more details.)

Punishment and aggravating factors

If an offender is found guilty of the offense in this article, he shall be punished with imprisonment for 7 to 15 years. Additional penalties may also be applied at the discretion of the court, as per Article 48.

As per Article 4 (Criminal Responsibility) paragraph 4, if the representative, agent or employee of a legal entity or principal is found guilty of this offense, the court may also punish the legal entity or principal with the additional penalties that are provided by Article 48 of the TSE Law. These additional penalties,

[13] This may be an offense under other laws, however, such as those relating to immigration.

if warranted, include punishments such as confiscation of materials or property (Article 48(1)-(3)), or closure of a business (Article 48(4)). (See discussion under Article 48 for more detail.)

However, if the court finds any one of the aggravating factors listed below, then the punishment is raised to 15 to 20 years.

The law does not require that all the aggravating factors be met; it is enough that any one of the factors be present for the offender to receive the heightened punishment.

- **the victim is a minor,**

If the victim is under 18 years of age, the offender shall receive the heightened punishment.

If the offender had supervision or control over the victim, then the TSE Law presumes that the offender knows the victim's age. See discussion under Article 7 (Definition of Minor) above.

- **the offence is committed by a public official who abuses his/her authority over the victim,**

If the offender is a public official, and carried out the act by means of an abuse of his power, then the offender shall receive the heightened punishment.

"Public official" means a civil servant or a citizen entrusted with an elected mandate. This includes but is not limited to positions such as officials of the government, police, military, teachers and staff in public schools or universities, doctors and staff of public hospitals or health centers, and persons holding an elected public position at any level.

Abuse of authority" means the same as the term "abuse of power" that is discussed under Article 8 – that is, the situation where a civil servant or a citizen entrusted with an elected mandate, uses his position inappropriately or takes advantage of his position in order to carry out a wrongful act. This definition is consistent with that found in the new Penal Code (see Book 4, Title 3, Chapter 1, Section 1, Sub-Section 2, "Abuse of Power against Individuals"). Often this abuse of power serves to exploit one or more persons who are in vulnerable circumstances, to convince the victim to do something that the victim would not do willingly.

It should be noted that the TSE Law as a whole shows a clear intent to punish severely any involvement by public officials in human trafficking.

- **the offence is committed by an organized group.**

If the offender acted as part of an organized group to commit the offense, then the offender shall receive the heightened punishment.

In Article 77 of the Penal Code, an "organized criminal group" means "any group or conspiracy that is established to plan or to commit one or more offenses".

In relevant international law, the definition is similar, with the added requirement that the organized group must include three or more persons. For example, the UN Convention Against Transnational Organized Crime, to which the Palermo Protocol is attached and which Cambodia has ratified, defines an "organized criminal group" in Article 2(a) as "a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit."

Therefore, an "organized group" means a formal or informal group of three or more people that is established to plan or commit a crime.

Article 17. Transportation with Purpose
A person who transports another person knowing that he or she has been unlawfully removed, recruited, sold, bought, exchanged or transported for the purpose of profit making, sexual aggression, production of pornography, marriage against will of the victim, adoption, or any form of exploitation shall be punished with imprisonment from 7 to 15 years.

The offence stipulated in this article shall be punished with imprisonment from 15 to 20 years when:
- the offence is committed by a public official who abuses his/her authority over the victim,
- the offence is committed by an organized group.

Article 17 establishes the offense and punishes a person who transports, for the purpose of profit making, sexual aggression, production of pornography, marriage against will of the victim, adoption, or any form of exploitation, another person who has been unlawfully removed, recruited, sold, bought, exchanged or transported.

The offense established in this article has three main elements, all of which must be fulfilled:

1) **The offender transports another person**
Transporting means conveying the other person from one place to another, in any sort of vehicle or by accompanying the person while walking.

2) **The offender knows that the person being transported has been unlawfully removed, recruited, sold, bought, exchanged or transported**
To be punishable under this Article, the transporter is required to have knowledge that the person or persons he or she transports have been unlawfully removed, recruited, sold, bought, exchanged or transported and the transporter must have the purpose of profit making, sexual aggression, production of pornography, marriage against will of the victim, adoption, or any form of exploitation.

For example, A unlawfully recruited or sold B, and then A hires C to transport B somewhere. Then in this case, if C knows that B was unlawfully recruited or sold by A, and C still transported B for the purpose of profit-making, sexual aggression, production of pornography, marriage against will of the victim, adoption or any form of exploitation, then C shall be liable under this article. But if C has no knowledge that B was unlawfully recruited or sold by A, then C shall not be liable under this article.

The offender who transports the victim may be the same offender who previously unlawfully removed, recruited, sold, bought or exchanged the victim. In this case, the offender can be prosecuted and punished for those offenses under the relevant articles of this law.

"unlawfully removed, recruited, sold, bought, exchanged, or transported"

"Unlawful removal" means the act defined in Article 8.

"Unlawful recruitment" means the act defined in Article 12.

"Sold, bought or exchanged" means the act defined in Article 13.

"Transported" means the act defined in Article 17.

3) **The offender transports the other person for the purpose of…**
In addition to committing the act of transportation, the offender must have the specific intent to carry out any one of the following acts. The TSE Law does not require that the offender have successfully carried out these acts, but only that he have the intent to do so. Likewise, the law does not require that the offender have more than one of the following purposes; it is sufficient to have only one.

Additionally, it should be noted that it is the act of transportation that must have been carried out with purpose. The person being transported does not have to have been unlawfully removed, recruited, sold, bought, exchanged or transported for the purpose of profit making, sexual aggression, production of pornography, marriage against will of the victim, adoption or any form of exploitation for this Article to be applicable.

For example, if B is a victim of a simple unlawful removal that is not combined with the purpose to commit any further crime, but is transported by A who has the purpose to exploit B, then A is still punishable under this Article.

"profit making"

The term "profit-making", as used in this article, means that the offender has carried out the act of transportation in exchange for or in order to receive something of value, including but not limited to money, other items of value (gold, jewelry, etc.), services or persons. If the offender commits the act of selling, buying or exchanging a person for this purpose, then he should be punished under this article.

"sexual aggression"

The term "sexual aggression", as used in this article, means that the offender has carried out the act of transportation with the purpose of committing a sexual crime against the victim, such as rape or other sexual assault (see definitions of these crimes according to the applicable criminal law); or, in the case of a minor under 15 years, an indecent act as defined in Chapter 6 of this law. If the offender commits the act of transportation for this purpose, then he should be punished under this article.

If the offender commits the act of transportation for this purpose and then carries out the sexual aggression, he can be prosecuted for both offenses.

For example, if an actor unlawfully transports a person for the purpose of raping her, and then carries out the rape, he can be charged with the offense set out in this article (Transportation with Purpose) as well as for the crime of sexual aggression that he committed (Rape) as defined in the relevant article of the criminal law.

"production of pornography"

The offender is liable for punishment under this article if he commits the act of transportation for the purpose of creating or contributing to the creation of pornography. "Pornography" means the definition set out in Article 38 of this law.

It is not required that the offender receive or intend to receive any financial benefit from this act.

"marriage against will of the victim"

The offender is liable for punishment under this article if he commits the act of transportation for the purpose of compelling the victim to marry against his or her will.

It is not required that the offender receive or intend to receive any financial benefit from this act.

"adoption"

If the offender commits the act of transportation for the purpose of giving or selling the victim into adoption, then he should be punished under this article. (Regarding adoption, see Civil Code, Book Seven "Relatives", Chapter Four "Parents and Children", Section II "Adoption", and the Law on Inter-Country Adoption). It is not required that the offender receive any financial benefit from the adoption; it is enough that he have the purpose to give the victim directly to another person in adoption, or to give the victim to a person who will facilitate an adoption.

"any form of exploitation"

The term "any form of exploitation" includes but is not limited to the acts listed in Article 10 Paragraph 3: **the exploitation of the prostitution of others, pornography, commercial sex act, forced labor or services, slavery or practices similar to slavery, debt bondage, involuntary servitude, child labor or the removal of organs**. For definitions of these terms, see discussion under Article 10(3). In addition, the

court has the discretion to consider other types of exploitation not listed here. If the offender commits unlawful transportation for any of these purposes, then he should be punished under this article.

Punishment and aggravating factors

If an offender is found guilty of the offense in this article, he shall be punished with imprisonment for 7 to 15 years. Additional penalties may also be applied at the discretion of the court, as per Article 48.

As per Article 4 (Criminal Responsibility) paragraph 4, if the representative, agent or employee of a legal entity or principal is found guilty of this offense, the court may also punish the legal entity or principal with the additional penalties that are provided by Article 48 of the TSE Law. These additional penalties, if warranted, include punishments such as confiscation of materials or property (Article 48(1)-(3)), or closure of a business (Article 48(4)). (See discussion under Article 48 for more detail.)

However, if the court finds either of the aggravating factors listed below, then the punishment is raised to 15 to 20 years.

The law does not require that both the aggravating factors be met; it is enough that either one of the factors be present for the offender to receive the heightened punishment.

- **the offence is committed by a public official who abuses his/her authority over the victim,**

If the offender is a public official, and carried out the act by means of an abuse of his power, then the offender shall receive the heightened punishment.

"Public official" means a civil servant or a citizen entrusted with an elected mandate. This includes but is not limited to positions such as officials of the government, police, military, teachers and staff in public schools or universities, doctors and staff of public hospitals or health centers, and persons holding an elected public position at any level.

Abuse of authority" means the same as the term "abuse of power" that is discussed under Article 8 – that is, the situation where a civil servant or a citizen entrusted with an elected mandate, uses his position inappropriately or takes advantage of his position in order to carry out a wrongful act. This definition is consistent with that found in the new Penal Code (see Book 4, Title 3, Chapter 1, Section 1, Sub-Section 2, "Abuse of Power against Individuals"). Often, this abuse of power serves to exploit one or more persons who are in vulnerable circumstances, to convince the victim to do something that the victim would not do willingly.

It should be noted that the TSE Law as a whole shows a clear intent to punish severely any involvement by public officials in human trafficking.

- **the offence is committed by an organized group.**

If the offender acted as part of an organized group to commit the offense, then the offender shall receive the heightened punishment.

In Article 77 of the Penal Code, an "organized criminal group" means "any group or conspiracy that is established with a view to plan or to commit one or more offenses".

In relevant international law, the definition is similar, with the added requirement that the organized group must include three or more persons. For example, the UN Convention Against Transnational Organized Crime, to which the Palermo Protocol is attached and which Cambodia has ratified, defines an "organized criminal group" in Article 2(a) as "a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit."

Therefore, an "organized group" means a formal or informal group of three or more people that is established

to plan or to commit a crime.

Article 18. Cross-border Transportation (The Act of Bringing a Person Cross-border)
A person who transports (brings) another person to outside of the Kingdom of Cambodia knowing that he or she has been unlawfully removed, recruited, sold, bought, exchanged or transported shall be punished with imprisonment from 7 to 15 years.

A person who transports/brings another person in a country outside of the Kingdom of Cambodia to another country knowing that he or she has been unlawfully removed, recruited, sold, bought, exchanged or transported shall be punished the same as set out in paragraph 1 above.

The offence stipulated in this article shall be punished with imprisonment from 15 to 20 years when:
- the offence is committed by a public official who abuses his/her authority over the victim,
- the offence is committed by an organized group.

This article establishes the offense and sets the punishment for transporting a person across an international border, where the offender knows that the person has been unlawfully removed, recruited, sold, bought, exchanged or transported.

If the offender does not transport the victim across an international border, but instead transports the person for the purpose of exploitation, then the act may be punished under Article 17 (Transportation with Purpose).

The offense established in this article has three main elements, all of which must be fulfilled:

1) **The offender transports another person**
Transporting means conveying the other person from one place to another, in any sort of vehicle, by accompanying the person while walking or directing them across the border and ensuring that they cross.

2) **The offender knows that the person being transported has been unlawfully removed, recruited, sold, bought, exchanged or transported**
To be punishable under this Article, the transporter must transport the victim across an international border and must have knowledge that the person or persons he or she transports across the border have been unlawfully removed, recruited, sold, bought, exchanged or transported.

For example, A unlawfully recruited or sold B, and then A hires C to transport B to Thailand. Then in this case, if C knows that B was unlawfully recruited or sold by A, and C still transported B across the international border, then C shall be liable under this article. But if C has no knowledge that B was unlawfully recruited or sold by A, then C shall not be liable under this article.

"unlawfully removed, recruited, sold, bought, exchanged, or transported"

"Unlawful removal" means the act defined in Article 8.

"Unlawful recruitment" means the act defined in Article 12.

"Sold, bought or exchanged" means the act defined in Article 13.

"Transported" means the act defined in Article 17.

3) **Across an international border**
The offender must have transported the victim across an international border or (via the application of Article 4(1)) attempted to do so.

It should be noted that this article does not refer to the act of smuggling or illegally transporting a person

who voluntarily wishes to cross a border. To commit the offense in this article, the person being transferred across the border must come from a trafficked situation.

For example, a Cambodian worker wants to go to Thailand, and so pays a smuggler to take him across the border, where he is free to go by himself to look for work. This is not a trafficking offense, and so cannot be punished by this law. However, if the smuggler is hired to transport across a border a person who was unlawfully removed and the transporter knows this, then this act would constitute the offense set out in this article.

"cross-border transportation"

According to this article, the term "cross-border transportation" means any of the following:

"transports (brings) another person to outside of the Kingdom of Cambodia"

This provision penalizes transporting a victim from Cambodia to a foreign country.

"A person who transports/brings another person in a country outside of the Kingdom of Cambodia to another country"

This provision penalizes either of the following acts:

- Transporting a victim from one foreign country to another foreign country
- Transporting a victim from a foreign country to Cambodia

This article should be read together with the jurisdictional provisions of Article 2 and Article 3 above. For example, this article may be used to punish an act that occurs entirely outside of the territory of Cambodia, where either the victim or the offender is a Cambodian citizen. (See discussion under Article 3 for more details.) Likewise, if the victim is transported between two foreign countries via a ship flying the Cambodian flag, jurisdiction is proper under Article 2. (See discussion under Article 2 for more details.)

Punishment and aggravating factors

If an offender is found guilty of the offense in this article, he shall be punished with imprisonment for 7 to 15 years. Additional penalties may also be applied at the discretion of the court, as per Article 48.

As per Article 4 (Criminal Responsibility) paragraph 4, if the representative, agent or employee of a legal entity or principal is found guilty of this offense, the court may also punish the legal entity or principal with the additional penalties that are provided by Article 48 of the TSE Law. These additional penalties, if warranted, include punishments such as confiscation of materials or property (Article 48(1)-(3)), or closure of a business (Article 48(4)). (See discussion under Article 48 for more detail.)

However, if the court finds either of the aggravating factors listed below, then the punishment is raised to 15 to 20 years.

The law does not require that both the aggravating factors be met; it is enough that either one of the factors be present for the offender to receive the heightened punishment.

- **the offence is committed by a public official who abuses his/her authority over the victim,**

If the offender is a public official, and carried out the act by means of an abuse of his power, then the offender shall receive the heightened punishment.

"Public official" means a civil servant or a citizen entrusted with an elected mandate. This includes but is not limited to positions such as officials of the government, police, military, teachers and staff in public schools or universities, doctors and staff of public hospitals or health centers, and persons holding an elected public position at any level.

Abuse of authority" means the same as the term "abuse of power" that is discussed under Article 8 – that is, the situation where a civil servant or a citizen entrusted with an elected mandate, uses his position

inappropriately or takes advantage of his position in order to carry out a wrongful act. This definition is consistent with that found in the new Penal Code (see Book 4, Title 3, Chapter 1, Section 1 "Abuse of Power against Individuals"). Often this abuse of power serves to exploit one or more persons who are in vulnerable circumstances, to convince the victim to do something that the victim would not do willingly.

It should be noted that the TSE Law as a whole shows a clear intent to punish severely any involvement by public officials in human trafficking.

- **the offence is committed by an organized group**

If the offender acted as part of an organized group to commit the offense, then the offender shall receive the heightened punishment.

In Article 77 of the Penal Code, an "organized criminal group" means "any group or conspiracy that is established with the view to plan or to commit one or more offenses".

In relevant international law, the definition is similar, with the added requirement that the organized group must include three or more persons. For example, the UN Convention Against Transnational Organized Crime, to which the Palermo Protocol is attached and which Cambodia has ratified, defines an "organized criminal group" in Article 2(a) as "a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit."

Therefore, an "organized group" means a formal or informal group of three or more people that is established to plan or to commit a crime.

Article 19. Receipt of Person with Purpose

A person who receives, harbors, or conceals another person who has been unlawfully removed, recruited, sold, bought, exchanged, or transported for the purpose of profit-making, sexual aggression, production of pornography, marriage against the will of the victim, adoption or any form of exploitation shall be punished with imprisonment from 7 to 15 years.

The offence stipulated in this article shall be punished with imprisonment from more than 15 to 20 years when:

- the victim is a minor,
- the offence is committed by a public official who abuses his/her authority over the victim,
- the offence is committed by an organized group.

This article establishes the offense and punishes a person who receives, harbors or conceals, for the purpose of profit making, sexual aggression, production of pornography, marriage against will of the victim, adoption, or any form of exploitation, another person who has been unlawfully removed, recruited, sold, bought, exchanged or transported.

The offense established in this article has three main elements, all of which must be fulfilled:

1) **The offender receives, harbors or conceals another person**
   The offender shall be punished under this article if he or she receives harbors or conceals the victim for the purpose of exploitation.

"A person who receives, harbors, or conceals another person"

"Receiving" means accepting or taking in.

"Harboring" means giving shelter to another person.

"Concealing" means hiding another person, either physically (for example by placing the victim in a secret place where he or she cannot be seen or found) or by other means such as deception (for example, lying to a third party about the identity of the victim).

2) The person, who was received, harbored or concealed by the offender, was previously unlawfully removed, recruited, sold, bought, exchanged or transported

This offense applies where the victim was received, harbored or concealed by the offender, but before this, the victim was unlawfully removed, recruited, sold, bought, exchanged or transported

To be liable under this Article, the offender is not required to have knowledge that the person or persons he or she receives, harbors or conceals have been unlawfully removed, recruited, sold, bought, exchanged or transported. What is important is the purpose of the offender in receiving, harboring or concealing the victim. Thus, if the offender receives, harbors or conceals a person for the purpose of exploitation, but is unaware that the person was unlawfully removed, then the offender is still punishable under this Article.

"who was unlawfully removed, recruited, sold, bought, exchanged, or transported"

"Unlawful removal" means the act defined in Article 8.

"Unlawful recruitment" means the act defined in Article 12.

"Sold, bought or exchanged" means the act defined in Article 13.

"Transported" means the act defined in Article 17.

3) The offender receives, harbors or conceals the other person for the purpose of…

In addition to committing the act of receiving, harboring or concealing, the offender must have the specific intent to carry out any one of the following acts. The TSE Law does not require that the offender have successfully carried out these acts, but only that he have the intent to do so. Likewise, the law does not require that the offender have more than one of the following purposes; it is sufficient to have only one.

Additionally, it should be noted that it is the act of receiving, harboring or concealing that must have been carried out with purpose. For this Article to be applicable, the person being received, harbored or concealed has to have been unlawfully removed, recruited, sold, bought, exchanged or transported for the purpose of profit making, sexual aggression, production of pornography, marriage against will of the victim, adoption or any form of exploitation.

For example, if B is a victim of a simple unlawful removal that was not committed for the purpose to commit any further crime, but is received, harbored or concealed by A who has the purpose to exploit B, then A is still punishable under this Article.

"profit making"

The term "profit-making", as used in this article, means that the offender has carried out the act of receiving, harboring or concealing in exchange for or in order to receive something of value, including but not limited to money, other items of value (gold, jewelry, etc.), services or persons. If the offender commits the act of receiving, harboring or concealing for this purpose, then he should be punished under this article.

"sexual aggression"

The term "sexual aggression", as used in this article, means that the offender has carried out the act of receiving, harboring or concealing with the purpose of committing a sexual crime against the victim, such as rape or other sexual assault (see definitions of these crimes according to the applicable criminal law); or, in the case of a minor under 15 years, an indecent act as defined in Chapter 6 of this law. If the offender commits the act of receiving, harboring or concealing for this purpose, then he should be punished under this article.

If the offender commits the act of receiving, harboring or concealing for this purpose and then carries out the sexual aggression, he should be prosecuted for both offenses.

For example, if an actor unlawfully receives, harbors or conceals a person for the purpose of raping her, and then carries out the rape, he should be charged with the offense set out in this article (Receipt of Person with Purpose) as well as for the crime of sexual aggression that he committed (Rape) as defined in the relevant article of the criminal law.

"production of pornography"

The offender is liable for punishment under this article if he commits the act of receiving, harboring or concealing for the purpose of creating or contributing to the creation of pornography. "Pornography" means the definition set out in Article 38 of this law.

It is not required that the offender receive or intend to receive any financial benefit from this act.

"marriage against will of the victim"

The offender is liable for punishment under this article if he commits the act of receiving, harboring or concealing for the purpose of compelling the victim to marry against his or her will.

It is not required that the offender receive or intend to receive any financial benefit from this act.

"adoption"

If the offender commits the act of receiving, harboring or concealing for the purpose of giving or selling the victim into adoption, then he should be punished under this article. (Regarding adoption, see Civil Code, Book Seven "Relatives", Chapter Four "Parents and Children", Section II "Adoption", and the Law on Inter-Country Adoption). It is not required that the offender receive any financial benefit from the adoption; it is enough that he have the purpose to give the victim directly to another person in adoption, or to give the victim to a person who will facilitate an adoption.

"any form of exploitation"

The term "any form of exploitation" includes but is not limited to the acts listed in Article 10 Paragraph 3: **the exploitation of the prostitution of others, pornography, commercial sex act, forced labor or services, slavery or practices similar to slavery, debt bondage, involuntary servitude, child labor or the removal of organs**. For definitions of these terms, see discussion under Article 10(3). In addition, the court has the discretion to consider other types of exploitation not listed here. If the offender commits the act of receiving, harboring or concealing for any of these purposes, then he should be punished under this article.

Punishment and aggravating factors

If an offender is found guilty of the offense in this article, he shall be punished with imprisonment for 7 to 15 years. Additional penalties may also be applied at the discretion of the court, as per Article 48.

As per Article 4 (Criminal Responsibility) paragraph 4, if the representative, agent or employee of a legal entity or principal is found guilty of this offense, the court may also punish the legal entity or principal with the additional penalties that are provided by Article 48 of the TSE Law. These additional penalties, if warranted, include punishments such as confiscation of materials or property (Article 48(1)-(3)), or closure of a business (Article 48(4)). (See discussion under Article 48 for more detail.)

However, if the court finds any one of the aggravating factors listed below, then the punishment is raised to 15 to 20 years.

The law does not require that all the aggravating factors be met; it is enough that any one of the factors be present for the offender to receive the heightened punishment.

- **the victim is a minor,**

If the victim is under 18 years of age, the offender shall receive the heightened punishment.

If the offender had supervision or control over the victim, then the TSE Law presumes that the offender knows the victim's age. See discussion under Article 7 (Definition of Minor) above.

- **the offence is committed by a public official who abuses his/her authority over the victim,**

If the offender is a public official, and carried out the act by means of an abuse of his power, then the offender shall receive the heightened punishment.

"Public official" means a civil servant or a citizen entrusted with an elected mandate. This includes but is not limited to positions such as officials of the government, police, military, teachers and staff in public schools or universities, doctors and staff of public hospitals or health centers, and persons holding an elected public position at any level.

Abuse of authority" means the same as the term "abuse of power" that is discussed under Article 8 – that is, the situation where a civil servant or a citizen entrusted with an elected mandate, uses his position inappropriately or takes advantage of his position in order to carry out a wrongful act. This definition is consistent with that found in the new Penal Code (see , Book 4, Title 3, Chapter 1, Section 1, Sub-Part 2 "Abuse of Power against Individuals"). Often this abuse of power serves to exploit one or more persons who are in vulnerable circumstances, to convince the victim to do something that the victim would not do willingly.

It should be noted that the TSE Law as a whole shows a clear intent to punish severely any involvement by public officials in human trafficking.

- **the offence is committed by an organized group.**

If the offender acted as part of an organized group to commit the offense, then the offender shall receive the heightened punishment.

In Article 77 of the Penal Code, an "organized criminal group" means "any group or conspiracy that is established with a view to plan or to commit one or more offenses".

In relevant international law, the definition is similar, with the added requirement that the organized group must include three or more persons. For example, the UN Convention Against Transnational Organized Crime, to which the Palermo Protocol is attached and which Cambodia has ratified, defines an "organized criminal group" in Article 2(a) as "a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit."

Therefore, an "organized group" means a formal or informal group of three or more people that is established to plan or to commit a crime.

Article 20. Receipt of a Person for the Purpose of Assisting the Offender
A person who receives, harbors, or conceals a victim who has been unlawfully removed, recruited, sold, bought, exchanged, or transported for the purpose of assisting the offender who has unlawfully removed, recruited, sold, bought, exchanged or transported that victim shall be punished with imprisonment from 2 to 5 years and a fine from 4,000,000 to 10,000,000 riels.

The offence stipulated in this article shall be punished with imprisonment from 5 to 10 years when the victim is a minor.

This article establishes the offense and punishes a person who receives, harbors or conceals another person who has been unlawfully removed, recruited, sold, bought, exchanged or transported by another offender, with the purpose of assisting the other offender.

The offense established in this article has three main elements, all of which must be fulfilled:

1) **The offender receives, harbors or conceals another person**
To be punished under this article, the offender must receive, harbor or conceal the victim.

"A person who receives, harbors, or conceals another person"

"Receiving" means accepting or taking in.

"Harboring" means giving shelter to another person.

"Concealing" means hiding another person, either physically (for example by placing the victim in a secret place where he or she cannot be seen or found) or by other means such as deception (for example, lying to a third party about the identity of the victim).

2) **The person received, harbored or concealed by the offender was previously unlawfully removed, recruited, sold, bought, exchanged or transported**

For this offense to apply, the person who was received, harbored or concealed by the offender must have previously been unlawfully removed, recruited, sold, bought, exchanged or transported.

"who was unlawfully removed, recruited, sold, bought, exchanged, or transported"

"Unlawful removal" means the act defined in Article 8.

"Unlawful recruitment" means the act defined in Article 12.

"Sold, bought or exchanged" means the act defined in Article 13.

"Transported" means the act defined in Article 17.

3) **The offender acts with the purpose of assisting the initial offender who unlawfully removed, recruited, sold, bought, exchanged or transported the victim.**
In addition to committing the act of receiving, harboring or concealing, the offender must have the specific intent to assist the original offender – that is, the person who unlawfully removed, recruited, sold, bought, exchanged or transported the victim.

"To assist" means to act as an accomplice, as defined in Article 4.

The TSE Law does not require that the offender successfully provide this assistance, but only that he have the intent to do so.

Additionally, it should be noted that this intent to assist the initial offender presumes knowledge that the victim was previously subject to unlawful removal, recruitment, sale, purchase, exchange or transportation committed by the initial offender. In other words, the person who receives, harbors or conceals the victim in order to assist the initial offender is presumed to know about the initial offender's acts against the victim.

Punishment and aggravating factors

If an offender is found guilty of the offense in this article, the court shall punish the offender with imprisonment from 2 to 5 years and a fine from 4,000,000 to 10,000,000 riels.

If the victim is a minor (a person under 18 years) then the punishment of imprisonment is raised to 5 to 10 years.

If the offender had supervision or control over the victim, then the TSE Law presumes that the offender knows the victim's age. See discussion under Article 7 (Definition of Minor) above.

Additional penalties may also be applied at the discretion of the court, as per Article 48.

As per Article 4 (Criminal Responsibility) paragraph 4, if the representative, agent or employee of a legal entity or principal is found guilty of this offense, the court may also punish the legal entity or principal with the additional penalties that are provided by Article 48 of the TSE Law. These additional penalties, if warranted, include punishments such as confiscation of materials or property (Article 48(1)-(3)), or closure of a business (Article 48(4)). (See discussion under Article 48 for more detail.)

Chapter 3 - Confinement

This chapter defines the punishments for the crimes of arrest, detention or confinement, and provides for an increased penalty where the crime is committed under aggravating circumstances. The provisions in this chapter of the TSE Law are similar to the crime of illegal confinement as set out in Article 35 of the UNTAC Law, and to the provisions on illegal arrest, detention and confinement in the Penal Code (see Book 2, Title 2, Chapter 4, Section 1 "Illegal Arrest, Detention and Confinement").[14]

Article 21. Abduction (Arrest), Detention or Confinement
A person who, without legal authority, arrests, detains or confines another person shall be punished with imprisonment from:

1. 3 to 5 years when the arrest, detention or confinement lasts less than one month;
2. 5 to 10 years when the arrest, detention or confinement lasts one month or longer.

This article defines the offense and punishment for a person who unlawfully arrests, detains or confines another person. This offense has several specific elements.

"without legal authority"

The phrase "without legal authority" refers to a person who acts without possessing any authority at all to conduct a particular act, or to a person with legal authority but who acts beyond the scope of the authority conferred by law or by the state.

Thus, arrest, detention or confinement without legal authority can occur in different ways:

- A person who possesses no legal authority arrests, detains or confines a victim.

  For example, if a private citizen (someone who is not an official, and who has no authority under law) confines a victim, then that confinement has been done "without legal authority".

- A person (generally a police or government official) who normally possesses the required legal authority arrests or detains or confines in a manner that the person knows is not allowed by law.

  For example, if a police or government official arrests or detains a victim, knowing that arrest or detention is not allowed by law (such as where the victim has committed no wrongful act, or where a wrongful act is committed by the victim but the law does not authorize arrest or detention for that act), then the TSE Law considers that the official has acted "without legal authority".

  For example, if a police officer detains a person beyond the time limit permitted by the Criminal Procedure Code[15] and with no further legal authorization (such as a court order), then such an act may be considered an illegal detention.

It should be noted that in some circumstances, private individuals or organizations may be granted by law the authority to keep someone against their will in a particular place, when the person being confined does not by law have full capacity (such as minors or persons who have been declared by the court to lack full capacity).

For example, if an orphanage has been granted legal custody over the minors (the orphans) in its care, it thus can require that they not leave the orphanage.

However, it is important to note that the right to take care of a person is different from the right to confine the person.

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[14] It should be noted, however, that the punishments stipulated in the Penal Code are different in some respects from those stipulated in this chapter.

[15] The Criminal Procedure Code generally permits the police to detain a suspect in custody for 48 hours; for persons suspected of committing a felony, this period can be extended another 24 hours provided that the relevant legal authorities give their permission. See Criminal Procedure Code, Article 96 ("Police Custody").

For example, an organization that works on social rehabilitation and which obtains the legal authorization to receive and take care of certain persons (such as trafficking victims, drug users, street children, etc.), nonetheless does not have the legal authority to confine them against their will or prevent them from leaving the organization's facilities.

Employers also do not have any right to confine a worker against his will. The employer can require as a condition of employment that the worker not leave the workplace during the working hours (except during break times), but the employer has no legal authority to detain or confine the worker, or to require that the worker remain in the workplace beyond the legal and agreed working hours. (If the worker chooses to leave during working hours, the employer can only discipline or dismiss the worker from his job, to the extent permitted by the Labor Law.)

Thus, for example, a household employer may not prohibit a domestic worker from leaving the house.

"arrests, detains or confines another person"

This article punishes an offender who unlawfully arrests, detains or confines another person. The terms arrest, detain or confine mean as follows:

- "Arrest" in this article refers to taking custody of another person by the police, competent official or a private citizen without authority or beyond the authority conferred to him/her by law and then keeping the victim or transferring the victim to another place where the victims is not free to leave.
- "Detain" and "confine" in this article both refer to maintaining custody or control over another person, by the police, competent official or private person, without authority or beyond the authority conferred to him/her by law, and preventing the victim from leaving the place where he/she is detained.

With respect to the means listed above, it is important to note that "threat" means both explicit and implied threats.

Similarly, the concept of "confinement" should be broadly interpreted, and does not refer only to physical confinement of the victim (e.g., keeping the victim in a locked room). There are many other forms of confinement which also qualify, such as psychological confinement (confinement based on threats), professional confinement (e.g., an employer who keeps the worker's passport or other documentation in the employer's possession as a guarantee, or who keeps the worker from leaving by threatening to fire him).

"shall be punished with imprisonment"

This article specifies that the applicable punishment is imprisonment only. The article does not allow the offender to avoid imprisonment by paying a fine.

"3 to 5 years when the arrest, detention or confinement lasts less than one month"

This article does not specify a minimum duration of the arrest, detention or confinement; the punishment (3 to 5 years imprisonment) is the same for all offenses where the victim has been arrested, detained or confined for less than one month. However, as in the sentencing for any criminal act, courts have discretion to consider mitigating circumstances and reduce the sentence as appropriate and as allowed by law. (See, the section on mitigating circumstances in the new Penal Code, , Book 1, Title 3, Chapter 2, Section 2 "Mitigating Circumstances").

It should be noted that the new Penal Code sets out a ifferent range of punishments for the offenses of unlawful arrest, detention and confinement (see, Book 2, Title 2, Chapter 4, Section 1 "Unlawful Arrest, Detention and Confinement"). In particular, Article 253 of the Penal Code prescribes a penalty of 1 to 3 years imprisonment in case the unlawful arrest, detention or confinement is for less than 48 hours. Such penalty is lighter than that of Article 21 of the TSE Law which prescribes an imprisonment of 3 to 5 years when the arrest, detention or confinement lasts (for any period) less than 1 month. Following the principles of statutory interpretation and the rules set out in Articles 671 and 668 of the Penal Code (see discussion on "principles of statutory intepretation" in the Introduction and in Art. 50 below), the lower penalty under the newer Penal Code generally supersedes the penalty under the TSE Law in so far as the unlawful arrest,

detention and confinement are for less than 48 hours. However, if the unlawful arrest, detention and confinement (less than 48 hours) is committed within the context of human trafficking, the TSE Law (which is a special law) will prevail and thus, the perpetrator may be charged and punished with the higher penalty of the TSE Law.

For example, A, an owner of a printing company, unlawfully confines B, an employee, inside the printing room for suspecting B to have stolen company money intended for a supplier. A refuses to release B until B returns the money stolen. After 45 hours, A releases B upon learning that the money has in fact been taken by C, the office manager, and paid to their supplier. This case does not involve an element of trafficking, and thus, the perpetrator should be prosecuted under Article 253 of the Penal Code for the offence of unlawful detention and confinement.

As another example, X, a trafficker, lures Y, a young lady, to leave her hometown with her to go to work as a waitress in a restaurant in Phnom Penh, which doubles as a brothel in the evenings. Z, the brothel owner, then pays X some money and locks up Y for almost two days before Y is rescued by her parents. In this case, Z may be prosecuted under Article 21, paragraph 1.1 of the TSE Law for the unlawful detention and confinement of Y and punished with 3 to 5 years imprisonment, as it is a trafficking-related offense.

Article 22. Aggravating Circumstances
A person who, without legal authority, arrests, detains or confines another person shall be punished with life imprisonment when:
1. the offense is accompanied with torture or barbarous act;
2. the offense is followed by the death of that person;
3. the offense is committed to obtain payment of money.

This article mandates that an offender be punished with life imprisonment if he has arrested, detained or confined another person under certain specific circumstances.

It should be noted that the new Penal Code sets out a different range of punishments for aggravating circumstances relating to the offenses of unlawful arrest, detention and confinement (see Book 2, Title 2, Chapter 4, Section 1 "Unlawful Arrest, Detention and Confinement"). In particular, aggravating circumstances of Article 254 of the Penal Code prescribes a lower prison term of 15 to 30 years compared to Article 22 of the TSE Law which prescribes a higher prison term of life imprisonment. Following the principles of statutory interpretation and the rules set out in Articles 671 and 668 of the Penal Code (see discussion on "principles of statutory interpretation" in the Introduction and in Art. 50 below), the lower penalty under the newer Penal Code generally supersedes the penalty under the TSE Law. However, if the offense involved is committed within the context of human trafficking, the TSE Law (which is a special law) will prevail and thus, the offender may be charged and punished with the penalty under the TSE Law.

"the offense is accompanied with torture or barbarous act"

If the offender arrests, detains or confines another person, and in connection with that arrest, detention or confinement also commits torture or a barbarous act, then the offender must be punished with life imprisonment.

The TSE Law does not define "torture" or "barbarous act". However, the term "torture" is used in Cambodian criminal law, including the laws in force at the time the TSE Law was promulgated (see e.g. Article 12 of the UNTAC Law, and Article 7 of the Law on Aggravating Circumstances) as well as the new Penal Code (see e.g., Book 2, Title 2, Chapter 2, Section 1 "Torture and Barbarous Acts"). Although these laws do not define the term "torture", the TSE Law is understood to incorporate (through reference to implementation of other international treaties, in Article 1 of the TSE Law) the definition set out in the Convention against Torture. Cambodia ratifed the Convention against Torture on 15 October 1992. Article 1 of the Convention against Torture defines "torture" as:

> "…any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on

discrimination of any kind..."

For the TSE Law, the term "torture" is defined by two key elements:

1) severe pain and suffering, whether physical or mental;
2) that is intentionally inflicted.

It should be noted that while international law considers that torture can only be committed in connection with a public official or a person acting in an official capacity, in Cambodian law the crime of torture also applies to acts committed by private individuals. This is consistent with the approach set out in relevant provisions of the new Penal Code (see, Book 2, Title 2, Chapter 2, Section 1 "Torture and Barbarous Acts").

The term "barbarous acts" is not defined in Cambodian or international law, but is presumed to refer to other ill-treatment that is of a similar level of severity as torture. In this sense, it can be understood as similar to the term "cruel, inhuman or degrading treatment", which is also used (but not defined) in the Convention against Torture.

"the offense is followed by the death of that person"

If a person is arrested, detained or confined, and then dies in connection with the arrest, detention or confinement, then the offender (the person who arrests, detains or confines the victim) must be punished with life imprisonment.

In such a case, it is not enough that the victim dies after being arrested, detained or confined; rather, the victim must have died as the result of the arrest, detention or confinement. However, this article does not require that the offender have intended to cause the death of the victim. If the offender did not intend to kill the victim, but the victim still died as the result of the arrest, detention or confinement (for example, the victim is sick or injured and is not allowed to leave to seek medical care or take needed medicine), then the offender must be sentenced to life imprisonment. This approach is consistent with the approach found in the new Penal Code, which specifies heightened punishment for an offender who illegally arrests, detains or confines a person and, in so doing, "causes the death of the victim without having intention of so doing." (See new Penal Code, Book 2, Title 2, Chapter 4, Section 1 "Illegal Arrest, Detention and Confinement").

"the offense is committed to obtain payment of money"

If a person is arrested, detained or confined in order to obtain money, then the offender (the person who arrests, detains or confines the victim) must be punished with life imprisonment.

Chapter 4 - Prostitution and Child Prostitution

This chapter of the TSE Law is about sexual exploitation for commercial purposes. The chapter defines the terms "prostitution" and "child prostitution", and establishes the offenses and punishments for activities related to prostitution and child prostitution.

It is important to note that the TSE Law does not punish a person for engaging in prostitution (neither the prostitute nor the client[16]), but instead criminalizes only certain related activities. Even in such cases, the TSE Law does not consider the prostitutes as offenders; the offenders under the TSE Law are the pimps, heads of prostitution and others who draw a profit from the prostitution of others (that is, from the activities of the prostitutes). Therefore prostitutes are never offenders: persons who are voluntarily engaging in commercial sex work (and who are therefore, by definition, not victims of trafficking) are not punished under this law. Trafficking victims are also not punished under this law for those acts. However, prostitutes may be punished if found guilty of the offence of soliciting for prostitution in a public place (see Article 24). In the latter case, they are punished not for engaging in prostitution but for soliciting in public, which is considered as affecting public order.[17]

The TSE Law punishes all persons who engage in child prostitution (including the client), but it does not consider the child who commits prostitution as the offender. The child who commits prostitution is a victim, and as such is to be protected. The TSE Law considers that the offender for a crime of child prostitution is the person who procures, manages, recruits, induces or otherwise profits from the activity of the child prostitute. A person who purchases child prostitution is also considered an offender.

Article 23. Definition of Prostitution and Child Prostitution
"Prostitution" in this law shall mean having sexual intercourse with an unspecified person or other sexual conduct of all kinds in exchange for anything of value.

"Child prostitution" in this law shall mean having sexual intercourse or other sexual conduct of all kinds between a minor and another person in exchange for anything of value.

This article defines the terms "prostitution" and "child prostitution", which are used extensively throughout this chapter of the TSE Law. This article does not criminalize prostitution or child prostitution, and no prosecutions should be commenced under this article.

It should be noted that prostitution by freely consenting adults is not illegal under the TSE Law, although certain other related activities are criminalized in Article 24, Articles 26-27 and Articles 29-32.

Child prostitution is illegal under the TSE Law but, as noted above, the child prostitute is not punished. The child prostitute is considered by law to be a victim and not an offender. Crimes related to child prostitution are set out directly in Article 28 and Articles 33-37, and by incorporation in Articles 26-27 (through the operation of Article 28) and Articles 30-32 (though the operation of Article 33). Article 29 (Procurement of Prostitution by Torture) may also be applied to cases of child prostitution. Article 24 (Solicitation) does not apply in cases of child prostitution.

Prostitution
The definition of prostitution set out in the first paragraph of this article has several important elements:

1) An actor (the person practicing prostitution)

[16] The only prostitution-related offense for which a client is punished is the purchase of child prostitution. See discussion on Article 34 ("Purchase of Child Prostitution") below.
[17] This approach is consistent with the Penal Code, which classifies the offence of "soliciting other person in public" together with the offence of "apparent intoxication" in public. See Penal Code, Book 2, Title 2, Chapter 5, Section 6 "Other Types of Infringement on Dignity".

2) has sexual activity (sexual intercourse or other sexual conduct)
3) with another person (an "unspecified person")
4) in exchange for anything of value

The key terms used in the first paragraph of this article are defined below.

Actor (adult)

The first paragraph of this article does not explicitly mention the actor, but by the logical operation of the second paragraph (defining child prostitution) it is understood that this first paragraph refers to prostitution conducted by an adult actor.

"sexual intercourse"

The term "sexual intercourse" means the insertion of one person's genital into another person's genital, mouth or anus, or the insertion of any tools or instruments into a person's genital.[18] Sexual intercourse can take place between two or more persons of the same or opposite sex.

The term "tools" or "instruments" should be interpreted broadly to include, among other things, a stick, pen, toy penis, vibrator, bottle, or parts of the body such as finger, tongue, hand, etc..

The term "genital" is generally defined as a person's penis or vagina, but to have stronger protection for victims, in this law, the word "genital" is understood to mean, penis or, vagina or anus.
The term "sexual intercourse" therefore includes vaginal sex, anal sex and oral sex, whether between males and females, males and males, or females and females.

"or other sexual conduct of all kinds"

The term "other sexual conduct of all kinds" means any other type of conduct which stimulates or satisfies the actor's sexual desires.[19]

Such conduct includes physical contact between the prostitute and another person, and also may include cases where there is no physical contact between the prostitute and another person.

For example, if a person pays to see a child's genitals or to see the child masturbate, that person can be prosecuted under Article 34 (Purchase of Child Prostitution) even if there has been no touching or other physical contact between the client and the child.

To qualify as "other sexual conduct", the act must be carried out for the purpose of stimulating or satisfying the client's sexual desire. It does not matter how the client seeks to stimulate or satisfy sexual desire; this can be by the client initiating sexual contact with the prostitute, or by directing the prostitute to initiate sexual contact with or exposure to the client or a third party, or by directing a third party to initiate sexual contact with the prostitute.

"with an unspecified person"

This term refers to a person who is not the prostitute. Usually (though not always) the unspecified person is the client: that is, a person who engages in sexual activity with the prostitute is also the person who gives or promises to give something of value to the prostitute in exchange for the sexual intercourse or other sexual conduct. In some circumstances, however, the person who pays may be different from the person who engages in sexual activity with the prostitute: for example, one person may pay for sexual services to be rendered to a third party. This type of circumstance does not disqualify the situation from being deemed as one of prostitution.

"in exchange for anything of value"

The term "anything of value" includes but is not limited to remuneration in cash, valuable items (for example, jewelry, clothing, etc.), corporeal property (for example, house, land, apartment, etc.), non-

[18] This definition is consistent with the Ministry of Justice Instruction No. 01/09, dated 23 February 2009, which defines sexual intercourse with respect to Articles 42 and 43 of the TSE Law.
[19] The definition for this term is based on related definitions for the term "indecent act" as used in Article 43 of this law and as defined in Ministry of Justice Instruction No. 01/09, dated 23 February 2009.

corporeal property or real rights (for example, rights to own, use, sell or lease any kind of movable and immovable property), services, direct or indirect payments or fees (fees paid to, through or on behalf of another person), valuable information, or control over persons.

Child Prostitution

The definition of child prostitution set out in the second paragraph of this article uses the same definition as for adult prostitution (defined in the first paragraph), with the important difference that the sexual intercourse or other sexual conduct must take place with a minor.

Therefore, the definition of child prostitution set out in this article applies whenever the following elements are present:

1) An actor (either an adult or a minor)
2) has sexual activity (sexual intercourse or other sexual conduct)
3) with a minor (any person aged under 18 years)
4) in exchange for anything of value.

It should be noted that the actor (the one who purchases child prostitution) may be an adult or a minor.

As per Article 7 of the TSE Law, a minor is any person under the age of 18 years. It should be noted that Chapter 6 (Articles 42-44) of the TSE Law grants minors who are 15 years and older (that is, persons aged from 15 years to under 18 years) the capacity to consent to engage in sexual relations, but the law does not grant such minors the capacity to engage in prostitution. All prostitution involving any minor (anyone under the age of 18 years) is considered child prostitution, and is illegal under the TSE Law.

The other elements are defined according to the explanations given for the first paragraph (on adult prostitution) of this article.

Article 24. Soliciting

A person who willingly solicits another in public for the purpose of prostituting himself or herself shall be punished with imprisonment from 1 to 6 days and a fine from 3,000 to 10,000 riels.

A minor shall be exempted from punishment of the offense stipulated in this article.

This article establishes the offense of soliciting, which is defined as willing solicitation of prostitution in public. This means that the TSE Law does not consider to be an offense any soliciting for prostitution that is a) not willing or b) not done in public. Therefore, the law generally does not punish a victim of trafficking for soliciting, because in most instances a trafficking victim is not a willing participant. Likewise, the law does not punish soliciting that is done in a private place.

This article is based on a similar article in the new Penal Code (see Book 2, Title 2, Chapter 5, Section 6 "Other Types of Infringement on Dignity").

In the classification of offenses set out in the new Penal Code, soliciting is classified as a petty crime and is not a felony or misdemeanor. As such, the following articles of the TSE Law do not apply to cases of soliciting:

- Article 3 (Application of this Law outside the Territory) only applies to felonies and misdemeanors, and so does not apply to soliciting. The police and the courts therefore are not empowered to investigate, prosecute or punish any soliciting that occurs entirely outside of the territory of the Kingdom of Cambodia.
- Article 4 (Criminal Responsibility), paragraphs 1-3, only applies to felonies and misdemeanors, and so does not apply to soliciting. The police and the courts therefore are not empowered to investigate, prosecute or punish any attempted soliciting, nor any accomplice or instigator of soliciting.

This article sets out the following elements for the offense of soliciting.

"Willingly"

The use of the term "willingly" means that the actor, voluntarily and with his or her free will, solicits another person.

If a person solicits another person due to duress, coercion, threat or being forced by another person to solicit, then the act is not carried out willingly. For example, if an actor is forced or coerced to solicit another person for the purpose of prostitution, the actor cannot be considered to have willingly solicited and thus cannot be prosecuted or punished under this article.

Victims of human trafficking are generally exempted from prosecution and punishment under this article, because in most instances human trafficking is an act that is compelled by another person against the will of the victim.

"solicits"

This article punishes soliciting for the purpose of prostitution. The term "to solicit" means that there must be a specific communication or behavior by the offender that interferes with the public, which leads to public disorder and which conveys that the offender is willing to engage in sexual activity in exchange for anything of value.

It is important to note that, as with any criminal statute, there must be proof of the offender's intent to prostitute him- or herself. In general, the following are <u>not</u> considered soliciting or proof of intent to solicit:

- standing or waiting in a public place
- wearing revealing, provocative or "sexy" clothes
- smiling or waving to a person
- possessing or carrying condoms, lubricant or other material related to the promotion of safe sex and the reduction of HIV/AIDS[20]
- working at a particular place (such as a beer garden, karaoke club, massage parlor, etc.)

Even where the above acts have been committed, there must still be other facts that can serve as proof that the accused intended willingly to prostitute him- or herself in public.

"in public"

This article only punishes soliciting that is done in public. Soliciting that is done in private is not punished under the TSE Law. (Note that Article 32 of the TSE Law punishes a person, such as a property owner, who knowingly provides a private place to be used for prostitution, but it does not punish the prostitute – that is, the person who solicits for prostitution.)

The term "in public" means any state-owned, public or private land, facilities, buildings and transportation which are either open to all members of the public or which provide services to all members of the public. This definition is consistent with that found in Article 4 of the Law on the Protection and Promotion of the Rights of Persons with Disability (2009).

For the purposes of this law, the term "in public" also means that solicitation can also be punished if it is carried out in a private place but can be seen or heard by a person who is in a public place.

For example, if a prostitute solicits while standing just inside the door of a private place, such that people on the street can easily see or hear the solicitation, then the act can be punished.

It is worthwhile to note that the provision on solicitation in the new Penal Code is not placed in the chapter

[20] In fact, education activities on prevention and control of spread of HIV/AIDS, including the promotion and use of condoms, are encouraged by the laws and policies of the Royal Government of Cambodia, including the Prime Minister's Order on 100% Condom Use Program, the 2002 Law on the Prevention and Control of HIV/AIDS and its Implementing Guidelines. (See further discussion on the provisions of the HIV/AIDS Law, its Implementing Guidelines and the policies on condom use under the Explanatory Notes sections on Articles 25, 31 and 32 below.)

on procurement of prostitution, but rather in a later chapter titled "Other Types of Infringement on Dignity", where it is located just after the article which penalizes people who are apparently drunk in public (see Book 2, Title 2, Chapter 5, Section 6 of the Penal Code). Such placement suggests that the objective of this article is not to punish prostitutes (since prostitution is not itself illegal) but is in fact to protect the right of the general public to use and enjoy public spaces, and (consistent with the TSE Law's objective, as stated in Article 1) to preserve and enhance good national customs. This means that Article 24 of the TSE Law should therefore be applied only when the soliciting is carried out in such a way that it interferes with the public's use and enjoyment of public space.

This understanding (that the offense of soliciting is related to concerns about the right to use and enjoy public space) is reinforced by the 2008 Guidelines on the Implementation of the Law on Suppression of Human Trafficking and Sexual Exploitation (hereinafter, "the Guidelines on Implementation"), which were issued in November 2008 by the Ministry of Interior on behalf of the High-Level Working Group. The Guidelines on Implementation make clear that action by the authorities regarding prostitution should be undertaken only in the following four cases:

- If there is a complaint from the people in the neighborhood about prostitution activities that affect their daily lives
- If there is a complaint from a victim that has been forced into prostitution in that location
- If there is child prostitution
- If prostitution leads to public disorder and insecurity

"for the purpose of prostituting himself/herself"

This article punishes soliciting when it is carried out for the purpose of prostitution. "Prostitution" means the definition that is set out in Article 23.

"shall be punished with imprisonment from 1 to 6 days"

If an offender is found guilty of the offense set out in this article, the offender shall be imprisoned from 1 to 6 days. This imprisonment requires a court order; the police may not impose this imprisonment without a judgment by the court that the offender is guilty of the offense in this article.

It should be noted that, according to Article 5 of this law, the court may choose to punish the offender with only the fine, or only the imprisonment or both the fine and imprisonment

The provision on solicitation in the new Penal Code does not provide for any imprisonment of offenders (see Book 2, Title 2, Chapter 5, Section 6 "Other Types of Infringement on Dignity"). However, article 298 of the Penal Code only penalizes a person for inciting another person in public to have sexual relations, without the purpose of prostituting oneself. If the person incites another person in public to have sexual relations for the purpose of prostituting oneself, then Article 24 of the TSE Law shall apply. This article requires that the offender receives or agrees to receive something of value in exchange for sexual relations with the unspecified person.

"and a fine from 3,000 to 10,000 riels"

If an offender is found guilty of the offense set out in this article, the court may order the offender to pay a fine from 3,000 to 10,000 riels. This fine requires a court order; the police may not impose this fine without a judgment by the court that the offender is guilty of the offense in this article.

"A minor shall be exempted from punishment of the offense stipulated in this article."

This provision specifies that minors are not to be punished for soliciting.

According to Article 7 (see above), a minor is any person aged less than 18 years.

It should be noted that Chapter 6 (Articles 42-44) of the TSE Law grants minors who are 15 years and older (that is, persons aged at least 15 but under 18 years) the capacity to consent to engage in sexual relations, but the law does not grant such minors the capacity to engage in prostitution, including soliciting

in public for prostitution. All prostitution involving any minor (anyone under the age of 18) is considered child prostitution, and is illegal under the TSE Law.

Under the TSE Law, a minor does not have legal capacity to consent to engage in prostitution. Therefore, minors cannot be prosecuted for this offense.

If a minor is found to be soliciting in public for the purpose of prostitution, the police and the courts should arrest, prosecute and try the pimp or head of prostitution that has directed the actions of the minor. The minor is to be considered a victim of child prostitution, and is therefore entitled to protection, as well as any normal procedures or services for rehabilitation and reintegration.[21]

Article 25. Definition of Procuring Prostitution
The act of procuring prostitution in this law shall mean:

1. drawing a financial profit from the prostitution of others;
2. assisting or protecting the prostitution of others;
3. recruiting, inducing or training a person with a view to practice prostitution;
4. exercising pressure upon a person to become a prostitute.

The following acts shall be deemed equivalent to the act of procuring prostitution:

1. serving as an intermediary between one person who engages in prostitution and a person who exploits or remunerates the prostitution of others;
2. facilitating or covering up resources knowing that such resources were obtained from a procurement;
3. hindering the act of prevention, assistance or re-education undertaken either by a public agency or by a competent private organization for the benefit of persons engaging in prostitution or being in danger of prostitution.

This article defines the terms "procuring prostitution", which is used extensively throughout this chapter of the TSE Law. Article 25 is similar to the following articles in the new Penal Code (see Book 2, Title 2, Chapter 5, Section 5 "Procuring"): Article 284 (Procuring); Article 285 (Acting as Intermediary between Prostitute and Procurer); Article 286 (Justification of Resources from Procuring); and Article 287 (Obstructing Measures Designed to Prevent Prostitution).

Articles 26-29 of the TSE Law set out the offenses and corresponding punishments related to procuring prostitution.

Procuring prostitution is a complex concept which can be realized in different ways, and this article includes several different definitions for procurement of prostitution. However, the intent of all the definitions is to punish any person who receives or expects to receive a financial benefit from the prostitution of others, or who intends to further the business activity of prostitution. This basic idea should be considered part of <u>all</u> the definitions provided in this article. Thus, if an actor does not receive or expect to receive any financial benefit from the prostitution of others, or does not intend to further the business activity of prostitution, then the actor should not be held liable for procurement.

It is important to note that this article does not punish people who engage in the activity of prostitution itself, nor does this article punish the individual prostitutes. The TSE Law does not punish prostitutes (individually or in groups) for engaging in prostitution. Likewise, this law does not punish the clients of prostitution.

This article defines procurement of prostitution in the following ways:

"1. drawing a financial profit from the prostitution of others"[22]

Subsection (1) covers the cases where the actor derives a financial profit from the prostitution of others.

[21] Note that any such protection, rehabilitation or reintegration should be based on the consent of the child (where applicable) and/or his/her parents or legal guardian.
[22] This provision is identical to Art. 284(1) on Procuring, of the Penal Code.

"Financial profit" means anything of value to the actor who derives such profit. Generally this is in the form of money, but it could also be considered of something else of value, including other remuneration in kind, valuable items (for example, jewelry, clothing, etc.), corporeal property (for example, house, land, apartment, etc.), non-corporeal property or real rights (for example, the rights to own, use, sell or lease any kind of movable and immovable property), services, direct or indirect payments or fees (fees paid to, through or on behalf of another person), valuable information or control over persons.

The whole term "drawing a financial profit from the prostitution of others" refers to the business activity of prostitution (rather than helping the individual prostitutes).

The term means that the actor receives the profit directly from prostitution services performed by other persons. This means it is not for any prostitution services that the actor performs by himself or herself.

For example, an owner of a brothel draws a financial profit from the prostitution performed by the brothel's prostitutes. Likewise, an intermediary who gets a commission from the prostitute's prostitution service is drawing a financial profit from the prostitution of others. But a prostitute who gets paid by his/her client is not subjected to the punishment in this subsection, because the prostitute is drawing a profit from his or her own prostitution and not that of others.

In order for an actor to be covered by this subsection, he or she must have both knowledge and intent. That is, the actor a) must know that the financial profit that he or she receives derives from the prostitution of others, and b) must intend to draw the profit from that prostitution. In other words, this subsection does not cover cases where a financial profit is drawn by someone who does not know that the profit comes from the prostitution of others, or by someone who (even if he or she knows the profit comes from prostitution) does not intend for others to engage in prostitution.

For example, a landlord who rents a building to a brothel, but who does not know that it is used for prostitution, is not liable under this subsection for the rent payments that he or she receives.

Similarly, the support staff (cashier, cook, cleaner, parking attendant, etc.) employed by a brothel receives a salary (and thus a financial profit) from the brothel; but because these workers do not intend that the prostitutes in the brothel engage in prostitution, they should not be punished under this subsection.

"2. assisting or protecting the prostitution of others"[23]

Subsection (2) covers the cases where the actor assists or protects the prostitution of others.

"Assisting or protecting" means any form of helping, protecting, promoting or facilitating.

"The prostitution of others" means the business activity of prostitution (rather than helping the individual prostitutes).

For example, if a manager of a brothel hired security guards to protect prostitutes in the brothel from harassment and so that they can carry out their work, the manager would be protecting prostitution of others. If an actor informed a brothel owner of an upcoming police raid so that the owner can cover up the prostitution in the brothel, the actor would be protecting the prostitution of others.

In order for an actor to be covered by this subsection, he or she must have both knowledge and intent. That is, the actor a) must know that the assistance or protection is for the benefit of the prostitution of others, and b) must intend to assist or protect that prostitution. Therefore, a person who unknowingly assists or protects the prostitution of others is not liable under this subsection.

Similarly, a person who assists or protects a prostitute, but who does not intend for such assistance or protection to further that person's prostitution activity, is not liable under this subsection.

[23] This provision is similar to Art. 284(2) on Procuring, of the Penal Code.

For example, a doctor who treats a sick prostitute is not liable under this subsection, because the doctor does not provide the service with the intent to assist or protect the prostitution activity. Likewise, an NGO or other agency that provides services to individual prostitutes is not liable under this subsection.

Similarly, the fact that a police officer stopped a client of a prostitute from assaulting the prostitute, does not mean that the police officer protected the prostitute's prostitution.

"3. recruiting, inducing or training a person with a view to practice prostitution"[24]

Subsection (3) covers the cases where the actor recruits, induces or trains a person with a view to practice prostitution.

For example, if a brothel owner or employee asked a person to work for the brothel for a monthly pay of 300 dollars, that act would constitute recruitment with a view to practice prostitution.

If an actor taught a person how to work in a brothel and deal with prostitution patrons, that act would constitute training with a view to practice prostitution.

If brothel owner or employee induces a person to work in the brothel as a prostitute by offering or promising money, that act of inducement is procurement of prostitution.

In order to be covered by this subsection, an actor has to have the purpose for another person to practice prostitution in his or her act of recruiting, inducement or training. Therefore, a person who unknowingly recruits, induces or trains someone is not liable under this subsection. Likewise, if the recruitment, induction or training is not done with the intent to further the recipient's practice of prostitution, then that act is not liable under this subsection.

For example, public health organizations that conduct outreach or education activities to combat HIV/AIDS (in accordance with the 2002 Law on Prevention and Control of HIV/AIDS[25] and its Implementing Guidelines,[26] and the Prime Minister's order on 100% Condom Usage Program) may conduct awareness-raising activities on the use of condoms or safe sex techniques. However, the intent behind these activities is to prevent the spread of HIV/AIDS, and not to further the practice of prostitution; therefore such activities are not liable under this subsection.

Similarly, this subsection does not prohibit organizations that advocate for the rights of prostitutes, or any activities carried out by such organizations, because the intent is to protect the individual prostitutes and to defend their rights, rather than to promote the prostitutes' business activity. In fact, private health organizations are mandated by the Law on Prevention and Control of HIV/AIDS and its Implementing Guidelines to conduct education activities to promote respect for the human rights of people with HIV/AIDS and people who are vulnerable to HIV infection, such as sex workers.[27]

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[24] This provision is similar to Art. 284(3) on Procuring, of the Penal Code.

[25] Article 3 of the HIV/AIDS law calls for the mobilization of people in the community, as well as organizations and associations, in the design and implementation of HIV/AIDS education and information programs, including on prevention measures and control of the spread of HIV/AIDS. Article 4 of the Law states that "HIV/AIDS education and other refresher courses are the responsibility of private healthcare providers to take part in the HIV/AIDS epidemics prevention and control program." Article 11 of the HIV/AIDs law requires that all HIV prevention materials, such as condoms, be accompanied by information, which explains the proper method for using the equipment.

[26] Chapter 5 of the Implementing Guidelines of the HIV/AIDs Law provides that "[u]nder the Ministry of Health's guidelines…STI clinical services should be combined with the delivery of information and education such as condom promotion and distribution."

[27] Article 4 of the HIV/AIDS Law mandates private healthcare providers to provide "refresher courses, including discussions on ethical issues involved with HIV/AIDS, particularly on confidentiality and dignity of human rights." Chapter 2 of the HIV/AIDS Law's Implementing Guidelines requires that "all information and education materials should promote respect for the human rights of people living with HIV/AIDS and people who are vulnerable to HIV infection…and how respect for (their) human rights…is essential to successfully combating the HIV/AIDS epidemic."

"4. exercising pressure upon a person to become a prostitute"[28] (Note: In the original Khmer text of the TSE Law, the term used is "exercising pressure upon a person to engage in prostitution".)

This subsection punishes a person who has exercised pressure upon another person to engage in prostitution. The term "pressure" in this article includes but is not limited to physical force, pressure or restraint, as well as other kinds of pressure, including financial or psychological pressure.

For example, if an actor threatened to withdraw support from his daughter if the daughter did not prostitute herself, then the actor would have exercised pressure for the daughter to become a prostitute.

This subsection requires that the actor have intent: that the actor exercise the pressure with the intent of having the other person engage in prostitution, regardless of whether the person being pressured was a prostitute before or not. It also does not matter if the person who was pressured yielded to the pressure; the actor cannot claim as a defense that the person who was pressured consented to engage in prostitution, if the consent was vitiated/defective.

Where violence is used in the course of procurement against a person who is already a prostitute (rather than as a form of pressure to induce the person to become a prostitute), then the offender may be liable under Article 27.3 (Aggravated Procurement of Prostitution).

Note also that where "deception, abuse of power, confinement, force, threat or any coercive means" is used to recruit or induce a person to engage in prostitution, the offender may, in addition, also be liable under Article 12 (Unlawful Recruitment for Exploitation) of the TSE Law.

Paragraph 2 of this article sets forth three types of acts that are also equivalent to the act of procuring prostitution.

"1. serving as an intermediary between one person who engages in prostitution and a person who exploits or remunerates the prostitution of others"[29]

This subsection (1) covers the cases where the actor serves as an intermediary between two people: (a) a prostitute and (b) a person who exploits or remunerates the prostitute.

"Exploit" in this subsection means that the person draws a financial profit from the prostitutes activity. (See discussion above regarding "drawing a financial profit from the prostitution of others".)

"Remunerate" in this subsection means that the person pays the prostitute for his or her activity as a prostitute.

In order to be covered by this subsection, the person who serves as an intermediary must intend for his actions as an intermediary to promote or facilitate prostitution.

For example, if a person introduces a prostitute to a brothel owner or manager in the hope that the prostitute can work at the brothel, then this act of introduction may be punished under this subsection because the brothel owner or manager is a person who exploits or remunerates the prostitution of others.

However, if a person introduces a prostitute to a brothel owner or manager in the hope that the prostitute can work at the brothel as a cook, then this act is not covered by this subsection.

[28] This provision is identical to Art. 284(4) on Procuring, of the Penal Code.
[29] This provision is similar to Art. 285 (Acting as Intermediary Between Prostitute and Procurer), of the Penal Code.

Consistent with the idea of being an intermediary to procurement, the intermediary actor must also derive or expect some financial benefit from his act.

For example, a taxi driver who takes a client to a brothel, and who gets a commission from the brothel, is liable for punishment under this subsection.

But a friend who takes another friend to a brothel, and who does not receive any commission from the brothel, is not liable for punishment under this subsection.

"2. facilitating or covering up resources knowing that such resources were obtained from a procurement"[30]

This subsection (2) covers the cases where the actor facilitates or covers up resources that came from the procurement of prostitution, with knowledge that the resources were so obtained.

This provision echoes Article 6 of United Nations Convention against Transnational Organized Crime (UNTOC), which criminalizes the laundering of proceeds of crime, and the concealment and disguise of the proceeds from crime.

"Facilitating…resources" means engaging in transactions (including transporting, transferring, paying or receiving) with respect to resources that were obtained from the procurement of prostitution.

The term "resources" as used here includes but is not limited to remuneration received in cash or in kind, monetary instruments (including cash, checks, money orders, electronic money transfers, etc.), valuable items (for example, jewelry, clothing, etc.), corporeal property (for example, house, land, apartment, etc.), non-corporeal property or real rights (for example, the rights to own, use, sell or lease any kind of movable and immovable property), services, direct or indirect payments or fees (fees paid to, through or on behalf of another person), valuable information or control over persons.

"Covering up…resources" means disguising or concealing the amount, nature, source, location, ownership or control of the resources.

In order for an actor to be covered by this subsection, he or she must have both knowledge and intent. That is, the actor a) must know that the resources were obtained from the procurement of prostitution, and b) must intend to facilitate or cover up those resources, in order to promote the procurement of prostitution.

Therefore, a person who unknowingly or unintentionally facilitates or covers up the resources that were obtained from the procurement of prostitution is not liable under this subsection.

For example, if a brothel owner deposits money that he earned from procuring prostitution into a bank account, or transfers that money between bank accounts, the bank is not liable for prosecution under this subsection because it is assumed that the bank does not know that the money was obtained from the procurement of prostitution.

But if a brothel manager takes money earned from the procurement of prostitution, and deposits it in a bank account (or hides it in another location, or disguises it to appear as having been obtained from another source), then the brothel manager may be punished under this subsection.

"3. hindering the act of prevention, assistance or re-education undertaken either by a public agency or by a competent private organization for the benefit of persons engaging in prostitution or being in danger of prostitution"[31]

Subsection (3) covers the cases where the actor hinders the effort of a public agency or a private organization, where the agency or organization acts to assist or re-educate persons engaging in prostitution or to prevent them from being in danger of prostitution.

[30] This provision is similar to Art. 286 (Justification of Resources from Procuring), of the Penal Code.
[31] This provision is identical to Art. 287 (Obstructing Measures Designed to Prevent Prostitution), of the Penal Code.

In order to be covered by this subsection, a person who hinders the effort of a public agency or a private organization has to intend to facilitate or promote prostitution. Any act that incidentally hinders the act of prevention, assistance or re-education for the benefit of persons engaging in prostitution or being in danger of prostitution by itself, does not constitute procurement of prostitution under this subsection. In particular, this provision does not apply to NGOs or other entities that work to protect or for the benefit of prostitutes, even in the case where their acts hinder the assistance provided by another entity.

For example, an NGO-run shelter takes over custody of prostitutes from the police and encourages them to enter a re-education program which requires that they do not leave the shelter. A legal aid lawyer comes and wants his client, a prostitute, released due to what the lawyer claims are unlawful restrictions on his client's liberty (illegal confinement). Even though the NGO-run shelter and the lawyer are both attempting to hinder the other part, neither of them can be held liable under this provision, because neither party acts with the intent to facilitate or promote prostitution.

Article 26. Procurement (of Prostitution)
A person who commits procurement of prostitution shall be punished with imprisonment from 2 to 5 years.

This article sets the punishment for procurement of prostitution, which is defined in Article 25 above. Offenders must be punished under this article, not under Article 25.

The article punishes the offense of procurement of prostitution with a prison term of 2 to 5 years. Additional penalties may also be applied at the discretion of the court, as per Article 48 of this law.

It should also be noted that longer prison terms are possible in cases where the procurement of prostitution is found to be aggravated (Article 27), or is carried out with regard to child prostitution (Article 28), or is achieved by torture or barbarous acts (Article 29).

As per Article 4 (Criminal Responsibility) paragraph 4, if the representative, agent or employee of a legal entity or principal is found guilty of this offense, the court may also punish the legal entity or principal with the additional penalties that are provided by Article 48 of the TSE Law. These additional penalties, if warranted, include punishments such as confiscation of materials or property (Article 48(1)-(3)), or closure of a business (Article 48(4)). (See discussion under Article 48 for more detail.)

It should be noted that Articles 284, 285, 286 and 287 of the Penal Code, which pertain to the same acts of procuring defined in Article 25 of the TSE Law, prescribe the same penalty of imprisonment from 2 to 5 years as Article 26 of the TSE Law. The Penal Code articles, however, include an additional penalty of a fine from 4,000,000 riels to 10,000,000 riels. Due to the rule set out in Article 97 of the Penal Code – that in all cases where an offence is punished concurrently with a prison term and a fine, the court may pronounce a ruling of 1) either a prison term and a fine concurrently; 2) a prison term only; or 3) a fine only -- the judge may sometimes impose the penalty of fine only for Procuring Prostitution under the Penal Code.

The inconsistency in penalties between the TSE Law and Penal Code provisions on procurement may be resolved following the principles of statutory interpretation and the rules set out in Articles 671 and 668 of the Penal Code (see discussion on "principles of statutory interpretation" in the Introduction and in Art. 50 below). Based on these rules, the penalty for procurement under the newer Penal Code generally supersedes the penalty for procurement under the TSE Law.

Nevertheless, in accordance with the principle of "individualization of penalties" under Article 96 of the Penal Code, it is suggested that for serious cases of procurement, the penalty of imprisonment should be imposed in lieu of fine alone, based on factors such as the size of operation or number of prostitutes involved, amount of money earned by the procurer, the length of time the perpetrator has been engaged in the activity, recidivism, etc..

However, if the procurement is committed within the context of human trafficking, the perpetrator should be charged and punished with the heavier penalty of imprisonment under the TSE Law (which is a special

law that prevails over the Penal Code in connection with trafficking-related offences).

Article 27. Aggravated Procurement (of Prostitution)
A person who commits procurement of prostitution shall be punished with imprisonment from 5 to 10 years:

1. when it is committed by a male or female procurer or head of prostitution who is an ascendant, descendant, either legitimate or illegitimate, natural or adoptive, of the prostitute;
2. when it is committed by a male or female procurer or head of prostitution who abuses his or her authority over the prostitute;
3. when a male or female procurer or head of prostitution uses violence or coercion against the prostitute;
4. when the procurement of prostitution is committed by an organized group;
5. when the procurement of prostitution is committed against several persons.

This article establishes the offense and sets the punishment for five types of aggravated procurement of prostitution. A person who commits any one of the five types of aggravated procurement of prostitution is punished more severely, by being imprisoned from 5 to 10 years, rather than from 2 to 5 years as set out in Article 26.

Note that this article is similar to Article 288 of the new Penal Code (see Book 2, Title 2, Chapter 5, Section 5 "Procuring", Article 288 "Aggravating Circumstances – Status of the Perpetrator"), which provides the same penalty of 5 to to 10 years imprisonment.

In order to be punished under this article, an offender must:

a) be guilty of procurement of prostitution as defined in Article 25 above, and
b) fulfill any one of the below types of aggravated procurement.

In such cases, an offender should be prosecuted and punished under this article, not under Article 25-26.

It is important to note that this article must be read together with Article 25 (Definition of Procurement of Prostitution) and Article 26 (Procurement). For example, where the provisions under this article refer to "the prostitute", it does not only refer to someone who is already a prostitute; through the operation of Article 25, the provisions in this article also apply to cases involving someone who may not yet be a prostitute, but who is being recruited, induced or trained to practice prostitution (Article 25, paragraph 3), or someone who is pressured to become a prostitute (Article 25, paragraph 4).

Procurement of prostitution is aggravated in any one of the following cases:

"1. when it is committed by a male or female procurer or head of prostitution who is an ascendant, descendant, either legitimate or illegitimate, natural or adoptive, of the prostitute;"

Procurement of prostitution is aggravated if the offender is related to the prostitute by blood, marriage or adoption. This provision accentuates that crimes committed by one family member against another are considered more grave, and thus deserving of heightened punishment. The relative may be an older or younger relative of the prostitute, and may be a legitimate or illegitimate relative of the prostitute.

Note that if the procurement is committed with respect to a minor relative, then the offender should also be prosecuted and punished under Article 28 (Procurement with regard to Child Prostitution).

"2. when it is committed by a male or female procurer or head of prostitution who abuses his or her authority over the prostitute;"

Procurement of prostitution is aggravated if the offender abuses his authority as a public official in order to procure prostitution.

"3. when a male or female procurer or head of prostitution uses violence or coercion against the prostitute;"

Procurement of prostitution is aggravated if the offender uses violence or coercion (threats) against the

prostitute.

For example, if a brothel owner or manager beats up prostitutes who work at his brothel because they are not willing to serve certain clients, this use of violence will be covered by this subsection.

Similarly, if a brothel owner or manager threatens to rape, threatens to injure or threatens to kill prostitutes working for his brothel if they do not follow orders, this is considered coercion against the prostitutes and is punished under this subsection.

"**Violence**" means the use of force which may result in death, pain or physical injury, whether long-lasting or transitory (including rape or other forms of sexual assault, or drugs administered against the victim's will, etc.) as well as psychological abuse. Violence in this sense is an act that is carried out against another person's physical or psychological integrity or health. Violence that rises to the level of torture or a barbarous act should be prosecuted and punished under Article 29 (Procurement of Prostitution by Torture).

"**Coercion**" in this subsection means the use of force or the use of a threat, express or implied, including some forms of non-violent or psychological use of force or threat. This includes:

a) The use of force or threat of harm (including death, physical injury or rape and sexual assault) or physical restraint of any person;
b) Any scheme, plan or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person;
c) Abuse or any threat linked to the legal status of a person;
d) Psychological pressure, including causing a person to believe that he, she or another person will be illegally removed, sold or confined.

Coercion in this sense is an act that is carried out against another person, such that they cannot exercise their free will.

In the absence of these aggravating circumstances, less serious threats made to pressure a person to become a prostitute may still be considered "pressure", as defined in Article 25(4) ("exercising pressure upon a person to become a prostitute"), and thus would be punished under Article 26.

"4. when the procurement of prostitution is committed by an organized group;"

Procurement of prostitution is aggravated if it is committed by an "organized group".

In Article 77 of the Penal Code, an "organized criminal group" means "any group or conspiracy that is established with the view to plan or to commit one or more offenses".

In relevant international law, the definition is similar, with the added requirement that the organized group must include three or more persons. For example, the UN Convention Against Transnational Organized Crime, to which the Palermo Protocol is attached and which Cambodia has ratified, defines an "organized criminal group" in Article 2(a) as "a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit."

Therefore, an "organized group" means a formal or informal group of three or more people that is established to plan or commit a crime.

"5. when the procurement of prostitution is committed against several persons."

Procurement of prostitution is aggravated if it is committed against "several persons".

This means that an offender who is found guilty of procuring prostitution with respect to several persons is to be punished more severely. This aggravating circumstance means that there is no need for the prosecution to bring multiple charges as concurrent offenses. Under this provision the heightened punishment can be imposed, if the offender is found guilty.

Article 28. Procurement with regard to Child Prostitution

Procurement of prostitution shall be punished with imprisonment from 7 to 15 years when the prostitute is a minor.

The term "prostitution" in the relevant provisions of this Chapter shall be replaced with the term "child prostitution," when the offense set forth in Paragraph 1 of this article applies.

This article establishes the offense and sets the punishment for procurement of child prostitution. A person who commits procurement of child prostitution is punished more severely, by being imprisoned for 7 to 15 years rather than 2 to 5 years as set out in Article 26.

Note that paragraph 1 of this article is identical to Article 289 of the new Penal Code (see Book 2, Title 2, Chapter 5, Section 5 "Procuring", Article 289 "Aggravating Circumstances – Status of the Victim"), which provides the same aggravated penalty of 7 to 15 years imprisonment for procurement if the person engaging in prostitution is a minor.

In order to be punished under this article, an offender must:

a) be guilty of procurement of prostitution as defined in Article 25 above,
b) where the prostitute is a minor (under 18 years of age).

In such cases, an offender should be prosecuted, and punished under this article, not under Article 26.

A minor is any person under the age of 18 years, as per Article 7. It should be noted that Chapter 6 (Articles 42-44) of the TSE Law grants minors who are 15 years and older (that is, persons aged from 15 to under 18 years) the capacity to consent to engage in sexual relations, but the law does not grant such minors the capacity to engage in prostitution. All prostitution involving any minor (anyone under the age of 18) is considered child prostitution, and is illegal under the TSE Law.

Where the offense of procuring child prostitution applies, this article also acts to replace the term "prostitution" with the term "child prostitution" for all articles in this chapter.

Article 29. Procurement of Prostitution by Torture

Procurement of prostitution shall be punished with imprisonment from 10 to 20 years when a male or female procurer or head of prostitution committed such offense by recourse to torture or barbarous act on the prostitute.

This article establishes the offense and sets the punishment for procurement of prostitution by committing torture or barbarous acts on the prostitute. A person who commits this offense is punished more severely, by being imprisoned for 10 to 20 years rather than 2 to 5 years as set out in Article 26.

Note that this article is similar to Article 290 of the new Penal Code (see Book 2, Title 2, Chapter 5, Section 5 "Procuring", Article 290 "Aggravating Circumstances – Torture or Acts of Cruelty"), which provides the same aggravated penalty of 10 to 20 years imprisonment for procurement if the procurer inflicts torture or acts of cruelty on the person engaging in prostitution.

If an offender intentionally inflicts severe pain or suffering on a prostitute, in order to punish, intimidate or coerce the prostitute, the offender should be punished under this article.

Where the violence that is inflicted does not rise to the level of torture, the offender may still be prosecuted under Article 27 (3).

The TSE Law does not define "torture" or "barbarous act". However, the term "torture" is used in Cambodian criminal law, including the laws in force at the time the TSE Law was promulgated (see e.g. Article 12 of the UNTAC Law, and Article 7 of the Law on Aggravating Circumstances) as well as the new Penal Code (see e.g., Book 2, Title 2, Chapter 2, Section 1 "Torture and Barbarous Acts"). Although these laws do not define the term "torture", the TSE Law is understood to incorporate (through reference in Article 1 of the TSE Law to implementation of other international treaties) the definition set out in the Convention against Torture. Cambodia ratified the Convention against Torture on 15 October 1992. Article 1 of the Convention against Torture defines "torture" as:

> *"…any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind.."*

For the TSE Law, the term "torture" is defined by two key elements:

1) severe pain and suffering, whether physical or mental,
2) that is intentionally inflicted.

It should be noted that while international law considers that torture can only be committed in connection with a public official or a person acting in an official capacity, in Cambodian law the crime of torture also applies to acts committed by private individuals. This is consistent with the approach set out in relevant provisions of the new Penal Code (see Book 2, Title 2, Chapter 2, Section 1 "Torture and Barbarous Acts").

The term "barbarous acts" is not defined in Cambodian or international law, but is presumed to refer to ill-treatment that is of a similar level of severity as torture. In this sense, it may be similar to the term "cruel, inhuman or degrading treatment", which is also used (but not defined) in the Convention against Torture.

Article 30. Management of Prostitution
A person who, directly or through an intermediary, manages, exploits, operates or finances an establishment of prostitution shall be punished with imprisonment from 2 to 5 years.

This article establishes the offense and sets the punishment for the management, exploitation, operation or financing of an establishment of prostitution. This article is based on a similar provision in the new Penal Code, Article 291, pertaining to the offence of Operating a Place of Prostitution (see new Penal Code, Book 2, Title 2 Chapter 5, Section 5 "Procuring").

An offender may be found guilty of this offense for direct acts or for acting via an intermediary.

"management"

"Managing" means exercising control or authority over the establishment.

An actor may be considered to manage directly or for, via an intermediary.

For example, if a person A lets his brother B run a brothel for A, both A and B are involved in the management of an establishment of prostitution.

"exploitation"

"Exploitation" means drawing a financial benefit from the establishment, in order to use that benefit for other purposes.

For example, if an actor uses part of the proceeds from a brothel to fund his real estate business, he will be exploiting an establishment of prostitution.

"operation"

"Operation" means regularly maintaining the establishment as an on-going business, either for the actor's own benefit (that is, when it is his own business) or on behalf of another person who is the owner of the establishment.

"financing"

Financing means supplying money or other resources to enable the operation of the establishment.

For example, if an actor pays for or makes loans to a brothel, the actor will be financing an establishment of prostitution.

"establishment of prostitution"

"Establishment of prostitution" means a physical location (house, building, business, location, etc.) that is operated for the purpose of prostitution, as that term is defined in Article 23of this law. Such a place is generally called a brothel.

For establishments that are operated for another purpose (that is, prostitution is not the primary purpose of the establishment) and where prostitution nonetheless takes place, this article should not be used. However, the offense under Article 31 may apply.

"shall be punished with imprisonment from 2 to 5 years"

A person who commits this offense shall be punished with imprisonment from 2 to 5 years. Additional penalties may also be applied at the discretion of the court, as per Article 48 of this law.

If the offense is committed with regard to child prostitution, then the offender should be prosecuted, and punished more severely (7-15 years imprisonment), as per Article 33 (Offense with regard to Child Prostitution).

As per Article 4 (Criminal Responsibility) paragraph 4, if the representative, agent or employee of a legal entity or principal is found guilty of this offense, the court may also punish the legal entity or principal with the additional penalties that are provided by Article 48 of the TSE Law. These additional penalties, if warranted, include punishments such as confiscation of materials or property (Article 48(1)-(3)), or closure of a business (Article 48(4)). (See discussion under Article 48 for more detail.)

It should be noted that Article 291 (Operating a Place of Prostitution) of the Penal Code, which pertain to the same acts as Article 30 of the TSE Law, prescribes the same penalty of imprisonment from 2 to 5 years. The Penal Code, however, includes an additional penalty of a fine from 4,000,000 riels to 10,000,000 riels, which could be imposed by itself or together with imprisonment.

The inconsistency in penalties between the TSE Law and Penal Code may be resolved following the principles of statutory interpretation and the rules set out in Articles 671 and 668 of the Penal Code (see discussion on "principles of statutory interpretation" in the Introduction and in Art. 50 below). Based on these rules, the penalty for operating a place of prostitution under the newer Penal Code generally supersedes the penalty for the same act under the TSE Law. Nevertheless, in accordance with the principle of "individualization of penalties" under Article 96 of the Penal Code, it is suggested that the penalty of imprisonment under the Penal Code be imposed in lieu of fine alone, for more serious cases based on factors such as the size of operation or number of prostitutes involved, amount of money earned by the perpetrator, the length of time the perpetrator has been engaged in the activity, and recidivism.

However, if the offense is committed within the context of human trafficking, the perpetrator should be charged and punished with the penalty of imprisonment under the TSE Law (which is a special law that prevails over the Penal Code in connection with trafficking-related offences).

Article 31. Management of Establishment for Prostitution
Shall be punished with imprisonment from 2 to 5 years when a person accepts or tolerates that:
1. another person indulges in prostitution inside an establishment or its annexes; or
2. another person seeks clients with a view to do prostitution inside an establishment or its annexes.

This article establishes the offense and sets the punishment for a person (owner or manager) who accepts or tolerates that prostitution is carried out in any establishment or its annexes. This article is based on a similar provision in the new Penal Code, Article 292, pertaining to the offence of Authorizing Prostitution Activities in an Establishment (see new Penal Code, Book 2, Title 2, Chapter 5, Section 5 "Procuring").

A person found guilty of this offense shall be punished with imprisonment from 2 to 5 years.

The offense established in this article has several elements:

"a person"

As used in this article, the term "a person" means someone who, directly or through an intermediary, manages, exploits, operates or finances an establishment and therefore has control or authority over the establishment. By contrast, a mere landlord or property owner who does not also manage, exploit, operate or finance the establishment should not be punished under this article, but may be liable under Article 32 (Provision of Premise for Prostitution) of this law.

"accepts or tolerates"

To be punished under this article, the actor both:

a) must know about the prostitution activity taking place in the establishment, and
b) must tolerate, condone or agree with that prostitution activity.

To be punished under this article, the actor must both a) know about and b) tolerate the prostitution activity.

For example, if a bar owner does not know that an employee engages in prostitution in the bar, then the owner is not subject to punishment under this article. Similarly, if the bar owner knows that the employee has engaged in prostitution but does not tolerate it (for example, the owner has warned the employee to stop or she will be fired), then the bar owner is not liable under this article even if the employee continues to engage in prostitution without the owner's agreement.

This article requires proof that the actor actually knew about and tolerated prostitution activity. However, the mere presence of condoms or material designed to raise awareness about sexually transmitted diseases is not proof that prostitution takes place in an establishment.[32] Similarly, the *lack* of condoms or other similar materials does not prove that there is no prostitution in an establishment. The promotion and use of condoms is encouraged by the policies of the Royal Government of Cambodia, pursuant to the 2002 Law on the Prevention and Control of HIV/AIDS[33] and its Implementing Guidelines,[34] and thus,

[32] In fact, entertainment establishments may even be subject to legal requirements that they have and display condoms or other materials. Such requirements may exist in accordance with regulations such as the Prime Minister's order on 100% Condom Usage Program, the Phnom Penh Municipality Regulation no. 01/08 on 100% Condom Use, or MoLVT Prakas no. 86 on Managing HIV/AIDS in the Workplace.

[33] Article 29 of the HIV/AIDS Law requires the State to take measures that will promote the prevention and control of sexually transmitted infections. Article 11 of the HIV/AIDS Law requires that all HIV prevention materials, such as condoms, be accompanied by information, which explains the proper method for using the equipment.

[34] Chapter 5 of the Implementing Guidelines of the HIV/AIDs Law provides that "[u]nder the Ministry of Health's guidelines…STI clinical services should be combined with the delivery of information and education such as condom promotion and distribution." Chapter 5 further sets out that to prevent HIV transmission through commercial sex work, Cambodia has adopted a '100% Condom Use Program' (which) mandates consistent condom use during all commercial sex acts, and imposes punishment on owners and operators of adult entertainment establishments (for example warnings and closure) for failure to comply with the requirements of the program.

prosecution or punishment under this provision requires other facts as proof that the offender accepted or tolerated prostitution.

"that another person indulges in prostitution"
"that another person seeks clients with a view to do prostitution"

"Another person" means a person who is a prostitute, pimp, procurer or intermediary, and who engages in prostitution or who seeks clients for prostitution in the establishment or its annexes.

"Prostitution" means the definition set out in Article 23 above.

It is important to note that this article does not criminalize the activity of prostitution itself, nor does this article punish the individual prostitutes. The TSE Law does not punish prostitutes (individually or in groups) for engaging in prostitution. Likewise, this law does not punish the clients of prostitution.

"inside"

This article punishes a person who accepts or tolerates that prostitution takes place inside their establishment. If the prostitution takes places outside, then the actor is not punished.

For example, if a beer promotion worker ends her shift at a bar, leaves the bar and, while outside on the street, solicits a person for the purpose of prostituting herself, the owner of the bar is not liable for the worker's act.

"an establishment"

"Establishment" means a physical location (house, building, business location, etc.) that is operated for another purpose (that is, prostitution is not the primary purpose of the establishment) but where prostitution takes place on its premises nonetheless.

For example, a karaoke club, massage parlor, guest house, bar or hotel where prostitution also takes place might be covered by this article.

For establishments that are operated for the purpose of prostitution (brothels), this article should not be used. However, the offense set out under Article 30 may apply.

"or its annexes"

"Annexes" means another building or group of buildings that:

a) Is owned or managed by the same person or entity as owns or manages the primary establishment, and
b) Is physically attached to, or on the same premises as the primary establishment.

For example, if the owner of a karaoke also owns a hotel that is located on the same lot, the hotel is considered an annex for the purposes of this article.

"shall be punished with imprisonment from 2 to 5 years"

A person who commits this offense shall be punished with imprisonment from 2 to 5 years. Additional penalties may also be applied at the discretion of the court, as per Article 48 of this law.

If the offense is committed with regard to child prostitution, then the offender should be prosecuted, and punished more severely (7-15 years imprisonment), as per Article 33 (Offense with regard to Child Prostitution).

As per Article 4 (Criminal Responsibility) paragraph 4, if the representative, agent or employee of a legal entity or principal is found guilty of this offense, the court may also punish the legal entity or principal with the additional penalties that are provided by Article 48 of the TSE Law. These additional penalties, if warranted, include punishments such as confiscation of materials or property (Article 48(1)-(3)), or closure of a business (Article 48(4)). (See discussion under Article 48 for more detail.)

It should be noted that Article 292 (Authorizing Prostitution Activities in an Establishment) of the Penal Code, which pertain to the same acts as this article, prescribes the same penalty of imprisonment from 2 to 5 years. The Penal Code, however, includes an additional penalty of a fine from 4,000,000 riels to 10,000,000 riels, which could be imposed by itself or together with imprisonment.

The inconsistency in penalties between the TSE Law and Penal Code may be resolved following the principles of statutory interpretation and the rules set out in Articles 671 and 668 of the Penal Code (see discussion on "principles of statutory interpretation" in the Introduction and in Art. 50 below). Based on these rules, the penalty for "authorizing prostitution activities in an establishment" under the newer Penal Code generally supersedes the penalty for the same act under the TSE Law. Nevertheless, in accordance with the principle of "individualization of penalties" under Article 96 of the Penal Code, it is suggested that the penalty of imprisonment under the Penal Code be imposed in lieu of fine, for more serious cases based on factors such as the size of operation or number of prostitutes involved, amount of money earned by the perpetrator, the length of time the perpetrator has been engaged in the activity, and recidivism.

However, if the offense is committed within the context of human trafficking, the perpetrator should be charged and punished with the penalty of imprisonment under the TSE Law (which is a special law that prevails over the Penal Code in connection with trafficking-related offenses).

Article 32. Provision of Premise for Prostitution
A person who sells or makes available to another person premises not utilized by the public, knowing that they will be used by such person to indulge in prostitution shall be punished with imprisonment from 2 to 5 years.

This article establishes the offense and sets the punishment for a person (landlord, property owner or controlling tenant) who sells, rents or otherwise provides private premises to another person, while knowing that the other person will use the premises to engage in prostitution. This article is based on a similar provision in the new Penal Code. Article 293, pertaining to the offence of Making Premises Available for Prostitution (see new Penal Code, Book 2, Title 2, Chapter 5, Section 5 "Procuring").

A person found guilty of this offense shall be punished with imprisonment from 2 to 5 years.

The offense established in this article has several elements:

"a person"

As used in this article, the term "a person" means a landlord, property owner or controlling tenant of a property. In order to be held liable under this article, a person must have property rights over a place, including notably the right to utilize the property.

"who sells or makes available"

This means to sell, rent, lend or otherwise provide a property for the use of another person.

"premises not utilized by the public"

This article applies only to the use of private property, including land or buildings such as a house, business or other place that is privately owned or managed.

This article does not cover cases involving the sale, rental or other provision of public property. For the TSE Law, the term "public" (defined in the discussion on Article 24 above) means any state-owned, public or private land, facilities, buildings and transportation which are either open to all members of the public or which provide services to all members of the public. This definition is consistent with that found in Article 4 of the Law on the Protection and Promotion of the Rights of Persons with Disability (2009). "Private" property, therefore, is any property which is either not open to some members of the public, or which does not provide services to some members of the public.

"knowing that they will be used … to indulge in prostitution"

The offense set out in this article requires that the actor have actual knowledge that the premises will be used for prostitution.

For example, if a landlord sells or rents an apartment to a person that the landlord knows is a prostitute, and whom the landlord knows will practice prostitution inside the apartment, the landlord will be punished by imprisonment of 2 to 5 years under this article.

"Prostitution" means the activity defined in Article 23 of this law.

This article requires proof that the actor actually knew the premises would be used for prostitution. However, as discussed in Article 31 above, the mere presence of condoms or material designed to raise awareness about sexually transmitted diseases is not proof that prostitution takes place in the premises.[35] Similarly, the *lack* of condoms or other similar materials does not prove that there is no prostitution in the premises. The promotion and use of condoms is encouraged by the policies of the Royal Government of Cambodia, pursuant to the 2002 Law on the Prevention and Control of HIV/AIDS[36] and its Implementing Guidelines[37], and thus, prosecution or punishment under this provision requires other facts to be proof that the offender had knowledge of the prostitution activity.

It should be noted that the knowledge requirement is slightly different for the sale versus the rental of a property:

a) Sale.
To be punished under this article in the case where a property is sold, the seller must know at the time of the sale that the property will be used for prostitution. If the seller does not know at the time of the sale, but finds out after the sale, then the seller is not liable under this article, because the seller no longer has ownership of the property.

b) Rental.
To be punished under this article in the case where a property is rented, the landlord is liable to be punished if he learns at any time during the rental that the property is being used for prostitution. In the case of rental, the landlord has ongoing liability because he continues to have ownership of the property.

Finally, it is important to note that this article does not punish a person who sells, rents or otherwise provides a property to a prostitute who will not use the premises to engage in prostitution.

For example, where a prostitute resides in a rented house or apartment, but does not engage in prostitution on the premises, the landlord in such a case would not be subject to punishment under this article.

"shall be punished with imprisonment from 2 to 5 years"

A person who commits this offense shall be punished with imprisonment from 2 to 5 years. Additional penalties may also be applied at the discretion of the court, as per Article 48 of this law.

If the offense is committed with regard to child prostitution, then the offender should be prosecuted, and punished more severely (7-15 years imprisonment), as per Article 33 (Offense with regard to Child

[35] Entertainment establishments may even be subject to legal requirements that they have and display condoms or other materials. Such requirements may exist in accordance with regulations such as the Prime Minister's order on 100% Condom Usage Program, the Phnom Penh Municipality Regulation No. 01/08 on 100% Condom Use, or MoLVT Prakas no. 86 on Managing HIV/AIDS in the Workplace.

[36] Article 29 of the HIV/AIDS Law requires the State to take measures that will promote the prevention and control of sexually transmitted infections. Article 11 of the HIV/AIDS Law requires that all HIV prevention materials, such as condoms, be accompanied by information, which explains the proper method for using the equipment.

[37] Chapter 5 of the Implementing Guidelines of the HIV/AIDs Law provides that "[u]nder the Ministry of Health's guidelines…STI clinical services should be combined with the delivery of information and education such as condom promotion and distribution." Chapter 5 further sets out that to prevent HIV transmission through commercial sex work, Cambodia has adopted a '100% Condom Use Program' (which) mandates consistent condom use during all commercial sex acts, and imposes punishment on owners and operators of adult entertainment establishments (for example warnings and closure) for failure to comply with the requirements of the program.

Prostitution).

As per Article 4 (Criminal Responsibility) paragraph 4, if the representative, agent or employee of a legal entity or principal is found guilty of this offense, the court may also punish the legal entity or principal with the additional penalties that are provided by Article 48 of the TSE Law. These additional penalties, if warranted, include punishments such as confiscation of materials or property (Article 48(1)-(3)), or closure of a business (Article 48(4)). (See discussion under Article 48 for more detail.)

It should be noted that Article 293 (Making Premises Available for Prostitution) of the Penal Code, which pertain to the same acts as this article, prescribes the same penalty of imprisonment from 2 to 5 years. The Penal Code, however, includes an additional penalty of a fine from 4,000,000 riels to 10,000,000 riels, which could be imposed by itself or together with imprisonment.

The inconsistency in penalties between the TSE Law and Penal Code may be resolved following the principles of statutory interpretation and the rules set out in Articles 671 and 668 of the Penal Code (see discussion on "principles of statutory interpretation" in the Introduction and in Art. 50 below). Based on these rules, the penalty for "making premises available for prostitution" under the newer Penal Code generally supersedes the penalty for the same act under the TSE Law. Nevertheless, in accordance with the principle of "individualization of penalties" under Article 96 of the Penal Code, it is suggested that the penalty of imprisonment under the Penal Code be imposed in lieu of fine. for more serious cases based on factors such as the size of operation or number of prostitutes involved, amount of money earned by the perpetrator, the length of time the perpetrator has been engaged in the activity, and recidivism.

However, if the offense is committed within the context of human trafficking, the perpetrator should be charged and punished with the penalty of imprisonment under the TSE Law (which is a special law that prevails over the Penal Code in connection with trafficking-related offenses).

Article 33. Offense with regard to Child Prostitution

A person who commits any of the offenses set forth in Articles 30, 31 and 32 of this law shall be punished with imprisonment from 7 to 15 years when the offense is committed with regard to child prostitution.

When the offense set forth in Paragraph 1 of this article applies, the term "prostitution" in the relevant provisions of this Chapter shall be replaced with the term "child prostitution."

This article establishes the offense and sets the punishment for managing, tolerating or providing premises used for child prostitution. A person who commits this offense is punished more severely, by being imprisoned for 7 to 15 years rather than 2 to 5 years as set out in Articles 30, 31 and 32.

In order to be punished under this article, an offender must:

a) be guilty of the offenses as defined in Articles 30, 31 and 32 above,
b) where those offenses involve child prostitution

In such cases, an offender should be prosecuted, and punished under this article, not under Articles 30, 31 or 32.

"Child prostitution" means the definition set out in Article 23 above, where the prostitution activity involves a minor (a person under 18 years of age).

It should be noted that Chapter 6 (Articles 42-44) of the TSE Law grants minors who are 15 years and older (that is, persons aged from 15 to under 18 years) the capacity to consent to engage in sexual relations, but the law does not grant such minors the capacity to engage in prostitution. All prostitution involving any minor (anyone under the age of 18) is considered child prostitution, and is illegal under the TSE Law.

Where the offenses of managing, tolerating or providing premises used for child prostitution apply, this article also acts to replace the term "prostitution" with the term "child prostitution" for all articles in this chapter.

Article 34. Purchase of Child Prostitution
A person who has sexual intercourse or other sexual conduct of all kinds with a minor who is 15 years of age or above by providing, or promising to provide, anything of value to the minor, an intermediary, a parent, a guardian or any other person who keeps the child under his or her supervision or control shall be punished with imprisonment from 2 to 5 years.

Any person who commits the above stated offense with a minor under the age of 15 years shall be punished with imprisonment from 7 to 15 years.

This article establishes the offense and sets the punishment for the purchase of child prostitution.

This article sets out two different ranges of punishment, depending on the age of the child prostitute at the time the offense is committed:

- If the child prostitute is from 15 to under 18 years old at the time of the offense, then the client is punished with imprisonment from 2 to 5 years.
- If the child prostitute is under 15 years old at the time of the offense, then the client is punished with imprisonment from 7 to 15 years.

Additional penalties may also be applied at the discretion of the court, as per Article 48 of this law.

This two-tiered scheme reflects the fact that, although the Chapter 6 of the TSE Law grants minors aged from 15 to under 18 years the capacity to consent to sexual relations, the law does not grant minors aged from 15 to under 18 years the capacity to engage in child prostitution. The purchase of child prostitution is illegal with respect to all minors (all persons under the age of 18 years). However, because minors under the age of 15 are considered to be more vulnerable, the TSE Law imposes heightened punishment on persons who purchase prostitution involving minors under the age of 15.

It is important to note that it does not matter if the minor involved in the act has previously engaged in child prostitution or if it is the first time for the minor to be in such a situation. Similarly, the offender cannot claim as a defense that the minor solicited or consented to the prostitution, because the TSE Law deems minors legally unable to consent to engage in prostitution.

The offense of purchasing child prostitution has several elements:

"a person"

This article punishes anyone who purchases or (via the operation of Article 4) attempts to purchase sexual services from a minor (a person under 18 years of age). Thus the term "a person" here means a prostitution client.

The offender may be an adult or a minor. For example, a 17-year old actor who purchases prostitution from a minor can be held liable under this article. It is important to distinguish the age provisions of this article from those in Chapter 6 (Indecency Against Minors Under Fifteen Years). In that Chapter, Articles 42 and 43 grant minors aged 15 or more the capacity to engage in sexual activity, but this does not mean that such minors are legally permitted to purchase prostitution from another minor. In other words, a minor aged 15 or more may engage in sexual relations with another minor aged 15 or more, but this article punishes that act if the sexual activity is carried out by providing or promising to provide anything of value.

It should be noted that this article is the only provision under the TSE Law that punishes a person (the client) who purchases prostitution.

"who has sexual intercourse or other sexual conduct of all kinds"

This article punishes a person who has already engaged, or who has attempted to engage, in sexual intercourse or other sexual conduct with a minor by providing or promising to provide anything of value.

According to the "attempt" provision of Article 4 (1), this article may also be used to punish a person who has attempted to purchase prostitution (that is, the sexual contact has not yet taken place).

"**Sexual intercourse**" means the insertion of one person's genital into another person's genital, mouth or anus, or the insertion of any tools or instruments into a person's genital.[38] Sexual intercourse can take place between two or more persons of the same or opposite sex.

The term "tools" should be interpreted broadly to include, among other things, a finger or any other part of the body.

The term "genital" is generally defined as a person's penis or vagina, but to have stronger protection for victims, in this law, the word "genital" is understood to mean, penis or, vagina or anus. The term "sexual intercourse" therefore includes vaginal sex, anal sex and oral sex, whether between males and females, males and males, or females and females.

"**Other sexual conduct of all kinds**" means any other type of conduct which stimulates or satisfies the actor's sexual desires.[39]

Such conduct includes physical contact between the prostitute and another person, and also may include cases where there is no physical contact between the prostitute and another person.

For example, if a person pays to see a child's genitals or to see the child masturbate, that person can be prosecuted under this article even if there has been no touching or other physical contact between the client and the child.

To qualify as "other sexual conduct", the act must be carried out for the purpose of stimulating or satisfying the client's sexual desire. It does not matter how the client seeks to stimulate or satisfy sexual desire; this can be by the client initiating sexual contact with the prostitute, or by directing the prostitute to initiate sexual contact with or exposure to the client or a third party, or by directing a third party to initiate sexual contact with the prostitute.

"with a minor who is 15 years of age or above"

"A minor" means a person under the age of 18 years, as per the definition in Article 7.

If the child prostitute is minor aged from 15 to under 18 years old at the time the offense was committed, then the client is punished with 2 to 5 years imprisonment.

Chapter 6 of the TSE Law grants minors who are 15 years and older (that is, persons aged 15-17 years) the capacity to consent to engage in sexual relations, but, the law does not grant such minors the capacity to engage in prostitution. All prostitution involving any minor (anyone under the age of 18) is considered child prostitution, and is illegal under the TSE Law.

"by providing, or promising to provide"

This article punishes the client who has sexual contact with a minor in exchange for providing or promising to provide anything of value.

It is important to note that the article does not require that the client actually provide something of value. If the client makes a mere promise to provide something of value, and has sexual contact with the minor in exchange for that promise, then the client is liable to be punished under this article.

For example, if an actor promises to pay a minor's school fees in exchange for sexual intercourse, and has sexual intercourse with the minor but then does not pay the school fees, the actor is still liable to be punished under this article.

"anything of value"

As discussed under Article 23 above, the term "anything of value" includes but is not limited to

[38] This definition is consistent with the Ministry of Justice Instruction No. 1/09, dated 23 February 2009, which defines sexual intercourse with respect to Articles 42 and 43 of the TSE Law.

[39] The definition for this term is based on related definitions for the term "indecent act" as used in Article 43 of this law and as defined in Ministry of Justice Instruction No. 1/09, dated 23 February 2009.

remuneration in cash, valuable items (for example, jewelry, clothing, etc.), corporeal property (for example, house, land, apartment, etc.), non-corporeal property or real rights (for example, rights to own, use, sell or lease any kind of movable and immovable property), services, direct or indirect payments or fees (fees paid to, through or on behalf of another person), valuable information or control over persons.

"to the minor, an intermediary, a parent, a guardian or any other person who keeps the child under his or her supervision or control"

This provision reflects the fact that in cases of child prostitution, the minor often does not receive any direct financial benefit. Instead, the financial benefit accrues to a parent, guardian or other third party that maintains supervision or control over the minor. This article therefore punishes the purchase of child prostitution in such situations.

For example, if A had sex with a minor by paying an intermediary, A would have committed the purchase of child prostitution. If A had sex with a minor by promising to pay the minor's parent or guardian, A would have committed the purchase of child prostitution. If A committed an indecent act with a minor by promising to work for the minor's parents for a week, A would have committed purchase of child prostitution because he promised to provide something of value (a service) to the minor's parents.

It should be noted that for all the examples in the above paragraph, the intermediary, parents or guardian would also be liable for punishment under Article 28 (Procurement with regard to Child Prostitution).

"supervision or control"

"Supervision or control" means either of two situations:

1. the legal power that is conferred by law to the parents, guardians or general curators of a minor, or
2. the practical supervision or control over a minor even where the adult does not have legal authority over that minor as in point 1 above.

For example, if a parent asks his relative or neighbor to take care of his minor child for a period of time, the relative or neighbor is considered to have supervision or control of the minor.

Similarly, if a minor is employed, then the employer is considered to have supervision or control of the minor during working hours or while the minor is at work.

If the minor is at school, then the minor's teacher and school principal are considered to have supervision and control of the minor.

Article 35. Soliciting for Child Prostitution

A person who solicits another for child prostitution, or advertises child prostitution, for the purpose of acting as intermediary of the child prostitution shall be punished with imprisonment from 2 to 5 years and fine from 4,000,000 to 10,000,000 riels.

A person who commits the above offense as business shall be punished with imprisonment from 5 to 10 years.

This article establishes the offense and sets the punishment for persons who solicit potential clients for child prostitution, or who advertise child prostitution, in order to receive a financial benefit as an intermediary.

It should be noted that this article is not about, and does not punish, a child prostitute who solicits another person (a client) for the purpose of prostituting himself or herself. Soliciting for the purpose of prostitution is covered by Article 24. According to Article 24 (2), minors are exempt from punishment of the offense of soliciting.

"solicits"

"Solicits" means the activity defined in Article 24 (Soliciting). This article punishes soliciting for the purpose of child prostitution.

The term "to solicit" means that there must be a specific communication between the offender and another person, or other behavior by the offender, which conveys that the offender is willing to procure a child prostitute for the other person, or is advertising the services of a child prostitute, in exchange for anything of value.

"advertises"

In this provision, "advertises" means to promote child prostitution services to another person, or to inform another person about the availability of child prostitution services. The advertising (promotion or informing) can be done in any medium, including but not limited to being done verbally, in print or electronically.

"child prostitution"

"Child prostitution" means the definition set out in Article 23 above, where the prostitution activity involves a minor (a person under 18 years of age).

It should be noted that Chapter 6 (Articles 42-44) of the TSE Law grants minors who are 15 years and older (that is, persons aged from 15 to under 18 years) the capacity to consent to engage in sexual relations, but the law does not grant such minors the capacity to engage in prostitution. All prostitution involving any minor (anyone under the age of 18) is considered child prostitution, and is illegal under the TSE Law.

"for the purpose of acting as intermediary of the child prostitution"

The objective of this article is to punish a person who acts as an intermediary. In this article, "acting as an intermediary" means that the offender intends for his actions as an intermediary to promote or facilitate child prostitution.

"shall be punished with imprisonment from 2 to 5 years and fine from 4,000,000 to 10,000,000 riels"

A person who is found guilty of this offense shall be punished with imprisonment from 2 to 5 years and fined from 4,000,000 to 10,000,000 riels. As per Article 5 (Pronouncement of Principal Penalties), the court may impose either or both punishments. Additional penalties may also be applied at the discretion of the court, as per Article 48 of this law.

As per Article 4 (Criminal Responsibility) paragraph 4, if the representative, agent or employee of a legal entity or principal is found guilty of this offense, the court may also punish the legal entity or principal with the additional penalties that are provided by Article 48 of the TSE Law. These additional penalties, if warranted, include punishments such as confiscation of materials or property (Article 48(1)-(3)), or closure of a business (Article 48(4)). (See discussion under Article 48 for more detail.)

"A person who commits the above offense as business"

This provision increases the punishment for actors who commit the offense as a business. In such cases, the offender is subject to imprisonment for 5 to 10 years. Additional penalties may also be applied at the discretion of the court, as per Article 48 of this law.

"As a business" means that the actor solicits or advertises for child prostitution on a recurring or regular basis, with the purpose of drawing ongoing financial benefit from this activity.

As per Article 4 (Criminal Responsibility) paragraph 4, if the representative, agent or employee of a legal entity or principal is found guilty of this offense, the court may also punish the legal entity or principal with the additional penalties that are provided by Article 48 of the TSE Law. These additional penalties, if warranted, include punishments such as confiscation of materials or property (Article 48(1)-(3)), or closure of a business (Article 48(4)). (See discussion under Article 48 for more detail.)

Article 36. Conditional Money Loan in connection with Child Prostitution
A person who provides another with a money loan or anything of value on the condition that a minor engage in child prostitution business shall be punished with imprisonment from 5 to 10 years.

A person who provides a minor with money loan or anything of value on the condition that the latter engage in child prostitution business shall be punished the same as set out in paragraph 1 of this article.

This article establishes the offense and sets the punishment for persons who loan money or anything of value to a third party or a minor, on the condition that the minor engage in child prostitution.

"a money loan"

A "money loan" means any amount of money (in any currency) that is given to the recipient to use for a period of time, with the expectation and/or promise that it will be repaid to the giver (with or without interests).

"anything of value"

As discussed under Article 23 above, the term "anything of value" includes but is not limited to remuneration in cash, valuable items (for example, jewelry, clothing, etc.), corporeal property (for example, house, land, apartment, etc.), non-corporeal property or real rights (for example,s rights to own, use, sell or lease any kind of movable and immovable property), services, direct or indirect payments or fees (fees paid to, through or on behalf of another person), valuable information, or control over persons.

"Anything of value" should be interpreted broadly in order to cover all forms of conditional payment or offering in connection with child prostitution.

For example, if an actor provides a television to a mother on the condition that her minor daughter prostitute herself, the actor will be punished under this article.

If an employer offers work to a cleaner on the condition that the cleaner's minor daughter prostitute herself, the employer is also covered under this article.

Likewise, if an actor provides candy to a minor on the condition that the minor prostitute himself or herself, this act will be covered by this article.

"on the condition that a minor engage in child prostitution business"

The objective of this article is to punish a person who recruits, procures, induces or promotes child prostitution by providing a money loan or anything of value to a third party or to the minor, on the condition that the minor engage in the business of child prostitution. It is immaterial whether the minor actually engaged in child prostitution as a result of the actor's loan or payment.

"Child prostitution" means the term described in Article 23 of this law.

"Child prostitution business" includes any situation where the minor is obliged to engage in child prostitution, whether for a single occasion or on a recurring or regular basis.

It should be noted that this article does not seek to punish a person (a client) who pays a child prostitute in exchange for sexual contact with the child prostitute. Such behavior is punished under the offense set out in Article 34 (Purchase of Child Prostitution). Rather, this article seeks to punish those who attempt to induce or coerce a child to practice prostitution, by use of a money loan or other item of value.

"shall be punished with imprisonment from 5 to 10 years"

A person who is found guilty of this offense shall be punished with imprisonment from 5 to 10 years. Additional penalties may also be applied at the discretion of the court, as per Article 48 of this law.

As per Article 4 (Criminal Responsibility) paragraph 4, if the representative, agent or employee of a legal entity or principal is found guilty of this offense, the court may also punish the legal entity or principal with the additional penalties that are provided by Article 48 of the TSE Law. These additional penalties,

if warranted, include punishments such as confiscation of materials or property (Article 48(1)-(3)), or closure of a business (Article 48(4)). (See discussion under Article 48 for more detail.)

Article 37. Contract of Child Prostitution
A person who makes a contract with another in which a minor is obliged to engage in child prostitution business shall be punished with imprisonment from 5 years to 10 years.

A person who makes a contract with a minor in which the latter is obliged to engage in child prostitution business shall be punished the same as set out in paragraph 1 of this article.

This article establishes the offense and sets the punishment for a person who makes a contract with a third party or a minor, on the condition that the minor engage in child prostitution. An offender found guilty of this article is punished with 5 to 10 years of imprisonment.

"Child prostitution" means the term described in Article 23 of this law.

"A person who makes a contract with another"

The term "contract" here is defined by Cambodian law to mean any agreement between two or more parties to create, change or terminate one or more obligations which bind them. Such agreements may be written or verbal, entered into by a natural person or a legal entity, and may be made directly between the parties or via an intermediary.

This sort of contract is in fact void by law. Any agreement, verbal or written, to commit an illegal activity (including any form of human trafficking and sexual exploitation) is void and unenforceable.

This is consistent with the approach in the contract law in force at the time the TSE Law was promulgated. Article 5 of Decree No. 38 (Law referring to Contract and Other Liabilities) states that a contract:

...shall be deemed void when
- *it is illegal, and not consistent with public order or good customs.*
- *it is contrary to social interests or violating social ethics.*
- *[it is] a contract whose subject matter is impossible to perform.*

Similarly, the Civil Code, in Article 354, states that a contract shall be void "(a) where the contents of the contract violate a mandatory provision of the law; or (b) where the contents of the contract contravene the public order and good customs."

The language in the articles cited above is intentionally broad and is meant to invalidate any agreement that is illegal or in conflict with public order. This includes any contract that relates to child prostitution. Any agreement with the purpose to commit any such offenses is null, void, and unenforceable by any party to the agreement.

"on the condition that a minor engage in child prostitution business"

The objective of this article is to punish a person who obliges or attempts (via Article 4, paragraph 1) to oblige a child to practice prostitution, by use of a contract with a third party or with the minor. It is immaterial whether the minor actually engaged in child prostitution as a result of the contract.

"Child prostitution" means the term described in Article 23 of this law.

"Child prostitution business" includes any situation where the minor is obliged to engage in child prostitution, whether for a single occasion or on a recurring or regular basis.

It should be noted that this article does not seek to punish a person (a client) who pays a child prostitute in exchange for sexual contact with the child prostitute. Such behavior is punished under the offense set out in Article 34 (Purchase of Child Prostitution). Rather, this article seeks to punish those who, by use of a contract, oblige or attempt to oblige a child to practice prostitution.

"shall be punished with imprisonment from 5 to 10 years"

A person who is found guilty of this offense shall be punished with imprisonment from 5 to 10 years. Additional penalties may also be applied at the discretion of the court, as per Article 48 of this law.

As per Article 4 (Criminal Responsibility) paragraph 4, if the representative, agent or employee of a legal entity or principal is found guilty of this offense, the court may also punish the legal entity or principal with the additional penalties that are provided by Article 48 of the TSE Law. These additional penalties, if warranted, include punishments such as confiscation of materials or property (Article 48(1)-(3)), or closure of a business (Article 48(4)). (See discussion under Article 48 for more detail.)

Chapter 5 - Pornography

This chapter defines pornography and child pornography, and establishes the related offenses and punishments.

Article 38. Definition of Pornography
'Pornography' in this law shall mean a visible material such as a photograph or videotape, including a material in electronic form, depicting a genital or other similar pornography which excites or stimulates sexual desire.

This article defines the term "pornography". This article does not establish any offense relating to pornography; the offenses are established under Article 39. Therefore, an accused offender should be charged, and, if found guilty, punished for offenses set out under Article 39.

"visible material"

This article defines pornography primarily as a visible material. This includes, but is not limited to, photographs, drawings, texts, videos and movies in any physical or electronic form. Such visible material may also contain audio content that is pornographic in nature.

"depicting a genital"

To be considered pornography, the material must show a person's genitals and (as noted below) be intended to excite or stimulate sexual desire.

The word "genital" is generally defined as a person's penis or vagina, but to have stronger protection for victims, in this law, the word "genital" is understood to mean, penis or, vagina or anus.
For a text to be considered pornographic, it must include a written depiction of a person's genitals.

"other similar pornography"

By including the term "other similar pornography", the TSE Law means a visible material which does not depict a genital, but which is nonetheless pornographic because it is intended to excite or stimulate sexual desire. This includes but is not limited to material that depicts sexual acts or activity, or other sexual parts (including the buttocks or nipple area).

"which excites or stimulates sexual desire"

To be considered pornography, the material must be intended to excite or stimulate sexual desire on the part of the observer.

This requirement of intent is fundamental in order to exclude materials that show a person's genitals for a legitimate purpose (that is, they are not intended primarily to excite or stimulate sexual desire). Materials intended for use in fields such as medicine, public health, education, or art are not to be considered pornographic, because they are not intended primarily to excite or stimulate sexual desire.

For example, this article is not intended to apply to public health or other materials that are designed for outreach, awareness-raising and education in an attempt to promote safe sex or to reduce or prevent the

spread of HIV/AIDS and other sexually transmitted diseases. Even where such materials are sexually graphic, because the materials are intended for public health purposes, they are not considered pornographic.

Article 39. Pornography
A person who distributes, sells, leases, displays, projects or presents in a public place, pornography shall be punished with imprisonment from 7 days to 1 month and a fine from 100,000 to 200,000 riels.

A person who possesses, transports, imports, or exports pornography for the purpose of use in commission of the above offense shall be punished the same as in the above-stated paragraph 1.

A person who produces pornography for the purpose of use in commission of any offense stipulated in the first and second paragraphs of this article shall be punished with imprisonment from 1 month to 1 year and a fine from 200,000 to 2,000,000 riels.

This article establishes the offense and defines the punishments for persons who distribute, sell or lease pornography, or present pornography in public; or who possess, transport or produce pornography for the purpose of distributing, displaying or presenting it.

As with any criminal offense, the accused must have knowledge and intent. In this article, to be held liable, a person must know that the material is pornographic and must intend to engage in the prohibited behavior.

For example, if a vendor sells a magazine on the street without knowledge that it contains one page of pornography, he or she is not subjected to punishment under this article.

Similarly, if a person possesses pornography and unintentionally leaves it in plain view (he does not intend to display it), then he is not subject to punishment under this article.

This article prohibits the following acts:

"distributes, sells, leases,"
This provision prohibits commercial and non-commercial distribution (whether for free or in exchange for something of value), as well as the sale or lease of pornography.

"displays, projects or presents in a public place"
This provision prohibits the display, projection or presentation of pornography in public.

"Display" means that the person intends to make or allow another person to view the pornography; it does not apply to when the person views the material himself. However, because the objective of this provision is to prevent members of the public from being exposed to pornography against their will, an actor may also be found guilty if he display pornography in private but so that it is visible to a person who is in a public place.

The term "in a public place" means any state-owned, public or private land, facilities, buildings and transportation which are open to all members of the public or which provide services to all members of the public. This definition is consistent with Article 4 of the Law on the Protection and Promotion of the Rights of Persons with Disability (2009).

For the purposes of this law, the term "in a public place" also means that the display, projection or presentation of pornography can also be punished if it can be seen or heard[40] by a person who is in a public

[40] Although Article 38 defines "pornography" as a "visible material", the audio content of such a material may also be pornographic. If the visible material is presented in private but pornographic content can be heard by a person in a public place, then this may still be punished. For example, if a pornographic film is shown inside a house, but the volume is loud and it can be heard on the street, then the person who shows the film may be found liable under this article.

place.

For example, if pornography is presented just inside the door to a private place, such that people on the street can easily see or hear the pornography, then the act can be punished.

"A person who possesses, transports, imports, or exports pornography for the purpose of"

This provision criminalizes the possession, transportation, import or export of pornography when these acts are done for the purpose of committing the offense set out in the first paragraph of this article. Because the activities of possession, transporting, importing or exporting are prohibited only when carried out with the intent to commit one of the offenses set out in the first paragraph of this article, the prosecution must show some evidence of the accused's intent.

"Possession" includes possession of the material in any form (including physical or electronic forms). It should be noted that if the possession is not carried out with the intent to commit the offense set out in the first paragraph of this article, then the activity is not prohibited.

For example, possession of pornography for personal use is not prohibited by this article.

"Transport", "import" and "export" are to be broadly understood in order to include their normal meanings (that is, the normal processes of physically transporting, importing or exporting) and also any acts connected with new technologies such as the internet, mobile phones or other new technologies. These terms therefore also prohibit the downloading, uploading or sending of pornography by email, mobile phone or other technologies, when done for the purpose of committing one of the offenses set out in the first paragraph of this article.

"A person who produces pornography for the purpose of use in commission of any offense stipulated in the first and second paragraphs of this article"

This provision heightens the punishment of a person who produces pornography for the purpose of use in the commission of any offense stipulated in Paragraphs 1 and 2.

To be liable under this paragraph, the offender is required to have two intents: 1) the intent to produce pornography (including the knowledge that the material produced is pornographic); and 2) the intent to use the pornography produced for the purpose of committing one of the offenses stated in Paragraphs 1 or 2.

Article 40. Definition of Child Pornography
'Child pornography' in this law shall mean 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.

This article defines child pornography. This article does not establish any offense relating to child pornography; the offense is established under Article 41. Therefore, an accused offender should be charged, and, if found guilty, punished under Article 41 of this law.

"visible material"

This article defines child pornography as a visible material. This includes, but is not limited to, photographs, drawings, texts, videos and movies in any physical or electronic form. Such visible material may also contain audio content that is pornographic in nature.

It should be noted that Arrangement by an Adult of Gatherings/Meetings Involving Indecent Exposure or Sexual Relations at which a Minor is Present or Participated is an offense under Article 346 of the new Penal Code (see new Penal Code, Book 2, Title 3, Chapter 5, Section 2, "Inciting a Minor to Commit Illegal or Dangerous Acts").

"depicting a minor's naked figure"

To be considered pornography, the material must show all or part of the naked body of a minor. This

means showing the minor fully or partially undressed. This may include showing the minor's genitals or other body parts. Such depiction must be, with an intent to excite or stimulate sexual desire.

For a text to be considered pornographic, it must include a depiction of a naked minor.

"which excites or stimulates sexual desire"

To be considered pornography, the material must be intended to excite or stimulate sexual desire on the part of the observer.

This requirement of intent is fundamental in order to exclude materials that show a naked minor for a legitimate purpose (that is, they are not intended primarily to excite or stimulate sexual desire). Materials intended for use in fields such as medicine, public health, education, or art are not to be considered pornographic.

Article 41. Child Pornography

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.

A person who possesses, transports, imports, or exports a child pornography for the purpose of use in commission of the offense stipulated in the above paragraph 1 shall be punished the same.

A person who produces a child pornography shall be punished with imprisonment from 5 to 10 years.

A person who produces a child pornography for the purpose of use in commission of any offense stipulated in the above-stated first and second paragraphs shall be punished with imprisonment from 10 to 20 years.

This article establishes the offense and defines the punishments for persons who distribute, sell or lease child pornography, or present child pornography in public; who produce child pornography; or who possess, transport or produce child pornography for the purpose of distributing, displaying or presenting it.

As with any criminal offense, the accused must have knowledge and intent. In this article, to be held liable, a person must know that the material contains child pornography and must intend to engage in the prohibited behavior.

For example, if a person unintentionally includes a pornographic picture of a child in a book or magazine, etc., he or she is not subjected to punishment under this article. This is true even if the person intends to distribute or produce a book or magazine that contains pornographic material of adults; in such a case, if the person did not intend to produce child pornography, he should be charged and punished under Article 39 of this law.

However, in accordance with Article 7, the producer of pornography may be considered to have supervision and control of the minor, and thus is presumed to know the minor's age. If the producer wishes to claim as a defense that he intended to produce only adult pornography, he must prove that he had a reasonable belief that the minor depicted in the pornography was 18 years or older. In considering whether such a belief is reasonable, courts may look at a variety of factors, including (but not limited to) the real age of the victim, representations of age made by documentation (for example, where the minor presents a falsified birth certificate or ID card which states that he is 18 years or older), etc. (For more detail, see discussion regarding Article 7 above.)

This article prohibits the following acts:

"distributes, sells, leases,"

This provision prohibits commercial and non-commercial distribution (whether for free or in exchange for something of value), as well as the sale or lease of child pornography.

"displays, projects or presents in a public place"

This provision prohibits the display, projection or presentation of child pornography in public.

"Display" means that the person intends to make or allow another person to view the pornography; it does not apply to when the person views the material himself. However, because the objective of this provision is to prevent members of the public from being exposed to child pornography against their will, an actor may also be found guilty if he displays child pornography in private but so that it is visible to a person who is in a public place.

The term "in a public place" means any state-owned, public or private land, facilities, buildings and transportation which are open to all members of the public or which provide services to all members of the public. This definition is consistent with Article 4 of the Law on the Protection and Promotion of the Rights of Persons with Disability (2009).

For the purposes of this law, the term "in a public place" also means that the display, projection or presentation of child pornography can also be punished if it can be seen or heard[41] by a person who is in a public place.

For example, if child pornography is presented just inside the door to a private place, such that people on the street can easily see or hear the pornography, then the act can be punished.

"A person who possesses, transports, imports, or exports child pornography for the purpose of"

This provision criminalizes the possession, transportation, import or export of child pornography when these acts are done for the purpose of committing the offense set out in the first paragraph of this article. Because the activities of possession, transporting, importing or exporting are prohibited only when carried out with the intent to commit one of the offenses set out in the first paragraph of this article, the prosecution must show some evidence of the accused's intent.

"Possession" includes possession of the material in any form (including physical or electronic forms). It should be noted that if the possession is not carried out with the intent to commit the offense set out in the first paragraph of this article, then the activity is not prohibited.

"Transport", "import" and "export" are to be broadly understood in order to include their normal meanings (that is, the normal processes of physically transporting, importing or exporting) and also any acts connected with new technologies such as the internet, mobile phones or other new technologies. These terms therefore also cover the downloading, uploading or sending of child pornography by email, mobile phone or other technologies, when done for the purpose of committing one of the offenses set out in the first paragraph of this article.

"A person who produces child pornography"

This provision criminalizes the mere production of child pornography, regardless of the use of the child pornography for commission of any offense.

To be liable under this paragraph, the producer of child pornography must have the intent to produce child pornography (including the knowledge that the material produced contains child pornography). In accordance with Article 7 of the TSE Law, the producer of child pornography may be considered to have supervision and control of the minor, and thus is presumed to know the minor's age. If the producer wishes to claim as a defense that he intended to produce only adult pornography, he must prove that he had a reasonable belief that the minor depicted in the pornography was 18 years or older. In considering whether such a belief is reasonable, courts may look at a variety of factors, including (but not limited to) the real age of the victim, representations of age made by documentation (for example, where the minor presents a falsified birth certificate or ID card which states that he is 18 years or older), etc. (For more detail, see

[41] Although Article 40 defines "child pornography" as a "visible material", the audio content of such a material may also be pornographic. If the visible material is presented in private but pornographic content can be heard by a person in a public place, then this may still be punished. For example, if a film that is child pornography is shown inside a house, but the volume is loud and it can be heard on the street, then the person who shows the film may be found liable under this article.

discussion regarding Article 7 above.)

"A person who produces child pornography for the purpose of use in commission of any offense stipulated in the first and second paragraphs of this article"

This provision heightens the punishment of a person who produces child pornography for the purpose of use in the commission of any offense stipulated in Paragraphs 1 and 2.

To be liable under this paragraph, the offender is required to have two intents: 1) the intent to produce child pornography (including the knowledge that the material produced contains child pornography); and 2) the intent to use the child pornography produced for the purpose of committing one of the offenses stated in Paragraphs 1 and 2.

Chapter 6 - Indecency against Minors under Fifteen Years

This chapter defines the offenses and related punishments for persons who have sexual contact of any sort with a minor under fifteen years.

By defining these offenses, this chapter also sets the age of sexual consent at fifteen years. Thus, the TSE Law grants a 15 year old the legal capacity to engage in voluntary sexual relations. This is consistent with Article 239 of the Penal Code which states that the "age of sexual consent is 15 years."

It should be noted that all minors (a person under the age of 18) are prohibited from engaging in prostitution. This is true even for a minor who is 15 years old or older, and thus has reached the age of sexual consent. In other words, the TSE Law grants minors aged 15 to under 18 years the capacity to agree to sexual relations, but not the capacity to consent to prostitute themselves. Therefore, if a person has any sexual contact with a minor (a person under the age of 18) by providing or promising to provide anything of value, then the person should be prosecuted and tried for the crime of purchasing child prostitution under Article 34, in addition to any possible prosecution and trial under this chapter..

It should also be noted that the Ministry of Justice has issued Instruction 1/09 (February 2009) to clarify the proper application of this chapter of the TSE Law.

Article 42. Sexual Intercourse with Minors under Fifteen Years
A person who has sexual intercourse with another person of the age of less than fifteen years shall be punished with imprisonment from 5 to 10 years.

This article punishes a person (man or woman) who has sexual intercourse with a minor under fifteen years old.

This article is to be applied even where the minor under the age of 15 years has fully agreed to such sexual intercourse or does not resist it in any way. Because the TSE Law does not grant minors under the age of 15 years the capacity to consent to sexual relations, any such agreement is not "consent".

If the offender has engaged in sexual intercourse with a minor under the age of 15 years by means of force, violence, coercion, threat or surprise, then the offender should be charged and punished for aggravated rape under Article 241 ("Aggravating circumstances (status of the victim)") of the Penal Code instead of being charged and punished under this article. (See Penal Code, Book 2, Title 2, Chapter 3, Section 1 "Rape".)[42]

If the offender has engaged in sexual intercourse with a minor under the age of 15 years by providing or promising to provide anything of value to the minor or to a third party, then the person should be prosecuted and tried for the crime of purchasing child prostitution under Article 34, in addition to prosecution and trial under this article.

As per Article 7 (Definition of Minor), a person who has supervision or control of a minor is presumed to know the minor's age unless the person proves that he/she reasonably believed the minor's age to be 18 years or more. This presumption also applies to questions relating to the age of sexual consent.

For example, where a person has supervision or control of a minor and has sexual intercourse with that minor, Article 7 presumes that the person knows the minor's age, and so the person cannot easily claim as a defense that he did not know the minor was below 15 years old.

[42] Under Articles 239 and 241 of the Penal Code, "rape" -- defined as an act of sexual penetration with a sexual organ or an object, committed against another person of either sex, by violence, coercion, threat or surprise –- is punishable by imprisonment from 7 to 15 years if it is committed against a person who is particularly vulnerable by reason of his or her age.

(For further information, including a discussion of "supervision and control", please see the text on Article 7 above.)

In accordance with Article 44, only a person who is aged fifteen years or older can be punished under this article.

In principle, according to article 38 and 39 of the Penal Code, a minor who is aged 14 years old may be held responsible for an offence; but in the case of article 42 of the TIPSE Law, only a minor who is at least 15 years old or more may be punished under this article.

In practice, some minors with similar age, or with a short age gap, engage in voluntary sexual relationships, without use of any violence, coercion, threat, surprise or deception.

For example, a 16 year old boy and a 14 year old girl are in a romantic relationship and agree to have consensual sex, without any physical force, injury or abuse of authority.

As in the example above, in the jurisprudence and/or laws of some countries, consensual sexual relationships between children close in age are considered as non-criminal relationships or a minor offence, because these countries believe that punishing children for consensual sexual relations is not in their best interests.[43]

Therefore, in the above cases, taking into account "the circumstances of the offence or the character of the minor" in accordance with article 39 of the Penal Code, the prosecutor or court may consider to prosecute or not to prosecute or to impose only alternative measures on the minor.

In case it is decided to prosecute the minor, the court should consider to apply alternatives to pre-trial detention and to impose a non-custodial sentence, or at the very least, consider to apply mitigated penalties as stipulated in article 96 of the Penal Code.

"sexual intercourse"

The term "sexual intercourse" means the insertion of one person's genital into another person's genital, mouth or anus, or the insertion of any tools or instruments into a person's genital. Sexual intercourse can take place between two or more persons of the same or opposite sex. This definition is consistent with the Ministry of Justice Instruction 01/09 dated 23 February 2009

The term "tools" should be interpreted broadly to include, among other things, a finger or any other part of the body.

The term "genital" is generally defined as a person's penis or vagina, but to have stronger protection for victims, in this law, the word "genital" is understood to mean, penis or, vagina or anus.
The term "sexual intercourse" therefore includes vaginal sex, anal sex and oral sex,[44] whether between males and females, males and males, or females and females.

An offender can be punished under this article regardless of whether the offender is the one penetrating the victim or is the one being penetrated.

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[43] Countries, such as England, maintain their statutory rape laws but have made it customary not to prosecute young offenders.

There has also been a growing trend toward enacting, what the United States refers to as, Romeo and Juliet Laws whereby consensual sexual relationships between individuals close in age are considered a non-criminal relationship, or still an offense but a less serious one than statutory rape. *(Steve James, "Romeo and Juliet Were Sex Offenders: An Analysis of the Age of Consent and A Call for Reform", 78 UMKC L. Rev. 241, 248 (2009))*

[44] Oral sex is considered "sexual intercourse" even when it is performed on a female and there is no penetration of the vagina or anus. This interpretation is necessary in order to ensure that female minors are not discriminated against, and are given the same rights and protection as males under the law.

Article 43. Indecent Act against Minors under Fifteen Years
'Indecent act' in this law shall mean an act of touching or exposing a genital or other sexual part of another, or of having another touch the actor's or a third person's genital or other sexual part, with the intent to stimulate or satisfy the actor's sexual desire.

A person who commits an indecent act against another person of the age of less than 15 years shall be punished with imprisonment from 1 to 3 years and a fine from 2,000,000 to 6,000,000 riels.

A person who repeatedly commits any offense stipulated in Article 42 or this article shall be punished with double the prison punishment.

This article defines an indecent act (sexual contact that does not rise to the level of intercourse as defined in Article 42) and punishes a person (man or woman) who engages in an indecent act with a minor under fifteen years old.

The penalty in Article 43 of 1 to 3 years imprisonment and fine from 2 million to 6 million riels is aggravated to double the punishment in case of repeat offending.

Note that paragraphs 1 and 2 of Article 43 of the TSE Law is identical to Article 341 of the Penal Code (see Book 2, Title 3, Chapter 5 "Endangering of Minors", Section 1 "Threat to Physical or Mental Health", Article 341 "Indecent Assault of Minor under 15 Years of Age").

Article 341 of the Penal Code provides the same penalty of 1 to 3 years imprisonment and a fine from 2 million to 6 million riels.

The penalty is increased to 2 to 5 years imprisonment and a fine of 4 million to 10 million riels in case of aggravating circumstances listed in Article 342 (Aggravating Circumstances) of the Penal Code.

This article is to be applied even where the minor under 15 years has fully agreed to such sexual contact or does not resist it in any way. Because the TSE Law does not grant minors under the age of 15 years the capacity to consent to sexual relations, any such agreement is not "consent".

If the offender has engaged in indecent act with a minor under 15 years old by means of force, violence, coercion, threat or surprise, then the offender should be charged and punished for aggravated indecent assault under Articles 247 or 248, in relation to Article 246 (Indecent Assault)[45], of the Penal Code, instead of being charged and punished under Article 43 of the TSE Law. (See new Penal Code, Book 2, Title 2, Chapter 3, Section 2 "Other Sexual Assault".) Articles 247 and 248 of the Penal Code prescribe an aggravated penalty of 2 to 5 years imprisonment and a fine of 4 million to 10 million riels in case of aggravating circumstances, including where the victim is particularly vulnerable by reason of his or her age.[46]

If the offender has engaged in sexual intercourse with the victim (who is a minor under the age of 15), then the offender should be charged, and punished under Article 42.

If the offender has committed an indecent act against a minor under 15 years by providing or promising to provide anything of value to the minor or to a third party, then the person should be prosecuted and tried for the crime of purchasing child prostitution under Article 34, in addition to prosecution and trial under this article. If convicted under Article 34 and under this article, then the offender should be sentenced

[45] Article 246 of the Penal Code defines indecent assault as "touching, fondling or caressing the sexual organs or other part of a person without that person's consent or coercing another person to perform such acts on the perpetrator himself or herself or a third person for the purpose of arousing the perpetrator or providing sexual pleasure to the perpetrator".

[46] Under Article 247 (Aggravating Circumstances – Means Used or Status of Perpetrator) of the Penal Code, the offense of indecent assault is aggravated by the use of a weapon, threat of use of a weapon, use of narcotics or other means to weaken the victim's resistance, abuse of authority, etc.. Under Article 248 (Aggravating Circumstances – Status of the Victim) of the Penal Code, indecent assault is aggravated if committed against a person who is particularly vulnerable by reason of his or her age, among others.

with the higher applicable punishment.[47] This is in accordance with the provision on concurrent offenses set out in Article 6 above.

As per Article 7 (Definition of Minor), a person who has supervision or control of a minor is presumed to know the minor's age unless the person proves that he/she reasonably believed the minor's age to be 18 years or more. This presumption also applies to questions relating to the age of sexual consent.

For example, where a person has supervision or control of a minor and has sexual contact with that minor, Article 7 presumes that the person knows the minor's age, and so the person cannot easily claim as a defense that he did not know the minor was below 15 years old.

(For further information, including a discussion of "supervision and control", please see the text on Article 7 above.)

In accordance with Article 44, only a person who is aged fifteen years or older can be punished under this article.

"'Indecent act' in this law shall mean…"

This article defines an indecent act in several ways, which are discussed below. It is important, however, to bear in mind that to qualify as an indecent act, the activity must be carried out with the intent to stimulate or satisfy the actor's sexual desire.

"an act of touching…"

The term "indecent act" includes any touch between any part of the body of one person and the genital or other sexual part of another person, when done with the intent to stimulate or satisfy the actor's sexual desire.

"Touching" includes any form of physical contact, including but not limited to rubbing, caressing, kissing or other types of contact. Touching includes direct (skin to skin) contact with a genital or other sexual part, as well as touching a genital or other sexual part on top of or through clothing.

"an act of…exposing…"

The term "indecent act" also includes any act by one person to expose the genital or other sexual part of another person, when done with the intent to stimulate or satisfy the actor's sexual desire.

"Exposure" means removing the clothes or other covering, so that any person (the actor or another person) may view the genital or other sexual part. Exposure includes situations where the actor physically removes the clothes or other covering of another person, or where the actor instructs or induces another person to physically remove his or her own clothes or those of a third person.

"…a genital or other sexual part of another…"

The term "genital" is generally defined as a person's penis or vagina, but to have stronger protection for victims, in this law, the word "genital" is understood to mean, penis or, vagina or anus.
The term "other sexual part" is to be broadly understood, and includes the buttocks and nipple area.

"…or of having another touch the actor's or a third person's genital or other sexual part…"

This article also prohibits any act by a person by which the victim is made to touch the genitals or another sexual part of the offender or a third party with the intent to stimulate or satisfy the actor's sexual desire.

"Touching" includes any form of physical contact, including but not limited to rubbing, caressing, kissing or other types of contact. Touching includes direct (skin to skin) contact with a genital or other sexual part, as well as touching a genital or other sexual part on top of or through clothing.

[47] This is in accordance with the provision of the Penal Code, Article 36 on "Concurrence of Offenses".

"…with the intent to stimulate or satisfy the actor's sexual desire."

To be liable for punishment under this article, the offender must carry out the act of touching or exposing, or of directing another person to touch or expose, with the purpose of stimulating or satisfying his own sexual desire. It does not matter how the offender seeks to stimulate or satisfy his own sexual desire; this can be by using his own actions against the victim, by directing the victim to act against the offender or a third party, or by directing a third party's actions against the victim.

Article 44. Exemption from Punishment
A person under the age of 15 years shall be exempted from punishment of the offenses stipulated in Articles 42 and 43 of this law.

This article provides that a person under the age of 15 years shall not be punished for the offenses setout in Articles 42 (Sexual Intercourse with Minors under 15 years) and Article 43 (Indecent Act against Minors under 15 years). However, this exemption only applies to charges brought under Articles 42 and 43; it does not exclude a 14 year old person from being held liable for rape or sexual assault under the applicable criminal law.

It should be noted that this exemption from punishment only applies to charges under Articles 42 and 43, where the sexual acts are voluntarily agreed to by all participants.

If the participants do not all agree to participate in the acts covered under Articles 42 and 43, and the actor has used force, violence, coercion, threat or surprise, then the actor should be prosecuted for rape or other forms of sexual assault under the relevant provisions of the applicable criminal law. (See new Penal Code, Book 2, Title 2, Chapter 3, Section 1 "Rape" and Section 2 "Other Sexual Assaults".) In this case, it should be noted that the criminal law provides for some (limited) punishments for minor offenders who are as young as 14 years. (See, for example, the new Penal Code in Book 1, Title 2, Chapter 3 "Penalties Applicable to Minors".)

For example, if a person who is 14 years old has sexual intercourse with a minor under the age of 15 years, and that sexual intercourse is achieved by means of force, violence, coercion, threat or surprise, then the offender should be charged and punished for rape in the criminal law instead of being charged and punished under Article 42.

Chapter 7 - Civil Remedy

The TSE Law is primarily a criminal law, but this chapter sets out the available civil remedies.

Article 45. Contract for the Act of Selling/Buying or Exchanging a Personand Sexual Exploitation
A contract shall be null and void if it is made for the purpose of selling/buying or exchanging a human being or sexual exploitation.

A loan contract shall be null and void if it is made in connection with the act of selling/buying or exchanging a human being or sexual exploitation.

'Act of Selling/Buying or Exchanging a Human Being' or 'Sexual Exploitation' in this and the following articles shall mean any unlawful act concerning the offenses as stipulated in this law.

This article provides that a contract or loan contract shall be null and void if it is made for the purpose of, or in connection with, any offense under the TSE Law.

This is consistent with the approach in the contract law in force at the time the TSE Law was promulgated. Article 5 of Decree No. 38 (Law referring to Contract and Other Liabilities) states that a contract:

...shall be deemed void when
- *it is illegal, and not consistent with public order or good customs.*
- *it is contrary to social interests or violating social ethics.*
- *[it is] a contract whose subject matter is impossible to perform.*

Similarly, the Civil Code, in Article 354, states that a contract shall be void "(a) where the contents of the contract violate a mandatory provision of the law; or (b) where the contents of the contract contravene the public order and good customs."

The language in the articles cited above is intentionally broad and is meant to invalidate any agreement that is illegal or in conflict with public order. This includes any agreement made for the purpose of any act across the spectrum of trafficking, including every offense mentioned in the entirety of this statute. Any agreement with the purpose to commit any of these offenses is null, void, and unenforceable by any party to the agreement.

"A loan contract shall be null and void…"

This paragraph means that a loan made in connection with trafficking and exploitation is unenforceable. Any loan made in connection with these offenses is invalid, regardless of whether the lender was a private individual or a financial institution. The purpose of this provision is to encourage lenders to verify that loans they disperse are not used to finance trafficking or sexual exploitation.

The term "contracts" mentioned here and in Article 37 should be interpreted broadly. Any agreement, verbal or written, to commit an illegal activity (including any form of human trafficking or sexual exploitation) is invalid and unenforceable per se.

"any unlawful act concerning the offenses as stipulated in this law"

This provision means that a contract or loan contract is null and void if it is made for the purpose of, or in connection with, any offense in the TSE Law, or any other offense defined in Cambodian law that is carried out in relation to any offense in the TSE Law.

Article 46. Restitution of Unjust Enrichment
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 human being or sexual exploitation shall be liable for restitution of the whole unjust enrichment along with accrued interests.

An aggrieved person (a person being exploited) may claim for damages in addition to the restitution of such unjust enrichment.

A person who has made a contract of loan or any other provision to another person for the purpose of committing the act of selling/buying or exchanging a human being or sexual exploitation may not claim for restitution of the provision.

This article attempts to prevent individuals from profiting from human trafficking and sexual exploitation. It requires full restitution of any enrichment derived from sexual exploitation or human trafficking. This means that anyone who knowingly profits from human trafficking or sexual exploitation (other than victims of those crimes) must restore all profits to the persons at whose expense the offender was enriched.

"A person who obtains enrichment without a legal cause…"

This provision applies to all persons who obtain enrichment illegally or from an illegal source.

"…knowing that the enrichment has been obtained from the act of selling/buying or exchanging a human being or sexual exploitation…"

This article requires that the person obtaining the enrichment know that it comes from an act related to human trafficking or sexual exploitation. It does not cover cases where a person is enriched but is unaware that the enrichment comes from an offense under the TSE Law.

"…shall be liable for restitution of the whole unjust enrichment along with accrued interests."

This provision allows a victim of an offense under the TSE Law, or any other person at whose expense the offender was unjustly enriched, to bring a claim for restitution of unjust enrichment.

"Unjust enrichment" means any benefit or profit derived illegally from the property or services of another person, and thereby causing harm or loss to the other person. This definition is consistent with the concept of unjust enrichment set out in the Civil Code, (see Book 5, Chapter 15 "Unjust Enrichment").

The court shall order the person who was unjustly enriched to pay restitution to the claimant for the entire amount, including accrued interests which are to be calculated by the court.

"An aggrieved person (a person being exploited) may claim for damages in addition to the restitution of such unjust enrichment."

This provision allows victims of an offense under the TSE Law, or any other person at whose expense the offender was unjustly enriched, to bring a claim for damages in addition to any claim for restitution of unjust enrichment.

"A person who has made a contract of loan or any other provision to another person for the purpose of committing the act of selling/buying or exchanging of human being or sexual exploitation may not claim for restitution of the provision."

The third paragraph of this article explains that if one agrees to loan money for the purpose of furthering human trafficking or sexual exploitation, the lender may not legally enforce payment of the loan. The purpose of this provision is to prevent lenders from funding trafficking and exploitation, and to punish them in cases where they have loaned money for such purposes.

This paragraph functions as an exception to the provisions set out in the first two paragraphs of this article. In other words, the first two paragraphs provide that a person who profits by the commission of an offense set out in the TSE Law, and where such profit is at the expense of another person, is liable to the other person for restitution and damages. However, this third paragraph states that where the other person loaned the offender money for the purpose of committing the offense, then the lender may not claim for payment of the loan or any other form of restitution.

This is consistent with the Civil Code, Article 741 ("Performance for Illegal Cause"), which states that claims for restitution of unjust enrichment are prohibited if granting such a claim would be in breach of public order or any law regarding public order.

Article 47. Preference to Confiscated Property
Victims shall have preference over property confiscated by the state for their compensation and restitution.

This article gives victims the right to claim property confiscated in connection with the offense as compensation and restitution for their victimization. The purpose of this provision is to provide a mechanism for compensating victims, and to ensure that the victims have the first preference over such compensation.

"preference"

The term "preference" means that the victim has a preferential right over the confiscated property. The preferential right held by the victim takes priority over any other rights to the confiscated property, including any rights held by creditors under the Civil Code (see Book 6, Chapter 3 "Preferential Rights"). In other words, a claim presented by a victim for compensation and restitution will take priority over any other claims to the confiscated property, including over any claims by the state or any creditors. If the value of the confiscated property does not fully compensate the victim, the victim has a continuing claim.

"property"

The term "property" is defined broadly. In accordance with Article 2(d) of the UN Transnational Organized Crime Convention, the term "property" means "assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets."

Chapter 8 - Supplemental Provisions

Article 48. Additional Penalties
For the offenses stipulated in this law, the following additional penalties may be imposed:

1. the confiscation of any equipment, materials or objects which have served, or been intended to serve, to commit the offense;
2. the confiscation of any materials which are constituent objects of the offenses;
3. the confiscation of the proceeds or the properties earned by or which resulted from the offense;
4. the closure of a business that has served to commit the offense; the restriction of civil rights; and
5. the ban on stay.

This article sets out the additional penalties that the court may apply to offenders found guilty under the TSE Law.

The purpose of this article is to provide courts with more tools to deter human trafficking and sexual exploitation. This article allows for confiscation of property with a close connection to offenses covered in this Law, forced closures of implicated businesses, restriction of civil rights, and restrictions on mobility. These penalties should be used at the court's discretion and should only be applied to perpetrators of these crimes, and not their victims.

Where a representative, agent or employee of a legal entity (e.g. a company) or a principal is found guilty of an offense under the TSE Law, the court may consider imposing some of the penalties listed in this article on the legal entity, in accordance with Article 4 above. (See discussion under Article 4 for more detail.)

"confiscation of any equipment, materials or objects which have served, or been intended to serve, to commit the offense"
"confiscation of any materials which are constituent objects of the offenses"
"confiscation of the proceeds or the properties earned by or which resulted from the offense"

These provisions permit the court to confiscate the equipment, materials, objects, proceeds or properties that have a close connection to the offense, and which were either used by the offender in committing the offense or which the offender obtained as a result of committing the offense.

These provisions are not intended to be used to confiscate property not belonging to the offender; property belonging to a third party (including the victim) may not be confiscated under this article. This is consistent with the new Penal Code, which prohibits any confiscation that affects the rights of third parties. (See new Penal Code, Book 1, Title 3 "Penalties", Chapter 1, Section 1 "Principal Penalties", Chapter 7, "Penalties Applicable to Legal Entities".

The scope of confiscation and court's discretion is greater in this article than the confiscation provisions of the 1996 Trafficking Law. The 1996 Trafficking Law stated that any property used in connection with the offense would be confiscated for the government. Under the TSE Law, confiscation is optional (a tool used at the court's discretion to enhance justice and equity).

As per Article 47 (Preference to Confiscated Property) of this law, the material, proceeds or properties confiscated must first be used to compensate victims, who under the TSE Law have a preferential claim over confiscated property for their compensation and restitution. If the victims have already been compensated, then the confiscated property becomes government property, consistent with the new Penal Code (Book 1, Title 3 "Penalties", Chapter 1, Section 1 "Principal Penalties", and Chapter 7, "Penalties Applicable to Legal Entities").

"the closure of a business that has served to commit the offense"

This provision means that if a business has been used to commit the offense, the court can order the business to close. This penalty may be applied by the court where the representative, agent or employee of a business is found guilty of an offense, and is found by the court to have used the business to commit the offense. Consistent with the new Penal Code (Book 1, Title 3, Chapter 7 "Penalties Applicable to Legal Entities"), the penalty of closure may be either permanent or temporary for a period of up to five years. (See also discussion of criminal responsibility for legal entities under Article 4 above.)

"restriction of civil rights"

Under this provision, the court may punish the offender by restricting his civil rights. These punishments are defined in the new Penal Code (Book 1, Title 3 "Penalties", Chapter 1, Section 2 "Additional Penalties"), which states:

> *The civil rights that may be deprived as provided for in point 1 of Article 59 (Categories of Additional Penalties) include:*
>
> 1. *rights to vote;*
> 2. *rights to stand for election;*
> 3. *rights to work in public function;*
> 4. *rights to be designated as an expert, arbitrator and proxy in court;*
> 5. *rights to receive all official decorations;*
> 6. *rights to serve as a witness under oath at court;*
>
> *This penalty may either be definitive or temporary for a duration of 5 (five) years at the most.*

"ban on stay"

Under this provision, the court may punish the offender by prohibiting or restricting him from residing in a particular place, by prohibiting the offender from leaving the Kingdom of Cambodia, or (for convicted foreigners) from entering or residing in the Kingdom of Cambodia. It is important to note that these punishments are to be applied differently to offenders who are Cambodian citizens and to offenders who are foreigners.

When applied to a Cambodian or a foreign offender, this means that the court may prohibit the offender from residing in a particular place or list of places. The court may apply this prohibition in a manner similar to that defined in Article 59 of the new Penal Code (Book 1, Title 3 "Penalties", Chapter 1, Section 2 "Additional Penalties"), which states:

> *The penalty of local exclusion shall mean the prohibition imposed upon the convicted person from being in certain places in the territory of the Kingdom of Cambodia. The period of local exclusion may not exceed 10 (Ten) years in the case of a felony, and 5 (Five) years in the case of a misdemeanour.*
>
> *The court shall list the places where the exclusion applies and the duration of such exclusion.*
>
> *Local exclusion shall be accompanied by supervision. The convicted person must:*
>
> 1. *Appear when summoned by the judicial or administrative authorities designated by the court;*
> 2. *Report periodically at the offices of the police or royal gendarmerie designated by the court;*
>
> *The court shall determine how the supervision shall be carried out.*
>
> *The Prosecutor shall notify the court decision to the Ministry of Interior and the Ministry of National Defence.*

For a Cambodian offender, the court may also prohibit the offender from leaving Cambodia for a period of time. The court may apply this prohibition in a manner similar to that defined in Article 60 of the new Penal Code (Book 1, Title 3 "Penalties", Chapter 1, Section 2 "Additional Penalties"), which states:

> *The period of prohibition from leaving the territory of Cambodia must not exceed 5 (Five)*

years.

The convicted person must hand over his/her passport to the clerk of the court. The passport shall be kept as specified by Prakas of the Minister of Justice.

The convicted person cannot, during the period of the penalty, obtain a passport.

For a foreign offender, the court may also prohibit the offender from entering or residing in Cambodia. For an offender who is already in Cambodia, this means that the court may order the offender to be deported. If this punishment is imposed along with imprisonment, this means that the offender will be deported from Cambodia after he finishes serving his sentence of imprisonment.

The court may not prohibit a foreigner from leaving Cambodia except in cases where the foreigner is also punished with imprisonment, or in cases where a foreigner is accused but the trial has not yet concluded. If the foreigner is found guilty and punished with imprisonment, the law generally requires that the prison term be served in a Cambodian prison.

The court may apply this punishment in a manner similar to that defined in Article 61 of the new Penal Code (Book 1, Title 3 "Penalties", Chapter 1, Section 2 "Additional Penalties"), which states:

The prohibition of a convicted foreigner, from entering and remaining in the territory of the Kingdom of Cambodia may be permanent or temporary. In the latter case, the period of prohibition may not exceed 5 (Five) years. Such prohibition shall entail the expulsion of the convicted person at the end of his or her sentence of imprisonment.

It should be noted that the law does not allow the court to deport or expel a Cambodian from the territory of the Kingdom of Cambodia. The Constitution in Article 33 provides that Khmer citizens cannot be exiled or deported except where they are extradited to another country pursuant to an agreement.

Article 49. Concealment of Identity of Victim
Newspapers and all other mass media shall be prohibited from publishing or broadcasting or disseminating any information which can lead to public knowledge of the identities of the victims of offenses stipulated in this law.

This article prohibits the media (including newspapers and other forms of mass media) from publishing, broadcasting or disseminating any information which might identify the victim of an offense under the TSE Law.

The purpose of this article is to shield victims of trafficking and exploitation from unnecessary embarrassment and social harm and to encourage them to cooperate with investigations and prosecutions against perpetrators of human trafficking and sexual exploitation. This Article is therefore consistent with the TSE Law's overall objective to protect victims of sexual exploitation and human trafficking offenses.

"publishing or broadcasting or disseminating"

Here, the terms "publishing," "broadcasting" or "disseminating" mean any form of distributing information, whether in print (including newspapers and magazines), electronic transmission (including television, radio, loudspeaker or internet), posting in a public place or other means of passing the information onto the general public or third parties.

"shall be prohibited"

It should be noted that although this article prohibits the media from publishing, broadcasting or disseminating such information, there are no punishments specified. This article therefore does not define a criminal offense. However, a victim of an offense in the TSE Law, whose honor or reputation has been damaged by publication of the information, may be able to bring a civil action against the persons or institutions that have published, broadcast or disseminated the prohibited information, for compensation under tort law. (See Civil Code, Book 5, Chapter 16 "Torts", and in particular Articles 744, 757(3) and 762.)

In this sense, this article is similar to Article 15 of the Press Law (1995), which states that:

> *The press may not publish information, photographs or drawings which may make it possible for the readers to identify or know the name of:*
>
> *(3) a woman who is a victim of molestation or rape.*
>
> *…Any individual whose rights under this article are violated by the press are entitled to file a civil action in court for compensation.*

However, in contrast to Article 15 in the Press Law, the TSE Law does not restrict the prohibition to cases of molestation or rape; nor does it require that the victim be a woman. Under the TSE Law, there is a broad prohibition against publishing, broadcasting or disseminating any information that could identify any victim (man or woman, adult or minor) of any trafficking or sexual exploitation offense under the TSE Law.

This prohibition does not apply where the victim gives free, full and informed prior consent to the publication of identifying information. This exception is important, as some government agencies and NGOs may obtain the victim's consent to use identifying information – for example, as part of public information campaigns to raise awareness about the dangers of human trafficking and sexual exploitation.

In cases where the victim gives consent for such information to be used, "consent" means that the victim must give his or her consent freely, having been fully and truthfully informed of the proposed use of the information, prior to any publication of the information. The consent must be given in writing.

Even if the victim gives consent, the court may prohibit the publication, broadcast or dissemination of the information if it will affect an on-going investigation of the court.
These exceptions regarding consent are similar to those found in Article 15 of the Pres Law, which states that:

> "*except in cases in which the publication may affect the investigation of the court, the press may publish the above information if the concerned person or custodian agrees in writing*."

Nevertheless, in accordance with the law, only persons with legal capacity to act may give their consent to such publication of identifying information. Under the Civil Code, an act performed by a person who was unable to recognize and understand the legal consequences of his actions is voidable. Therefore, minors, adults in guardianship or persons under curatorship are generally not able to give such consent (see Civil Code, Book 2, Chapter 1, Section III "Capacity" and Section IV "Capacity to Act").

The publication or dissemination of information that may lead to identification of a child victim or witness should be prohibited regardless of the consent of the child's parents or guardians. This is consistent with the UN Guidelines on Justice in matters involving Child Victims and Witnesses of Crime (2005), which states that:

> *"child victims and witnesses should have their privacy protected as a matter of primary importance" and "information relating to a child's involvement in the justice process should be protected...through maintaining confidentiality and restricting disclosure of information that may lead to identification of a child who is a victim or witness in the justice process".*

"any information which can lead to public knowledge of the identity of the victim"

This provision prohibits the distribution of any type of information that might identify the victim to the public, including but not limited to photographs, drawings, names, addresses or other personal information. This also includes such information about the victim's family members, since by identifying the family members of the victim, the victim might also be identified.

Chapter 9 - Final Provisions

Article 50. Repeal of Law
The Law on Suppression of Kidnapping, Human Trafficking/Sale of a Human Being and Exploitation of a Human Being, which was promulgated by Royal Kram No: cs/rkm/0296/01 shall be repealed by this law.

This law shall prevail if a provision of any other law is in contradiction with the provisions of this law.

This article repeals the 1996 Law that was previously applicable in cases of human trafficking and sexual exploitation. As of 15 February 2008, the date of the promulgation of the TSE Law, the 1996 Law on Suppression of Kidnapping, Human Trafficking/Sale of a Human Being and Exploitation of a Human Being (promulgated by Royal Kram No: cs/rkm/0296/01) is therefore no longer in force.

"This law shall prevail if a provision of any other law is in contradiction with the provisions of this law"

This article's second paragraph states that if a conflict exists between a provision in the TSE Law and a provision of any other law, the TSE Law provision shall apply. However, this paragraph must be understood in light of the Cambodian legal framework and the hierarchy of laws, and with regard to accepted principles of statutory interpretation.

The Cambodian legal framework establishes a hierarchy of laws and regulations. Where a conflict occurs between the provisions of different laws that are at different levels of the hierarchy, then the provision from the higher-ranking law prevails over the provision from the lower-ranking law. The TSE Law is a law (chhbab) that was adopted by the National Assembly and Senate, and promulgated by the King in his capacity as Head of State. So this article means that, in the context of the Cambodian legal hierarchy, if a provision of the TSE Law is in conflict with a provision of a lower-ranking legal instrument, the TSE Law will prevail.

Where the conflicting provisions arise in legal instruments that are at the same level, the principles of statutory interpretation (see discussion in the Introduction above) offer some guidance. In particular, two rules should be kept in mind:

1) New vs. Old. The more recent law will prevail over the older law.
2) Specific vs. General. The more specific law will prevail over the more general law.

However, where a newer but more general law has a provision that is in direct conflict with an older but more specific law, then the newer law prevails. However, if a newer general law is silent on a particular issue and that particular issue is contained in the old specific law (and therefore there is no conflict), then the relevant provisions of the older law are generally considered to be still valid.

Under Article 50(2), the TSE Law shall prevail if a provision of any other older law is in conflict with the provisions of the TSE Law.

The principles of statutory interpretation help to resolve the conflict between, for example, the TSE Law's Article 22 (which imposes a life sentence for aggravated confinement) and Article 7 of the old Law on Aggravating Circumstances (which allows the same crime to be punished by 15 years of imprisonment). Since the TSE Law is more recent and, arguably, more specific than the old Law on Aggravating Circumstances, the sentencing provisions in Article 22 of the TSE Law prevail over those in Article 7 of the old Law on Aggravating Circumstances.

However, despite the text of Article 50(2) of the TSE Law, the TSE Law will not prevail where there is a conflict with the provisions of a higher-ranking legal instrument, such as the Constitution, or if the TSE Law has a conflict with the provisions of a new law that was promulgated and adopted after the TSE Law. In such cases, the higher-ranking legal instrument or later-in-time law will prevail over the TSE Law.

The new Penal Code, which was adopted after the TSE Law and entered into full force in December 2010, may contain provisions that may conflict with the TSE Law. Under the Penal Code (Book 6 "Final

Provisions", Article 671 "Abrogation and effect of previous criminal provisions"), provisions of pre-existing criminal laws, that are contrary to the provisions of the new Penal Code, shall be considered as invalid with regard only to the contradictory provisions. Accordingly, while the TSE Law will remain in force, where a provision in the TSE Law is contradictory to a provision in the Penal Code, the provision in the TSE Law will be superseded to the extent only of the contrary wording.

However, with respect to illegal acts related to trafficking offenses, the TSE Law may be invoked despite a conflict with the Penal Code provisions, in recognition of the principle of statutory interpretation that, in general, a special law prevails over a general law. It should be noted that the Penal Code does not contain offences "specific" to human trafficking and, therefore, the TSE Law remains the core legislation governing offences relevant to human trafficking. In fact, the Penal Code recognizes the primacy of special laws over general laws in Article 668 (Application of Other Criminal Legislation), Book 5 "Transitional Provisions", which states that:

> *"Criminal offences defined and punished by other separate criminal legislation and provisions in force shall be implemented in accordance with such criminal legislation and provisions.*
>
> *In the event of conflict between other criminal laws and provisions and the provisions of this Code, application shall be done accordingng to the rules set out in Book 1 (General Provisions) of this Code.*
>
> *The provisions of paragraph 2 above shall not be applicable to special criminal laws."*

The TSE Law may be considered as a special criminal law, based on the law's objective set out in Article 1, to "suppress the acts of human trafficking" and to "implement the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children". Accordingly, where a clear direct conflict arises between the Penal Code and the TSE Law criminal provisions, the TSE Law provisions may still be applied to cases that involve trafficking-related acts.

Furthermore, the provisions of the TSE Law should be interpreted in a way that they do not conflict with the provisions of international human rights treaties that Cambodia is a party to. This approach has been recognized by Cambodia's own Constitutional Council, which (in a decision of July 2007) has interpreted Cambodian laws so that they are kept consistent with the provisions of international human rights treaties.

Article 51. Replacement by Penal Code
Article 2, article 3, article 4 and article 6 of this law shall be replaced with the relevant provisions in the Penal Code when the Penal Code comes into force.

This article explicitly provides that certain specific articles (articles 2, 3, 4 and 6) of the TSE Law will be replaced by the new Penal Code when the new Penal Code enters into force.

At the time the TSE Law was adopted, the Penal Code was still in draft form. The Penal Code was later promulgated by Royal Kram No. –NS/RKM/1109/022, dated 30 November 2009. Book 1 of the Penal Code came into effect on 11 December 2009 for Phnom Penh and 21 December 2009 nationwide. Books 2 to 6 of the Penal Code entered into force one year after or on 11 December 2010 for Phnom Penh and 21 December 2010 nationwide.

It should be noted that Article 2 (Application of this Law within the Territory), Article 3 (Application of this Law Outside the Territory), Article 4 (Criminal Responsibility) and Article 6 (Concurrence of Offences) are general provisions in Chapter 1 of the TSE Law. These articles are now replaced by Book 1 of the new Penal Code, which sets out the General Provisions for the Implementation of Criminal Law. This is consistent with Article 670 (Expansion of the Application of Book 1"General Provisions") of the Penal Code, which sets out that *"all other separate criminal provisions shall be governed by the provisions of Book 1(General Provisions) of this Code, except where otherwise provided for by other provisions"*

However besides articles 2, 3, 4 and 6 of the TSE Law, there may also be other articles and/or provisions of the TSE Law that are also replaced by the new Penal Code through the application of generally accepted principles of statutory interpretation. According to this principle, if there is a conflict between the provisions of two different laws, the provisions of the more recent law generally prevails. (See discussion on this topic under Article 50(2) above.)

Article 52. Enforcement of this Law
This law shall be promulgated as urgent.

This article means that the TSE Law took effect throughout the country immediately upon its promulgation on 15 February 2008. This is consistent with Article 93 (2) of the Constitution.