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# Can CEDAW Article 6 Transform a Broken Girl into a Precious Gem?

A Study on the Implementation of CEDAW Article 6  
Concerning the Exploitation of Prostitution and Trafficking in  
Cambodia

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## Abbreviations

ADHOC Cambodian Human Rights and Development Association  
AFESIP Agir Pour Les Femmes En Situation Précaire  
AIDS Acquired Immuno-deficiency Syndrome  
CATW Coalition Against Trafficking in Women  
CDHS Cambodia Demographic Health Survey  
CDP Cambodian Defenders Project  
CEDAW Convention on the Elimination of All Forms of Discrimination Against Women  
CPP Cambodia People's Party  
CWCC Cambodian Women Crisis Centre  
FUNCINPEC National United Front for an Independent, Neutral, Peaceful and Cooperative Cambodia. (French acronym)  
GDI Gender Development Index  
GAD/C Gender and Development for Cambodia  
GEM Gender Empowerment Measure  
GPCC General Population Census of Cambodia  
HDI Human Development Index  
HIV Human Immuno-deficiency Virus  
IO International Organisation  
IOM International Organisation for Migration  
LAC Legal Aid of Cambodia  
LICADHO Cambodian League for the Promotion and Defence of Human Rights  
MCoPP Municipal Court of Phnom Penh  
MoI Ministry of Interior  
MoT Ministry of Tourism  
MoH Ministry of Health  
MoWVA Ministry of Women's and Veterans' Affairs  
NGO Non-Governmental Organisation  
PHR Physicians for Human Rights (Commercial Sexual Exploitation of Women and Children in Cambodia)  
SCM Supreme Council of Magistracy  
SIDA Swedish International Development Co-operation Agency  
SMR Svenska Missionsrådet  
SOC State of Cambodia  
STD Sexually Transmitted Diseases  
UNDP United Nations Development Fund  
UNICEF United Nations Children's Fund  
UNCOHCHR United Nations Cambodia Office of the High Commissioner for Human Rights  
UNTAC United Nations Transitional Authority in Cambodia  
USG Urban Sector Group  
WAC Wymen's Agenda for Change  
WFP Women For Prosperity

# 1 Introduction

## 1.1 Choice of Topic

*“In order to combat prostitution we don’t talk just about prostitution, we talk about the position of women in society. We have to upgrade it.”*

Minister of Women’s and Veteran’s Affairs, Her Excellency Mo Sochua

Women are violated every day and everywhere in our world. Women often come in second place in most areas of life such as education, work, healthcare and social status. This makes women as a group exposed and discriminated. We therefore believe that women’s rights are worth attention and must be put in focus in order to obtain equality between women and men. The promotion of women’s rights are important for women world wide, as no state throughout the world can be said to have achieved a full enforcement of women’s rights.<sup>1</sup> It is also vital to realize that the development of a country is dependent on that not only half of the population’s rights are taken into consideration. The efforts of implementing and enforcing women’s rights face several problems, which can be symbolized by the attempts by states to obtain a system protecting women from sexual exploitation. Traffic and exploitation of prostitution of women are phenomena in which women’s human rights are violated and neglected, and due to its trans-national scope and that the negative effects of the globalization facilitates its expansion the violations increase.<sup>2</sup> We have therefore chosen the focus of our thesis to be the implementation of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) Article 6 in an national context. The national context in this study is represented by the Kingdom of Cambodia, and we are examining how the suppression of traffic in women and exploitation of prostitution of women in accordance with CEDAW Article 6 are promoted and worked with in this specific country. CEDAW Article 6 reads:

***“State Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.”***

How prostitution should be addressed legally has been in focus of an international debate, and there is no uniform idea of how it should be legally handled. CEDAW Article 6 does not subscribe for prohibition of prostitution per se, it is the exploitation of prostitution that shall be suppressed. The formulation of CEDAW Article 6 opens up for different interpretations in how to implement the article. States have different views on prostitution, but three various types of domestic legislation can be distinguished: regulationist, abolitionist and prohibitionist.<sup>3</sup>

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<sup>1</sup> Askin/Koenig 2000, p. 73

<sup>2</sup> United Nations Centre for Human Rights 1996, p. iii

<sup>3</sup> SOU 1995:15, p. 44 and BRÅ-rapport, 2000:4 p. 11

Some states have decided to *regulate* prostitution.<sup>4</sup> There might be provisions concerning brothels, pimps, registration and health controls for the prostitutes. In for example Holland and Germany prostitution is permitted under certain circumstances and in certain areas. One reason for this, to put it simply, is the view that the deleterious effect on prostitutes is caused by the stigma of prostitution. Regulated prostitution will be a work among others, which will decrease the stigma.<sup>5</sup> There is however no country where prostitution is ranked equal to other professions.<sup>6</sup> The *abolitionist* view defines prostitution as violence, and all forms as exploitative. States with such a position are not prohibiting prostitution per se, but in most cases just a third persons involvement, procuring for example. Behind this lies the view of the prostitute as a victim of a process she does not control, and that women can be rescued from prostitution for example through alternative careers.<sup>7</sup> Without the 'third party', it is believed that the institution of prostitution will wither away. At the same time there might be regulations regarding registration and health control for prostitutes. Sweden has an abolitionist view, but is also unique in its legislation as the customer's involvement is criminal but not the prostitute's. The third legal model is practised in states where all forms of prostitution is prohibited, in these so called *prohibitionist* systems any participation is criminal.<sup>8</sup>

The Cambodian legislation in order to eliminate exploitation of prostitution belongs to the abolitionist view as it criminalizes exploiters such as pimps, brothelowners and traffickers.

## 1.2 Outline

In this study of examining implementation of CEDAW Article 6 in Cambodia we will start in this introductory chapter (chapter 1) to give a background to the women's rights movement, CEDAW in particular. We will also discuss human rights as international law, specifically in an East Asian context. The remaining parts of chapter 1 consist of describing the problem that is the base for the essay, the method of doing a field study as well as delimitations and definitions in the study.

Chapter 2 concerns the Cambodian social context from a gender perspective, in order to see the implementation of CEDAW Article 6 in a more contextual perspective. This is needed to receive an understanding of the exploitation of women and children through commercial sex work/prostitution in Cambodia. In this chapter we will describe some parts of the Cambodian history since their violent and conflicting past, still, affects the society of today. The main focus in chapter 2 is to examine the status of women through different aspects as religion, traditional attitudes in society, domestic violence, health, education and employment. We will also examine sexuality and prostitution in Cambodia and look specifically at the conditions sex-working women are facing in society. In this chapter there is also a section covering some of our personal observations at places where prostitution takes place.

Chapter 3 deals with the element of CEDAW Article 6 that states that parties shall take efforts "*including legislation*" in order to suppress exploitation of prostitution and trafficking. We will overview the formal ratification of international treaties and conventions and the Cambodian legal system. We will examine the problems in the legal system, such as lack of

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<sup>4</sup> The term *legalization* is sometimes used, but it is also used in a broader sense and therefore less accurate. See Prostitutes' Education Net, <http://www.bayswan.org/defining.html>, 2001-05-25

<sup>5</sup> Socialstyrelsens rapport 2000:5, p. 14

<sup>6</sup> Strandberg 1999.

<sup>7</sup> Prostitutes' Education Net, <http://www.bayswan.org/defining.html>

<sup>8</sup> Strandberg 1999

uniformity between different laws, lack of law enforcement and corruption, to be able to discuss how CEDAW Article 6 actually is implemented in Cambodia. We will look at the Constitution of the Kingdom of Cambodia and also at what emphasis there is on women in the Constitution. There are two laws in Cambodia that cover the area of exploitation of prostitution and trafficking, the UNTAC law and the Trafficking Law, and both will be examined and problems with the laws will be discussed in chapter 3.

Chapter 4 concerns other measures, besides legislation, that state parties are obliged to perform according to CEDAW Article 6. This chapter is mainly based on our field study and the information we received through interviews. Because of the many Non-Governmental Organisations (NGOs) active in Cambodia, actions taken are mostly performed by those and not the Royal Government. We will examine both the efforts taken by the Royal Government as well as the NGOs and also discuss their relationship in working with CEDAW Article 6.

Chapter 5 summarizes the current state of the implementation of CEDAW Article 6 in Cambodia in light of conditions, obstacles and challenges discussed throughout this study.

### **1.3 Women's Rights and the Convention on the Elimination of All Forms of Discrimination Against Women**

The international engagement concerning women's issues can, even though it existed, be seen as marginal until the beginning of the 1970's. Still, the UN had established the Commission on the Status of Women in 1946 to take actions on behalf of the women and other international efforts were made, primarily by the International Labour Organisation (ILO). During the years 1976 to 1985 the UN Decade for Women was proclaimed and during this period women's issues became more visible in the UN system.<sup>9</sup> In 1979 the UN General Assembly adopted CEDAW. This was made in the same spirit as the previously adopted Declaration on Elimination of Discrimination Against Women in 1967.

The existence of the 1967 Declaration has probably influenced a severe change in attitude towards a convention on women's rights<sup>10</sup> and in 1974 the time was ripe for the creation of a single draft CEDAW. Thus the Declaration laid the foundation of CEDAW which entered into force on 3 September 1981.<sup>11</sup> Today CEDAW has universal reach and is of legally binding character. It is the first international human rights convention to pay attention to a wide scope of issues related to different positions of women in society. One of the advantages with CEDAW is that it incorporates provisions from the 1967 Declaration and thereby give the already accepted provisions legally binding relevance.<sup>12</sup>

The aim of CEDAW to suppress all forms of discrimination against women creates a complicated duplication of human rights since it seems that human rights do not materialize in the situation of women. It is obvious that even though human rights are supposed to be available to both women and men, they have benefited women less than men. It is even so that broader problems in society are having disproportionate effect on women and many human rights abuses against women are so systematic and ordered in basic structures and culture that they are considered as part of a natural order.<sup>13</sup> It has been argued that the norms and practices of human rights are the result of "*a privileged male-centric approach to human rights norms*

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<sup>9</sup> Pentikäinen 2000, p.13

<sup>10</sup> Pentikäinen 2000, p. 27

<sup>11</sup> Rehof 1993, p. 9f

<sup>12</sup> Pentikäinen 2000, p. 35f

<sup>13</sup> Pentikäinen 2000, p.10

*and international law that addresses only the public sphere and concerns of white males.*"<sup>14</sup> CEDAW is among the most widely ratified human rights conventions and it seems that CEDAW is a result of giving violation of women's human rights more attention. However, it can be seen as a failure that women as a group are exposed to violations and discrimination to the extent that general human rights conventions do not manage to be equivalently applied to women and men. CEDAW states, only by its name, that women are discriminated in different aspects, both in public and private life. We do not see the existence of CEDAW as a failure of the international human rights movement, but it seems that even in the field of human rights, women's situation has been neglected and addressed improperly. CEDAW, as well as its Optional Protocol, recognizes that women continually face specific challenges in seeking redress for violations under general human rights' conventions.<sup>15</sup> The positive aspects of CEDAW; the fact that women's human rights are taken seriously, the unique features of awareness of women's diverse situations and the great extent of ratification has unfortunately the negative side of being the most frequented reserved conventions of all.<sup>16</sup> Because of women's disadvantaged position all around the world, even though their situation differs, we believe there is a need for international agreements as they can serve as tools in improving equality between sexes. In CEDAW a uniform direction is stated which has prompted concerned organisations to work against subordination of women,<sup>17</sup> CEDAW is therefore an appropriate and useful instrument in eliminating the gender gap in different parts of the world.

#### **1.4 Human Rights as International Law and in an Asian Context**

Behind our choice of topic lies the question of what accountability human rights have as international law. Human Rights and the rights of individuals have not for such a long time been considered in international law, as international law from the beginning only governed relations between states on the state level. Concern for individual human welfare developed with the awareness of cruelty in connection with slavery and inhuman treatment in war during the 18<sup>th</sup> and 19<sup>th</sup> century, in cases where often more than one state was involved. After World War I human rights grew as a response to the awareness of inhuman treatment also within states, and concerns within states consequently became a concern between states.<sup>18</sup> But it was not until after World War II that the notion of human rights entered the arena of international relations. Today the Bill of Rights is accepted by nearly all states.<sup>19</sup> Since international law is something between sovereign states that first and foremost have concerns for their own interest, the reality and effectiveness of such law is sometimes questioned. This especially when it comes to Human Rights concerning individuals since a sovereign state have exclusive right to decide for it's citizens.<sup>20</sup>

When human rights are used as international law they are by some questioned as useful or efficient in the part of the world where they did not arise. Cultural diversity has in recent years increasingly come to be a value in itself and there is also a growing popularity of cultural relativist arguments. Culture has in many areas of international relations become an important and celebrated issue. This has been a special subject in the so-called "Asian values debate." Cultural relativist arguments are used from the Asian side to challenge what they mean is a Western notion of human rights, mostly concentrating on civil and political freedoms. This particular version of cultural relativism holds that Asian cultures are

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<sup>14</sup> Askin/Koenig 2000, p.320

<sup>15</sup> United Nations 2000, VII

<sup>16</sup> Pentikäinen 2000, p.37

<sup>17</sup> Askin/Koenig 2000, p.327

<sup>18</sup> Steiner/Alston 2000, p.127f

<sup>19</sup> Bauer/Bell p 1999, p. 62f

<sup>20</sup> Steiner/Alston 2000, p.127f



characterized by a set of values that does not follow human rights as they are understood in West, and human rights are therefore alien to Asian culture and inappropriate to Asian society. There are instead values said to be specific “Asian values”.

The Bangkok Declaration<sup>21</sup> from the Bangkok meeting (29/3-2/4 1993) was the result of a regional preparatory meeting for the Vienna Conference on Human Rights, where ministers and representatives of Asian states were present. The Bangkok Declaration is significant because it was the first organized expression of Asian opposition to the Universal Declaration. On the other hand, it is noteworthy that the Bangkok Declaration includes an Asian wide official affirmation of the Universal Declaration as universal values.<sup>22</sup>

It is important to remember that in this context Asia remains a weak link in the international human rights regime, since this part of the world does not have a Regional Human Rights Charter,<sup>23</sup> and that the Bangkok Declaration therefore may represent some form of progress.<sup>24</sup> In the Asian values debate, it is at the same time important not to forget that the Bangkok Declaration is made by governmental representatives only and that it seems to be a great gap between their notion of the situation compared to people working in the NGOs; organizations from the Asia-Pacific Region have been particularly active in working against the spirit of the Bangkok Declaration. The NGOs play a very important role in the human rights movement in Asia and as a response they have created Asian Human Rights Charter.<sup>25</sup> The Asian Human Rights Commission consists of NGO-representatives from several of the Asian countries. In 1994 an initial consultation was held where the participants reflected on the basic issues that should be in an Asian charter of human rights. After three consultations the draft was finalized in 1998. The charter is an unofficial document and will therefore not be the final product for the protection of human rights in Asia.<sup>26</sup> The declaration will be used, Asian Human Rights Commission states, as an educational document and as a basis to develop solidarity action for the protection and promotion of human rights in Asia. The introduction to the charter reads:

*“This charter is presented to deepen the Asian debate on human rights, to present the people’s views on human rights as against those of some Asian leaders who claim that human rights are alien to Asia and to promote political, social and legal reforms for ensuring human rights in the countries of the regime.”<sup>27</sup>*

The complexity of human rights used in different parts of the world is characterized by this brief summary of a great debate in some countries in East Asia, an area economically and socially expanding, but at the same time confronting human rights and violations of those.

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<sup>21</sup> <http://www.rwgmechanism.com/asia.html> 010510

<sup>22</sup> “Reaffirming the commitment to principles contained in the Charter of the United Nations and the Universal Declaration on Human rights”<sup>22</sup> and “Recognize that **while human rights are universal in nature**, they must be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds.” Bangkok Declaration Article 8 (our emphasis)

<sup>23</sup> Davis 1995, p.151

<sup>24</sup> Davis 1995, p.18f

<sup>25</sup> Davis 1995, p.161f

<sup>26</sup> Harris p.2

<sup>27</sup> Asian Human Rights Charter introduction

## 1.5 Problem

Prostitution exists all over the world, in different shapes and in different cultural contexts. Observing prostitution today, in any part of the world, reveals a picture of much coercion, violence and exploitation of women and children but seldom of men. As a consequence it can be deemed that the social structures and patterns in and around prostitution are of a serious suppressive character, that prostitution has strong social bases that involves unequal relations between men and women and between adults (including parents) and children.<sup>28</sup> The view on prostitution as a part of a system of suppressive social structures that exploits women and violates their rights was not at first acknowledged in the human rights movement, as it is today. During the last decades individuals and organizations have raised concerns regarding the situation in and around prostitution. Primarily concerns refer to the violation of the human rights of the prostitutes and their working conditions, the commercial sexual exploitation of children in prostitution and public health threats, especially concerning the enlarged spread of HIV/AIDS and other Sexual Transmitted Diseases (STDs), as well as to social welfare and public morality.<sup>29</sup> One determining factor behind this increased awareness is probably the changes prostitution is going through, particularly in connection with the accelerating spread of traffic in women and children for sexual purposes. There is an international agreement to change the situation, expressed in CEDAW Article 6. But, as cultures differ and ideas differ, there is no uniform approach on how to act in order to change these suppressive social structures and patterns.

How to implement Article 6 is an example of the difficulties in reaching an agreement in the International Community where countries are different in many aspects. Traditions, history, culture, economy, social development etc creates different views on phenomena in society. In dealing with such a controversial subject, as prostitution, the terminology of an agreement on a global level probably needs to be open, which at the same time creates indistinctiveness in the actual aim of the article. This can be viewed as either openness or vagueness, depending on the effect it results in.

In CEDAW Article 6, there are two elements that particularly open up for national interpretation and discretion; the two elements are *appropriate measures* and *including legislation*. Looking into the first mentioned element; what are the determining factors for a measure to be appropriate? Is the provision formulated in an objective or a subjective manner, that is, are the measures taken by a state determined as appropriate based on international standards or based on national conditions? In other words, how much discretion do the wordings *appropriate measures* open up for? Is the article, formally, too easy to fulfil with this choice of element or is it, on the contrary, a requirement for the article to be an instrument to work with? The element *including legislation*, prescribes that exploitation of prostitution and trafficking should be dealt with by legal means. Legislation is thus a recommended and agreed way of handling the issues. The composition of the rules is, however, not agreed upon. An additional aspect is that the enforcement of the legislation is not in the wordings taken into consideration. Is the clause *including legislation* fulfilled in a state where legislation is passed, but the legal system does not have the capacity to enforce it? What are the determining factors for a legal rule to fulfil the wordings of CEDAW Article 6?

It is of our intent to have these questions in focus when looking upon implementation of CEDAW Article 6 and the situation of Cambodian, as we believe questions like this are important when working with and evaluating human rights effect on society. The composition

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<sup>28</sup> Lean Lim 1998, p. 1, Strandberg 1999

<sup>29</sup> Lean Lim 1998, p. 1

of a convention's text produces abilities for member states to reach the aim of the convention. Although the aim of the convention can be clear, the prescription in the article to reach it can still be diffuse. The questions raised above have therefore been the basis throughout our process.

We do not have to look very deeply into different parts of the world to see that the spread of exploitation of prostitution co-exist with poverty and lack of education. The widespread sex sector and the increasing sex-trade or traffic in human beings for sexual purposes are increasing everywhere, but are certainly rampant in many developing countries. We have chosen Cambodia as the focus and field study of our research as it is a country where prostitution and trafficking for sexual purposes are widely spread. In Cambodia prostitution and trafficking for sexual purposes is a burning question with a complexity of causes and effects. With a population of 11,400,000 persons it is estimated that between 50,000 and 55,000 are prostitutes, and 10,000 to 20,000 of them live and work in the capital Phnom Penh.<sup>30</sup>

From the complex of problems in the presented background we have chosen the following questions at issue for this study:

- How is CEDAW Article 6 implemented and put to reality in Cambodia?
  - How is the question handled in legislation?
  - What other measures are taken by the government besides legislation?
  - What other actors are taking measures and what kind of measures?
  - Do the legislation and the practical efforts correspond with one another?

## **1.6 Purpose and Aim**

Cambodia accessed to CEDAW in 1992 without reservations and has therefore agreed to suppress the sexual exploitation of women. The main purpose of this study is to examine how Cambodia has acknowledged this, and what measures has been taken to fulfil Cambodia's undertaking of Article 6. The evaluation of the implementation of human rights is vital, since the value of an international convention is dependent on its effect in practice. A key component of the enforcement of women's rights is achieving effective enforcement of women's rights in municipal systems.<sup>31</sup> If the situation of the women addressed in CEDAW is affected, CEDAW is successful. The good aims and thoughts must not only be words on paper.

To fulfil this purpose, the aim of this study is to see how the work with CEDAW Article 6 is proceeded, mainly through legislation, in a specific country to suppress the discrimination of women and promote their human rights, and by this reach a better understanding of this human rights issue's validity in practice. It is our intention to study the implementation of CEDAW Article 6 by the Cambodian government and measures by other actors such as Non Governmental Organisations (NGOs) and International Organisations (IOs).

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<sup>30</sup> NGOs parallel report on CEDAW in Cambodia 2001, p. 19 and UNICEF 1995, p. 3.

According to SIDA 2001, part 4 p. 14 there are figures from Ministry of Planning that there was 80,000 to 100,000 prostitutes in Cambodia in 2000. The figures differ widely because of the difficulties in determining them as the commercial sex industry is rapidly changing face from brothels to massage parlours, karaoke bars, casinos etc. See section 1.7.1 about reliability on statistics.

<sup>31</sup> Askin/Koenig 2000, p. 51

## **1.7 Method**

### **1.7.1 Practice as Theory**

We have used qualitative method, to receive the foundation on which this thesis is based, consisting of three methods of collecting data; document analysis, interviews and observations.<sup>32</sup> The greater part of the information is founded on the results from a field study made in Cambodia during 10 weeks from February to May 2002. The field study was made possible through a scholarship from the Swedish Mission Council (Svenska Missionsrådet).

To make a legal study relevant it is necessary to study the practice and effect of the law in society. There are few documents on the implementation of CEDAW in Cambodia as well as on Cambodian law in this field, therefore a field study was necessary for our thesis. Out from this much of our thesis is built on practice, since practice in this case provides legal science with working material; without practice no theory. Håkan Hydén, Professor of Sociology of Law at Lund University, Sweden, claims that legal science in comparison with other sciences to a small extent divides theory from practice. As will show in our thesis, the understanding of the content and application of the law is dependent on a study in practice.<sup>33</sup>

### **1.7.2 Written Sources**

International Conventions, Cambodian legislation and the Swedish Government Official Reports Series are used for the legal parts of the study. We have also taken part of literature concerning human rights, international conventions, NGOs, the Cambodian history and society and the international debate on how to legally handle exploitation by prostitution. The written references concerning the situation of prostitution in Cambodia are mostly reports and are only to be found in Cambodia. Other written documents we have used are Cambodian periodicals and statistics. We have also used internet to gather useful information such as articles and essays, especially for the international debate on prostitution.

It would have been of great interest and contribution to this study to see how the law has been used in the Cambodian court. We put a great effort into finding cases, but found that the judicial system has not yet a satisfactory filing system, and documents that do exist are few, short and in Khmer. As there were no written sources we interviewed a few judges and defenders in trying to get a picture of trends and problems in cases brought before court.

The access to statistics is limited in Cambodia. We went to Ministry of Planning / Institute of Statistics and bought the available statistics for our study. We do not know the exact methods that are used to perform those statistics, and we do not know in what purpose some data is presented. Generally, statistics in Cambodia are not of great reliability because the country does not have the routines and traditions nor the economic resources for this. The filing system is not well developed, which we experienced also in other situations. Cambodia made an extensive census in 1998 funded by United Nations Population Fund. This is the first census that covers the whole population since Cambodia became independent. Because of the lack of accountability in statistics and the fact that the communication system and infrastructure are limited the authenticity of these figures is not guaranteed. The difficulty with accurate statistics when it comes to prostitution is of course also related to that the sex industry includes and is connected to illegal deeds of various kinds. Nevertheless we have

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<sup>32</sup> Bengtsson/Hjort/Sandberg/Thelander 1998, p. 18

<sup>33</sup> Hydén 1998, p. 19

chosen to use some of these figures as we believe they give a picture of what the situation is like in Cambodia.

### **1.7.3 Unwritten Sources**

The unwritten sources consist of qualitative interviews, conversations and observations made during our field study in Cambodia. Regarding the interviews, we chose to do qualitative interviews where we formulated the questions out of the respondents special area of knowledge, which means that we have not followed one specific questionnaire for all our interviews. There are innumerable NGOs in Cambodia working with human rights in some sense. Out of these we have focused on those that work with women's rights and those focusing on legal questions and the judiciary. Apart from NGOs we have interviewed representatives from different organs of the UN, governmental officials and judges. We had only a few local contacts in advance of our arrival in Cambodia; communication between Sweden and Cambodia made it difficult to contact NGOs of our interest from Sweden. We received the information that it would be easier for us to get in contact with different organisations and persons when we arrived. This appeared to be true and very effective. As we arrived and started our field work people were very helpful along the way which resulted in contacts we never hoped we could get, and we are most grateful to them all. It was never our purpose to meet with all organisations working with women's rights, but we have chosen to try to contact those that work with sex workers or former sex workers, either socially or legally and sometimes both. We were met by enthusiasm and we felt very welcome since they gave us much of their time and engagement. A few organisations however, were we not able to get in contact with or they were not able to receive us. Through the persons we have interviewed and the organisations they represent, we feel that we have received a good and representative sample for our field study.

The respondents should first and foremost be valued as representatives for an organisation or institution, but in many cases their own personal values and ideas shine through. We have tried our best both during the interviews and in the subsequent work to keep it separate. We expected the language to be a great hindrance for our interviews and we were prepared to hire interpreter for most of the interviews. Luckily this was not needed in most of the cases as the respondents handled English well. The English vocabulary was limited for some of the respondents and their information to us would probably have been even more nuanced and well formulated in their native language, the words do not reflect the words they would use in their first language, most often Khmer. Therefore our quotes do not do justice to all their knowledge, but we believe and hope that we have understood the spirit in their answers. A part of the language difficulties is of course in our reception and understanding, not only their expressions and pronunciation as we used our second language as well. We noticed that as our understanding of the Khmer culture and language improved during our ten weeks in the country, our understanding of "their" English improved as well. An even longer stay in the country might have improved our understanding and ability to converse.

The method of using qualitative interviews brings other obstacles that we have to consider. Sometimes the answers that were presented to us, were very long and descriptive, and answered more than just our question. Sometimes the respondent presented the information he or she wanted us to hear, not the information we asked for. In some cases this might be connected to us being from one of the donor-states. Sweden is one among many donor-states in Cambodia, giving financial help to many NGOs. As the situation is now, Cambodia is totally dependent on that foreign states and organisations donate money. We do not know if

this has affected the answers the respondents gave us. Sometimes this extensive talking was a waste of time, but in many cases we received data that was useful for our understanding of the Khmer culture, society and traditions. We also felt that it, mostly out of respect for the respondents, was problematic to interrupt when they were talking about issues that they felt were very important. We are aware that we, to some extent, have created this problem ourselves, in asking unspecific questions.

What we call “conversations” are appointments with one or two persons under circumstances that could not be called an interview.<sup>34</sup> These were situations when the purpose was to receive background information, we were prepared on the subject but without exactly formulated questions and there was no possibility for us to use the recorder. We have chosen to use the valuable information from the “conversations” in our thesis, since we took notes.

We conducted a few “observations” in order to follow the natural flow of events and actions and by this receive an idea of prostitution in the Cambodian society.<sup>35</sup> We strolled along streets known for being frequented by brothels and massage parlours. We walked in parks at night time where young women individually were selling sex. We visited Phnom Penh’s most famous men’s clubs, where we were quite unexpected guests and probably had a hampering effect on the surrounding activity. We also took a taxi outside one of the big hotels in town- just like foreign sex buyers do- to a so-called prostitution village in the outskirts of Phnom Penh. We seemed to have the same effect there as in the previous mentioned clubs. Still the activities, both in the clubs and in the prostitution village, continued and gave us a chance to observe. We will shortly describe our experiences from these observations further ahead.

## **1.8 Delimitations**

We have experienced difficulties in limiting the scope of the question at issue in our field study. A lot of aspects intervene and are important and many of those are hard to leave out of account. We also know that the knowledge we have gained, that might not follow our delimitations exactly, still has given us a wider contextual understanding. We would never receive this kind of information from literature or other written documents. Knowing reality is more complex than it looks in documents and than we can deal with in this study, we have chosen the following delimitations for our study, with the intent that it still will give an accurate view of the situation in Cambodia.

In addition to exploitation of prostitution, trafficking for sexual purposes is stated in Article 6 as a phenomenon that the member parties should work to suppress. Trafficking is often addressed as a modern form of slavery.<sup>36</sup> The most common sort of trafficking is probably trafficking for sexual purposes, but there is also trafficking for purposes like labour, domestic services, begging and marriage.<sup>37</sup> We came to Cambodia with the image that trafficking was mostly a cross border phenomenon, and that it therefore would be easy for us to delimit our field study to concern prostitution only. We realised that this is not possible as there is a big flow of trafficking within Cambodia, primarily for sexual purposes. Trafficking occurs from poor areas to richer areas, from the provinces to the bigger cities, mostly Phnom Penh. The close connection between trafficking and prostitution is evident since most girls and women that are prostitutes originally come from another area.<sup>38</sup> We still won’t discuss the cross

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<sup>34</sup> Bengtsson/Hjort/Sandberg/Thelander 1998, p. 24f

<sup>35</sup> Bengtsson/Hjort/Sandberg/Thelander 1998, p. 52ff

<sup>36</sup> Ministry for Foreign Affairs 2001, p.3

<sup>37</sup> Ministry for Foreign Affairs 2001, p.13f

<sup>38</sup> UNICEF 1995, p. 8

border trafficking, but the trafficking within Cambodian borders is a part of the sexual exploitation we are examining, leaving it out would give a false picture of the situation.

From the beginning it was also our intention to make a clear distinction between child prostitution (girls and boys under the age of 18) and adult prostitution. The reason for this was that child prostitution is by the international community unquestionably seen as a violation of children's rights and there are no dissident opinions concerning regulation as it is when it comes to adults in prostitution. We realised that many of the prostitutes in Cambodia are young women under 18 years, and almost everybody are under 18 years when they enter prostitution. This means that we are not focusing on child prostitution, but we are neither excluding women under 18 years old. Certain prescriptions in the Cambodian legislation on trafficking has a dividing-line based on the age of 15. It deals with the offender differently depending on if the victim has reached the age of 15 years or not. Victims under 15 years are considered minors and the penalty for the crime is therefore doubled. The fact that the victim is seen as an "adult" in the legislation if he or she is over 15 years is also a reason for including this group in our study.

As mentioned above the main object of this study is how Cambodia responds to CEDAW Article 6 through legislation. Looking at legislation without its social context would result in a very theoretical study, a study that do not reflect the actual situation of those it concerns. Answering the main question at issue of our study, how CEDAW is implemented, has to include a study of the society where the legislation is or should be in force. This is the reason for the sections describing history and the social situation.

## **1.9 Definitions**

We have met difficulties in deciding what term to use, *prostitution* or *sex work*, and then also in using them consequently. Different people give the words different meaning, often depending on their opinion, background and contact with the issue in question. *Prostitution* is the traditionally used word and in order to escape the negative connotations, it has in certain discourses been replaced by the term *sex work*. The latter term is also used to emphasize the activities as a recognised work.

*Prostitution* is commonly given the following definition: Sexual services provided in return of economic compensation. *Sex work* is often given a broader meaning and also includes sexual services not necessarily involving direct sexual contact such as erotic dancers, karaoke-girls, beer-girls etc. Neither this theoretically plain division can always be distinguished among our respondents or in the books we have read. Since there are no clear and prevalent definitions we have used both the terms in different contexts based on what is, from our experience, most common in the certain text or circumstance. In consequence with what we have said above we use *sex work* in a broader sense than *prostitution*; this is a terminological choice not involving moral aspects.

Prostitution is sometimes divided into *forced* and *voluntary* prostitution, depending on the reason for the woman to be a prostitute. The division between the two is however, very complicated to define. We also question if it really is a woman's voluntary choice to be a prostitute, when there seems to be no other way of support. We do not find the division appropriate since we believe the theoretical distinctions do not apprehend with the diverse reality. The terms *voluntary* and *forced* are only used when we refer to someone who uses this division.

Another frequently used word that needs to be explained is *sexual exploitation*. *Sexual exploitation* refers to the practice of illicit sexual use of a person for some sort of gratification or financial gain. Typical examples of sexual exploiters are pimps, brothelowners, traffickers and clients. A distinctive feature of *sexual exploitation* is the superior position the exploiter possesses in relation to the exploited victim.

A *pimp* is a person who provides opportunities for sexual services in return for economic compensation, or a person who takes all or parts of the economic compensation from the prostitute's earnings.

*Trafficking* involves the recruitment and /or transportation of a person within and across national borders for disreputable and illicit purposes, for example prostitution. The United Nations has agreed on a definition: “‘*Trafficking in person*’ shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practice similar to slavery, servitude or the removal of organs.”<sup>39</sup>

*Non-Governmental Organisations (NGOs)* We are using the term NGO to cover all forms of non-profit organisations. There is a great complexity of organisations when using the same name since there are many different characters of organisations found in this definition, but dividing them into smaller sections, as many authors do, will not be more suitable for our purpose. Some NGOs are more intermediary organisations engaged in funding and other forms of support to promote development, some NGOs work closer to their members. Some NGOs are very large in both scope of areas and activities as well as economic resources, others are not. Some NGOs have their headquarters and origin in Western countries, some in the developing countries. The NGOs we have been in contact with are foremost working with promoting human rights, in different ways. We do, occasionally, make the distinction to call NGOs mostly active in Cambodia, local NGOs.<sup>40</sup>

*International Organisations (IOs)* are also non-profit organisations, but where states are members. The international organisations are working world-wide with funding and other forms of resources to developing countries. The most common international organisation in Cambodia is the UN and its different agencies.

## 2 Social Context from a Gender Perspective

### 2.1 Introduction

In order to see the implementation of CEDAW Article 6 in a more contextual perspective we need to receive an understanding of the exploitation of women and children through commercial sex work/prostitution in Cambodia. We will therefore in this chapter look at the social situation in Cambodia, primarily the situation of women, the social attitudes towards women and the attitudes towards sexuality of both men and women. We will survey the status

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<sup>39</sup> *The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, Article 3 (a), added to *The United Nations Convention against Transnational Organised Crime*. 2000

<sup>40</sup> Hulme/Edwards 1997, p.21



of women in different areas of life such as health, education, employment and household, and subsequent the situation of trafficked women and women in sex work. We see these situations as the most influential in a woman's everyday life and they shape the role of women in Cambodian society. These aspects are also what our respondents lifted up as characteristic concerning women's social situation.

As an introductory section to this chapter on social context we will very briefly go through some of the major periods and events of the history of Cambodia.<sup>41</sup> Since Cambodia has been faced with a complete economic, political and social transformation in a very short time we will give more details about the last 30 years of Cambodian history than the previous years. In the following section we will also briefly go through in what way the authorities have responded to prostitution, with beginning of the years of the Khmer Rouge-regime until the UNTAC-period.

## **2.2 History of Cambodia**

In the first century AD Southeast Asia became a centre for foremost Indian and Chinese traders and when they arrived they exposed the people to their cultures. It was the Indian culture that took the greatest hold with its culture, religion, law, science and writings. In the third century AD the dominant power of the region was the Indian influenced state of Funan, but in the later half of the sixth century AD Funan started to decline. This period is sometimes referred to as the Pre-Angkorian period.<sup>42</sup>

The most famous and prosperous period of the Khmer Kingdom was the Angkor-era from about 800-1400 AD<sup>43</sup>. This great power had its centre in the northern parts of Cambodia, north of the Lake Tonle Sap. There are still ruins from the impressive temples and buildings and during the Angkor-era there was a shift in religion depending on different kings and rulers. There are Hindu temples as well as temples dedicated to Buddha and Buddhism. The kingdom was a warrior kingdom and had a history of armed conflicts and invasions and finally it fell after wars and attacks from neighbouring countries and the flourishing days of Angkor were over.

The following centuries are badly documented and Cambodia had several armed conflicts with their neighbouring countries, Thailand and Vietnam. Cambodia was an agricultural country with rice farming people dependent on the monsoon-rain every year. There was no developed trade or commerce and in comparison to its neighbours, Cambodia was poor.<sup>44</sup>

In 1863 Cambodia became a French Protectorate, a part of French Indochina; but still some power remained with the Cambodian king, though under French supervision<sup>45</sup>. During 1940 and 1945 (the Second World War) the Japanese had a great impact over the country and pushed aside the French and during this period, in 1941, Norodom Sihanouk was crowned king. After the Japanese surrender Cambodia tried to gain independence, but France remained control over important fields such as finance, defence and foreign affairs. The independence movement, though, started and different political parties were formed.<sup>46</sup>

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<sup>41</sup> If anyone is interested in more thorough and deep knowledge about the history and social development of Cambodia, we warmly recommend David P. Chandler's books- see list of references.

<sup>42</sup> Siem Reap Angkor-Visitors Guide 2002

<sup>43</sup> Chandler 1996, p.29

<sup>44</sup> Chandler 1996, p.100

<sup>45</sup> Chandler 1996, p.148

<sup>46</sup> Chandler 1996, p.172f

In 1955 a declaration of independence was made by King Sihanouk. During the Vietnam War he had conflicts with the USA and Cambodia was severely bombed for several months and in 1970 there was a coup against the king because of discontent with Vietnamese forces in the country and King Sihanouk, already in France, was deposed. With American support prime Minister Lon Nol established *The Khmer Republic*. There was a bitter and bloody civil war at the same time as Cambodia was drawn into the Vietnam war<sup>47</sup>. In the countryside at this time the Khmer Rouge proceeded a guerrilla war and under the lead of Saloth Sar (later Pol Pot) the Khmer Rouge invaded the capital Phnom Penh in 1975 and entered with a new kind of terror. The Communist Khmer Rouge victoriously proclaimed *Democratic Kampuchea* in 1975. Many Cambodian institutions were destroyed or overturned and the urban population forcibly exiled from their homes were, together with everybody else, put to work in the countryside as agricultural labourers, in the attempt to create a classless agricultural society. The new regime abolished money, markets, formal schooling, Buddhist practices and private property. More than one million people, or one in seven, were killed because of war, starvation, terror and diseases during the period of 1975-1979.<sup>48</sup>

In 1979 the Vietnamese troops invaded Cambodia in response to repeated and bloody border provocations and the Pol Pot regime was forced across the border to Thailand. In place of the Khmer Rouge the Vietnamese installed a new communist government composed by largely disaffected Khmer Rouge cadre, *People's Republic of Kampuchea* 1979-1989.

The awful discovery of Cambodia's "Killing Fields" (mass graves from the Khmer Rouge regime), the desperate plight of the country's surviving population, including the threat of widespread famine and exodus from the country of more than half a million traumatised refugees, brought the situation in Cambodia to international attention as well as significant humanitarian assistance.

Cambodia was again isolated because of an American-led political and economic embargo due to Vietnam's continued military involvement in the country and during this time received only limited levels of international humanitarian and development assistance. The Khmer Rouge continued the guerrilla war and king Sihanouk, who was in exile, created an exile government in 1982. The Cambodian conflict continued until the break-up of the former Soviet Union. The end of the cold war was also accompanied by other political changes in for instance Germany and China. During this period bilateral meetings were organised concerning Cambodia's situation and this led to progress in developing a settlement of the Cambodian conflict and also establishing a UN led peacekeeping operation. In 1989 the Vietnamese left the country and King Sihanouk returned; during 1989-1993 the country was called *State of Cambodia*.<sup>49</sup> In 1991 the conflicting parties came to an understanding and the *Agreements on A Political Settlement of the Cambodian Conflict* (Mostly referred to as *The Paris Peace Agreements*) were signed and the United Nations Transitional Authority in Cambodia (UNTAC) was established. The aims of UNTAC were to restore peace in Cambodia, establish national reconciliation and achieve liberal democracy through a free and fair election.<sup>50</sup> The UNTAC sponsored election was held in May 1993 with a turnout of some 90% registered voters. Despite some pre-election violence it was declared to have been free and fair. The result became a coalition government with the royal party FUNCINPEC (a French acronym) and the communist party, Cambodia People's Party (CPP). At the same time

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<sup>47</sup> Curtis 1998, p.4

<sup>48</sup> Chandler 1996, p.5f

<sup>49</sup> Curtis 1998, p.5f

<sup>50</sup> Curtis 1998, p.8

a new Constitution was made and *the Kingdom of Cambodia* was created with King Sihanouk as constitutional monarch “that shall reign but shall not govern”<sup>51</sup>. Still, with the conflicting past there are many problems.<sup>52</sup> In the post UNTAC period (after 1993) the National Assembly passed legislation that outlawed the Khmer Rouge, still they continued their war through the years with less success and with little chance of recovering as a potent political force. However, burned villages, killing and heavy fighting in rural areas were signs that the Khmer Rouge, although weaker, still were active and creating insecurity.<sup>53</sup>

Despite all this there was hope that years of fighting and bloodshed might finally come to an end and during this time with massive international support Cambodia made great development progress.<sup>54</sup> But in July 1997 a military confrontation took place in Phnom Penh over a weekend and resulted in 150 deaths. The conflict was between the FUNCINPEC and the CPP. Who actually provoked it is somewhat unclear, but it was commonly reported as Hun Sen’s (CPP) bloody seizure of power.<sup>55</sup> Despite this coup d’etat Cambodia’s next national election was held in 1998 and CPP formed a government with Hun Sen as Prime Minister.<sup>56</sup> During these years there has still not been any trials against the leaders of the genocide during 1975-1979. The debate on if and how trials should be supervised and carried out are still under discussion. In July 1997 a “showtrial” sentenced the Khmer rouge leader Pol Pot to life imprisonment.<sup>57</sup> Pol Pot died in April 1998.

### **2.3 Authorities’ Response to Prostitution**

During these years authorities have responded differently towards prostitution and sex workers. Before the Khmer Rouge came into power in 1975 prostitution was openly practised in Cambodia, especially during the years 1970-75. During the Khmer Rouge regime prostitution was banned and even extra marital sex was punished with death. After the fall of this regime in 1979 prostitution escalated again, but the government ensured the situation was not rampant. Between 1980 and 1989 the Vietnamese regime arrested sex workers and took them to an island called Koh Kor for re-education and rehabilitation. The Vietnamese withdrew from Cambodia in 1989, and after that prostitution remained in check until 1991 when the Paris Peace Agreements were signed and the Koh Kor centre was closed. The number of sex workers in Phnom Penh were in 1991 estimated to be around 6 000.

In 1989 an economic liberalisation programme was started which resulted in more open borders and a beginning free market economy. It also led to increased disposable income for a few Cambodians, and businessmen from the region arrived in Cambodia. The new wealth and more open borders towards the neighbour countries brought with it an increase in prostitution that was accentuated in 1991 with the arrival of approximately 20,000 well paid UN personnel during the United Nations Transitional Authority in Cambodia (UNTAC). “*The UNTAC period between 1991 and 1993 saw an explosive growth in prostitution. Brothels flourished in Phnom Penh and major provincial towns, often openly in front of UN quarters. Almost no measures were instituted by UNTAC to check these practices or educate UN staff. By the end of 1992, there were an estimated 20,000 commercial sex workers in Phnom Penh alone.*”<sup>58</sup>

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<sup>51</sup> The Constitution of the Kingdom of Cambodia Article 7(1)

<sup>52</sup> Curtis 1998, p.10

<sup>53</sup> Curtis 1998, p. 14, 35f

<sup>54</sup> Curtis 1998, p.44

<sup>55</sup> Curtis 1998, p.49

<sup>56</sup> CPP received 64 of the mandates, FUNCINPEC 43 and Sam Rainsy Party 15.

<sup>57</sup> Curtis 1998, p.43

<sup>58</sup> UNICEF 1995, p. 2

UNTAC left in 1993, and there was a hope that the situation could be controlled again. In 1994 the numbers of prostitutes was less than 10,000 in Phnom Penh, but since then the number has increased again and is now as mentioned before estimated to be up to 20,000 in Phnom Penh.

## **2.4 The Status of Women**

### **2.4.1 Basic Statistics**

The figures in this section are principally from a population census made 1998 by the National Institute of Statistics at Ministry of Planning, and the Cambodia Demographic and Health Survey 2000 concentrating on women.<sup>59</sup> Figures that can be found in both the census and the survey are taken from the census, even though the survey is newer, since the census covers a greater deal of the population (supposedly the whole country) and the survey covers a nationally representative sample of 15,300 women.<sup>60</sup>

The 1998 census show a population consisting of 11,400,000 persons, of which 52 percent are women. The annual population growth rate is estimated to be 2.5 per cent. The Cambodian population is a young population, with 43 percent of the total population aged 0-14 which implies continuing high population growth. The total fertility rate is 5.3 children per woman and it is estimated that 9 per cent of the girls become mothers between 13 and 19 years of age. About 40 per cent live below the poverty line with a per capita income of less than US\$ 300.<sup>61</sup> A low Gross Domestic Product, high child mortality rate and malnutrition, low average life expectancy (56 years) and low educational attainment contributes to a Human Development Index (HDI)<sup>62</sup> among the lowest in Asia.

The Gender Development Index (GDI), which have the same bases as the HDI but also takes into account gender inequalities, is very low in Cambodia mainly because of the big gender disparity in literacy and educational attainment. The Gender Empowerment Measure shows women's possibility of active participation in political and economic spheres and differs by that means from the GDI, which shows gender equality in fundamental conditions.<sup>63</sup> This is as well among the lowest in Asia, due to a low number of women represented in legislative, management and professional occupations.<sup>64</sup>

### **2.4.2 Hierarchical Society**

The big gender inequalities are connected to the Khmer society being a hierarchical society where men generally are perceived as having a higher status than women. They are more powerful and more influential in almost any situation.<sup>65</sup> Every time the question about society's view upon women was asked our respondents, both Cambodian and foreigners, both men and women, talked about men having higher status than women as a part of the culture, the custom and as the law of society. The respondents explained how men think their value is higher than women's, how men look down on women and how they see at least some women as second class citizens. Respondents also explained that both men and women behave

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<sup>59</sup> Bear in mind the problems with statistics mentioned in section 1.7.2

<sup>60</sup> CDHS 2000, p. 2

<sup>61</sup> GPCC 1998, p. xii and 4. (The exact population figure given is 11,437,656) and [www.unfpa.org/regions/adp/countries/cambodia/3cam0105.doc](http://www.unfpa.org/regions/adp/countries/cambodia/3cam0105.doc), 020820

<sup>62</sup> Human Development Index measures life expectancy, BNP per capita and educational attainment in 174 countries. [http://www.undp.se/article.asp?Article\\_id=541&Category\\_Id=HDR\\_2000](http://www.undp.se/article.asp?Article_id=541&Category_Id=HDR_2000), 2002-07-24

<sup>63</sup> [http://www.undp.se/article.asp?Article\\_id=541&Category\\_Id=HDR\\_2000](http://www.undp.se/article.asp?Article_id=541&Category_Id=HDR_2000), 2002-07-24

<sup>64</sup> GPCC 1998, p. 52 and SIDA 2001, part 4 p. 4

<sup>65</sup> Interview, CWCC 020423

according to this, which shows that these standards are well integrated in society and demands strong measures in order for change to happen. The devaluation of women they said causes many of the problems in society.<sup>66</sup> Apart from this it is interesting to note that Cambodia, according to social scientists, never has been a patriarchal society where virtually all political and economical power lay with men.<sup>67</sup> Still the result is not of much difference as higher status in the hierarchical order comprise more power, and in Cambodia men are in the possession of this high position.

### 2.4.3 Religion

When looking for patterns and reasons for a certain social phenomenon religion often plays a significant role, and without having it as main objective of this study we will put forward what we discovered about Buddhist impact on Cambodian society. It is not our intention to make any statements on the religious consciousness of the Khmer people, but as we arrived we found that Cambodia is a secularised country with little knowledge about Buddhist teachings, and the Buddhist beliefs are mixed up with a variety of other beliefs. So, the Buddhist morals that for example implies a limited sexual behaviour is often not taken into account by ordinary people.<sup>68</sup> One reason for the secularisation is that the Khmer Rouge Regime during their years of power (1975-79) very much succeeded in destroying old traditions and religions. The at that time important Buddhist spiritual and moral forces in ordinary life was eradicated.<sup>69</sup> Most of the temples were also destroyed by the Khmer Rouge, in the name of communism, and the people are now trying to regain some of what they have lost.<sup>70</sup> Both in towns and at the countryside in Cambodia there are at present time several newly built Buddhist temples, and temples under restoration, with numerous monks in the surroundings of these.

One of the traditions that do remain from Buddhist ideas and is integrated in society is, according to some writers, the hierarchically organised society mentioned above. This hierarchy is said to be a system rooted in the Buddhist ideas of merit and karma which says that a person's level in society is a product of their conduct in previous incarnations. The position someone has gained in society is something that he or she deserves, because of his or her previous behaviour and life-style. If a person is born woman she has accumulated only a limited amount of merit in her previous lifetime. Women's lower religious status is shown in the fact that women are not allowed to become monks, and that there is no comparable order of nuns.<sup>71</sup> The hierarchically organised society therefore governs relationships in a way that gives women lower status than men. To sum up it can be said that despite the fact that Buddhism in itself is not a factor with great impact on today's Khmer society, it might be a part of and the background for still existing traditional conducts.

### 2.4.4 Prevalent Traditional Attitudes

Examples on traditional attitudes that are prevalent in society are that the man is seen as the head of the family and that he is the one to decide rules for the household. What happens in the home is a family affair, and no one shall therefore interfere with problems such as for example violence within the home. In accordance with the culture "*[w]omen keep their family-problems to themselves, they do not hang their trashy laundry in front of their*

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<sup>66</sup> Interview, UNDP 020308, GAD 020326, Men's Network 020326, MoWVA 020328

<sup>67</sup> Fiske 1995, p. 21

<sup>68</sup> Interview LICADHO, 020312

<sup>69</sup> UNICEF 1995

<sup>70</sup> Article 43(3) Constitution of the Kingdom of Cambodia

<sup>71</sup> Fiske 1995, p. 21

*neighbours,*<sup>72</sup> as Ms Sun Sothy at Cambodian Women Crisis Centre (CWCC) said. This proverb gives a clear image of the importance of a good looking surface and that most women do not complain about their situation, but instead try to hide it. Forced marriages are prohibited in the law,<sup>73</sup> but it is still very rare that men and women themselves decide who they want to marry.<sup>74</sup> Sex outside the marriage is out of the question for women, while this is very common among men. This is one of the big causes for the rampant situation with prostitution in the country.

#### **2.4.5 Domestic Violence**

One of the problems that is intensified by the devaluation of women is domestic violence. Violence in the home has been found frequently occurring, and is a big topic on the agenda in Cambodia right now. Mr Hang Vannak at UNDP said:

*“Men give less value to women and the majority of the women are beaten by their husbands. The women think they have done a bad thing themselves, and need to receive bad things in return to get that away. [...] Yes, even today this idea seems to be stuck in Cambodia. The woman has no skill, no job, so when she is beaten she has nowhere to go. Her husband can do anything.”*<sup>75</sup>

In the Health Survey 2000 25 percent of ever-married women had suffered emotional, physical or sexual violence by their husband, and a majority of these women have experienced it within the last 12 months which shows that many women continues to experience violence in their home.<sup>76</sup>

The issue has been brought to attention in various ways in Cambodia. Every year in November and December the organisation Gender and Development for Cambodia (GAD/C) conducts a campaign to stop Violence Against Women in order to unify society in this question. Involved in this as well is a network under GAD/C called Men’s Network for the Elimination of Violence Against Women that does an impressing work in Cambodia on gender issues. Much because of these men’s lobbying in the government the Law on Domestic Violence was passed.<sup>77</sup> This issue is as well brought to attention in connection with International Women’s day on March 8<sup>th</sup>. We got the opportunity to participate in the 2002 March Against Violence Against Women through the centre of Phnom Penh, which was followed by a speech by the Minister of Women’s and Veteran’s affairs, where she expressed her great support for the efforts.

#### **2.4.6 Health**

Another effect of difference in status between men and women is women’s access to health services and education, as Ms Mehn Navy at GAD says:

*”[O]ur society is a hierarchical society, the men always say that their value is higher than women. Therefore women have less opportunity to health and education. [...] Because the law of society always says that women are lower than men.”*<sup>78</sup>

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<sup>72</sup> Interview CWCC, 020225

<sup>73</sup> Article 45(4) Constitution of the Kingdom of Cambodia

<sup>74</sup> SIDA 2001, part 4 p. 13

<sup>75</sup> Interview, UNDP 020308

<sup>76</sup> CDHS 2000, p. 238f

<sup>77</sup> Interview, GAD and Men’s Network 020326. During the campaign 2001 40 000 white ribbons symbolizing the will to stop violence against women were distributed in 6 provinces of Cambodia.

<sup>78</sup> Interview, GAD 020326

Fewer women seek treatment for illness than men, even though women face a lot of health problems related to motherhood and reproductive health. The maternal mortality ratio is estimated to be 473 per 100 000 live births; the antenatal care is less than 50 per cent and only 34 per cent of deliveries are attended by health professionals.<sup>79</sup> Children are affected too as parents treat them differently depending on sex, when it comes to breastfeeding and medical treatment boys are often prioritised.

An alarming issue is that Cambodia has one of the fastest growing HIV prevalence rates in the world. In March 2001 170 000 Cambodians were estimated to be infected, this is equivalent to about 3.5 percent of the adult population. Sex workers, police and married women have the highest infection rates. A growing number of women are getting infected through their husbands,<sup>80</sup> and at the same time they hesitate to seek the healthcare needed.

### 2.4.7 Education and Employment

The least educated people are also the poorest. More than one in three persons over 25 years has not attended school, 73 percent of these are women. The gender disparities are shown at an early stage. Girls drop out of school earlier and in a bigger number than boys, and there are a significant higher amount of girls than boys between 7 and 19 years old in the labour force.<sup>81</sup> Women are therefore in general less educated than men; in 1998 the adult (from 15 years) literacy rate was 80 percent among males and only 57 percent among females. Of those who never completed primary school were 49 percent males and 66 females.<sup>82</sup>

The Health Survey 2000 shows that 59 percent of women think it is better to educate a son than a daughter, and that the gender gap widens in higher schooling levels.<sup>83</sup> It should be emphasized that Cambodian families value education, especially at the primary level, and that they are eager to send their children, both girls and boys, to school. Unfortunately this often conflicts with economic and other practical necessities.<sup>84</sup> The traditional structures says that a woman should work in the home, and work outside is valued lower if performed by a woman than if performed by a man. Therefore girls are more often than boys removed from school when help is needed in the home, such as care for siblings, household chores and agricultural activities.<sup>85</sup> Mr Hang Vannak at UNDP says:

*“If a family has one son and one daughter, they only send the son to school.”<sup>86</sup>*

And Ms Debbie Tetsch at White Lotus confirms this:

*“[Y]ou know in a family a boy might be allowed to continue education longer than a girl. She would be stopped to work in a rice field, because it is more valuable for the male to have education. Why is that so easily accepted?”<sup>87</sup>*

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<sup>79</sup> [www.unfpa.org/regions/adp/countries/cambodia/3cam0105.doc](http://www.unfpa.org/regions/adp/countries/cambodia/3cam0105.doc), 020820

<sup>80</sup> SIDA 2001, part 4 p.7f and CDHS p.131f. The figure 3.5% is built on that adults represent approximately half the population. See also [www.unfpa.org/regions/adp/countries/cambodia/3cam0105.doc](http://www.unfpa.org/regions/adp/countries/cambodia/3cam0105.doc), 020820

<sup>81</sup> GPCC 1998, p. 38

<sup>82</sup> GPCC 1998, p. xiii. Round off in whole numbers.

<sup>83</sup> CDHS 2000, p. 218 and 17

<sup>84</sup> Fiske 1995, p. 7

<sup>85</sup> GPCC 1998, p. 4

<sup>86</sup> Interview, UNDP 020308

<sup>87</sup> Interview, White Lotus 020315

Another aspect that affect the parents' choice of taking the girl out of school, even if the high costs are the main reason,<sup>88</sup> is the often long distances to school; they are worried about her safety and reputation.<sup>89</sup>

One effect of having no education is that it limits a person's possibility to make use of different kinds of services and programs, and therefor also limits economic opportunities. Moreover, the level of education of a woman and her knowledge of how to take care of herself and her children in aspects of health often go hand in hand. Not having an education evidently makes it harder to get out of poverty,<sup>90</sup> which gives the already disadvantaged women even fewer possibilities.

Even though Cambodian society seems to believe educating a son gives more benefits than educating a daughter estimations can be made that shows that women receives higher salary to each level of schooling than men. Men that have finished primary school earn 10 percent more than men with no schooling, while women that have finished primary school earn 32 percent more than women with no schooling. For upper and secondary school the percentage is 42 for men and 80 for women.<sup>91</sup> Some figures in the 1998 census also indicates that educating girls might be of favour. Women in a higher educational level have better chances of getting jobs matching their education than men in the same educational level have.<sup>92</sup>

Most Cambodians, about 85 percent, live and work in rural areas. About 71 percent of men and 82 percent of women work in agriculture and fishery. The majority of women also work as unpaid family workers, while this is not as common at all among men. More women than men work in the wholesale and retail trade, hotels and restaurants, private households and manufacturing (factories) whereas more men than women work in public administration.<sup>93</sup> Women are underrepresented in professions that carry status, like in the civil service, decision-making and management positions and professional positions such as teaching, medicine, agronomy, science, architecture, engineering, journalism and media.<sup>94</sup>

An analysis of female workers in each industrial category by marital status is made in the 1998 Census. This shows higher percentage of never married among factory workers (54 percent), employees in hotels and restaurants (52 percent) and private household employees such as maids (59 percent). The drawn conclusion is: "*The nature of economic involvement of such women may discourage marriage and family building.*"<sup>95</sup> The few job opportunities offered for women consist of hard work with long working hours and are therefore probably impossible to combine with taking care of a household. This is confirmed by Mr Robert Baltus at AFESIP as he talks about the conditions in the garment factories:

*"Job opportunities in Cambodia are limited, you have the garment factories,[ ...] but again the working conditions in garment factories is very difficult, they have to work very long*

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<sup>88</sup> Fiske 1995, p. 9

<sup>89</sup> Fiske 1995, p. 7. During our stay in Phnom Penh we became good friends with our maid Ravy Bin who is a 23 year old Cambodian woman. She confirmed this in telling that she was one of the few girls that finished school, most of her girlfriends dropped out just because of safety reasons as men kissed them on the way to school even if the girls did not want to.

<sup>90</sup> SIDA 2001, part 4 p. 6

<sup>91</sup> SIDA 2001, part 4 p. 7

<sup>92</sup> GPCC 1998, p. 44f

<sup>93</sup> GPCC 1998, p. 40

<sup>94</sup> SIDA 2001, part 4 p. 9

<sup>95</sup> GPCC 1998, p. 39



*hours, it's a very exhausting job and with very little salary. And most, an increasing number of women who work in garment factories have to prostitute themselves.*"<sup>96</sup>

Sex workers are not mentioned at all in the tables or analysis in the 1998 Census,<sup>97</sup> and in all probability they have been left out since prostitution is not an officially approved profession.

Other interesting figures in the 2000 Health Survey shows that a large proportion of household expenditures are met with women's earnings, 77 percent of women cover half or more and 34 percent cover all household expenditures with their earnings. This indicates that in spite of the fact that women generally have lower access to education, they still are economically equal players within the household.<sup>98</sup>

#### **2.4.8 Women Headed Households**

Out of the population 10.8 percent of the females and 6.5 percent of the males are widowed, and 25.7 percent of the households are headed by females<sup>99</sup> without labour support from a male. Many of these women lost their men during the Pol Pot-time from 1975 to 1979; when Vietnamese forces invaded Cambodia in 1979 it was estimated that females constituted 65 percent of the Cambodian population.<sup>100</sup> Many women have also become widows as a result of military actions or land-mine explosions. The term "widow" is as well used for divorced women and for those who have been abandoned by their husbands, which is a quite common scenery. Since the status of women is lower than the status of men, widowed women become marginalized and face difficulties in making a livelihood.<sup>101</sup>

At the same time as these women struggle, more and more women are brave enough to initiate divorce. This is probably a result of NGOs' and the MoWVA's work for women empowerment and the change this has contributed to in the Khmer society. The discussion below between the organisation Women For Prosperity and the government shows how difficult it can be to change old beliefs, both the women's self-confidence and the governments old ideas.

*"And now we have many cases of divorce, in which the women took the decision to file the divorce. Now the government, the Ministry of Justice told me - we train them on the law - and the Ministry of Justice they said: 'Please [we] don't want to see the women take the decision to file for divorce, because this is not our culture.' And I said: 'Our culture does not spell out that the women cannot file for divorce.' So now the women are well aware of their rights and they do not want to be abused anymore. So this is her right, to take a decision for her life, and*

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<sup>96</sup> Interview, AFESIP 020304

<sup>97</sup> GPCC 1998, p. 39

<sup>98</sup> CDHS 2000, p. 52f

<sup>99</sup> GPCC 1998, p. xii, xiii

<sup>100</sup> Fiske 1995

<sup>101</sup> GPCC 1998, p. 5.

Nanda Pok from WFP explains the changes in an interview 020321: *"In general a woman has changed her role very drastically after the war. Before the war many of us stayed at home, this is our tradition. We would be considered as a good woman if we were good at home, meaning being a good wife and a good mother to the family. The war started and everybody worked during the war. Many of the men were killed, and left many of the women who became widow. So, we became the breadwinners of the family. And that was a role that we never prepared ourselves for. So when the war ended we saw many women headed households, at that time there was about almost 30 or 28 [per cent] and now it is 25 [per cent] women headed households. This is [a] very high number of female headed households. So you see how our role changed completely because of the war. And we become workers to earn money for the family, which is a role that we were not trained for. Despite of that we are able to raise the children, able to catch up with other countries, you know, despite of the war."*

*the life of her children. That they don't want to be abused anymore. So, the government should find ways to support those people and should respect their decision. What would we have human rights and women's rights for, if [we] can't make our own decisions? Or exercise [our] rights? And they [the government] said: 'Oh, I don't want to see that Cambodia has such a high number of divorce, you know, just like foreign country.' I said: 'I don't think you can prevent that.' So there is something that we have to challenge the government. They want to have a good look, but we suffer. [...] Right now our society is starting to accept them [divorced women], because of our talk. We say: 'Despite you are married or divorced- you are a human. You need to be respected and think of yourself: Are you happy to be with a man who abuses you all the time or are you happy to be alone- and still be respected?' This is the message that we are educating the people.*"<sup>102</sup>

## **2.5 Sexuality in Cambodia**

### **2.5.1 Men are Gold and Women are White Cloth**

The section above gives us a picture of women's social situation in Cambodia, at the same time it gives us a picture of the man's role. When it comes to prostitution a crucial topic is how sexuality per se is apprehended and viewed upon in Cambodia. The situation here differs immensely for women and men.

*"Men are gold, women are white cloth; if you dip it in the dirt, gold can easily be wiped off, but the cloth will be stained forever."*

This is a proverb that refers to the idea of sexuality in Cambodia. Men can have several sexual experiences but their value as men is unchanged. They are like gold that falls in the dirt; you wash it off and it still shines. Women's virtue, on the other hand, is like a white cloth that once dirtied never can become clean again. A woman is expected to remain virgin until she gets married. For men, on the other hand, it is acceptable to have many sexual partners, in second wives (mistresses) or in sex workers.<sup>103</sup> Another proverb says: *"Ten rivers do not feed an ocean"* which means that ten women are not enough to satisfy a man.<sup>104</sup> Ms Nanda Pok at WFP does not say that this is a part of Cambodian society or culture, but she prefers to call this behaviour a habit, which might indicate a belief that habits can be questioned and changed and not be disguised in arguments of culture:

*"I don't want to say it is the culture, but a habit. That even though the constitution say marriage is between one man and one woman, in reality many Cambodian men have many mistresses. And to them, they say, it is OK. It is acceptable. To them- meaning to the men. But to the woman, it is not acceptable.[...]Like I say, it is a habit. The society thinks it is OK for a man to have many mistresses."*<sup>105</sup>

This statement, that extramarital sex for men is accepted in society even though it is not accepted by women, shows once again that women's voices are not the ones that contribute to the voice of society.

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<sup>102</sup> Interview, WFP 020321

<sup>103</sup> PHR 1996, p. 2

<sup>104</sup> Conversation, Christina and Larissa 020302. The Khmer version is said to be a more telling expression.

<sup>105</sup> Interview, WFP 020321

### 2.5.2 Men That Buy Sex

In several of our interviews we asked about society's view upon men that buy sex. Our respondents did not seem prepared for that question, they looked surprised, puzzled and they hesitated before answering, which they did not do to our other questions. Their answers were that the men were "no problem", "all the blame in society was put on the women". It seemed to us that the male participation in the commercial sex trade was not a big issue. And the men were not an aim in changing the situation of women. The respondents' answers might depend on their great focus on women, since their organisations work with women's rights, or they might not have understood our question. However, we came to the conclusion, that the focus on men often is left out.

It has to be emphasized that all exploitative actions in the sexual exploitation of women and children are not conducted only by men. Many of the recruiters in trafficking are women as they more easily than men can convince or lure a girl to follow them. Neither all sex buyers are male, but still the sex industry would be largely limited if it was not for men's sexual involvement. Without the buyer there would be no market; without the demand no need for supply. The great demand makes this industry a lucrative business not just for traffickers and brothelowners, but even in some cases for the sex worker as well (even if this is true only for a minimal part of people in sex work). This, together with poverty, is probably the main cause for sexual exploitation. The focus on the sex client is thus of much importance in implementing CEDAW Article 6; it has to be questioned why and from where this behaviour comes and how it can be targeted.<sup>106</sup> We must emphasise that as in any other country, sexual exploiters of all kinds is an issue with great need for attention in Cambodia.

### 2.5.3 Cambodian Clients

Mr Chay Kim Sore from Cambodian Men's Network said that a man in Cambodia is not respected if he buys sex, at least if people know. His statement still shows that it is a common behaviour:

*"[I]n Cambodia we have a straight tradition and custom also; anyone who goes to the prostitute, the society does not respect. If a woman becomes a prostitute, men wants virgins, so no one wants to marry her. The man who is going to have sex with a prostitute, the society doesn't really know. Men can get married anyway. Before it was openly brothels in the city and young people went there because no one could see them. ['Before' probably refers to the closing of the karaoke-bars in November 2001, the bars served as open brothels.] In the community it is not so open, but secret, the boys are more careful, no one knows that they are going there."*<sup>107</sup>

Most Cambodian men go to prostitutes frequently. Of course there is no statistics confirming this, but according to Mr Robert Baltus, National Co-ordinator at AFESIP which is an NGO that works solely with issues related to prostitution, it can be estimated that about 75% of all men over 18 years old go to prostitutes at least once a month.<sup>108</sup> This is not only accepted, but almost expected for a man at the age of 20. Visiting a brothel is something men do in group as a social activity,<sup>109</sup> and according to Dr Bipin Adhikari, Judicial Advisor from United

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<sup>106</sup> Hedin/Månsson 1998, p. 65

<sup>107</sup> Interview, Men's Network 020326

<sup>108</sup> Interview, AFESIP 020304. "It is estimated that about 75% of all boys over 18 years old goes to prostitutes at least once a month."

<sup>109</sup> PHR 1996, p. 2

Nations' Judicial Mentor Programme Office at the Phnom Penh Municipal Court, to be with a prostitute can for a man be a sign of status:

*"Prostitution is rampant here, and it is integrated in society. If you go to a hotel without a prostitute, people will think you don't have any money."*<sup>110</sup>

The wives do not like it, but women compare it with the man having a second wife/mistress, which to them is even worse.<sup>111</sup> A second wife or mistress might bring extra expenses in forms of financial support, for instance child-support.<sup>112</sup> Often she causes great jealousy from wives, which lately has been shown in several severe physical attacks by women towards their husband's second wives or girlfriends.<sup>113</sup> The fact that men visit brothels does therefor not attract as much attention from wives since it is the least bad alternative for wives. Prostitution is, as our respondent above said, integrated in society.

We asked several of our respondents about the clients in prostitution. Mr Kem Sokkha, member of the Senate, gives us a view of what he thinks is the reasoning of men that buy sex:

*"Yes in Cambodia they say it is normal. They don't care about the future problem. Some men think that they do like that and they get two benefits. They get the benefit themselves, for their happiness or something like that. And second they help Cambodian girl that need some money to live. They help the girl, they help some poor people. [...] Because normally there are so many girls, and they are poor. 'We give money to them and they give happiness to us. So we have both [benefit]'... they think it is no problem."*<sup>114</sup>

Ms Nanda Pok from WFP broadens the picture about the reasons behind men buying sex:

*"Why men go to prostitutes is because they go there to release stress and some young ones they want the experience. I think it is also because men, their ego, that think that if they have sex with many women they are better."*<sup>115</sup>

The factors mentioned by Mr Kem Sokkha and Ms Nanda Pok are not exhaustive, but are essential in working with the suppression of prostitution and exploitation. If some of the reasons behind men's behaviours are known, they should constitute the base of further efforts.

The Urban Sector Group has a programme called Education and Social Support for Sex Workers where Mr Meas Chantan is Programme Assistant Co-ordinator.<sup>116</sup> On Friday nights he goes out to study life on the streets in order to understand the situation for sex workers. This is what he, in our interview, says about society's view upon clients:

*"Only put the fault on the women, as I told you. They don't think about themselves, only point to the women."*<sup>117</sup>

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<sup>110</sup> Interview, MCoPP 020424. The Judicial Mentor Programme is a part of UNCOHCR.

<sup>111</sup> Ung 2000, p. 27

<sup>112</sup> Christina and Larissa 020302

<sup>113</sup> SIDA 2001, part 4 p. 13. During our stay in Cambodia we could several times read in the newspapers (Phnom Penh Post and The Cambodia Daily) about acid-attacks because of this specific reason.

<sup>114</sup> Interview, Kem Sokkha 020424

<sup>115</sup> Interview, WFP 020321

<sup>116</sup> Programme Assistant Co-ordinator, Education and Social Support for Sex Worker (ESSSW)

<sup>117</sup> Interview, USG 020306

Mr Meas Chantan continues to explain about the men's treatment of sex workers. He talks about men cheating the women in order to abuse them. Many women are exposed to gang rapes and severe violence. This is especially the situation for women not working in brothels, but in parks and on the streets.

#### 2.5.4 The Police

The one group that most frequently goes to prostitutes is the police. Next after sex workers they are the group with the highest HIV infection rate.<sup>118</sup> As Mr Meas Chantan explains the police also cause a lot of problems for sex workers:

*“This morning only we requested to the Government and we also invited policemen, but they don't say anything. Only the Excellency ....he requested to the Government, the policemen and to the men to stop the violence. As they go to sex work, many policemen and men beat them [the sex workers], do something bad to women. And also they put the fault to the women, all women. They say the problem comes from the women. [...]*  
*[The sex workers] have a ...first problem: no brothel, [second]: rape, and the third one: police. When they arrest [the sex workers] they take the money from them. And orange sellers also -sex workers sell oranges- when police ask money from orange sellers and they don't have money, the police arrest or take the oranges and through away. And sometimes they rape the women.”<sup>119</sup>*

The Minister of Women's and Veteran's Affairs Her Excellency Mu Sochua also talks about the police as one of the big problems when it comes to society's view upon sex workers and how they are treated:

*“Therefore you already have a social bias, you already have a gender bias. Because the police will automatically look upon women as a second class citizen, as objects and as a cause of the problem. They are not the cause of the problem, they are being exploited. They are looked upon as the unwanted members of society. But in fact it is the society that pushes them to the corner and blame them for their position, for the place that they have but they never chose to be there.”<sup>120</sup>*

In the Ministry of Interior and General Commissariat of National Police, there is a project called Law Enforcement Against Human Trafficking and Child Abuse Project. As the name reveals it is a project to enforce the law on human trafficking through and among the police. Mr Christian Guth, technical advisor for the project, answers the question about the will of the police to fight exploitation of prostitution and trafficking and explains the difficulties in training the police:

*“We organised the first training in 94/95 and I talked about debauchery and having sex with children, or 15-16 old girls. They laughed, because it's the best for them. Having sex with young girls, for them, is much more exciting than with adults. It was difficult to sensitise the police that having sex with children is a crime. But now, after two years of sensitising training and workshops everywhere in the country -not everywhere but in 12 provinces- I can say that some police are really sensitised now, and these policemen we have organised as a network of*

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<sup>118</sup> SIDA 2001, part 4, p. 8

<sup>119</sup> Interview, USG 020306

<sup>120</sup> Interview, MoWVA 020328

*policemen that we trust. And we know that when a case is reported by an NGO, we can call these policemen and they will do something.*"<sup>121</sup>

This project has a very important role in implementing CEDAW Article 6 in Cambodia, as it goes without saying that all efforts through conventions and legislation is pointless if the law enforcers also are the criminals. With all the difficulties this project face taken into account it was very encouraging to hear of the progress that is actually reached.<sup>122</sup> Ending state officials sexual abuse of women is one of the essential and needed steps to achieve full enforcement of women's rights.<sup>123</sup>

### 2.5.5 Foreign Clients

Foreigners are not the most common sex buyer in Cambodia, they consist of around 10 percent of the sex buyers. This division is the general situation in most parts of the world, but for us it was somewhat surprising that the clients were Cambodian to such a large extent.<sup>124</sup> Foreigners' activities in Asia are given more attention than national citizens' involvement in prostitution, at least according to the information we receive in the Western part of the world. But even though foreigners seem few their contribution makes a profound impression. Firstly because they lay the foundation for new patterns and open new doors in the sex industry.<sup>125</sup> With the raise of sex workers from 6 000 to 20 000 in one year when UNTAC arrived in Cambodia a network for prostitution was built up. Mr Robert Baltus at AFESIP comments on the UNTAC influence on prostitution in Cambodia:

*"[I]t would be interesting to see how the situation was ten years or 15 years ago. We feel like UNTAC not only encouraged [the] increasing of prostitution, it has also changed the state of mind of the population. Prostitution has always existed, but now in such....at this level."*<sup>126</sup>

Secondly it is mostly foreigners that want to buy sex from children and virgins. Cambodia is thought to be a new goal for paedophiles as the legal system is not well enforced in protecting children, and perhaps also because awareness has increased in countries traditionally frequented by foreigners like Sri Lanka, Thailand and the Philippines.<sup>127</sup> Mr Ngeng Teng and Mr Pen Thai at Cambodian League for the Promotion and Defense of Human Rights' (LICADHO) children's department talk about the men that seeks sexual relations with children and virgins:

*"[Mr Teng:] Only the **rich men**.. Not all kinds, only rich men and foreigners go to children. [Mr Thai:] The client come to find a child in a poor family, or to study English or to do something , give money. After that the boy go with the foreigner. [Mr Teng:] Because those people they sometimes need a young virgin, girl or boy, because they are afraid of contracting HIV. There is a belief that if they have sex with a young girl or young boy they have the health. [...] That is from Chinese belief, that is why there are many Chinese foreigners that come to have sex with young boys and girls in Cambodia. And also the **high Government***

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<sup>121</sup> Interview, Christian Guth 020418

<sup>122</sup> See also chapter 4.2.5

<sup>123</sup> Askin/Koenig 2000, p. 74

<sup>124</sup> Askin/Koenig 1999, p. 689f

<sup>125</sup> Interview, WFP 020321: *"I don't know the number of foreigners, but I think that many of the men that goes are Cambodian. 90% [Ms Nou Pheary adds:] There are foreigners as well, but they are more secret. Foreign men that come to Cambodia has set up a place, for what I know, and they have ID card- this is what I have been told- so they have some kind of connection, some secret service, special service."*

<sup>126</sup> Interview, AFESIP 020304

<sup>127</sup> UNICEF 1995, p. 16

*officers pay for a lot of young virgin girls. They have middle-men to seek for young girls. They give about [US]\$ 400 and bring to hotel or far away places, to travel...To have aside a little girl for just one week and pay [US]\$ 400. It's a kind of rape.*"<sup>128</sup>

### 2.5.6 "Broken Girls"

Mr. Chay Kim Sore's statement in section 2.5.3 expresses society's view upon the sexuality of men, but as well upon the sexuality of women. No man wants to marry a woman who is not a virgin, men on the other hand can get married anyway. Ms Rosanna Barbero at WAC, Oxfam HK strengthens this as she talks about women she has met that work as sex workers:

*"Many of them felt very depressed anyway, by being where they were, selling sex, because they were not virgins anymore, and not to be a virgin in this society means that you are worthless, and your status is below that of a dog. They welcomed HIV/AIDS and death."*<sup>129</sup>

It seems like women in Cambodia live up to this belief, in the 2000 Health survey it was found that 96.9 percent of married women only had sexual intercourse with one man (most likely their husband), and 99.7 percent out of unmarried women had no sexual partner.<sup>130</sup> When reading these figures one should bear in mind that a woman might not want to admit extra-marital relationships even in an anonymous survey, as she would risk everything in doing that since such sexual relations are undoubtedly unacceptable. Moreover the results show that sex workers were not included in this survey, or that they were hiding the truth about their sexual experiences.

Even if prostitution in itself in a way is socially accepted in the Khmer society,<sup>131</sup> it is nevertheless seen as causing problems. The man or client is, as explained above, not by society seen as a part of the problems: *"It's simple for men"*<sup>132</sup> as one respondent said; Society either doesn't know or doesn't care about a man going to prostitutes. The problem is by society linked to the woman in sex work. Mr Meas Chantan's at USG answer to the question "How does society look upon prostitution?" was:

*"Big problem also. Because many people in society, they disgrace being a sex worker. They say: Oh, you are sex worker, you are making big problem. You must bring HIV /AIDS. But also like some women that get HIV get it from their husband."*<sup>133</sup>

The last sentence indicates that when a man brings HIV to his wife after being with a prostitute, the prostitute is the one being blamed. Even in this situation the woman is the problem. Married women have the third highest infection rate in Cambodia, after sex workers and policemen.<sup>134</sup>

Once a woman has started working in sex work, she is stigmatised and marginalized in society.<sup>135</sup> Mr Robert Baltus at AFESIP explains it this way:

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<sup>128</sup> Interview, LICADHO 020312, (our emphasis)

<sup>129</sup> Interview, WAC 020403

<sup>130</sup> CDHS 2000, p. 202

<sup>131</sup> Interview, MCoPP 020429, Bipin: *"Prostitution is socially accepted."*

<sup>132</sup> Interview, CWCC 020225

<sup>133</sup> Interview, USG 020306

<sup>134</sup> SIDA 2001, part 4, p. 8

<sup>135</sup> Interview, UNDP 020308 and MoWVA 020328

*“Prostitutes are treated like dogs, and even less. They are less than nothing. In Cambodia a prostitute is called srey kot, a broken girl, so it says it all. When she is broken she is not broken physically only, broken for ...her life is broken for ever, for the whole society she is nothing, and she will be nothing anymore.”*<sup>136</sup>

Society’s view upon sex workers affects the social context in which the sex workers have to survive, support themselves and perhaps their family. We will now look upon the sex workers’ situation in society.

## **2.6 Prostitution in Cambodia**

### **2.6.1 Statistics on Women in Prostitution in Cambodia**

There are different figures on how many persons who are working as sex workers in Cambodia. NGOs estimate in their shadow report on CEDAW that there are between 50,000 and 55,000 sex workers in the whole country, while 10,000 to 20,000 of them live and work in Phnom Penh.<sup>137</sup> According to Ministry of Planning there was 80,000 to 100,000 prostitutes in Cambodia in 2000.<sup>138</sup> This gives an estimation of between 0.4 and 0.9 percent of the whole population working as sex workers.

NGOs in Cambodia have made several good situation reports on prostitution and trafficking in which sex workers have been interviewed. The results in these reports give some patterns and answers for what the situation is like from the women’s point of view.

### **2.6.2 Reasons for Enter Prostitution**

When looking upon the reasons for women and children entering sex work, two categories can according to UNICEF<sup>139</sup> be distinguished. There are those who have been *forced* into joining sex work and those who have *not been forced*. Results from surveys made 1993 and 1994 showed that these two groups constitute about 50 percent each. Of the ones being sold, the majority were sold by someone they trusted.<sup>140</sup>

We question if this way of categorizing women in prostitution is accurate, since so many of the not forced sex workers without doubt would choose another profession if alternative opportunities were given. A problem with this distinction is *“its failure to acknowledge the social, economic and political structural imbalances and the sexual relations of power between women and men which constitute the context within which these choices and decisions are being made.”*<sup>141</sup> We will however use these categories in this section as a consequence of this division in the reports that we have found in this matter. In a report made by Cambodian Human Rights and Development Association (ADHOC) this distinction is made by the sex workers themselves, which indicates that this is how they look upon their

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<sup>136</sup> Interview, AFESIP 020304

<sup>137</sup> Cambodian NGO Committee on CEDAW 2001, 2002, p. 19 and UNICEF 1995, p. 3.

The Cambodian NGO Committee on CEDAW has so far made two shadow reports on CEDAW, even though the government, which is obliged to regularly do reports following the accession of CEDAW in 1992, has not yet finished one. See section 4.2.4 for more about this.

<sup>138</sup> SIDA 2001, part 4 p. 14, See section 1.6.1 about reliability on statistics.

<sup>139</sup> UNICEF 1995, p. 5f. This report focuses on trafficking and prostitution of children in Cambodia. As many of the sex workers in Cambodia are under 18 it still gives a good picture of the situation for sex workers in general. It is based on information from several organisations and aims to point to broad trends in the situation. Even it is somewhat old it seems to be the latest one in its kind and is therefore of very much interest and use.

<sup>140</sup> UNICEF 1995, p. 6

<sup>141</sup> CATW Asian-Pacific, 1998



own situation. On the other hand the questions put to the sex workers in this report might have pointed this way. A probable reason could be that the respondents in the mentioned report use them as a result of previous researchers' usage.<sup>142</sup>

It is not an unusual scenery that a woman or child is forced into becoming a sex worker, this is done through abduction by middlemen/women, sale by parents, relatives, neighbours or boyfriends, deception, often with promise of a job and subsequent sale by middlemen/women to brothels. Other reasons can be such as pledging by the family to repay debts, or rape by relatives or strangers.

The reason why a raped woman is said to be forced into prostitution is that society often excludes an unmarried woman who is not a virgin, and this is used by men in trying to trick women into prostitution. A man either rapes her, or seduces her with promise of marriage. Mr Pen Thai at LICADHO says that after a girl is raped her life is changed, she is not a virgin anymore but a "broken girl."

*"After a week the girl goes to a [pimp]. She comes back to the family, but she cannot live with her family, so she must go to the [pimp]. They go to some Karaoke bar or restaurant. And they end up in prostitution."*<sup>143</sup>

Cases of sexual abuse of young girls, often by stepfathers, relatives or neighbours, are also contributing to girls ending up in prostitution. In a study made by UNICEF one third to one half of sexually exploited children had suffered sexual abuse prior to entering sex work. Three quarters of them said they entered sex work because of the sexual abuse, ashamed of losing their virginity they felt there were nothing else to do.<sup>144</sup> Raped girls have a hard time facing up to the shame of what has happened and many run away from home. The feeling seems to be: "I have been raped, so I am fit only to be a prostitute."<sup>145</sup>

Looking on the situation as seen from without, it can be questioned how parents are capable of selling their daughter knowing that she will spend days and nights selling sex. At least in our minds this question was repeatedly raised. What we saw and what people told us convinced us that poverty forces humans to do almost anything to survive. Ms Rosanna Barbero at Wymen's Agenda for Change (WAC) at Oxfam HK, who has been working with different NGOs for the sex workers' conditions for about eight years, talks about her experiences:

*"If you can't feed your family... and someone gets sick and you just sold a part of your land and your cow to pay for help, because healthcare is being privatised. And as a mother - I spoke to so many mothers that say: 'Don't judge me!' They cry and say: 'It was my last option'. The last option or die. A mother is not bad if she sends her one daughter away, to be able to survive. Because for a mother to watch her children starving, for a mother to hear her children crying every night - of course I don't know that, I have never been in the situation, I'm just telling you what they have told me - for a mother to hear the children crying because they are hungry, for a mother to see that for every day her child is getting worse and worse, because they are not getting enough food, it's torture! It's torture! She is not going to be*

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<sup>142</sup> ADHOC 1999, p. 8

<sup>143</sup> Interview, LICADHO 020312

<sup>144</sup> Report by LICADHO, 2001 p. 62 which refers to Raghda, Saba; Case Presentation of Sexual Abuse; Transculture psychosocial organization (TPO), Phnom Penh, December 15, 1998, p. 96.

<sup>145</sup> UNICEF 1995, p. 23

*moralistic about her daughter going to Phnom Penh, for a job or going through a facilitator that some people would call a trafficker. I am not saying that these people do good, don't misjudge what I'm saying, I'm just trying to help you to understand the more complex stuff, hey?! So, she would go to someone that she knows is connected or facilitate people movement or migration. Rural to urban or rural to cross border. She would go there knowing, knowing that this child might suffer, but she is left with no luxuries to sit there and decide, sitting there questioning a mother or a family or whatever, as we would. She doesn't have that luxury. It's torture for them. That's how they have described it to me, that it's torture for a mother to have to do this. I'm not hard on this, I just get so angry when people are debating without having seen how it is out there.*"<sup>146</sup>

The other group, who say they are not forced into prostitution, work as sex workers mainly to relieve poor living conditions in their family and in some cases to pay family debts. Since poverty is severe all over Cambodia it can be questioned how much voluntariness there actually is in a woman's or girl's choice of doing sex work. On women's day March 8<sup>th</sup> 2002 some NGOs organised a meeting where sex workers, government officials and police were invited. The meeting was one of the NGOs' and sex workers' measures in trying to give those in power better understanding for their situation.

*"And there was a question raised at the conference that why, if they know that this work was not acceptable in our culture, why did they choose? All of them responded that: 'Do [we] have a choice?' And we couldn't respond. The members of the Government and the parliament couldn't respond to them. [The sex workers continued:] 'Do you have an alternative work [for us]? When you ask these kinds of questions you should think. And I don't do anything beside selling myself to support myself.'*"<sup>147</sup>

Mr Meas Chantan from USG quotes a woman at the same meeting:

*"I don't work in the sex work because the social not allow me to work with sex work but I have my reason, I have no choice, If I don't work with sex work I have no money to survive."*<sup>148</sup>

These voices from sex workers that belong to the category that have not been forced into prostitution give us a picture what the expression "not forced" actually means in Cambodia.

### **2.6.3 Trafficking within Cambodia**

Trafficking in human beings can have many different purposes, as discussed in the introduction, and has therefor in many cases nothing to do with prostitution. However, it is often an adjacent area as trafficking in women and children for sexual purposes is increasing not only in Cambodia but all over the world. For Cambodia the situation is somewhat special. Being a country which is opening up towards the surrounding world, with neighbours like Thailand and the Philippines where the sex industry has been rampant for many years Cambodia is for traffickers and sex-tourists viewed upon as a new haven. Not only because the weak law enforcement which makes it easy avoiding discovery, but also because of the belief that not so many Cambodians are infected by HIV yet. The latter statement is

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<sup>146</sup> Interview, WAC 020403

<sup>147</sup> Interview, WFP 020321

<sup>148</sup> Interview, USG 020306

unfortunately false as almost half of the persons working as sex workers in Cambodia are infected by HIV.<sup>149</sup>

The main reason for the close connection between trafficking and prostitution in Cambodia is not the cross-border trafficking to neighbour countries, but the big flow of trafficking from the provinces to Phnom Penh and other big cities, and from the poor areas to the richer areas. Most of the girls working in Phnom Penh come from other provinces. In most of Cambodia there is no public transport system, no functioning basic postal service and no telephones. This makes it easy for the trafficker and difficult for the victim. Taking a girl away to another province cuts her off completely from her family, relatives and friends. She has no chance to contact them and it is extremely difficult for the family to trace her.<sup>150</sup> Another factor that makes it easy for the recruiter is the girls'/women's lack of education and knowledge about what kind of circumstances she will face. It is not unusual that the recruiter is a nice lady who offers a job in a restaurant in town, and the victim will realise her situation first when she arrives in the brothel. According to Ms Rosanna Barbero at WAC women in some cases agree to go with the recruiter knowing the work is sex work, but do not know what it actually will be like. She is here talking about both cross-border trafficking and trafficking within the country:

*“Exploitation and slavery can happen with the intention for a woman to go to another country, so you want migration, you want to go away, you want to be migrated, you want to sell sex because you want to make money to help your family and all the rest. Then what happens to you is something totally different. You are locked in a room, you are forced, you are raped. You didn't agree to that. That is the slavery-like practice. The money are taken from you, you are starting to get all these debts that you never agreed to accept. You did agree to go there, you took the chance. But why do people take that chance?”<sup>151</sup>*

The scenery when a woman is trafficked for sexual purpose in Cambodia usually has the following features: The girl is taken to a brothel in another province where she is sold for between US\$ 130 and 500 with an average of US\$ 150. The Phnom Penh price is at present said to be US\$ 400-600 for a virgin, with determining factors like age and beauty.<sup>152</sup> What the brothelowner finally pays the middleman for a virgin is normally determined by how much money they bring in during the first week of sex with a client, which usually is around US\$ 500. Often she is locked up in the brothel, a hotel room or in a “safe house” until she is hired out to her first client. After the week/weeks with the first client the girl's value drops drastically and she can be sold to another brothel for between US\$ 30-100. If she is not resold to another brothel she starts working in the brothel to pay off her alleged debt to the owner, which is the price the owner paid for her, and she is in a total dependency of the owner. It is more or less up to the owner when she is free from the debt, and usually that is when the owner decides that she is not bringing in enough money anymore. While she is paying off her debt she usually has to give all earnings to the owner, who, in some cases, gives her a small amount money a day, feeds her, cloths her and if necessary helps her with medical treatment. The owner usually forces her to sleep with about 8 to 10 customers a day, and she is often not allowed to leave the brothel without companion. When the first debt is paid off, a girl often

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<sup>149</sup> See section 2.5.9

<sup>150</sup> UNICEF 1995, p. 8

<sup>151</sup> Interview, WAC 020403

<sup>152</sup> Conversation, Christina and Larissa 020302

has additional debts to the owner for medical or other expenses. When the debts are almost paid back she can usually keep half of her earnings to herself.<sup>153</sup>

When all debts are paid, she is free to go. Many of them stay though, they rent a room in the brothel and freelance. The woman is now free to choose number of clients per day and seek the medical treatment she herself experiences a need for. Several reasons prevents her from returning home, such as guilt, shame and worry about a return to poverty, not being able to reintegrate with family and society and not finding another job. Moreover, she would probably earn less in another job. Cut off from old friends and family her only emotional support is from the brothelowner and the other sex working girls. All these factors contribute to that many women stay in prostitution.<sup>154</sup>

This girl, she is protected. There is an article which almost every state in the world has signed saying that the conditions she experiences should not exist, the article calls it exploitation. But does she know? This is what happens to most of the trafficked girls in Cambodia, of course there are a number of cases that have different experiences, both better and worse. But there is no doubt CEDAW Article 6 concerns them all.

#### **2.6.4 Sex Workers' Living-conditions and Health**

Conditions are often very poor in brothels and they are often overcrowded. Irregular eating habits and insufficient sleep since most brothels are open 24 hours a day have a destructive effect on the women's health. Weakness, headaches, body-aches, fever, colds, skin irritation and Sexual Transmitted Diseases (STDs) shown in abdominal pain, vaginal discharges, sores and warts are common complaints. Most threatening is of course the increasing spread of HIV. In 2000 it was estimated that 43 percent of the sex workers already were infected with HIV,<sup>155</sup> the number has probably increased since then. The poor physical conditions combined with constant stress and isolation from family and friends also affect the mental health. Fear of STDs, pregnancy, punishments, of being resold after paying back the debt and even of sex, worries about families and of their own future and shame of doing something they think not is a good way to make a living are in the survey made by UNICEF shown to be common. The newer girls were tearful and depressed, while others had a resigned acceptance.<sup>156</sup>

#### **2.6.5 Reintegration and Empowerment**

When society not is in conformity with the ideas behind women's rights, it has consequences for the self apprehension of women in sex work. This also affects the direction and method of work for the NGOs, that have to meet the needs of these women. Our respondents represent different methods of working with sex workers, but they share uniform experiences regarding the women's low self-esteem. Mr Robert Baltus from AFESIP and Ms Sun Sothy from CWCC talk about women their organisations have taken care of in shelters and the difficulties for these women to reintegrate in society:

*"We do our best, but it is very difficult. I mean we, just like anyone would think: 'Ok, you rescue a girl from prostitution and she is very happy, she learn things and to go back to society and to start a new life.' If we could at least reach that goal it would be perfect, but that's not the case. I mean they don't want anything, we just need to rebuild their self-esteem*

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<sup>153</sup> UNICEF 1995, p. 8ff

<sup>154</sup> UNICEF 1995, p. 13f

<sup>155</sup> SIDA 2001, part 4 p. 8

<sup>156</sup> UNICEF 1995, p. 14 and Greenwood Zoë 2000, p. 34

*and self-confidence. For the average, the average level of self-confidence and self-esteem of women in this society is so low. When you take these girls it's nearly hopeless. This is why what we are doing is so difficult. We try to reintegrate them and make them become the leaders of their own lives. Decide for themselves. [...]*

*And also for them staying in Phnom Penh is an open door to go back to prostitution. [...] When they go through difficulties, because usually society rejects them and when... if they stay in the centre we provide them with a minimum, and when they go back to society and once they are integrated society rejects them saying 'we don't want you, anyway you are dirty, I don't want you,' so what do you do? 'I go back to brothel. The best thing I can do, it's the only thing I know.' So, people say 'Ok, women go back to brothels because they want to, it's the evidence that they like it.' No, they have no other choice again. [...] We only can estimate that let me say 40% goes back to prostitution. ”<sup>157</sup>*

*“[After getting out of prostitution a woman is a]shamed, can not go home. A woman's value is connected with being in the home. When she is away outside people can say something bad about her. [...]*

*After six months [of shelter] we reintegrate or give them job opportunity. Teach them sewing and weaving in vocational training. Educate them to become sewing and weaving-teachers in the factory. Restaurant, assistants, tailors, sewing and weaving.*

*Some are able to support after that, but it is hard to get a job in Cambodia. It's the same difficult situation all over Cambodia. [...]*<sup>158</sup>

Ms Debbie Tetsch and Ms Sherry Lile from the NGO White Lotus, have also experienced that the self-esteem and self-confidence of the women are completely eradicated as they have no visions or dreams for their own lives. Their experience is that evoking dreams and hopes as well as rebuilding their self-esteem is time consuming. The White Lotus Programme is for each girl estimated to be at least two years.

*“[We try to find out:]Do they want to stay? Do they have any visions? Dreams for the future? And often, at that point, they don't. It's a kind of 'survival for the day mentality'. [...] Two years, we need time, emotionally many of them have suffered...dealing with trauma at various levels.*

*[...]*

*We asked the girls to draw: 'Where will you be in one year, five years and ten years.' One girl didn't write a drawing for ten years, and we said: 'Why?' And she said: 'I will be dead,' because she was HIV-positive. And that was the reality for her and in Cambodia it very often is. ”<sup>159</sup>*

Many of the shelters provide vocational training for the women in order to reintegrate them in society by ways of providing them with education to obtain different skills. Their view of women's role and position in society is revealed in that most of the women want to learn traditional female occupations like sewing and hairdressing, White Lotus tells us of some of the dreams beyond that:

*“One of them told us: 'To learn English.' We have two that might speak to someone just to have a conversation, they really want to learn.*

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<sup>157</sup> Interview, AFESIP 020304

<sup>158</sup> Interview, CWCC 020225

<sup>159</sup> Interview, White Lotus 020315

*One of the girls, she liked to go back to her village and help the people in the village, just like a development group might do. Actually we were quite impressed by that. She said I don't necessarily want to do it for pay, I just want to help people. Beyond that they want to study computers.*"<sup>160</sup>

In strengthen these women's situation the awareness of a particular person's own ability to change the situation is important. To provide the women with tools to find their self-esteem and own will is to empower them. Ms Rosanna Barbero from WAC that works with empowerment of sex working women says that there, despite what they have experienced, actually is a strength to be found in these women:

*"The strength is there, like a told you. There are things that happen that give them strength. Like when they talk to the Minister [of Women's and Veterans, Affairs], they feel great, because they feel that they are human beings. They are not animals, someone like her is talking to us, someone like her is asking us our opinion. She wants to know about our lives. And the fact that the law does not say that what they do is illegal, this in itself gives them some power, all this hope to do something. So, things are built, you know. Built and built and built. It's not one thing, you know. It's a series of things, it's not easy to be described, it's complex.*

[...]

*Basically, if they have power, control and body integrity and rights, they are able to become business people in this industry. Maybe they are able to take control, maybe able to you know demand condoms. Make them wear condoms because they want to safe guard their economic activity. Because that is what everybody wants to do, regardless of industry.*<sup>161</sup>

As a part and result of empowerment these women are making themselves heard, and that demands for other people to learn how to listen:

*...so they themselves become the voices, and people like me could stop speaking on behalf of them, and all this other people could stop speaking on behalf of them, and let's see what they have to say, and let's respect what they have to say. They, more than anyone of us know what the situation is.*"<sup>162</sup>

## **2.6.6 Personal Observations of Places of Prostitution in Phnom Penh**

In Phnom Penh the sex industry takes place in brothels, but also in other places such as hotels, restaurants, night-clubs, massage-parlours, and karaoke-bars. During our stay in Phnom Penh we visited a few of these places in order to receive an apprehension about the situation there.

We went to one bar and one night-club in Phnom Penh, among foreigners known as places to find prostitutes. Most of the customers there were foreigners as these places were comparatively exclusive, the majority of them from other Asian countries but also a goodly number of western men. We were, perhaps naive, but surprised that so many western men were in our own age (25-30) and looked like men in common. Our entrance at both places attracted some attention as we were the only foreign women there, and from what we could see the only once not working. Out of the women a few were working in the bar, but most of them were there to sell company. Most of them were very young ("No women below 18 years" by the entrance was a sign of doubtful effect), very beautiful and dressed like modern

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<sup>160</sup> Interview, White Lotus 020315

<sup>161</sup> Interview, WAC 020403

<sup>162</sup> Interview, WAC 020403

western girls in tight clothes showing much skin. Neither of the bars provided places for sexual services, but it was evident that the bar-owner and mama-san had some sort of agreement for the bar serving as a place of meeting, as we during the night could see couples meet and shortly after leave together. We also had quite long discussions with young, to all appearances stoned, British men and received their perspective on why they find a girl here almost every night.

We also went to a so-called prostitution village outside Phnom Penh, where men go to find sexual relations first and foremost with younger girls. The village has a main street that at first sight looked as any other Cambodian road. This is one of the places where sex buyers go to find younger sex partners and virgins, for a cheap amount of money. As we arrived a Western man at the café “Home away from home” greeted us with “*You can get a girl for US\$ 5 here!*” In the open gates, that most houses in Cambodian cities have, about 10 to 20 girls of young age were sitting or standing, waiting for a customer. They were dressed very similar to the women in the bars described above, and differed distinctly from the rest of the women on the street that were balancing baskets with Cambodian specialities on their heads or working in some eatery, dressed in practical clothes from the market. The sight of exclusive cars on this dusty road and the every hour mini-bus that took US\$ 1 for the trip from the centre of Phnom Penh was odd. Their arrival created commotion in the gates as the girls prepared to gather around the cars. Before we left some young boys, approximately 12-16 years of age, started talking to us and wondered if we did not want what the men wanted.

The above mentioned places are not representative for prostitution in Cambodia, since most customers there were foreigners. We had no opportunity to visit brothels and bars with mainly Cambodian customers, where most sex selling women in Cambodia are situated. Through our interviews we received the apprehension that the circumstances in brothels where natives go are worse and women are more exposed to violence, poverty and unhealthy conditions.

In changing the situation of women working in bars as well as in brothels their rights need to be promoted and respected. With the given context of women in Cambodia, their rights are promoted through raising awareness of women’s value in general and changing the status of women in the Cambodian society. It is of decisive importance that the women in sex work are included in the improvement of women’s rights and status, and not left aside. The promotion of women’s rights must include all women to make real change in society.

### **2.6.7 The Closing of Karaoke-bars in November 2001**

In order to work against trafficking and HIV/AIDS local authorities periodically raid and temporarily close brothels and other places where prostitution takes place.<sup>163</sup> A very urgent question when we arrived in Phnom Penh in February 2002 was the newly closing of the karaoke-bars. On November 22<sup>nd</sup> in 2001 the Prime Minister Hun Sen without previous notice decided that all karaoke-bars in town were to be closed, the reasons behind were said to be the criminal behaviour that took place in and around these bars. The problems remained, and the closing also resulted in a series of other problems. A lot of people lost their jobs, not just the many sex workers in the bars but also waitresses, beer-girls and karaoke-singers. NGOs have also noticed an increase in violence, especially against women, since November 22<sup>nd</sup> and have therefore formed a group in order to study the impact of the closing of the karaoke-bars on

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<sup>163</sup> NGO Committee on CEDAW 2002, p. 20

society. This is an attempt in trying to get the government to realize what this order has resulted in and to take actions.<sup>164</sup>

The decision to close the bars is interesting for this study as those bars often function as brothels<sup>165</sup> and that the closing of them has forced many women to work as sex workers on the streets, along the riverside and in the parks. This is as well the only option for many of the beer-girls and karaoke-girls that not necessarily worked as direct sex workers in the bars. Some students that were karaoke-singers in order to finance their studies have also ended up in prostitution. The number of sex workers has thus increased because of the closing, which is shown in the dramatically increase of “fruit-sellers” along the streets and in the public parks since November 22<sup>nd</sup>.<sup>166</sup> One of the members in the above mentioned NGOs group making a survey, Ms Menh Navy at Gender and Development for Cambodia (GAD), explains the situation like this:

*“You know, the impact of closing the karaoke, made the situation worse for the prostitutes. I say like this, I don’t support having karaoke-bars, but I think the Government have to do something to consider. When the bars closed down, [thousands of] women lost their jobs. And what happened to them? They lost their jobs and they try to work in the park, independently. And sometimes the men lie to them, they say to the girl: ‘Please go with me, this time I pay you 2000 Riels.’ [US\$ 0.5], but when they go, they are approximately 15 persons for only one night. Before there was the owner, a strong man to protect them. But now they have to find the money, so they have to. And if they don’t go, they don’t have money to eat for tomorrow. So they want to go, even if they only get 2000 Riels. [...]”<sup>167</sup>*

Ms Menh Navy continues explaining how desperation forces women to sell sex, not for money, but solely in order to receive a meal. She also discusses the deteriorated situation with severe violence and health problems for the women. When the girls are spread out, the NGOs have difficulties in reaching them with assistance and help, such as providing them with condoms and medical needs, as well as giving them mental support.

As she explains, the closing has caused several new problems for the former workers at the karaoke-bars, and for the NGOs involved in these issues. Women are now much more exposed to violence with no protection from brothelowners in the bars. The violence Prime Minister Hun Sen thought he eradicated has followed the women out on the street. Many NGOs have during the following months after the closing received an increasing amount of reports about gang-rapes and other sorts of violence. The work the NGOs have carried out concerning HIV/AIDS is hampered as the women are spread out in new locations and patterns and it demands time to map out the situation. The former gained trust and confidence among sex workers in NGOs will also demand time to rebuild in the new situation.

### **2.6.8 The Hierarchy of Laws in Cambodia**

It is suitable to ask how a decision like this, looking quite impulsive, can be possible to carry out without further consideration of the side-effects? The Cambodian law is very diverse as it

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<sup>164</sup> Interview, ADHOC 020327, AFESIP 020304, Kem Sokkha 020424 and Conversation, Christina and Larissa 020302

<sup>165</sup> Interview, LICADHO 020312: *“Mostly they work for the restaurant, for the massage and the brothels. Even if they work in these place, they are also prostitutes.”*

<sup>166</sup> Conversation, Christina and Larissa 020302. Sex workers that work on the streets and in parks are often called fruit-sellers or orange-sellers, as they combine their waiting for customers with selling fruit.

<sup>167</sup> Interview, GAD 020326



consists of many different sources, as will show in chapter 3.4.1. The hierarchy of laws is not precisely established, and it is somewhat hard to organise their relative position and determine which sources that prevail before others. However, we will give a brief overview that serves as a guide for how to understand what a decision might involve.

The Cambodian legal system consists of the following methods of decision-making:

1. Constitution
2. International Law
3. Laws adopted by the National Assembly
4. Laws made before the 1993 Constitution that are saved by article 158
5. Royal Decrees
6. Sub- Decrees
7. Ministerial Proclamation
8. Decisions
9. Circulars

The Constitution (1) and laws adopted by the National Assembly (3) can be regarded as true legislation, in that they are the result of legislative acts of the national Assembly. International law (2) is part of the law of Cambodia if specifically stated to be so by an existing Cambodian law. Ratification of an international law usually requires the government to incorporate its principles into Cambodian law at earliest opportunity. Laws made before the 1993 Constitution (4) are currently in force until replaced by legislation of the National Assembly. Royal Decrees (5) are used by the King in exercise of his constitutional powers. Sub-Decrees, Ministerial Proclamation, Decisions and Circulars (6 – 9) are regulations of the executive branch made under the authority of the Constitution and pursuant to law-making powers delegated to the executive by the legislature ( the National Assembly and the Senate).<sup>168</sup>

The closing of the Karaoke-bars was a decision, as number 8 in the enumeration above, which according to Mr Stuart Coghill is:

*“[A] legal document issued by the Council of Ministers, a ministry or by an administrative agency ( in our case the Prime Minister Hun Sen) confirming administrative authority to make decisions in matters within the jurisdiction of the institution or agency that issues the decision. The power must be exercised within well-defined limits. It is initiated and signed by the head of and executive body of the government, such as a ministry, secretariat or competent bureau.”*<sup>169</sup>

It would be of much interest to see the well-defined limits within which this power has been exercised. In order to create or maintain the rule of law in a legal system it is of much importance that unpredictable rulings like this do not exist. The stability and continuance that is supposed to be created by law is undermined by decisions like this that do not take the side-effects into consideration. Even though the constitutional duty is to eliminate exploitation of prostitution the result from this is rather the opposite since there are more documented cases of violence against sex workers after the carried out decision than before.

The positive observations that can be made is however the devoted NGOs’ reactions, that when they face resistance in their work they look for new solutions and ways to influence the government and make them aware of the effects of certain actions. The NGOs have been

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<sup>168</sup> Coghill 2000, p. 38ff

<sup>169</sup> Coghill 2000, p. 44

impressively fast in reacting according to the situation, they gather and try to unify in finding a solution and means in order to officially react towards this decision by Prime Minister Hun Sen. Four months after the carried out decision Ms Chan Serey from ADHOC (which is the co-ordinator of the NGOs' group on the closing of karaoke-bars) said:

*"[.]we are in the process of planning, and also doing the questionnaire. But we are sure that we are going to use the report from the survey to the Ministry of Interior, to Ministry of Women's and Veterans' Affairs, because we try to encourage the Ministry of Women's and Veterans' Affairs to use our report and then to lobby with the government or with the Prime Minister. We also plan to meet with the Prime Minister, to raise something in our report to the Prime Minister and with our report we are going it through the media. We want other people to know about the impact of the closure."*<sup>170</sup>

At the same time the NGOs are trying to bring a case before court, to show what kind of violence and living conditions sex workers have been exposed to as a result of the decision. This is also a part of the work in trying to get a functioning protective legal system. GAD explains the problems and the difficulty in finding a woman who is not too afraid to stand before court:

*"Now I am also on the Committee for protect the karaoke close downs, but we try to find the cases. We have had 17 cases that women have a problem. Police also, some police arrest her and say: 'Please give me money, but if you don't give me money you will go to jail'. And at the night time some policemen sleep with her also. So, it's a problem. And sometimes, the girl is only sitting, and the policeman will ask them for money, just sitting with a friend. We need to find a case to complain to the court, if the girl agrees to stand for the court. We don't want the government to open the karaoke bars again, we want the government to give them jobs! Or provide them with vocational training or something. If they don't allow them to work they need to have education or something."*<sup>171</sup>

It is discouraging to see that a decision like this is carried out without consideration about what actual side-effects it might result in. The closing of karaoke-bars have forced many young women to work as sex workers in the parks, where they are exposed to severe violations of their human rights. In trying to eliminate criminality the decision has resulted in increased exploitation of prostitution. But as many of our respondents have pointed out, most bars are still there but more silent and under different names.<sup>172</sup>

## 2.7 Conclusion

In this chapter we have illustrated the situation and social context of Cambodian women to obtain an understanding of the circumstances in which CEDAW Article 6 is to be implemented. A contextual perspective is a requirement for an international provision to be implemented properly, as well as a requirement for an analysis of the implementation to be relevant.

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<sup>170</sup> Interview, ADHOC 020327

<sup>171</sup> Interview, GAD 020326

<sup>172</sup> Interview, CWCC 020225: "**Are there still karaoke-bars open?** Yes, but they have taken down the signs and don't say that they have karaoke."

Interview, Kem Sokkha 020424: "But now it's open everywhere, only they don't put sign karaoke or night club, but the reality is now the same. After the closing, the nigh club and the karaoke changed to the 'restaurant', not a real restaurant. Still... you can order food and you can check something if you want. But clearly karaoke and nigh club."

A history filled with conflicts, violence and bloodshed up until recent years with a deliberate destruction of almost all social and political institutions have left the Cambodian people with poverty and lawlessness as well as with individual and community spirit weakened. The economic and social infrastructure is inadequate and unemployment is widely spread. The social situation makes families extra vulnerable to believe promises of jobs in cities for their children, children extra vulnerable to the temptation of a few dollars and people desperate enough to sell children into prostitution. Upon all this the country have two long and largely unprotected borders with the neighbouring countries which aggravates the complications with traffic in human beings.

Behind the situation of Cambodian women today lays the hierarchically structured society that places women in a position of lower status than men. Prevalent traditional attitudes such as that the man is seen as the head of the family, that marriages should be arranged by parents and that it is important not to show difficulties outside the family fortifies the perception of men having higher status than women. The effect is that women are put in second place in most areas of life; women's access to healthcare, education, employment and influential positions is quite limited in comparison with men. It is however interesting to note that having an education improves the situation more for women than for men, which at least indicates that education somewhat lessens the gender gap.

Poverty together with women having lower status than men puts women in an exposed position where they easily can be subject to exploitation. With prostitution as a phenomenon to be found prevailing in a large scale in Cambodia, especially in the cities, sexual exploitation is one of the most rampant forms of exploitation in Cambodia today.

We believe that in order to find the reasons for and determine the patterns of prostitution the role of the customer has to be put in focus. Among the customers in the sex industry in Cambodia about 90 per cent are of Cambodian nationality. This as well refers to traditional attitudes, such as that it is not only accepted but almost expected from a man to visits brothels, irrespective of if he is married or not. Through our respondents we learned that violence against sex workers is a commonly occurrence in prostitution, and sexual exploitation is a problem for the sex workers that have limited ways of protecting themselves. In trying to suppress the sexual exploitation of women as a group and especially the sex worker, there is in Cambodia a need for ways of influencing the customers and change their attitudes and behaviour towards women and sex workers. The ten per cent that consists of foreigners are contributing especially to the traffic of young girls and boys, as they more often search for such sexual relations. The perception of Cambodia as a country of destination for paedophiles based on poor judicial enforcement is cracked by the HIV epidemic.

In Cambodia there is also a close connection between trafficking and prostitution; almost all young women working as sex workers in the cities have been transported from their villages in the rural areas. Therefore it is hard to keep the two phenomena separated and efforts must be put in fighting the traffic in young women, since that consequently would reduce the number of women working as sex workers in Cambodia. There is also a need for the Royal Government and authorities to co-operate and set out guidelines for their work and their actions concerning trafficking and prostitution. It is important that before decisions and actions taken consider what effects they might have on the situation of the sex workers. The pictures is complex and therefore decisions must not be taken too quickly and without counselling people and organisations with special knowledge in the area; in the case of closing the karaoke bars, many NGOs could have been used as resources in advance.

The desirable effect of the implementation of CEDAW Article 6 in Cambodia is that the status of women will be upgraded. Status varies over time and in different cultures as it is an dependent variable, and also depends on the perspective of the observer and it is therefore difficult to define. However, one way of defining a person's high or low status in society is to look upon the actual control that she has over her own life.<sup>173</sup> More individual control for women will result in empowered women, who will realize that they have rights and value that other people must respect. An international agreement like CEDAW can create optimism because people are recognizing women's rights and are fighting for them all over the world. There are aims concerning elimination of discrimination of women that are shared all over the world.

### 3 "Including Legislation"- Means of Implementing CEDAW Article 6

#### 3.1 Introduction

CEDAW Article 6 states that member states shall use legislation as one of the forms of implementing the aims of the article. Cambodia, as one of the signatory states, has also acknowledged the convention in its Constitution and has also passed legislation on various areas in accordance with CEDAW. The regulation concerning exploitation of prostitution and trafficking in Cambodia consists of Article 46 in the Constitution, the UNTAC legislation,<sup>174</sup> particularly the articles about indecent assault and the Law on Suppression of the Kidnapping, Trafficking and Exploitation of Human Persons, what we call the Trafficking Law from 1996. We will go through what is stated in these laws and based on these analyse the effect of CEDAW Article 6 in the Cambodian legislation. Primarily we will shortly present some basic features of international law.

#### 3.2 International Law

International law is law and states acknowledge it as such. International law cannot prevent its own violation any more than for instance municipal criminal law. Law is not a solution as such, but is rather a mean of handling a particular situation.<sup>175</sup> International law is the body of law which sets out generally agreed principles or standards that are accepted by most, if not all, of the world's nations. It is a combination of the law of individual nations, customs developed in the course of international relations, treaties and the conventions, declarations and resolutions of inter-governmental organisations like the UN.<sup>176</sup>

Treaties<sup>177</sup> are increasingly utilised to regulate relations between states and the expansion in the matter is reflected in the diversity of issues regulated by treaties. There is also a convention on treaties, the 1969 Vienna Convention on the Law of Treaties, that came into force in 1980.<sup>178</sup> To be bound by a treaty, a simple signature from an authorised person may

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<sup>173</sup> Pietilä/Vickers 1990, p. 120f

<sup>174</sup> United Nations Transitional Authority in Cambodia- Provisions Relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia During the Transitional Period, 1992

<sup>175</sup> Wallace 1992, p.5

<sup>176</sup> Coghill 2000, p.39

<sup>177</sup> Treaties means an international agreement concluded between states in written form and governed by international law. Wallace 1992, p.220

<sup>178</sup> Wallace 1992, p.219

be sufficient, but frequently *signature ad referendum* is employed, which means a signature subject to later ratification.<sup>179</sup>

The delegates who sign a treaty or convention refer it back to their governments for approval, if such act of confirmation is expressly necessary. According to Starke ratification, in theory means “*the approval by the Head of State or the Government of the signature appended to the treaty by the duly appointed plenipotentiaries.*”<sup>180</sup> However, he continues to claim that in modern practice ratification has become more significant in representing the formal declaration by a state of its consent to be bound by a treaty. This is also stated in Article 2 of the Vienna Convention<sup>181</sup>. In each state the procedure in this regard differs; some states will insist on parliamentary approval or confirmation of a treaty, whereas other states follow the provisions of the treaty and regard it as binding without further steps being taken.<sup>182</sup> It is foremost a matter of the intention of the parties whether a treaty does or does not require ratification to be binding.

Cambodia accessed CEDAW in 1992. Accession means being party to the whole treaty by full and entire acceptance of all provisions, but not being one of the states that signed the Convention or the treaty before it came to force. However, the duties implied on the state as mentioned earlier in Article 2 of the Vienna Convention do not differ.<sup>183</sup> In CEDAW Article 25(4) it is stated “*The present Convention shall be open to accession by all States*”. As all state parties Cambodia must ratify the convention, incorporate its principles in its domestic law and work to fulfil the purpose with it. In the absence of specific directives in the Constitution the country undertakes not to defeat the object and purpose of the treaty<sup>184</sup> and to embody the principles of the Convention at earliest opportunity in its domestic laws. In the case of Cambodia, where the constitution lacks proper directives, it can be doubtful whether a citizen can enforce the international law (CEDAW) in the domestic courts.<sup>185</sup> However, some states refer to international law in their Constitutions and Cambodia is one of those. Article 31 of the Constitution states that “*the Kingdom of Cambodia shall recognise 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.*”

The effect of this article is that all branches of the Cambodian state (the legislature, executive and judiciary) must both recognise and respect the human rights stated in the international laws mentioned in Article 31, regardless of whether Cambodia has actually ratified any or all of those international laws.<sup>186</sup> The statement in the Convention, however, does not take away the purpose of active engagement and the promotion of laws to secure human rights and reduce human rights violations, but the recognition of human rights is apparent.

Cambodia has ratified the following human rights covenants and conventions, besides CEDAW, thus imposing a duty on Cambodia to ensure that their principles are incorporated into this its domestic law.

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<sup>179</sup> Wallace 1992, p.222

<sup>180</sup> Starke 1972, p.417

<sup>181</sup> Article 2 (b) “*Ratification*”, ‘*acceptance*’, ‘*approval*’ and ‘*accession*’ mean in each case the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty”

<sup>182</sup> Starke 1972, p.419

<sup>183</sup> Starke 1972, p.422

<sup>184</sup> Article 18 Vienna Convention

<sup>185</sup> Coghill 2000, p.40

<sup>186</sup> Coghill 2000, p.40

- International Convention on Civil and Political Rights
- International Convention on Economic, Social and Cultural Rights
- Convention on the Rights of the Child
- Slavery Convention and the Supplementary Convention on the Abolition of Slavery
- Convention on the Repression and Punishment of the Crime of Genocide
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Convention and protocol on the Status of Refugees<sup>187</sup>

Without too much cynicism, it must be clarified, that Cambodia actually assessed most these convention at the same time<sup>188</sup> and therefore it is understandable, however not acceptable, that they have not been given as much attention as they have required.

### 3.3 Cambodian Legal System

The judiciary consists of all judges and courts and includes the Supreme Court and the lower courts of all sectors and levels Cambodia has three levels of courts; Courts of first instance, The Appeal Court and the Supreme Court. The Courts of First instance are provincial courts and municipal courts that hear the legal cases arising in the province or in the municipality in which the court is located. In Cambodia there are 19 provincial courts and 2 municipal courts. There is also the military court, which only hears cases involving military offences.

The Appeal Court is located in Phnom Penh and hears cases from all over Cambodia when cases have been appealed from a court of first instance. The judgement from the Appeal Court can uphold, modify or annul the lower court judgement or decision.

The Supreme Court is also located in Phnom Penh and has only been in function since 1994. This is the highest court in the country and has general jurisdiction over the whole country, just like the Appeal Court. <sup>189</sup>

Involved in a criminal trial in Cambodia are; the prosecutor who is the principal party in a criminal case and it the one who starts the investigation. If there is sufficient evidence against the accused, according to the prosecutor, he prepares preliminary charges and sends that file to an investigating judge with a request that he will investigate it further. The investigation judge has important functions and therefore a wide range of powers, for instance to arrest the accused, to search his/her house for evidence and to subphoena<sup>190</sup> the accused or any person useful to the investigation. For the accused there is a right to bail, unless there is a request for detention / and produces supporting evidence/. The investigation judge shall find and gather all evidence possible and decide on that material if the accused should be sent to trial and on what charge/s. The prosecutor, however, has the right to be consulted and may appeal the decisions of the investigating judge.

The trial judge is not the same person as the investigation judge and has also an entirely different role than that of the investigating judge. The trial judge is supposed to remain neutral and must conduct the trial to be fair on both sides.<sup>191</sup>

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<sup>187</sup> Coghill 2000, p.41

<sup>188</sup> [www.unhchr.ch/pdf/report.pdf](http://www.unhchr.ch/pdf/report.pdf) 021017

<sup>189</sup> Coghill 2000, p.25ff

<sup>190</sup> A subphoena is an order of the court requiring any peron to appear before the court to answer questions.

<sup>191</sup> Coghill 2000, p.67ff

### 3.4 Problems in Current Law and in the Legal System

#### 3.4.1 Foreign Influences and Rapid Changes

Laws generally reflect the moral, economic, social and political values of a society. Values are principles, ideas and norms that are generally accepted by a particular group as important concepts of right and wrong.

When looking upon and discussing Cambodian legislation concerning prostitution and trafficking we must also look at the way the Cambodian society has been changed. It must be remembered that over almost the past 50 years, the values that have governed Cambodian society have changed over and over again. The social values, the moral values, but also the political and economic values have changed and it has left tracks in the legal system and legislation in Cambodia. The influence and values from different legal systems are still present in the Cambodian law and legal system.<sup>192</sup> To understand and to see the background of the laws and the criminal justice system in Cambodia today, we must look at the most important forces that have shaped them and still do.

- Customary rules
- French legislation and civil law system
- Socialist influenced civil law traditions
- The transitory legislation UNTAC and the SOC law (State of Cambodia Law on Criminal Procedure, 1993)
- The Cambodian Constitution
- The new legislation of the National Assembly, for instance the Trafficking Law from 1996<sup>193</sup>

The first point is probably the one with least foreign influence, but whether customary rules are genuinely Cambodian is hard to claim. Customary rules are often old customs and social change can therefore make the rules inadequate and not useful anymore in a modern society. The other five points are in different measures influences from other legal traditions. Since the beginning of the 1990's the influence has come mainly from so called Western countries (Europe, the USA and Australia). These foreign influences on Cambodian legislation of today is important to be aware of not just because they are foreign and perhaps not always sensitive to the Cambodian customs, but also because influences are many and from different cultures with different systems. Ms Rosanna Barbero from WAC expresses her concern about this phenomenon:

*“So that’s what worries me, being here for the last ten years, seeing all those foreigners coming in, all experts coming in, French lawyers, Australian lawyers and lawyers from America. They are all coming here, copying some obscure laws from their own country or whatever, without understand the situation here and presenting this, with good intentions, but actually it’s the reverse effect”<sup>194</sup>*

Change is a requirement for a society to develop and foreign influences have in many aspects been of benefit, the previous mentioned changes have however complicated the Cambodian legal system. The rapid changes of influences and with no understanding of the Cambodian situation, as Ms Barbero mentions, have resulted in lack of legal uniformity.

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<sup>192</sup> Coghill 2000, p.2

<sup>193</sup> Coghill 2000, p. 50f

<sup>194</sup> Interview, WAC 020403

### 3.4.2 Lack of Uniformity

Included in the reverse effect mentioned is that the Cambodian legal system is far from a uniform system, where the different laws correspond to one another. It results in big gaps in the laws and in ways of formulating the different laws. In a functioning legal system a uniform legal language is of much importance. The different systems and inputs that are used create an even more complicated situation for the Cambodian judiciary to create a “Cambodian legal language”. Mr Stuart Coghill from Cambodian Defenders Project (CDP) gives another part of the reasons for the difficulties in the legal system:

*“The reason for the laws not being matched is that they are done by bits at different periods by different people for different purposes.”*<sup>195</sup>

There is not yet a Penal Code in Cambodia<sup>196</sup>, and laws have instead been made when someone discovers that certain areas need to be regulated. The foreign influence does not only bring different legal traditions and systems into Cambodia, but also different languages, since most legal experts are drafting the laws in their first or maybe second language, which very seldom is Khmer. Mr Nick Rine, legal advisor at Cambodian Women Crisis Centre (CWCC), looking at the problem with the disunity of Cambodian laws, puts this as one of the aspects:

*“The real problem that slows the whole process down, is finding an appropriate Khmer language, since so many people involved who do have expertise are people who don’t speak really well Khmer, and then the translation problem becomes a real problem”.*<sup>197</sup>

Mr Rine also states that the Khmer language is not very suitable for the way of writing laws in accordance with traditional Western procedures:

*“One of the problem with the law, is that the official language, of course, is Khmer and often the Khmer language is vague and ambiguous. And it gets even worse when it gets translated into English and to French and both”*<sup>198</sup>

Mr Coghill furthermore states that he is pretty sure that the ones who drafted the Trafficking Law did not consider the existing UNTAC law, which at present application, of course creates problems, for all parties involved in such a trial.<sup>199</sup> Foreign legal experts have not had the sensibility required to take consequences with the new law in accordance with the old legislation into consideration. If the existing UNTAC law had been taken into consideration, the Trafficking Law would correspond and be a complement of the UNTAC law, instead of creating some of the uncertainties that exists today.

As we experienced during our stay in Cambodia, an urgent need for legal regulation in a specific area might appear, which put the drafting process under time pressure. A trafficking case was on the agenda while we were interviewing an NGO involved in this particular case. The problem this time was that the girl, probably trafficked from Vietnam, was discovered in

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<sup>195</sup> Conversation, CDP 020403

<sup>196</sup> During spring 2002 a draft (in English) of the new Penal Code was released, so the work with a Penal Code is, however ongoing.

<sup>197</sup> Interview, CWCC 020423

<sup>198</sup> Interview, CWCC, 020423, Talking about the Trafficking Law, answering the question: *Are there any problems, any lacks or anything that needs to be changed in the future in the Trafficking Law?*

<sup>199</sup> Conversation, CDP 020403



Cambodia, but she (not the man who had bought her) was sent to trial charged of being an illegal immigrant, since she had no passport or other migration documents. The NGO therefore wanted our input in drafting a law concerning this problem.

When laws are drafted quickly to regulate a sudden urgent situation, there is a danger that not all aspects concerning the new legislation is taken into consideration and that might create complicated situations. No advance towards a conclusion was made during our stay and no new law was presented. However, we do not say that the Trafficking Law was drafted under similar circumstances, but the desperate need for legislation, as in this particular trafficking case, is most likely not the only one.

Still, it seems that the legal help from experts is a time consuming mission and there are many different instances that probably have their say in the legal process. Mr Rine gives the example from the drafting of the Penal Code:

*“But I can say about the new penal code, that there have been French experts working on a draft of a new Penal Code for about 4 years now and it is unclear when the new draft will be available in Khmer language. Let alone how long after that it would take to get through the legislative process. So...”*<sup>200</sup>

Besides the difficulties mentioned above; different foreign influences; a language usage that is ambiguous, inexact and non-uniform; and a time consuming process in the drafting of laws, there is an additional problem that concerns the validity of the different laws. When it comes to prostitution and trafficking there are as well uncertainties of what law, the UNTAC law or the Trafficking Law, to apply under certain circumstances.<sup>201</sup>

### **3.4.3 Judicial Staff and Enforcement of Laws**

Despite the lack of uniformity in the Cambodian legislation, the lack of legally trained personnel and the corruption amongst the judicial staff are perhaps the greatest problems and the most important issues to deal with concerning the judiciary. It all starts with absence of both legal system and judges after the overthrowing of the Khmer rouge in 1979. Few legal professionals left and those who survived fled when the Vietnamese invaded Cambodia. The result was a severe shortage of trained legal persons, including judges, and that continues to present date.

The lack of educated staff is not the only issue when it comes to reforming the courts and the legal system. Another important issue is the independency of the judiciary according to the 1993 Constitution compared to the political control during the previous years,<sup>202</sup> However, in practice, the transition from socialist one-party legal system of 20-years to a radically different liberal democratic system, is likely to be difficult and slow. The provisions prescribing an independent judiciary<sup>203</sup> demands the civil servants and the judicial staff to revalue their roles. Since no one in the former legal system could be appointed to any important position, unless their views were politically correct and they were prepared to

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<sup>200</sup> Interview, CWCC 020423

<sup>201</sup> We will examine this problem and continue the discussion on which law to apply on which cases under chapter 3.8.2

<sup>202</sup> Coghill 2000, p. 55

<sup>203</sup> Article 51(4) The Constitution of the Kingdom of Cambodia ”The Legislative, Executive, and the Judicial powers shall be separate.” Article 109(1) ” The Judicial power shall be an independent power. The Judiciary shall guarantee and uphold impartiality and protect the rights and freedoms of the citizens.”

follow orders from the party, this change will probably take long time.<sup>204</sup> Another aspect which further complicates the situation is that the judiciary has functioned as a part of the executive and is physically close to the military.<sup>205</sup>

The fulfilling of the independence of the judiciary seems to be connected to the education, or lack of education, of the judges. There needs to be a major change in the approach and attitude towards the role of the courts and the tasks of the personnel in the judiciary. The principals and practices of the legal system promoted in the 1993 Constitution needs to be acknowledged and known by the people who are going to use it. The judges and the other legal staff need to be inspired to change the old system and initiate the changed procedures. The competence and impartiality of the courts are questioned by all the NGOs that we have met. Concerning the Trafficking Law, Ms Nanda Pok from Women For Prosperity (WPF) gives this example:

*“[T]he Trafficking Law we feel is very good, but the implementation is bad or is weak, very weak. Several of the law enforcers don’t know about the law, but we find out when we conduct training. We invite the police, the community and all of them come, they have never heard of the law. So this is the big mistake of the Government, it is that the National Assembly adopted the law, the Government were to enforce but the Government don’t have the resources to distribute the law to the law enforcer.”*<sup>206</sup>

Other voices on the topic of the enforcement of the Trafficking Law say:

*“Cambodia has very good law, but the enforcement is not good.[...] If the law had power, it would be very good.”*<sup>207</sup>

*“There is a Trafficking Law adopted in 1996, but the implementation is very very weak.[...] The law in Cambodia is adopted by the National Assembly, but at the same time the police don’t have education so they don’t understand the law. And then the law itself does not reach the victims ”.*<sup>208</sup>

These examples show that legislation in itself is not enough without proper methods of enforcement and enforcement is important in order to change the attitude of people’s minds. On the other hand, enforcement demands resources, both financial and professional.

#### **3.4.4 Corruption**

The problems mentioned over and over again by our respondents, when it comes to the legal system, are lack of understanding of the Constitution (since that is where the role of the judiciary is stated), understanding of how to apply the Trafficking Law, education of policemen, reaching out with laws to the general public. Above all this is the problem with corruption at all levels in society. Corruption sets all rules out of place, the one with money is the one with right on his/her side.

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<sup>204</sup> Coghill 2000, p. 52

<sup>205</sup> Coghill 2000, p.55

<sup>206</sup> Interview, WFP, 020321

<sup>207</sup> Interview, CWCC 020225

<sup>208</sup> Interview, UNDP 020308

*“[The law] is weak because there are rich powerful people that are involved in trafficking, and it is hard to punish the perpetrator because of corruption. The court system is weak, it needs to be reformed and the judges are corrupt.”<sup>209</sup>*

*“The law is for prevention of trafficking, but it is not so successful. As I said before, we have a very bad implementation. Most people who are involved in trafficking is high ranking people”<sup>210</sup>*

*“A problem is corruption at the grassroot-level, but it would be better if there was a good law”<sup>211</sup>*

Some of the problems of corruption have their origin in underpaid work and bad national finances. The monthly payment for policemen and judicial staff is not enough for survival and opens up for the possibility, or need, to take bribes. In our interview with CWCC’s legal office we got the information that clerks and policemen earn about 15-20 \$ a months and judges and prosecutors earn about 25\$ a month.<sup>212</sup>

*“Yes, they [the police] all take bribes, you have seen them at the red lights<sup>213</sup>. There’s no way out. [...]Corruption might be the main problem in Cambodia. They [the Royal Government] have taken measures, they have written legislation ...that’s all that has been done so far”<sup>214</sup>.*

Mr Rine adds different situations that affect the situation of corruption in the legal system and within the police force.

*“One of the difficulties is of course that it is not only the police that see the opportunity of money, that if there is money in the case they might get a piece of it, but also the court staff and the judges[...]*

*But then the additional problem is, of course, and it especially effects trafficking cases, is that in most instances the court staff - we talk about the clerks, the prosecutors, and the judges - are not going to have very much interest in doing a lot of work on the case, unless there is money involved, unless there is some opportunity for making money. And in the trafficking cases unfortunately, given the identity of the victims and the identity of the perpetrators, in most trafficking cases if there is any money involved, it is in the side of the defendant. And the only way the court staff has to make some money is to negotiate a settlement in which some money is paid, and the various actors in the situation gets a piece of it as it works its way to the victim. So, if for example, Poum was describing for me a case recently, in which the victim agreed on a settlement of \$2500 but when the money finally got to the victim it was only \$150[...]*

*There are really two problems, one problem is the judge in action. When you are very poorly paid and there is little opportunity presented by the case for making some money, there is rarely no reason to take action, and if there is some reason, like pressure from family, or an NGO or perhaps some public attention, that pushes the judge to act in the case, you have no*

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<sup>209</sup> Interview, WFP 020321

<sup>210</sup> Interview, GAD 020326

<sup>211</sup> Interview, Adhikari Bipin, 020424

<sup>212</sup> To compare with, our maid in Phnom Penh got 60\$ a moth for halftime work. Thus the judicial staff is severely underpaid, but can make fortunes on bribes.

<sup>213</sup> Policemen are standing at the red lights in Phnom Penh imposing fines on the drivers, and putting the money in their own pockets.

<sup>214</sup> Interview, AFESIP 020304 (Mr Baltus talking about how corruption can be suppressed when the police do not earn a proper salary.)

*assurance that the decision is a decision that makes sense. Or, which will not be simply a product of having been paid some money”<sup>215</sup>*

Besides the unwillingness of the judiciary to perform action on cases unless there is money involved, is the close relationship between the investigating judge and the prosecutor. They are supposed to work separately for the benefit of the parties in a trial and control the impartiality of each other’s work. As Mr Rine describes the situation, even here it is hard to discover and track down corruption since they in practice work closely.

*”The difficulty in the court is that the investigating judge is in this office, and the prosecutor is in the office next door, they see each other every day and work together every day, they have coffee together in the morning, they drink beer together and go to the same brothel in the evening... I exaggerate... But, the problem with this is that there is no formal restraints. But when we talk about people who work together, it is very difficult for the investigating judge to force the prosecutor to do something, to proceed with the charge when judge is unwilling”<sup>216</sup>*

Except for corruption the problem of impunity in the legal system is also affecting the work of suppressing sexual exploitation. Impunity means that criminals escape justice and therefore perpetrators do not fear for committing crimes, because prosecutions and trials seldom take place, especially of those with connections in high places of society.<sup>217</sup>

*“Most of the pimps and brothelowners are policemen or soldiers. This is one reason why it is difficult to effectively tackle this issue. When you start to work with it and to fight against things that are illegal, then you realise it never gets very far, because of high ranking protections.”<sup>218</sup>*

Even though, the situation of corruption might seem impossible to handle and the problems in the legal system seem too fundamental for actual change to happen. Some people do fight for change and are not following the rules of corruption.

*“I am not saying that she, the Minister of Women’s and Veterans Affairs,...that all the policemen and all the people in the Ministry of Justice are corrupted, because there are very good people who believe in their country and want to do something. But it is so few people compared to the ones that work with other rules”<sup>219</sup>*

### **3.4.5 The Supreme Council of Magistracy**

One important feature of the Constitution is that the executive has no role to play in the appointment of judges or in the transfer or removal of judges. The power has been given to the Supreme Council of the Magistracy, which is an independent body.<sup>220</sup> As stated in the Constitution: *“Judicial power shall not be granted to the legislative or executive branches.”<sup>221</sup>*

The Supreme Council of Magistracy (SCM) is the institution that shall assist the King in his task to guarantee the independence of the courts.<sup>222</sup> There are provisions in the Constitution

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<sup>215</sup> Interview, CWCC 020423 (Mr Poum, mentioned in the quote, is also Legal Advisor at CWCC)

<sup>216</sup> Interview, CWCC 020423

<sup>217</sup> ADHOC, LICADHO and Human Rights Watch 1999, p.7

<sup>218</sup> Interview, AFESIP 020304

<sup>219</sup> Interview, AFESIP 020304

<sup>220</sup> Coghill 2000, p.25

<sup>221</sup> Article 111, The Constitution of Cambodia

<sup>222</sup> Article 113 The Constitution of Cambodia

on the creation of the SCM as well as regulations on its organisation and task. However, there have been problems in forming the SCM and make it function.<sup>223</sup> Because of the political disputes over its composition<sup>224</sup> the SCM failed to convene for a long period and was not established until December 1997. The Law on the Organisation and the Functioning of the Supreme Council of Magistracy appoints the SCM the task to ensure the smooth functioning of the judiciary, by advising the King on certain matters and providing opinions on law proposals and draft laws concerning the functioning of the judiciary.<sup>225</sup> Stuart Coghill presents critique against the failure of the SCM and claims that some of the reasons for this are:

- The SCM has not achieved a level of independence from the executive which is required by the Constitution to establish a separation of powers. The reason for this is that many of the members of the SMC, in addition to being judges are also closely involved with one of the ruling political parties or the executive. It could therefore be strongly argued that the SCM is itself politicised.
- The members are busy and also the poor health of the King have contributed to the SCM's inability to meet regularly.
- The function of the SCM has been consistently pre-empted and undermined by the actions of the executive.<sup>226</sup>

Mr Rine agrees with Mr Coghill in his critique against the functioning of the SCM:

*“One of the big difficulties with the present judicial system is that under the constitution Cambodia has theoretically, probably a good, a very modern concept of an independent judiciary and an independent supervisory system for the judiciary called the – in English- ‘the Supreme Council of the Magistracy’, which is totally dysfunctional. So that, in fact, the judges are very much in control by the Ministry of Justice. And if the judge does too many things to offend people in power he is very likely to find himself in Ratanakiri, in a court with no electricity and trying cases involving chicken thieves”.*<sup>227</sup>

### 3.4.6 Conclusion

With no special instance that sufficiently controls the police and the courts, a court system with corruption and political influences continues and spreads. A new constitution does not in itself change the working procedures in court, as it seems that newly employed staff preferably copy the behaviour of more experienced workers. The legal system as such and the training and education of the people who are carrying out the laws must be better and more reliable. As a result of this complexity it is hard to point out what actually is the problem in Cambodia. Is it the unspecific law or is it the way the law is applied or that the judges and the police do not use the law at all? The pessimistic answer might be: All!

With the problems with the implementation of laws in Cambodia and the lack of legally trained people in mind, we will look at the legal instruments that are available. We will examine how they function and what problems there might be in their formulations. We will start with the most important legal instrument, the Constitution, which lays down the

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<sup>223</sup> Neam 1998, p.5

<sup>224</sup> It was a hot debate in the National Assembly whether the Minister of Justice should be in the SCM or not. (Neam 1998, p.5)

<sup>225</sup> Neam 1998, p.7 and Coghill 2000, p.30

<sup>226</sup> Coghill 2000, p.29

<sup>227</sup> Interview, CWCC 020423

principles for the country. After that we will present and discuss the legislation concerning prostitution and trafficking.

### **3.5 The Constitution of the Kingdom of Cambodia**

#### **3.5.1 Legal Status of the Constitution**

The new Constitution clearly abolishes the old system of state-controlled prosecutors and judiciary implementing state policy through forced confession and show trials. The continuance of the old system can now only take place in contravention of the Constitution.<sup>228</sup> “*The 1993 Constitution provides the blue-print for a society where power comes from the law, not from the gun and where all citizens, even the most influential with political and military connections, are subject to the Constitution and the laws of the country.*”<sup>229</sup> This is how Mr Coghill explains how the practice should be changed through the 1993 Constitution. It is striking, but very telling about the situation in Cambodia, that Mr Coghill has to spell out that even influential people in society are subjects to the laws on equal bases as all other citizens, as a remembrance of what actually is stated in the new Constitution. The equality between people is however not working in practice, when looking on the legal aspects. It is an aim to strive for, but it is not the reality for the majority of the people. It is a challenge for Cambodia to change from a society based on military power and one-party politics, to a society based on the 1993 Constitution. The Constitution establishes a society with multi-party participation, a strong legislature and an independent judiciary<sup>230</sup>

The Cambodian Constitution is the highest and most fundamental law in the country. All the country’s other laws must conform to the Constitution as is stated in its Article 131. “*This Constitution shall be the Supreme law of the Kingdom of Cambodia. Laws and decisions by the State institutions shall have to be in strict conformity with the Constitution*” As such, the Constitution promotes and reflects the values of the nation. At least it reflects the values of the nation put down on paper. However, the values of the people might not be known to all people. The Cambodian Constitution has been formed with several different Western constitutions as prototypes and it does not take into account the fact that Cambodia has a past quite varied from many of these Western states. Another aspect is that the well-formulated Constitution covers many areas in a detailed way, at the same time as it unfortunately does not reflect the reality of Cambodia and its people. This might impair the importance of the Constitution, since all provisions in the Constitution are of equal validity. However, the Constitution shall reflect the fundamental values that a society is to be build upon and shall be the base and guidance for all other legislative work in the country. Cambodia is in a transition process and a development process regarding most aspects of society and that process cannot lead to all aims of the Constitution at once, but the fulfilling of the Constitution is what the country must strive for.

#### **3.5.2 Women in the Constitution**

”*[O]ur constitution is the best constitution in the world, but the reality is not there.*”<sup>231</sup>

Ms Nanda Pok (WFP) describes the lack of political will to implement the rights of women according to the Constitution, this certain issue was concerning female participation in the

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<sup>228</sup> Coghill 2000, p.52

<sup>229</sup> Coghill 2000, p. 55

<sup>230</sup> Coghill 2000, p.55

<sup>231</sup> Interview, WFP 020321

Royal Government. The Constitution is very attentive on women's situation and their rights. All citizens are equal before court, enjoys the right to vote and to stand as candidates for elections, as well as have the right to choose any employment, regardless of sex. Equal pay for equal work is also guaranteed as well as that the work of housewives in the home shall have same value as work outside the home.<sup>232</sup> In Article 45 of the Convention it is stated that all forms of discrimination against women shall be abolished, exploitation of women in employment shall be prohibited, men and women are equal in all fields, especially with respect to marriage and family matters, and marriage shall be conducted on the principle of mutual consent between one husband and one wife. Women as mothers also have the right to support if they cannot take care of their children according to Article 73. Provisions regarding prostitution and trafficking are stated in Article 46.<sup>233</sup> Looking at the mentioned articles it is easy to state that women, in accordance with the Constitution, have equal rights as men and the Constitution furthermore acknowledges women specifically in certain situations where they are more vulnerable than men. But as Ms Nanda Pok replied "*the reality is not there*"

To fulfil the intent of the Constitution much is needed, but first and foremost a strong political will in combination with more means provided and effective usage of this money. Lack of money is a fact for the Cambodian Government, lack of political will is not as evident, but still relevant to question.

### **3.5.3 Trafficking and Prostitution in the Constitution**

Article 46 of the Constitution states: "*the commerce of human beings, exploitation by prostitution and obscenity which affect the reputation of women shall be prohibited.*" Prostitution per se is therefore not illegal in Cambodia, it is the exploitation by prostitution that is forbidden. The last wordings of Article 46, "*which affect the reputation of women*", can however be rather confusing. The most natural way of interpreting the clause is to see the different elements separately; obscenities that affect the reputation of women shall be prohibited and so shall commerce of human beings and exploitation by prostitution. The commerce of human beings and exploitation of prostitution is seen as illegal and a violation of human rights and is therefore not dependent on whether women's reputation is affected or not. But this still leaves the question unanswered; what determines whether the reputation of women is affected? To start with, Article 46 states that women has a reputation that is positive and that this reputation can be negatively affected by certain obscenities. Whenever the reputation of a woman, in any circumstance, is negatively affected of an obscenity, it conflicts with the Constitution. In accordance with this, involvement in prostitution conflicts with the Constitution if the reputation of the woman/sex worker is affected. As has been presented in the previous chapter on social context the reputation of a woman in Cambodia is affected, based solely on that the woman is working as a prostitute. The wordings of the Constitution together with the Cambodian society's view upon sex workers, results in a clearly stated abolitionist view where the sex worker is seen as a victim and not as a criminal. In line with this argument Article 46 opens up for the interpretation that also the customers' involvement in prostitution can be incompatible with the Constitution. The crucial element is "obscenities" as it is not explained or defined. The Trafficking Law materializes Article 46 of the Constitution. In consequence with this the Trafficking Law criminalizes any involvement of a third party in trafficking and exploitation by prostitution, but it does not criminalize the customer's involvement. However, we do not see any hindrance in the Constitution for such an interpretation.

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<sup>232</sup> Article 36 (3) The Constitution

<sup>233</sup> See section 3.5.3

It is on the contrary evident that according to the wordings of the Constitution the providing of sexual services for payment is not to be criminalized. It appears however, that the knowledge of the law and the Constitution is weak among different groups in society, both the police, the lawyers, the customers and the sex workers:

*“[W]hat is illegal is the running management operation of an establishment whereby women are exploited and sexually assaulted . Which in itself means that the brothelowners, the pimps, the facilitators, they are the ones that currently are doing something that is illegal, according to the law. The current law, on the other hand: A woman who says I’m going to raise revenue while renting out my vagina, that is not illegal. So the power still remain in the hands of the women. And no one ever told the sex workers that! When I told them, and the word spread around, this was very tangible to them, something that showed that they had this power. That they never thought they had. So, after they understood and received this information, when they were getting arrested, they would say to the police “ I have done nothing wrong, you don’t have the right to detain me ”<sup>234</sup>*

With the abolitionist view, the power is, as Ms Rosanna Barbero claims, in the hands of the women. Whatever reason there are for women to sell sex their services are not illegal. Only those who take some sort of profit from someone else’s sex work are under the jurisdiction of the Trafficking Law, the UNTAC law and the Constitution. The power that lies in the hands of the women is probably not healing their social situation and their self-esteem, but their, sometimes only, way of supporting themselves is not illegal, and that has empowered at least some of them.

### **3.6 Laws Made before the Present Constitution**

#### **3.6.1 Parallely Applicable Laws**

During the UNTAC period several laws and codes were passed with the intention that when Cambodia had had its own free and fair election and a new Constitution other laws would be made and the UNTAC laws would be amended or abrogated. The laws should be in force:

*“[...]until such time as the Legislative Assembly resulting from the elections amends them or adopts new legislation in this area.”<sup>235</sup>*

However, many laws made by previous regimes before the 1993 Constitution may still be in effect, because they are saved by article 158 of the Constitution which states:

*“Laws and standard documents in Cambodia that safeguard State properties, rights, freedoms and legal private properties and are in conformity with the national interests, shall continue to be effective until altered or abrogated by new texts, except those provisions that are **contrary** to the spirit of the Constitution”<sup>236</sup>.*

This article effectively protects any old law which is not contrary to the spirit of the Constitution and which has not been specifically abrogated by a new law. The practice in Cambodia is that a new law does not specifically abrogate the previous law, even where the two laws deals with the same subject. Therefore, provisions of the old laws which are not

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<sup>234</sup> Interview, WAC 020403 (our emphasis)

<sup>235</sup> Preamble of the Provisions Relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia During the Transitional Period

<sup>236</sup> Our emphasis



inconsistent with the new laws are still, in theory, part of the law of Cambodia. The old laws are also applied in practice since the jurisdiction is used to those provisions. As we will see later the decision to remove one provision in the UNTAC law in advantage of a provision in the other law can be very complicated. Foremost because the decision on what is contrary to provisions in a new law or not, generally seems hard to stipulate. The difficulties between provisions on sexual exploitation in the UNTAC law and the Trafficking Law is that the two laws are not having the same aim, are not using the same language or words in their provision, but are still covering similar areas of legislation. The wordings in both of the laws are not very specific or accurate, which also opens up for interpretations. That creates even more uncertainties in choice of law when it comes to prostitution and trafficking; or more precisely, choice of provisions in the two laws since they seem to be parallelly applicable. The application of two laws, regulating similar areas at the same time is something we were very unused to, and we found the legal situation in Cambodia very complicated and hard to grip. Despite this confusion on which law to apply when, we are going to examine these features since it somewhat is characteristic for the legal situation concerning prostitution and trafficking in this country.

### **3.6.2 The Inconsistency Test**

To ascertain if a particular provision still is in force, the “inconsistency test” put forward by Mr Stuart Coghill can be applied to decide what laws to prevail over others. Apart from being time-consuming, the decision whether an old provision is inconsistent with a new one or not, will still be depending on the arguments put forward in each individual situation. We do agree with Mr Coghill that a better approach for drafters of each new law would be to specifically which old laws and provisions are repealed by that law, thus removing doubt and make it easier to apply the laws in similar ways in the different cases.

We have chosen to present Mr Coghill’s “inconsistency test” because he, more than anyone has examined the legislation and the legal system in Cambodia. We also find his explanations valid and pedagogical in trying to see some formal difficulties in the legal system. It takes great effort in trying to understand a foreign legal system and without Mr Coghill’s guidance we believe that it would have been much more complicated for us. What he points out in his examination of the Cambodian legal system is in conformity of our notion of problematic issues and is also confirmed by other legally trained respondents, we are therefore assured that his theories are reliable.

The “inconsistency test” is as follows, that any provisions of an old law may still be in force if:

- the old law qualifies under Article 158 (safeguards state properties, rights, freedoms and legal private properties and is in the national interest) AND
- the old law has not been specifically repealed by a new law AND
- the provision does not contradict any provision of any new law AND
- the provision is not contrary to the principles set out in the Constitution, such as free market economy system, a liberal pluralistic democracy and the various rights of Khmer citizens

The SOC law and the UNTAC Code were both made before the present Constitution and therefore rely on Article 158 for their continued effect.<sup>237</sup>

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<sup>237</sup> Coghill 2000, p.42

**3.7 Prostitution and Trafficking in the UNTAC Law**

Among the laws that have been adopted by the National Assembly after 1993 is the Trafficking Law, but the enforcement and use of the Trafficking Law is a bit problematic since the UNTAC law also is applicable in certain cases. The separation of the two laws is, as mentioned above, not very easy or clear. Firstly we will go through the UNTAC legislation in the area of exploitation of prostitution, which is Article 42 concerning indecent assault and then we will examine the articles of the Trafficking Law, which as a whole deals with exploitation of prostitution and trafficking.

Article 42(1) UNTAC: Indecent Assault

Any person who sexually assaults another person of either sex

- by touching
- OR
- caressing
- OR
- any other sexual act not involving penetration<sup>238</sup>

Penalty: imprisonment for a term of 1 to 3 years.

Article 42(2) UNTAC

The sentence is doubled where the offence is accompanied by,

- fraud
- OR
- violence
- OR
- threat
- OR
- is committed by a person with authority over the victim
- OR
- if the victim is under 16 years of age.

Penalty: imprisonment for a term of 2 to 6 years

Article 42(3) UNTAC

Any person who

- procures
- OR
- entices
- OR
- leads away a minor for the purpose of prostitution
- OR
- any person who sexually exploits a minor (even with the consent of that minor)

<sup>238</sup> A sexual act involving penetration (against a nonconsenting person) is rape, Article 33 UNTAC

Penalty: imprisonment for a term of 2 to 6 years.

In general an indecent assault is an assault accompanied by circumstances of indecency. In most jurisdictions an indecent assault consists of any touching of another person without their consent (the “assault”), in circumstances that are “indecent” according to the ordinary standards of morality in the community. Article 42(2) is more specific than this since it requires that the perpetrator must have “*sexually*” assaulted another person of either sex “*by touching, caressing, or any other sexual act not involving penetration*”. In an offence of this nature, where an accused does not touch the other person there is no “assault” and consequently, no “indecent assault”. In most circumstances the sexual act will be obvious, touching the genital area of any person or the breasts of a female person. However, other touching may not be that evident and finally it is up to the judge to, based on the evidence in the case, decide whether there has been a sexual act or not.<sup>239</sup>

Thus the term assault in this context means any physical touching, but it could at least be argued that the words “any other sexual act” may include sexual acts not involving contact with the victim, for example indecent exposure. There is, however, no specific wording about this which creates a gap in the legislation, and therefore it is not clear if this extended interpretation can be done. Neither is there any article concerning sexual assault that is not physical, so-called sexual harassment or sexual threats. It is a difficult question, and no guidance is given in actually defining what a “*sexual act*” means in the Cambodian community.

It is important to have clear definitions and in accordance with the purpose of the law make sure that all the supposed acts are thoroughly covered. The article is silent on how to decide that an act constitutes indecent assault. Should it be determined very formally with exactly mentioned parts that should not be touched or is it the victim’s sense of being sexually assaulted that should create the crime? Since it seems that only physical touching is covered, there are situations of sexual assault that would not fall under the jurisdiction of the law, and that can create absurd situations. A woman could be told sexually insulting things, be forced to undress or to touch the man and these actions would then not be considered a criminal and sexual act. If the legal decision instead would be built upon the victim’s sense of being sexually assaulted and having tried to show her discontent with these actions, the provision would more properly protect the victim, which should be in accordance with the original aim. It is important to make sure that the laws protect exposed people, as the laws are aimed for, and it seems that to make the use of Article 42(2) more specific and create better coverage, it needs to be clarified by an amendment from the Cambodian Legislature. In the situation of prostitution this becomes even more complicated, but at least the law should be clear on that any sexual act without the consent of the sex worker is sexual exploitation.

Because Article 42 includes an assault, the touching must be without the other person’s consent. If the other person consents to the touching, there is no assault, provided no serious bodily harm is inflicted.<sup>240</sup> Sub clause (2) of the indecent assault offence provides for a doubling of the penalty if the victim of an indecent assault is under 16 years of age or if the indecent assault is committed by a person with “*authority over the victim*” or “*the indecent*

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<sup>239</sup> Coghill 2000, p 334

<sup>240</sup> In most jurisdictions, no person can consent to serious bodily harm that constitutes a criminal offence. That means, it would still be a crime despite the consent. How the position in Cambodia is, is unclear.

*assault is accompanied by fraud, violence or threat.* These circumstances make the indecent assault *an aggravated indecent assault.*

Sub clause (3) deals with sexual exploitation of a minor in the context of prostitution. Because sub clause (3) specifies no age, the term “*minor*” in that sub clause presumably means a person under the age of 18 years, which is the age limit according to the Convention on the Child<sup>241</sup> to be seen, internationally, as a child. It is however not clearly stated that 18 years is the intended limit, because of the limit of 16 years for aggravated crimes. If the legislators intended that the age limit in sub clause (3) was supposed to be 16, as in sub clause (2), they should have used the same wordings. Using different terms (“*victim under 16 years of age*” and “*minor*”) indicates different meanings, and a minor would accordingly constitute a person less than 18 years. However it appears likely that sub clause (3) has been repealed by Article 10 of the Trafficking Law (which states that any provision contrary to the Trafficking Law shall be repealed) and Article 8 where the new provision concerning “*debauchery*” is stated.<sup>242</sup> Because of different wordings in the two paragraphs UNTAC 42(3) and Article 8 Trafficking Law it is a complicated comparison; we will examine the paragraphs in the Trafficking Law in the following section.

### **3.8 The Trafficking Law**

#### **3.8.1 Purpose and Aim of the Trafficking Law**

The Law on Suppression of the Kidnapping, Trafficking and Exploitation of Human Persons, shortly called The Trafficking Law, was passed by the National Assembly on 16 January 1996. In line with CEDAW Article 6 the Trafficking Law aims at trafficking for any purpose, not just trafficking for the purpose of prostitution. The purpose of the Trafficking Law is accordingly to suppress the acts of kidnapping of persons for trafficking/sale and the exploitation of persons. The Trafficking Law also includes certain provisions regarding the situation of prostitution, in order to suppress the exploitation of prostitution, thus criminalizing acts such as pimping and open places where certain unwanted activities take place.

The Trafficking Law consists of 10 articles. The starting chapter concerns general provisions. The second chapter deals with kidnapping of human persons for trafficking/sale or for prostitution. The third chapters explains which parties and actions that are concerned as pimps and pimping and the fourth chapter is concerned with the offence of debauchery, and the fifth chapter is the final provision, concerning more formal and administrative provisions. We are going to examine problems and obstacles related to the Trafficking Law. The provision of the Trafficking Law is to be found in Appendix 1.

#### **3.8.2 Parallely Applicable Provisions in the UNTAC Law and the Trafficking Law**

Several provisions in the Trafficking Law concerns similar areas as UNTAC’s Article 42(1-3) on indecent assault. The effect of the Trafficking Law on the offence of indecent assault is interesting to examine, because it complicates the legal application in practice.

The indecent assault offence in the UNTAC law contains provisions relating to minors. However, the Trafficking Law also contains offences relating to sexual offence against minors as well as other provisions that may affect the indecent assault offence. Where the two laws

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<sup>241</sup> Article 1 Convention on the Child

<sup>242</sup> Coghill 2000, p.335

conflict, the provisions of the Trafficking Law, being the later law, prevail,<sup>243</sup> unless the “inconsistency test”<sup>244</sup> leads to another conclusion.

The Trafficking Law covers many different participants in exploitation of prostitution and trafficking and state that their acts are illegal. However, there are several problems connected to the use of the Trafficking Law. The first is, as previously mentioned, that it is not clear when the Trafficking Law or the UNTAC law should be applied. The judges seem to prefer to apply the UNTAC law, one reason for this is that the penalties are not as severe as in the Trafficking law:

*“One of the problems with the Trafficking Law which we have talked about before but which has not yet come up in this case, is the penalty. Are you aware of this problem? In other cases in the past, the penalty of 15 to 20 years under the Trafficking Law is so much severe than the penalty for rape in the UNTAC-law, that often judges and prosecutors are unwilling to enforce the Trafficking Law because of the severe penalty. There have been cases in the past where the victim was under 15 and therefore a child under the Trafficking Law, where the police or the investigating judge were unwilling to proceed with the prosecution.”<sup>245</sup>*

It is hard to see the logic behind not applying the new law based on that the penalties are too severe, a conclusion is that it is not in the judges’ primary concern to protect the victims of sexual exploitation and trafficking. It is undoubtedly a lack in the construction of the law to present penalties of that dignity and not consider the consequences thereof, with the consequence that judges apply UNTAC Article 42(2) instead since this law still is in force. As important as it is that the languages of different laws need to correspond, the penalties must as well be comparable to other deeds.

### **3.8.3 Lack of Definitions**

An additional, and perhaps the most severe, problem is the lack of definitions in the Trafficking Law. Without clear definitions it is hard to apply the law. Either the judge can decide to apply the law very broadly or on the contrary very narrowly. In both cases it is hard for all parties in a trial to know what kind of acts are illegal and why. A female judge, on the other hand, claims that general laws lack of definitions do not constitute a problem, but rather makes it more convenient for the judges:

*“People don’t know the law, but the trafficking law is very good. I don’t criticise the trafficking law. It is very general, and it is not difficult for practitioners. We can do a lot. People want the law to say everything. For me the law is no problem. It is easy to apply, up to the judge. Unfortunately the law calls for sub-decree. There is no need for sub-decree if they know how to apply the law.”<sup>246</sup>*

We were surprised to hear her words, since they differ from other respondents’ statements, and since many judges are badly educated this view upon what makes a law good, is to us absurd. In a country without tradition of binding precedents with severe corruption and lack of legally educated personnel a general law is a problem. A law is not supposed to be applied as it suits the judge, it is supposed to treat all people equal before the court. This judge’s statement is either an attempt to make us believe that there are no problems in the Cambodian

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<sup>243</sup> In general new law prevails older law and specific law prevails general law

<sup>244</sup> See chapter 3.6.2

<sup>245</sup> Interview, CWCC 020403

<sup>246</sup> Conversation, Kim Sothavy 020424

legal system or shows how some judges look upon their position in court, it is probably a mixture of both.

The predictability of a case in court becomes limited for the parties or even worse, non-existent, when the judges do not have the same criteria for what is illegal or not. When it comes to the Trafficking Law, this is most devastating for women, since they are the victims in most of the cases.

**3.8.4 Analysis**

**3.8.4.1 Kidnapping**

Since our aim is to see how CEDAW Article 6 is realized in Cambodia we have chosen to give our comments on the problems and obstacles we have recognized in the current law, and then give a few suggestions on how certain obstacles can be eliminated. We will not examine and evaluate all articles of the Trafficking Law and draft a new suggestion, rather sharing the thoughts we have about the legislation in order for the Trafficking Law to be an instrument to fulfil CEDAW Article 6.

There is a specific emphasis on kidnapping in the Trafficking Law and this is reflected in the aim of the statute (Articles 1 and 2), which is “*suppressing the acts of kidnapping of human persons for trafficking/sale and the exploitation of human persons*”. Eliminating kidnapping is thus an effort in encircling one main feature of trafficking. There are different ways of conducting trafficking, although some patterns often are similar. The aim of the Trafficking Law to reach one common act or one act that is repeated in almost all the offences, is likely the most favourable way to pin down the different culprits. Even though we believe that the legislator has the right approach in trying to eliminate the human trade/trafficking in Cambodia, there is a lot more to wish from the legislation. In order to cover as many actions as possible, there is a great risk in performing a vague and inexact legislation, complicated to apply and implement. There are some crucial paragraphs in the Trafficking Law that, mostly because of lack of definitions and uniformity with other legal paragraphs, adventures the validity and the implementation of the law. As the kidnapping act is given high priority in the law, we will start to analyse the actual consequences of this paragraph as it is formulated today.

Kidnapping in article 3 states the following explanation to trafficking:

- Anyone who lures
  - by ways of enticing
  - OR
  - any other means
  
- by promising
  - to offer money
  - OR
  - jewellery
  
- by ways of
  - forcing
  - OR
  - threatening
  - OR
  - using hypnotic drugs

(with or without that persons consent)

in order to kidnap for trafficking/sale or for prostitution shall be punished from ten to fifteen years. If the person is a minor, of less than 15 years the punishment will be fifteen to twenty years.

The fact that the term kidnap is not legally defined in the law, weakens the strength of the law. The actions that are specified in the article are certain features previous to the actual act of kidnapping (*lures, entices, offers money or jewellery, forcing, threatening or using hypnotic drugs*), but what establishes kidnapping of human persons is not defined. It seems as if the legislator assume that there is a common understanding of words that are not defined in the legal wording, but such an assumption creates devastating effects. The acts of kidnapping for trafficking in Article 3 can sentence the perpetrator to a maximum of twenty years imprisonment. Having such a severe penalty and no real definition of the act opens up for discretion that in turn hinders a uniform application of the law and puts the legal rights for the individual at risk.

Camille Cameron from Community Legal Education Center (University of San Francisco School of Law) claims, in an attempt to identify “*kidnapping*” that it involves an act of taking, which does not make parents selling their child/ren an object of the law. Parents would therefore not be charged with the penalty of kidnapping according to the Trafficking Law, since there is no taking between parents and child/ren.<sup>247</sup> Parents would in these circumstances instead be charged under the UNTAC law, where the penalties, as mentioned before, are lower. The UNTAC law states responsibility for anyone who “*procures, entices or leads away for purposes of prostitution*”<sup>248</sup>.

We would on the other hand claim that the act of kidnapping must not be defined in words of taking, but rather in the actions of illegally limiting someone else’s freedom of movement. This could involve locking someone in, taking someone away or selling someone. As a consequence it would be no difference in *who* performed those actions, because whether or not a parent can “take” his or her child, they can illegally limit their freedom of movement. Moreover it is not openly stated that the intent with the law is that the kidnapping article should not cover parents. If this was intended it would be more suitable to make that statement in a special provision to clarify and avoid doubts. That parents are included is also supported by the circumstance that Article 5 in the Trafficking Law on offence of pimping<sup>249</sup> states that the punishment for anyone who has a closer relationship to the girl or woman, for instance parents or husband, is object for a penalty that is doubled (10-20 years, instead of 5-10 years). Assuming a meant conformity by the legislator we must reason that parents would not be objects for double penalty in some issues and not even under the jurisdiction of the law in some. The fact that parents who act as pimps commit an aggravated crime is however not questionable, as it relies on the child’s state of dependency and weaker position.

We also see the argumentation of Cameron as problematic in another aspect. The actions in UNTAC Article 42(3), “*procures, entices or leads away*” are in all probability covered in the mentioned actions of Article 3 in the Trafficking Law and since the provisions in the Trafficking Law are extended, the UNTAC 42(3) is most likely abrogated.<sup>250</sup> In addition to

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<sup>247</sup> Cameron 1998, p. 243

<sup>248</sup> UNTAC Article 42(3)

<sup>249</sup> Definition of pimp is in Article 4 of the Trafficking Law

<sup>250</sup> A new law abrogates an older law if the provisions in the new law contradict the provisions in the old law see section 3.8.2

the extended provisions concerning acts of enticing, the Trafficking Law is also extended in the *purpose* of the enticing since it covers not only “*for prostitution*”, but all forms of trafficking. It can also be stated that the higher penalty in the Trafficking Law as well can be an indication of extended provisions, even though that element alone would not be enough in claiming that. These reasons lay a foundation to claim that the higher penalty in the Trafficking Law is actually the only penalty and the only legal provision covering different sorts of enticing for trafficking/sale or for prostitution. Therefore, parents cannot be subjects to lower penalties if they traffic their child/ren than an “outside” person.

But, the situation with parents selling their child/ren, anyhow, creates a problem hard to handle. Parents that sell their children (mostly girls or young women) are in all probability doing that to be able to survive. The purpose with the Trafficking Law is to cover all of the many actors that are performing criminal acts in trafficking and bring them to trial. The failure here is that the culprits most easy to find are the parents, and they are not supervising the organised trafficking in so called criminal rings, they are not the masterminds behind the action and they are not the ones making the big profits on their actions. Parents forced by poverty are trapped and have no options to choose from. A parent, forced to sell a daughter for the survival of the rest of the family is not a perpetrator, but a victim as well, and this is of serious importance to bear in mind. If that parent is sentenced to jail, it is probable that the children remaining at home will starve, since they are left without supporter.

In order to handle this issue, the law should reflect the reality facing the people of Cambodia and open up for provisions where parents because of circumstances over which they have no control, should be subjected to mitigating circumstances or a clause of exemption. The Trafficking Law should have no purpose of extend the group of criminals but rather to focus on charging those who make a living on modern slave trade. The circumstances under which parents sell their children should therefore by the court be considered in cases on trafficking.

Such regulations require high judicial competence and a legal system that is not permeated with bribes and corruption. It is also important that the police working on trafficking cases find the masterminds, instead of sending parents to jail just to have a scapegoat. In Cambodia as of today, accusing the mastermind behind criminal trafficking-rings is risking your own, or your family’s, life. There is a lot of money and power involved in the trade of persons and corruption is widely spread. This is the greatest threat to the creation of a fair application of the law in Cambodia. And when a fair application of the law cannot be guaranteed a lot of women and girls cannot be protected and they cannot claim their rights as women not to be forced into prostitution and not to be sexually exploited.

#### **3.8.4.2 Any Other Means**

In Article 3 of the Trafficking Law there are different actions enumerated that easily can confuse the reader, but we believe that it is an effort from the legislator to cover specific actions that often appear in trafficking cases, and that if they not are mentioned in the legal text might create a debate on whether those actions would constitute an illegal act per se. As it is now the acts are stated to be illegal under the Trafficking Law and it is also clear that there is no consideration taken to whether the victim of trafficking has consented to the act or not. What might raise difficulties is that while trying to present certain actions, that presumably would act as guidance for the application of the law, the legislator puts “*any other means*” as a prerequisite of equal value as the enumerated prerequisites and makes these unnecessary. “*Any other means*” is rather a general clause and if the intention with the enumeration of actions is meant to clarify what deeds are illegal, it would consistently be more pedagogical to



place the general clause as the last alternative and that it covered “similar means” so the enumeration actually could function as guidelines. As we see it, the reason for the enumeration is to clarify certain deeds; in doing that it is important to avoid the reverse effect, making the clause less clear.

#### **3.8.4.3 Age Limits**

A problem that arises very quickly when comparing the two laws is the age limit. For aggravating crimes the victim has to be less than 16 years in the UNTAC law and less than 15 years in the Trafficking Law. The use of the different assaults will therefore differ if the girl/woman is 15 or 16, which probably not was intended. It seems as the drafters of the Trafficking Law supposed that the provisions in the UNTAC law that concerned almost the same issues were going to be repealed. As it is now, both laws are used at the same time and that complicates the enforcement of the Trafficking Law and its validity. As regarding the age limit we would prefer 18 years, as mentioned before, to secure the rights and protection of the children and there would be no debate of if the word “*minor*” means human persons under the age of 18, 16 or 15. As it is now, depending on different laws, the limit to be considered a minor differs.

#### **3.8.4.4 Trafficking**

An improvement from the previous UNTAC law is that the Trafficking Law concerns all forms of trafficking and not only trafficking for sexual purposes. The UNTAC Law restricts the procuring offence to procuring “*for the purpose of prostitution*”. The Trafficking Law extends the offence of kidnapping for trafficking/sale or for prostitution. This means that the Trafficking Law would cover kidnapping for purposes in addition to prostitution, for instance the international marriage market, forced domestic service, debt bondage or the exploitation of victims in the sex industry beyond what is strictly defined as prostitution.<sup>251</sup>

Looking at the wording of Article 2 it is apparent that this extension of the meaning of trafficking is the objective since it states: “*The kidnapping of human persons for the trafficking/sale or for prostitution (...)*”<sup>252</sup>. This means that kidnapping for trafficking/sale for any purpose is illegal as well as kidnapping for prostitution. The legally trained respondents that we have met also say that this is the intention of the law and that this is an improvement for the victims of trafficking since the reason for the trafficking does not have to be examined.

#### **3.8.4.5 Debauchery**

The next major problem caused by lack of definition is the offence called “debauchery”. It is a word from an old French law, not longer used in French legislation. It also seems that the word is found in an old Cambodian law from 1923, and for some reason used again in modern legislation. Generally, debauchery is an act which “corrupts the public morals”. But that definition only seems to leave us with more questions than answers.<sup>253</sup> Mr Stuart Coghill is also questioning what actually is the illegal act according to Articles 7 and 8 of the Trafficking Law<sup>254</sup>. Since there is no definition of debauchery in the legislation, the word can be interpreted according to its natural and ordinary meaning. We will therefore start in trying to nail down what debauchery could be, since that reveals what the aim of the article is. In Black’s Law Dictionary, the definition of “debauchery” is:

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<sup>251</sup> Cameron 1998, p.243

<sup>252</sup> Our emphasis

<sup>253</sup> Conversation, Stuart Coghill

<sup>254</sup> Coghill 2000, p.337

*“In general, excessive indulgence in sensual pleasures, in a narrower sense, sexual immorality or excesses or unlawful indulgence of lust.”*

With this explanation it appears that Article 7 and 8 can cover an enormous range of “*sexual immoralities or excesses*”.

There are some suggestions on what debauchery might be in the drafts made previous to the Trafficking Law. The following examples are acts that takes place in a place of debauchery: Sexual intercourse with one or several persons, exchanging of partners for sexual intercourse, showing of exploitative film, imitating those films by actual practice and watching sex shows or obscene strip-shows. These examples cover a wide range of very different actions, and they do not give further information to rely on in finding the ambit of the articles. Neither it is sure if the examples in the draft still are relevant, the legislator has chosen not to explicitly write them out in the current law.

It is a fatal mistake not to define a term properly, because it puts the law on the verge of being not valid. There must be a definition to a crime that can send people for 15-20 years in prison. The law needs to be specific and it cannot be enforced or used when there are too many uncertainties. The result is that the old UNTAC law instead is used in most cases and the Trafficking Law becomes invalid. The aims of Article 1 of the Trafficking Law “*to rehabilitate and upgrade the respect for good national tradition, protect human dignity and protect the health and welfare of the people*” seems to be hard to realise, when the law that is supposed to be one of the means, is too unspecific to actually be in use. Mr Christian Guth, Technical Advisor at the Law Enforcement Against Human Trafficking and Child Abuse Project ( at the Ministry of Interior) remarks the same problem with the trafficking law (and adjacent laws):

*But they give no efficient definition\_of debauchery, what is debauchery? This is one of the things, they should give clear definitions of what they talk about. It is the same with rape. What is a rape? So judges will say: “Everybody knows what is a rape.” No! Last week a man used his finger to penetrate a five-year-old girl, is this rape?<sup>255</sup>*

In Article 7 the opener of a “*place for committing debauchery or obscene acts*” is performing illegal deeds. However, the visitors to that place are not mentioned and committing debauchery to some that is not a minor is not illegal according to the Trafficking Law. However, in Article 8 two different deeds are mentioned. Firstly, committing “*debauchery acts onto a minor*” and also “*buying such minor person from somebody else or from head of the prostitute*”. Mr Nick Rine comments on this:

*“And then, throws in to the same clause, ‘if upon buying such minor from somebody else can be punished from 10 to 20 years of prison.’ Can you be punished from 10-15 years of prison for buying a minor or for committing debauchery, or for both?”<sup>256</sup>*

The double meaning of the article; that it can be considered to cover only the debauchery act onto a minor, or that it is supposed to be an act with both debauchery and buying a minor person from somebody, can certainly make the usage of the article even harder. There is no definition of what debauchery is and then are these undefined acts only criminal if they are

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<sup>255</sup> Interview, Christian Guth 020418

<sup>256</sup> Interview, CWCC 020423

carried out in the context of buying that minor at the same time. The articles of the Trafficking Law and foremost Article 8 are therefore problematic in different respects:

- How can criminal justice personnel know what particular behaviour is debauchery? Will the police be able to recognise debauchery when they see it? The vagueness of this provision could lead to wildly different interpretations and arbitrary enforcement.
- How is any person to know in advance whether their actions will or will not be deemed debauchery? And how will the victim know if the actions she was exposed to were illegal?
- The penalty imposed by Article 8, 10-20 years imprisonment is one of the most severe available in Cambodian criminal law. It is the same penalty as that prescribed for premeditated murder<sup>257</sup>, and more severe than the penalties for voluntary manslaughter<sup>258</sup> or aggravated rape<sup>259</sup>. According to Mr Coghill this raises the question of fairness and sentencing parity and maybe that such severe penalties can imply either that the sexual immoralities and excesses must be repeated or serious or either that the act of debauchery must be performed in organised prostitution or trafficking.

If the debauchery acts only are supposed to be used in situations of organised prostitution and trafficking, than the indecent assault in the UNTAC law still must be used or there would be no provisions on sexual assault in force. We stay with the understanding that “or” (*commits debauchery acts onto a minor person of below 15 years old, even if there is consent from the concerned minor or if upon buying such minor person somebody else [...]*)<sup>260</sup> in the legal context, must mean that the mentioned acts are considered as crimes, individually. This therefore leads to that committing debauchery acts onto a minor person and buying a minor person from somebody are due to ten to fifteen years of imprisonment separately. This is also consequently with the all over world agreement that child prostitution and child pornography is wrong and is criminal. The severe penalties has the same pattern through the whole trafficking Law and the debauchery acts in Article 8 correspond with the penalties of other actions against minors. To kidnap a minor of less than 15 years is subject to a penalty of 15–20 years imprisonment. Pimping offences committed onto minor less than 15 years also has a penalty of 15-20 years. However, the penalties are not uniform with other legislation and that creates an absurd legal situation. High penalty for a crime with no definition does not create a state with proper rule of law.

#### **3.8.4.6 Consent**

The lack of definition of debauchery is the first and foremost comment we get from our legally trained respondents on the Trafficking Law. However, Mr Nick Rine also commented on another weak side of the law:

*“‘On a minor person, below 15 years, even if there is consent.’ The idea that you would even talk about consent in the concept of a minor is contradictory concept.”*<sup>261</sup>

He opposes to the use of the term consent, since he believes that being a minor automatically means that there is no consent to any sexual act. We do agree with him in that aspect, but on

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<sup>257</sup> Article 31 UNTAC 10-20 years

<sup>258</sup> Article 32 UNTAC 8-15 years

<sup>259</sup> Article 33 (2) UNTAC 10-15 years

<sup>260</sup> Article 8 the Trafficking Law (our emphasis)

<sup>261</sup> Interview CWCC 020423

the other hand, when writing it out it could also be seen as a statement to clarify that consent does not change the assault. Since the law is vague and unclear in other aspects this clarity might be useful in cases where minors are involved, since there will be no discussion about consent.

#### **3.8.4.7 Filing system**

There is not a tradition of filing concluded legal cases and therefore there are no binding precedents that the judges need to look back to. They can apply the law as they, themselves, wish. This also results in no proper way of finding out how Article 8 actually has been applied and how judges have interpreted its aims, what debauchery means and what actions that are covered. We searched a lot for cases to use as guidelines to see the application of the law and only those that NGOs kept were available for us. No possibility of looking upon former judgements in similar cases opens up for arbitrariness in court, a lack of uniformity in the system and uncertainty for the people.

### **3.9 Conclusion**

With legal staff that is not properly trained, the unclearness creates even more problems in the legal enforcement. Article 10 of the Trafficking Law states that any provision contrary to the Trafficking Law shall be repealed and not simply that the UNTAC law shall be totally abolished and therefore the practice of the two laws could be as in the schedule below. Article 8 in the Trafficking Law may replace the UNTAC law offence of indecent assault in all cases where the victim is under 15 years of age, but until the above issues and uncertainties are clarified by the legislature it is difficult, if not impossible, to say with certainty to what extent the Trafficking Law replaces the indecent assault offence in the UNTAC law. The following offences could be charged under one or other of the laws:

- Indecent assault on persons 16 and over - Article 42(1) UNTAC law. 1-3 years imprisonment  
OR  
Debauchery acts on persons under 15 - Article 8 Trafficking Law. 10-20 years imprisonment
- Aggravated (fraud, violence, threat or authority over victim) indecent assault on persons 16 and over- Article 42(2) UNTAC. 2-6 years imprisonment.  
OR  
If the victim is under 15 the charge could be debauchery acts under Article 8 Trafficking Law. 10-20 years imprisonment
- Luring persons of any age for the purpose of kidnapping for trafficking, sale or prostitution – Article 3 Trafficking Law. 10-15 years imprisonment, 15-20 years if victim is under 15.  
OR  
Pimping offences against persons any age- Article 4 and 5 Trafficking Law. 5-10 years imprisonment, 10-20 years if victim is under 15 and for other aggravating circumstances (procures, entices or leads away for purpose of prostitution). The UNTAC law Article 42(3) will probably be replaced by article 3 in the Trafficking Law, because Article 3 in the Trafficking Law covers “*enticing or any other means*” to lure a human person and “*in order to kidnap him/her for trafficking/sale or for prostitution*”, not only for the purpose of prostitution as in UNTAC law 42(3).<sup>262</sup>

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<sup>262</sup> Coghill, 2000p 337

Clearly the laws relating to sexual offences in Cambodia are in urgent need of attention by the Legislature. A coherent set of offences in this area would greatly assist understanding and enforcing of the law, as well as more efficiently promote the objects that the legislation tries to achieve.<sup>263</sup> Under Article 9 the Trafficking Law calls for a sub-decree in order to get detailed instruction on how to apply the law, and there is surely a great need for such a sub-decree as well as there is a need for laws that do not need sub-decrees, but self-containing. The vagueness of the law is a great hindrance, since it in many cases makes the law invalid. This could also be put in the words by Mr Rine:

*“I think a good defence lawyer in a developed legal system might well create a defence that the law is so vague and confusing that it doesn’t properly put the person on the list for the criminal act.”*<sup>264</sup>

The Trafficking Law has a good aim and purpose, but many legal technical mistakes minimize the protection against sexual exploitation that it is supposed to get. The legal system is under development as the whole country is, but specific laws is at least a small first step in creating legislation that can be properly used and does not open up for arbitrariness, corruption and impunity.

With the presence of foreign legal experts, there is also a need for sensitiveness in order create laws that correspond to each other in language, aims and penalties. There is a risk of causing greater confusion by inserting new ways of thinking that does not suit the system of law. What kind of appropriate measure is it to perform national legislation that does not have any effect? That kind of legislation does more harm than good and is not suppressing exploitation of women by prostitution in a proper way.

## 4 “All Appropriate Measures” - Means of Implementing CEDAW Article 6

### 4.1 Introduction

CEDAW Article 6 states that signatory states shall take *“all appropriate measures, including legislation”* in order to reach the goals of the article. What Cambodia does to fulfil *“including legislation”* has been dealt with in the previous chapter. Legislation alone is not enough to obtain change, partly because legislation requires measures to be enforced and partly because legislation in itself is not enough to affect society. The Royal Government is because of the accession to CEDAW obliged to take measures besides legislation to suppress exploitation of prostitution and trafficking, but somewhat contradictory most of the measures taken in Cambodia are actually performed by NGOs. The purpose with the UN Conventions is for governments to act as instruments in implementing the agreements, however, as in most states in the international community, the Cambodian NGOs press and influence the government in implementing CEDAW.<sup>265</sup>

The Royal Government’s work on the area of trafficking and prostitution is first and foremost performed by the Ministry of Women’s and Veterans Affairs (MoWVA). In co-operation with MoWVA there are additional programmes in other ministries as for example the project called *Law Enforcement Against Human Trafficking and Child Abuse* in the Ministry of Interior (MoI), efforts by the Ministry of Tourism to dispel the perception of Cambodia as a sex

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<sup>263</sup> Coghill, 2000 p 337f

<sup>264</sup> Interview, CWCC 020423

<sup>265</sup> Pietilä/Vickers 1990, p. 137ff

tourism destination<sup>266</sup> and measures by the Ministry of Health against STDs and HIV/AIDS. Besides this, organisations, both international and local, are doing significant achievements in improving the situation for sex workers and in helping women and children who want to get out of prostitution. The number of NGOs has increased enormously in Cambodia during the last decade concurrently with foreign countries' increased interest of the Cambodian situation. Most work in the area of interest for this study is done by independent organisations, and not by the Royal Government, probably because Cambodia is a country that needs recovery and urgent efforts in a great number of fields, and trafficking and sexual exploitation are not fields of first priority in the Royal Government. The many different needs combined with limited public finances leaves little room for efforts to enforce the legislation on trafficking and sexual exploitation. Between the MoWVA and the active organisations a co-operation has developed that strengthens both the NGOs and MoWVA, the ideas of the NGOs have greater impact through the voice of the MoWVA, and MoWVA benefits from the knowledge and efforts made by the NGOs. In this chapter we will first focus on the Royal Governments' own efforts that are "other measures than legislation" concerning exploitation of prostitution and trafficking, and subsequently the focus will be the work of the organisations.

## **4.2 Governmental Measures**

### **4.2.1 The Ministry of Women's and Veterans' Affairs**

The Ministry of Women's Affairs was established in 1996 (after the 1998 election it became Ministry of Women's and Veterans' Affairs) as a part of the Royal Governments efforts in order to promote the rights and status of women in accordance with international standards, after having adopted the Platform for Action of the Fourth World Conference on Women in Beijing in 1995.

### **4.2.2 "Women are Precious Gems"**

Shortly after the elections in 1998 the Ministry developed a National Five Year Strategic Plan 1999-2003, which was endorsed by the Royal Government in 1999. As a response to the previous mentioned proverb "*Men are gold, women are white cloth; if you dip it in the dirt, gold can easily be wiped off, but cloth will be stained forever.*" This five year plan is called "*Neary Rattanak*", which means "*Women are Precious Gems.*" In our interview with the Minister of Women's and Veterans' Affairs, Her Excellency Mu Sochua explains this as a part of the effort to upgrade women's status in society:

*"So now we are saying: Men are gold and women are precious gems. There is a movement, a women's meeting that comes out of the national willing to change, to upgrade, uplift the situation of women in Cambodia. Whether she is victim of trafficking, whether she has been raped; she is still a precious gem."*<sup>267</sup>

The five year plan gives priority to four main areas: women's health, education, economic empowerment and legal protection. In co-operation with other institutions and organisations the MoWVA as a part of this plan implements a number of projects among which protection against trafficking of girls and women is included.<sup>268</sup>

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<sup>266</sup> NGO Committee on CEDAW 2002, p. 19f

<sup>267</sup> Interview, MoWVA 020328

<sup>268</sup> SIDA 2001, part 4, p 16f

### 4.2.3 Policy Guidelines Against Sexual Exploitation

In 2001 the MoWVA presented “*Policy Guidelines Against the Sexual Exploitation of Women and Children*”<sup>269</sup> for other Ministries, in particular Ministries of Justice, Interior, and Social Affairs. The Guidelines are intended as temporary measures to respond to the immediate situation of an increasing number of women and children who are forced into the sex industry. Taking into account the existing Trafficking Law, the statement includes that perpetrators should be punished, even if they are government officials, and the women and children should be protected with legal means and provided with services such as healthcare and access to justice in the courts for sex workers equally with others. One interesting aspect presented in the Guidelines is a suggestion on regulations of brothels:

*“Regulations developed and implemented for control of places where sex services are offered:*

*no sex workers below 18 years old*

*hygienic conditions*

*regular visits of social / health services*

*confidential monthly STD check-up of sex workers by STD care providers recognized by the Ministry of Health*

*100 % use of condoms by customers*

*sex workers have access to advocates for sex worker rights*

*not located in neighbourhood of schools or other youth places*

*no inhuman or degrading treatment, no slavery, no forced prostitution, and no exploitation, sale, or trafficking”*<sup>270</sup>

The statement acknowledges that places where sex services are offered do exist and that there is a need for regulation to be implemented in order to improve the working conditions of sex workers. Her Excellency is however not positive to regulation through legislation:

*“If it is by legalisation, there are no measures taken to protect the women from being exploited by the brothelowners. I don’t think the law would make any difference, whether they make the brothelowners legal or not. I think also the social services, the social safety-net that does not exist at this moment, making it legal would increase the social discrimination against [commercial sex workers]. Because then the society would say, you have made the decision to be a worker. And the clients would say, I paid you and you did not perform, therefor I can beat you [...]*

*And then the court system that is so totally gender biased, corrupt. I think legalisation would make the law even more difficult to implement. As it is now, it is best to defend victims of prostitution, it is easier. For us it is easier because we stand in a position that these women are victims because they did not render the service, then the law says, the perpetrators – the brothelowners or the customers – are violating the law.”*

In the Guidelines we also found the only statement made during our field-study in Cambodia that actually recognizes the customer as a part of sexual exploitation. Point number 4 of the Guidelines says:

*“Prosecution of the customers of sex workers who are forced to provide sex services.”*

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<sup>269</sup> MoWVA, Draft as of 010423

<sup>270</sup> MoWVA, Policy Guidelines against the Sexual Exploitation of Women and Children, 2001

We believe that the perspective put forward by Her Excellency is of importance and need to be acknowledged in the future measures concerning suppression of exploitation of prostitution. As presented in chapter 3.5.3 the Constitution Article 46 opens up for a wider definition of the exploiter in situations of sexual exploitation.

The question remains however, in what situations and circumstances someone actually is *forced to provide sex services*. When we during our interview with MoWVA asked the question if Her Excellency divided prostitution into forced and voluntary prostitution we received the answer:

*“Of course. But we have to see that the majority of women, that are in commercial sex, are forced, tricked, have no other choices. Even if they make that choice, voluntary, you call it voluntary, I still don’t think it is voluntary, I think it is their only choice. Economically speaking. And it gets to a point, where they, socially, have no other way to be reintegrated. So they remain in this industry.”<sup>271</sup>*

The Policy Guidelines includes several measures needed in the situation of the sex workers, and it shows the MoWVA’s dedication and view that this is an issue of much importance. Yet the lack of resources both in the MoWVA and in other parts of the Royal Government constitute a great obstacle to enforce these measures. On our question if any steps are taken by the Royal Government Her Excellency responded:

*“At this moment it is now up to our Ministry and the NGOs to push for the next step. And we intend to do so. [...] I could do it, if I only had this, but I have more than this. I could do it, but I mean that the Government... all the Ministries should look into it. They are looking at it one piece at a time.”<sup>272</sup>*

#### **4.2.4 Report to the CEDAW Committee**

According to Article 18 of CEDAW the member states of CEDAW undertake to submit to the Secretary-General of the UN, for consideration by the UN CEDAW Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of CEDAW and on the progress made in this respect. As this shall be done within one year after the entry and thereafter every four years and Cambodia accessed CEDAW 1992, the Royal Government should have submitted their first report 1993. As of today there is not yet a report submitted to the Committee. Her Excellency responds to the situation like this:

*“Yes, Cambodia is 9 years late with its’ first report. I take the responsibility for it because I have been here for 4 years and I haven’t done anything. I am trying to make things happen, I wanted to write it three years ago, but there is almost nothing I could write about. Even if we try to make things happen to get a report, there is no positive. We are in the process of writing a report. Inventing a report and writing a report for the sake of a report does not serve the country, does not serve the interest of women. To me, the report system and the writing should be a process of empowerment, of awareness, of education for the women’s groups. To the Government the NGOs have initiated a report. I intend to have this process very open, and that’s what I am pushing for.”<sup>273</sup>*

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<sup>271</sup> Interview, MoWVA 020328

<sup>272</sup> Interview, MoWVA 020328

<sup>273</sup> Interview, MoWVA 020328



Her Excellency also comments the lack of resources as an obstacle for producing a report. Cambodia is by far not the only country that has not presented reports on time to the CEDAW Committee, and the Committee is aware of that the reporting process is difficult and the preparation of reports can be a time-consuming and complex task. Some problems in the process arise from lack of personnel, experience and resources within the relevant ministry or department.<sup>274</sup>

#### **4.2.5 Law Enforcement Against Human Trafficking and Child Abuse Project**

There are projects to fight sexual exploitation in other ministries besides MoWVA, with another focuses than women. We met with the Technical Advisor of one of the projects, Mr Christian Guth at the MoI. The Law Enforcement Project was originally initiated and is funded by International Organisation for Migration (IOM), UNICEF Cambodia, UNCOHCHR and World Vision Cambodia and has the purpose to improve the capacity of the police, the judges and the prosecutors in fighting against first and foremost sexual exploitation and trafficking of children.

The project has during the years conducted training of policemen in order to make them gender sensitive. Other special areas that demand extra efforts are according to Mr Christian Guth ignorance of the law, corruption and bureaucracy. Mr Guth also points out the importance of the law as a tool for the police in their work. But as of now, with little knowledge of the law and upon that a law lacking definitions and uniformity, those requirements are not yet fulfilled.

So far a network of reliable policemen is organised throughout 12 out of 19 Cambodian provinces and in Phnom Penh, that conduct criminal investigations in the province they work as soon as a case of trafficking is reported by for example an NGO. Despite the problems Mr Guth thinks the results of the project are good, even though the situation is not yet satisfactory. The project will continue up until 2005.<sup>275</sup> The Law Enforcement Project is an example of how the problem with exploitation of prostitution and trafficking can be attacked from another angle. Focusing on the tasks of the police is very suitable for the situation regarding sexual exploitation in Cambodia, thus a proper way of implementing CEDAW Article 6.

#### **4.2.6 The Work of International Organisations and Non-Governmental Organisations**

There are several human rights organisations active in Cambodia today, of different origins and of different size in both staff and activities. Although many of them are so called local NGOs they receive financial support from different foreign states and foreign organisations. The efforts taken in the area of prostitution are as varied as the organisations, depending on the different aims of the organisations. We had no opportunity to survey all the organisations, even less to meet all of them. However, from the work that we saw and the information we received we were impressed by the amount of work that is performed in the field of women's rights. In order to suppress the sexual exploitation of women by prostitution and trafficking many organisations were active in empowerment of the women based on fundamental women's rights. That is educating women in their rights as women and as sex workers which is making women realize that they are wrongly treated and that they possess dignity and rights that others must respect. Preventive actions like empowerment are perhaps the most important, since they are the base for the women's conception of themselves, and give them

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<sup>274</sup> Interview, MoWVA 020328

<sup>275</sup> Interview, Christian Guth 020418

power to stand up for themselves. Ms Rosanna Barbero at WAC talks about empowerment as a requirement for change:

*“[T]hey are in a very exploitative and precarious situation, that is very hard. That is why empowerment is the only way. Only when they take the power in their hands to strengthen their numbers, when they stand up as they have done in [years] before and say ‘This is what we want for us, because we know our situation.’ That is when things change. It doesn’t change because of legal changes, nothing changes. In my country and your country, in all industrial countries, things change because women formed a movement. Women demanded a change, they didn’t ask for it, they didn’t say please, they demanded it. They were convicted to change the situation, to change the society. They fought for better conditions, like your mother, your grandmother, and you now have more privileges and better opportunities.”<sup>276</sup>*

Many of the NGOs are in contact with the sex working women and supply them with services out of their special needs. The NGOs provide the sex workers with condoms and education on how and why to use those as well as they conduct health controls. The NGOs are also very often the spokespeople of the sex workers and give attention to their problems of rape, violence and illegal detention in different reports. The reports become the base either for lobbying the Royal Government, for the NGOs to take new actions or serve as information in international meetings and conferences.

Several NGOs have regular meetings with sex workers, where they sometimes have special education, but often those meetings are forums where the voices of the sex workers are heard and taken seriously. In these meetings the sex workers also get in contact with other women sharing similar situations. There is also training on the Trafficking Law and other legal provisions that are advantageous for the women to have knowledge about. Certain NGOs are focused on legal questions in general and give legal advice and assistance as well as free legal aid in court for exposed and poor people. Those NGOs work for fair trials and they act when sex workers are in need of legal support.

The aims of the NGOs are to improve the situation of the women concerned, but the means of doing this differ. Some help women that have been or are at risk of ending up in prostitution and conduct shelters with counselling and additional vocational training with the aim of reintegrating the women in society. Others want to support the sex workers while performing their services in order to obtain circumstances that are safer and where these women’s rights are respected. An idea expressed in the same sense, that some sex workers themselves supported, constituted of a house where sex workers run the management without pimps taking any profit or forcing them to receive customers against their will. This idea arose when the women realized that performing sexual services is not contrary to the Constitution, while exploitation is.

#### **4.2.7 NGOs Shadow Report on CEDAW**

The UN CEDAW Committee encourages NGOs world-wide to write shadow reports on the implementation of CEDAW, since that creates a comprehensive view of the actual situation of women and of the implementation in that country. Even though the Royal Government of Cambodia has not fulfilled their obligation to provide national reports on the implementation of CEDAW, a group of NGOs has created a committee responsible for making shadow reports. In 1995 the Cambodia NGO Committee on CEDAW was created to monitor and to

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<sup>276</sup> Interview, WAC 020403

promote the Royal Government's implementation of the CEDAW Convention in order to contribute to the improvement of gender equality across Cambodia. So far this committee has produced two reports; in 1997 the NGO Committee on CEDAW submitted a report to the UN Committee on CEDAW and the second report made 2001. The 2001 report was prepared through the collaboration of a network of 62 Cambodian NGOs, with Ms Nanda Pok from WFP as Chair of the NGO Committee on CEDAW. The shadow reports are sent to the UN CEDAW Committee, unfortunately they will not be studied by the UN Committee unless an Governmental report is submitted. In Cambodia the reports are distributed to every member of the Royal Government, the Senate, the Parliament and to NGOs.<sup>277</sup>

In our interview with the Minister of MoWVA we asked about Her Excellency's opinion on the shadow report made by the NGOs. Her Excellency's answer illustrates the point of different parties' participation in the process of making reports:

*“When the NGOs write reports, they write facts. They write about what is not happening. I think there is a big gap between what the Government's women write and what the NGOs have already written. So there is this wide gap. Because the Government will always take a position that is more defensive. Because I am more liberal I'm not being so defensive, I would give more reasons why things are not happening. I think NGOs sometimes expect very high performance from the Government. I think it would be best if they, the NGOs, were concrete about measures to be taken, and looking, considering the situation, why it is not happening. But nevertheless I respect the spirits, the content of the report. Because the situation of women in Cambodia at this moment, especially gender based violence, is a very critical situation.”<sup>278</sup>*

Besides making a shadow report to the UN CEDAW Committee, the Cambodian NGO Committee meets on a regular basis to network and advocate for the implementation of the principles of CEDAW. This is done through various initiatives, such as providing training on CEDAW to representatives from NGOs and to the Royal Government, training women from Cambodia, Laos and Vietnam on the implementation, monitoring and reporting of CEDAW, as well as participating on an ongoing basis as a member of the Royal Government Committee on CEDAW to write the governmental report. Another measure by the NGO Committee is the organizing of a forum on sex trafficking and prostitution called “Women for Women.”

#### **4.3 Problems and Challenges**

The Royal Government of Cambodia is due to the assessment of CEDAW responsible for taking efforts in suppressing discrimination against women. The fact that it is primarily NGOs and IOs that perform efforts in practice brings problems as well as challenges. Problems arise when the executive powers are in the Royal Government and the financial means are in the NGOs, and the opinions and aims of those contradict. At the same time it is a challenge to find ways of co-operation in finding the most suitable solutions for Cambodia.

The condition of many foreign donors with different views and countries of origin creates problems as the donors influence the work of the organisations they support. This is a problem in the Royal Government as well as in the organisations, as it from a foreign country is problematic to determine what actions are most needed and suitable in Cambodia. Among the NGOs that work with prostitution and trafficking this tension also appears, as different

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<sup>277</sup> Interview, WFP 020321

<sup>278</sup> Interview, MoWVA 020328

opinions among the organisations reflect the different views on how to handle prostitution in legislation. The view of the organisation is often influenced by the donor, as certain criteria are to be fulfilled in order to receive funding. Because of this the different organisations sometimes have difficulties in co-operating and gather their forces. This is an obstacle in using the resources as effectively as possible. At the same time different efforts are needed, as the situation for women and children in sex work are different and therefore demand different needs. In promoting and working according to different ways of addressing the issue of exploitation of prostitution and trafficking the organisations can also be said to put the different views into practice. In conducting a variety of actions the Royal Government can be influenced and inspired by the organisations, and at the same time wisely use the experiences in order to find the alternatives that suites Cambodia. Differences and tensions create an open debate on how to address the issue in Cambodia.

An additional problem created by the ways donors direct their money is the lack of continuity. NGOs existence and work is depending on foreign financial support, which endure for a certain period of time. Receiving funding for coming periods might demand changing the focus of the work. For donations to be effective and useful, the donors have to consider this as a responsibility and provide for longer lasting relationships with the receiving parties.

#### **4.4 Conclusion**

The work of NGOs improves the living conditions and the situations of sex workers in Cambodia and gives attention to their problems. Even though the actions of the NGOs do not reduce the responsibility of the Royal Government of Cambodia to properly implement CEDAW Article 6, it is of help and guidance. In the sex workers concern it is important that measures are taken and less important by whom. In the concern of creating changes in society it is important that measures are taken continuously. It should be stressed that implementing CEDAW Article 6 first and foremost is the responsibility of the Royal Government. The accession shows a national will that corresponds with the aims of CEDAW, although the resources to perform are limited.

In some Asian countries the governments are resistant against and questioning human rights validity in the context of their country. These leaders claim that human rights is a Western product and is not unquestionable suitable in other societies. Additionally they argue that there are certain Asian values that instead are prevalent in this part of the world. During our stay in Cambodia we never experienced any questioning of human rights. On the contrary it was an integrated and natural instrument to work with in improving the living conditions for the people of Cambodia. Many of our respondents' view upon CEDAW is that it formulates goals and therefore provides with guidelines for their work. It also gives awareness of that there is a movement, not only in Cambodia but world-wide, in eliminating all forms of discrimination against women, which is inspiring and supportive.

## **5 Conclusion**

### **5.1 Contributory Factors to Exploitation of Prostitution and Trafficking in Cambodia**

Trafficking and exploitation of prostitution are integrated problems with many sources and contributing factors. Different features and situations intervene and have to be taken into consideration when addressing the problems. When doing this study and spending time in

Cambodia two features have appeared as main causes behind exploitation of prostitution and trafficking in Cambodia. The factors are poverty and social structures that suppress and degrade women.

Poverty is connected with the lack of means and resources in all levels of society and that the Royal Government has no balanced budget without foreign aid. The history of civil wars and armed conflicts has destroyed the national infrastructure, the social security systems, the educational systems and almost all social and political institutions. With almost no industrial production and an agricultural society on a land-area frequented by land mines it creates a difficult situation of unemployment which hampers the possibilities of development. In Cambodia the status of woman is measured in being a good wife and being a virgin. Being a good wife means take care of all the housework, children and not to argue with her husband, who is the supporter and head of the family. Being a virgin is the condition for a woman to get married and have a place in society. Women in prostitution can hardly regain that position and are forced to stay in prostitution to be able to survive. Because of women's lower status in society, the few resources that can be provided are primarily of benefit for men. The women are more often than men left out from medical care, education and employment. Mostly women are responsible for domestic work and the bringing up of children, work that does not generate any income. Improper education causes several consequences for the women, partly the impossibility to find employment and partly the lack of basic knowledge on various areas of life. Knowledge is an instrument to understand, deal with and predict facing circumstances. Without much knowledge it is hard to take consequences into consideration; women with no knowledge about sexual trafficking and prostitution are of greater risk of being tricked into the sex industry. Poverty is also acknowledged by the CEDAW Committee in the General Recommendation number 19 to CEDAW Article 6:

*“Poverty and unemployment force many women, including young girls into prostitution. Prostitutes are especially vulnerable to violence because their status, which may be unlawful, tends to marginalize them. They need the equal protection of laws against rape and other forms of violence.”*<sup>279</sup>

At the same time there are social structures and social acceptance of men buying sex. As one of our respondents said buying sex is not only accepted but expected, both for unmarried and married men. A situation is stipulated with a demand for sex workers; still the sex workers themselves are marginalized and discriminated, based on the believed moral decay they bring into society.

These factors in combination, however not exclusive, have caused a base for the explosive growth in trafficking and sale of women and children for sexual purposes. The situation of poverty leaves people with desperate solutions in order to survive, which sometimes force them/include to abuse others or to be abused. The circumstance of poverty forces many women into prostitution as it is the only way for them or their family to survive.

Prostitution and trafficking for sexual purposes are closely connected in Cambodia. Before this study we were not aware of that most young girls in prostitution in Phnom Penh had been transported from their homes in the countryside, either against their will or with the belief that they were going to work with something else. The two are almost impossible to separate, since they in much are mutually dependent in Cambodia. It has to be remembered that

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<sup>279</sup> General Recommendation no. 19, 1992, <http://www.undp.org/rblac/gender/rec19.htm>

prostitution exists without trafficking and trafficking occurs for other purposes than sexual, but it is our conviction that if the focus is to eliminate trafficking, exploitation by prostitution would also be rampantly reduced in Cambodia. The emphasis, as we see it, and the recourses should therefore primarily be put to suppress all forms of trafficking. As a consequence the result would be less exploitation of prostitution.

A country with severe lack of governmental finances and almost entirely relying on foreign aid has to prioritise its' focuses. Sexual exploitation is not the only problem among all the issues that need attention, and therefore it is understandable that there is more to wish from the governmental efforts made in this certain area. This is nevertheless an excuse for not putting sexual exploitation on the agenda, but rather a reason to promote its' importance.

## **5.2 Legal Respons to CEDAW Article 6**

In accordance with CEDAW Article 6 Cambodia has agreed to pass legislation in the efforts to suppress trafficking and sexual exploitation by prostitution. It is positive to see that this is taken into account in the Cambodian law, a legislation under development and formation with legal fields not yet covered. The existence of the Trafficking Law shows an awareness of the importance of highlighting a rapid growing problem that in most aspects concerns women.

CEDAW Article 6 states that the member states shall suppress *all forms* of trafficking of women, and this is to be done through legislation. The Cambodian legislator has acknowledged this and formed the legislation in consistency with this. The UNTAC law from 1991 Article 42(3) covers trafficking for sexual purposes (however only regarding minors), while the Trafficking Law from 1996 explicitly covers all forms of trafficking of person of all ages. This is a distinct influence in the Cambodian national legislation deriving from the accession of CEDAW in 1992.

Still, the legal system and the current legislation in this field need improvement. As we have examined in this study there are some technical shortages in the current law. The overall problem, as we see it, is the lack of uniformity. This is noticeable from different aspects. Many important features in the legislation lack proper definitions, which makes the law hard to apply in a uniform way. The lack of definitions creates uncertainty for all parties involved in a trial on what is actually legal or not. This undermines the rule of law and the individuals' right to be treated equally before court. Clear definitions would strengthen the validity of the law. There is neither a uniform legal language used when making laws, it seems as if, as one of our respondents said, they are made at different times, by different people and for different purposes and therefore the laws do not correspond to one another. This depends in all probability on the great foreign influences in the drafting process of Cambodian legislation. Regarding trafficking and exploitation of prostitution it is uncertain which of the two set of rules in force, the UNTAC provisions or the Trafficking Law, that should be applied in situations of sexual exploitation. This lack of uniformity opens up for arbitrariness in court. The Constitution of the Kingdom of Cambodia states that different laws can be applicable at the same time if the older law does not contradict to the provisions in the newer law. In order to avoid confusion and create a uniform legal system, the legislator has to take this into consideration when drafting new laws and clearly state old laws to be repealed.

Many of our respondents, despite the problems mentioned above, believe the Trafficking Law is a good aiming instrument to work with, but there are other problems in the legal system that obstruct a proper application of the law. The Khmer Rouge eradicated the whole former judiciary and it is not until recent years that Cambodia has been able to provide legal training

at university level. At present some of the judiciary staff have received their education abroad, while most of them have no actual judicial training at all. This results in danger of arbitrariness in the application of law. However, the largest problem in Cambodia is the deep rooted corruption that permeates all levels of society, and not least the judiciary.

In cases concerning trafficking this is common as the perpetrator often is rich and powerful. In order to escape or minimize the sentence the accused either gives bribes to the judicial staff, or tries to settle the case by giving the victim an amount of money. Not even a perfect legislation functions well in a corrupt legal system, but if the legislation is uniform and clear it more effectively prevents discretion where corruption may thrive.

### **5.3 Actors Putting Sexual Exploitation on the Agenda**

When we asked the Minister of Women's and Veteran's Affairs what role NGOs play in Cambodia when it comes to prostitution and sex work Her Excellency answered the following:

*“What ever you hear about prostitution in Cambodia, is because the very active NGOs. They were writing this report, the victims receive services and they have programs about empower the victims, get them out of prostitution. And most amazing, which we support very much, is the network of commercial sex workers that the NGOs are eager to facilitate.”<sup>280</sup>*

All though Cambodia has an obligation to perform appropriate measure to suppress sexual exploitation of women besides legislation, the NGOs are really the ones putting prostitution and trafficking on the agenda. Thanks to the efforts of the NGOs practical measures are taken for the benefit of the sex workers. Civil society is doing a great job in lobbying with the Royal Government to take actions and to pass legislation. Difference is made for the sex worker, through various of practical efforts made by the dedicated NGOs.

A co-operation has developed between the MoWVA and the NGOs working with sexual exploitation, which is quite unique among the other Ministries. The actions, knowledge and financial means in possession of the NGOs might through this be of benefit for the Royal Government as well. Mutually the NGOs can take advantage of this relationship, as their ideas can be advocated with more power through the voice of the Royal Government of Cambodia.

There is, on the other hand, a difficulty in the unbalance between the few actions of the Royal Government and the many of the NGOs. As the NGOs are receiving funding by different foreign states and organisations, with certain directives and aims, their actions are directed by those donors' opinions. What seems to be the voice of the Cambodian society is actually, in many fields, the voices of Western donor states. It can also be questioned if the states giving directives from far away are capable of knowing what is best for Cambodia. At the same time the diversity of ideas that this creates, is of benefit as also donors differ in their point of view that creates a debate among the NGOs in Cambodia. Different aspects open up for the people in Cambodia to take stand, and as the majority of the staff in all NGOs are of Cambodian origin and are well aware of their country and culture the diversity of influences can be advantageous.

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<sup>280</sup> Interview, MoWVA 020328

#### 5.4 Reflection and Analysis

In examining the situation of exploitation of prostitution in Cambodia, both legally and socially, we have reflected on different ways of how to legally address the question. It is important to make a distinction between prostitution and *exploitation* of prostitution. Exploitation of a person is a human rights violation; in consequence with this, suppressing exploitation is the aim of CEDAW Article 6. Internationally, and in Cambodia, there are different views and solutions for eliminating sexual exploitation. In Cambodia this is mostly shown by the standpoints of the different NGOs. From our experience and point of view, influenced by the Swedish way of thinking and our fieldstudy in Cambodia, we will present our reflection on the situation of sexual exploitation in Cambodia.

To make prostitution illegal is not an option in today's Cambodia; making women who are selling sex criminals would make the situation even worse. Prostitution would not with this disappear since so many women depend on it to survive. Instead all activities included in prostitution would take place in the criminal sphere and this would deteriorate women's protection from being sexually exploited. They could not file charges against customers for violence or rape as their actions are criminal as well. Despite that sex workers under the current Cambodian legislation are not criminals, the police often treat them as such and even abuse them. Criminalizing sex workers would make this situation even worse. An additional problem is that sex workers would have less access to healthcare than they actually have today and the NGOs would not have the same possibility to provide their services. Being the easy target and afraid of being arrested, sex workers would hide away. Sex working women's social status would be brought to nothing and they would become an even more marginalized group in society than they are today. Making prostitution illegal is not a proper way of suppressing sexual exploitation of prostitution in Cambodia since such proceedings would have the reverse effect.

There are currents in Cambodia that promote suppressing exploitation by prostitution by regulating the sex industry, and create rules for brothels and sexual services. These views have not gained much approval, maybe because no suitable suggestions have been put forward, but probably because it is opposing the common political will. A legalisation of prostitution would put the sex workers in a situation where they would have protection under new legal provisions, but this would also put the sex worker in an exposed situation totally relying on that these provisions are fulfilled. Protecting sex workers' human rights in such a system would demand a functioning legal system and citizens that respect human rights. With the mentioned problems in the legal system and the Cambodian people's lack of knowledge and observance of the laws, this would be a dangerous situation.

A suggestion similar to the previous mentioned idea, but under the current law, is the establishment of brothels run by the sex workers themselves without any pimps or mamasans. The thought is that exploitation by prostitution would be eliminated as the sex workers set the rules for their services, and they would keep the profit themselves. This proposal, as well as the previous, demands a functioning and by citizens respected legal system. Besides, it demands money and an enterprising spirit that is often hard to find among these girls that are marginalized, uneducated, poor and have bad self-confidence. As the Trafficking Law Article 4(1) states that anyone "*who supports or protects one or more persons, by whatever means with knowledge in advance of the act of prostitution of such person(s) or seeks customers for such person(s) for the purpose of prostitution,*" shall be considered pimp, this project might result in illegal activities anyway as the women can be regarded as pimps in supporting and protecting each other.



Under the present law all exploitation of prostitution is prohibited, but the providing of sexual services for payment is not illegal. Neither is buying of sex services illegal, since that is not stated as an act of exploitation. All forms of pimping, procuring and kidnapping for the purpose of prostitution is on the contrary illegal. We believe that this is a legally satisfactory base for the continuing work in suppressing sexual exploitation. The emphasis that it is the exploiter and not the sex selling woman that performs illegal deeds is important, since the sex worker already is in an exposed situation. As the Trafficking Law is formulated now, the legal right is in the hands of the sex workers, which corresponds well with the aims of CEDAW Article 6. This is vital to stress, as at present the physical and financial power often is with the pimp or the trafficker. For the sake of uniformity and continuity in the legal system, it is most beneficial if the ideas behind the current law are integrated in society as a whole. That is a time-consuming process; it demands dedication and persistence and requires awareness of the idea behind the Constitution and the Trafficking Law in the minds of the people.

To obtain a legislation more capable of promoting women's rights and protecting women from exploitation, we believe that the following aspects should be taken into consideration. As of today, the role of the customer (most likely a man) is not taken into account neither in the legislation nor in the debate. We believe it would be of benefit for Cambodia to have a debate and discussion on sexual exploitation where both the buyer and seller are included, since the actions of both of them are contributing to the features of the present situation. This focus would in all probability bring new and challenging perspectives on the situation. During our stay in Cambodia we got the impression that the discussion was quite biased, as the focus was to rescue, train or empower *women* in prostitution. It has to be questioned *why* those women have to be rescued, trained or empowered and *who* put them in that position. Of course there are several contributory factors, but we want to claim that the attention given the man's role as a sex buyer does not by far equal the significant contribution he makes. The rule of demand and supply is valid also in the situation of prostitution. A greater emphasis on the customer as playing a significant role in sexual exploitation could be considered in the legislation as well, as the formulation of Article 46 of the Constitution opens up for this direction.

Another aspect besides the men's role as *sex customers*, that needs to be taken into account in the debate is the *men's view* of women in general and prostitutes in particular. In this the Men's Network has taken a first and needed step, in forming groups of men where topics like this is brought to the agenda. It is not enough only to empower the women, even though that is a needed start, it is also necessary that men realise that male suppression of women is unacceptable.

In addition to putting gender questions on the agenda in the debates and the legislation it is of much importance to work for a more gender sensitive legal system. A good start is to get more female judicial staff, but the most important is for all judicial staff to understand men's and women's equal rights. Laws have to be drafted from a point of view that takes both men's and women's situation into account. For instance, if common provisions on violence are not enough to cover violence that occurs especially against women, extra provisions has to be formed that satisfy those needs. A gender perspective is needed in all political institutions in Cambodia to assure the protection of women's rights.

In order to uplift the human rights of sex workers, all Cambodian women's rights and status have to be promoted and improved. Equality between men and women in the Cambodian

society would eliminate many of the causing circumstances behind sexual exploitation of prostitution and trafficking.

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## Appendix 1

### **Law on Suppression of the Kidnapping, Trafficking and Exploitation of Human Persons**

#### **Chapter I**

##### GENERAL PROVISIONS

###### Article 1

This law has an objective of suppressing the acts of Kidnapping of human persons for trafficking/sale and the exploitation of human persons, in order to rehabilitate and upgrade the respect for good national tradition, protect human dignity and protect the health and welfare of the people.

###### Article 2

The kidnapping of human persons for trafficking/sale or for prostitution and the exploitation on human persons, inside or outside of the Kingdom of Cambodia, shall be strictly prohibited.

#### **Chapter II**

##### KIDNAPPING OF HUMAN PERSONS FOR TRAFFICKING/SALE OR FOR PROSTITUTION

###### Article 3

Any person who lures a human person, even male or female, minor or adult of whatever nationality by ways of enticing or any other means, by promising to offer any money or jewellery, even though upon there is no consent from the concerned person, by ways of forcing, threatening or using of hypnotic drugs, in order to kidnap him/her for trafficking/sale or for prostitution, shall be subject to imprisonment from ten to fifteen years. Shall be punished to imprisonment from fifteen to twenty years for the case if the victim is a minor of less than 15 years old.

Those who are accomplices, traffickers/sellers, buyers, shall be subject to the same punishment term as which of the perpetrator(s).

Shall also be considered as accomplices, those who provide money or means for committing offences. All means of transportation, materials and properties which are used during the commission of offences, shall be confiscated as State's property.

#### **Chapter III**

##### PIMP

###### Article 4

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

1-who supports or protects one or more persons, by whatever means with knowledge in advance of the act of prostitution of such person(s) or seeks customers for such person(s) for the purpose of prostitution, or

2- who regularly shares the benefits obtained from the prostitution acts in any form, or

3- who brings men or women by whatever means for a training and convincing them to become male or female prostitutes, or

4-who acts as an intermediary by whatever form, to create relationships between male and female prostitutes with the head/owner of a brothel or with a person who provides benefits on the prostitution of other persons, or

5-who confines men or women in his/her house or any place, for a purpose of forcing them to commit prostitution to earn money for him/her

#### Article 5

Any male or female pimp or head of prostitutes, shall be punished from five to ten years in prison. In case of repeated offence, double term of the above punishment shall be applied.

Shall be subject to punishment to imprisonment from ten to twenty years, in case if upon a pimp:

commits an offence onto a minor person below 15 years old, or

2- commits an offence by coercion and violence or by threat or weapon, or

who is a husband, wife, boy/girlfriend, father or mother or guardian, forces a man or woman to commit prostitution, or

who forces a victim to commit prostitution outside of the country or, a victim who is a foreigner to commit prostitution on the territory of the Kingdom of Cambodia.

The court may, in addition to the above principal punishment term, apply a sub-punishment, by restriction of the civil rights and non- authorisation of residence.

#### Article 6:

The accomplices or those who attempt to commit offences as stated in the Articles 4 and 5 above, shall also be subject to the same punishment term as which of the perpetrator(s).

### **Chapter IV**

#### DEBAUCHERY

##### Article 7

Any person who opens a place for committing a debauchery or obscene acts, shall be punished to imprisonment from one to five years and with a fine penalty of from five million Riels to thirty million Riels. In case of repeated offence, the above punishment terms shall be doubled.

##### Article 8

Any person who commits debauchery acts onto a minor person of below 15 years old, even if there is consent from the concerned minor person or if upon buying such minor person from somebody else or from a head of the prostitutes, shall be subject to punishment from ten to twenty years in prison. In case of not giving up, the maximum punishment term shall be applied.

The court may, in addition to the above principal punishment, apply a sub-paragraph by restriction of the civil rights and non-authorisation of residence.

### **Chapter V**

#### FINAL PROVISIONS

##### Article 9

Detail instruction for the application of this law, shall be determined by a Sub-decree.

Article 10

Any provisions contrary to this law shall be hereby repealed.

## Appendix 2

### Questions on which the Interviews are Based

#### NGOs

##### ORGANISATION

- Tell us about the background and origin of the organisation
- The aims and goals of the organisation and why this is important
- How is the work financed?
- How big is your staff? Women/Men?
- Describe your activities and actions
- Do you co-operate with other organisations?
- How do you define sex work?
- How do you define prostitution?
- What kind of problems do you think are related to sex work?
- How can those problems be solved?

##### CEDAW

- Do you have CEDAW as a base in your work with sex workers? How?
- How do you look upon CEDAW?
- How can CEDAW Article 6 be realized in a society like Cambodia?
- Are there any problems with the article?
- Is the Royal Government working with CEDAW Article 6? How?
- What do you think about the Royal Government's efforts concerning CEDAW Article 6?
- Is this organisation trying to influence the Royal Government in issues concerning sex work? How?
- Have you reached any results?
- Is the Royal Government open for input or criticism?
- Do you experience corruption as a hindrance for NGOs to influence the Royal Government?

##### SOCIAL SITUATION-SEX WORK

- Where do the girls/women come from?
- What kind of situation were they in?
- Do they know it is sex work they are entering? Do they know what that is about?
- How do they live when they are sex workers?
- Working hours?
- Coast for their services? Their salary?
- Where in town are they working? At what places?
- What happens if they get pregnant?
- What is society's view of sex workers?
- What is society's view of the clients?
- How old are the clients?
- Can a woman stop being a sex worker? How?
- Do they want to stop? Why/Why not?
- Who want to stop?
- Some sex workers go back to sex work, why?

##### EDUCATION

- What is the education your organisation conduct about?
- Education on CEDAW? What is said, how is the education carried through? How are people educated?
- Are there (or have there been) any problems?
- Are there any other places where people can receive this kind of education?

## **Ministry of Women’s and Veteran’s Affairs**

### PROSTITUTION

- Any problems related to prostitution in Cambodia?
- Does Your Excellency see prostitution as a problem in itself?
- Does Your Excellency divide prostitution in forced and voluntary prostitution?
- In what way does Your Excellency think prostitution should be handled through legislation?
- Are the current laws in Cambodia satisfactory? Definitions?
- MoVWA’s “Policy Guidelines Against The Sexual Exploitation of Women and Children”
- What is the Royal Government’s respons on the Guidelines?

### CEDAW

- The assession to CEDAW
- Does Your Excellency find CEDAW a good instrument to work with?
- Are there any problems in using CEDAW?
- Does Your Excellency think that CEDAW is to wide in it’s definitions and articles or not?
- Does Your Excellency think that Article 6 of CEDAW, which concerns sexual exploitation is possible to realise or does it aim to high?
- The NGOs’ shadow report on CEDAW
- The MoWVA’s five year plan “Women are precious gems”

### NGOs

- What roles do NGOs play in Cambodia when it comes to prostitution and sex work?
- Does Your Excellency co-operate with NGOs in any way? The situation in other ministries?
- Are the NGOs, trying to influence Your Excellency?
- What is the Royal Governments response to Your Excellency and the Ministry’s work?
- Has Your Excellency seen any changes over the years Your Excellency has been working in the Royal Government?