



# LEGAL AID *of* CAMBODIA QUARTERLY

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## How to maintain evidences in rape cases

On April 28, 2004, a 6 year old girl was raped by a 22 year old man in Thma Pich Commune, Tbong Khmun District, Kompong Cham Province. On that day the offender was drinking wine with their peers for the whole day and in the late afternoon he came to get the palm juice (palm wine) at the field behind the victim's house. As he was walking across the victim's house he asked the victim and several other children to go to the field by convincing them that he would pick the palm fruit for them to eat. When they approached the palm trees, the offender frightened and drove the other children home by keeping the victim with him.

About an hour later, when it was about to get dark, the parents and the neighbors saw the offender carrying the victim looking faint and deadly pale back and as they arrived home she felt unconscious immediately. On her body, they saw some scratches on her neck, bruises on her eyes and swells on her lips. What is more, her trousers were strained with blood and her body had a high temperature. With great concern, the parents decided to take off her trousers and they saw blood on her groin and her genitals were swollen. As they did not know

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## Children detained like adults

In the world, there is a different type of political regime in each country. But people in society assume that children are small human being. Traditionally, children in Cambodia are considered to be less important to society than adults. However, children have no ability to be responsible before the law like adults. That is reason why Cambodia recognized and ratified the Convention on the Rights of the Child (CRC) in 1992 and the 1993 Constitution unconditionally ensures respect for the spirit of the Convention on the Rights of the Child.

The Constitution is the supreme law in Cambodia. Legislation

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and norms must be consistent with the spirit of the constitution. But unfortunately some laws adopted

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**Detaining children like adults is violating the Untac Law and CRC**

## Children detained like.....

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without focusing on the best interests of the child in society.

We speak out about the law on pre-trial detention which was promulgated in 1999. Article 1 defines that “the duration of a pre-trial detention must in no case exceed 4 months; however, upon the reasoned decision of a judge, this period may be extended to 6 months, if justified by the requirements of the investigation.”

In the 1999 law, article 14 of the UNTAC criminal law is abrogated. As a result, some courts apply the pre-trial detention to children as if they are adults.

For example, in one criminal case No. 484 dated 26 June 2004 in Battambang Provincial Court, a male child offender named O.S.V, aged 17, charged with thievery, was arrested on June 25, 2004, detained on June 26, 2004. Trial began on October 28, 2004 and the defendant was sentenced to 4 months and 5 days, commencing from the date of the pre-trial detention.

We regret that Cambodia is a State Party of the CRC but the law adopted is still contradictory to the spirit of this convention. Article 37 of CRC states that “no child shall be deprived of his/ her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of the last resort and for the shortest appropriate period of time.” In the Constitution, paragraph 1 of article 31 states that “The Kingdom of Cambodia recognizes and respects the human rights as

stipulated in the UN charter, universal declaration on human rights and covenant and convention related to human rights, women’s rights and children’s rights.” Furthermore article 48 in paragraph 1 defines that “the state shall protect the children’s rights as stipulated in the convention.....”

We consider that detaining children the same as adults absolutely violates the Convention on the Rights of the Child as well as the Constitution. We, the staff of civil society, would like to remind the executive and legislative body that have the power to make laws that they must take into account the sense of the draft laws in order to make sure whether they are related to the child or not. Cambodia must have the laws and norms compatible with the constitution and international convention so as they are easy for the law practitioners, especially the judges who have the absolute discretion to decide on cases for the best interests of the child and without any discrimination.

### **Civil Compensation CANNOT Terminate Public Action**

A 17-year old girl was raped until unconsciousness by a group of ten men in Bavel, Battambang on 11 May 2004.

On that date, H. M, the victim, and her relative were selling fruit at a stand where Rann, one of the identified accused, and his friends were drinking. She was asked to join the drinking. Because she became very drunk, she decided to go home first, leaving her relative at the stand.

On the way home, Rann caught up and took her to the forest in order to rape her. Unable to resist the attempt, she was raped by the guy and his friends in a row until she became unconscious. The next morning, she was brought home by two villagers. Of the rapists who are at large, she knows only four men: Rann, Chen, Ratt and Bros.

After learning about this incidence, her father lodged a complaint with an expertise’s record to the Bavel Police Office who turned it in to the Battambang court. The prosecutor accused the guys of rape (based on article, he Law on Aggravating Circumstances of Felony).

Later on, the prosecutor dropped the charge on the ground that the accused willingly paid 10000 Bath in compensation and that the victim accepted the offer and agreed to revoke the complaint.

According to the law on criminal procedure, after the prosecutor receives a criminal case from a civil party, or a case is referred to him, he has to examine the case and question the victim, witnesses or/and the accused. Then, if there are not enough elements to constitute an offense, the prosecutor drops the charge and notifies the relevant parties within 2 months running from the date when the statement is issued. On the contrary, if sufficient proof is found to constitute an offense, the prosecutor releases an

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accusation statement and sends an investigative request to an investigating judge for further investigation.

Given this criminal dossier, after receiving the complaint from the Bavel police, the prosecutor accused the ten men of rape (article 33, Criminal Law during Transitional Period). However, the prosecutor did not hand this case to an investigating judge in order to conduct an investigation but dropped the charge, citing that the victim agreed to accept monetary compensation from the accused.

Article 7 of the law on criminal procedure states, "Public action may not be settled by any arrangement." In addition, article 33 of the same law also stipulates that the renunciation of the civil action may neither stop nor suspend the prosecution. Technically, despite the fact that the victim accepts an offer of compensation and cancels the complaint, the prosecutor has to pursue public action in attempt to charge the accused. The victim's revocation simply means that s/he renounces a civil claim, but the public action does not come to an end along with the civil action. Therefore, the prosecutor's decision in this rape case is unlawful.

More importantly, the law on criminal procedure says that any criminal offense may give rise to two separate legal actions: public action and civil action. The public action attempts to condemn all acts which disrupt social order and peace, and all offenses provided by the law. The civil action intends

to provide the victim with an award proportionate to the damages incurred to him/her. Thus, in spite of the fact that the civil claim is renounced, the prosecutor is obliged to proceed with the public action to indict the offender in an attempt to ensure a rule of law in Cambodia.

## **How to maintain evidences in rape cases**

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how to deal with the problem along with their poverty burden, they were very concerned about her condition. With support from the neighbors and relatives, her grandmother took her to hospital for emergency treatment. The result of this examination showed that she was brutally raped.

In the meantime, her parents also filed a criminal complaint to the local authority, the suspect was arrested immediately and he also confessed he raped the girl.

Because her grandmother took her to hospital to get treated and her parents filed the criminal complaint to the local authority, the offender could be caught, the doctor could issue a forensic as the most important supporting document for the court case and the perpetrator could be brought to justice. But what is more, her parents, her grand mother, and her neighbors as well as her relatives have now learnt how to maintain evidences, to look after children and to educate children.

When such problems happen, without any hesitation, the parents or relatives have to bring victims to the hospital for forensic as well as for treatment. Her grand mother

gave her a bath and washed every thing on her body and later her trousers were also washed based on the reason that she had no clothes to wear. In this case, although it was difficult and she had never been in a situation like this, her grandmother should not have given her a bath due to the fact that it destroyed the evidence. Even though they were understandably shocked with the unexpected event and unfamiliar experience, her grandmother and her parents normally felt a mixture of anger and hopelessness but anyway they should have brought her immediately to the local authority or to the hospital so as to get evidence obtained promptly after the rape. In the same way, they should not have washed her blood-stained trousers because they are the proof of evidence resulting from the rape case. These evidences are vital grounds for criminating the perpetrator.

The 1<sup>st</sup> paragraph of the Article 19 of the UNTAC Law says that "*In all other cases, the investigating police may not arrest a suspect without substantial incriminating evidence which is exact and consistent and indicates that the suspect participated in the commission of crime and misdemeanor*". So we would like to point out that if people ignored collecting or maintaining evidence, the fresh evidence will have gone away very soon and there is less chance to bring the perpetrator to justice. Because people destroy the evidence unknowingly or on purpose the perpetrator can stay beyond the long arm of the law.

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If possible, bruises, blood stances, swells or scratches on the victim's body should be photographed since these kinds of injury can heal shortly after the incidence leaving no evidence to legally aggravate sentence on the offender.

One LAC's JLP lawyer asked the villagers where the above said crime happened whether they could think of any measures to prevent child rapes in the village in the future. A by standing health worker confirmed that parents should not allow their children to go out either or with someone else of their sight because something unpleasant could happens unexpectedly to them. We, parents should take care of our children all the time because if something bad happens to our children our spiritual wound could not be recovered.

The village chief's wife responded that several days prior to the rape case, the perpetrator along with other youngsters watched pornographic films continuously and this could have triggered his passion to commit such a crime. She also stressed that the local authority should not allow the youngsters to watch the bad films based on the ground that youngsters like imitating and following what they see in the films.

One lady also viewed that in villages where there are poor people with low education, children's moral is usually low because they hardly follow their parents' advice; they drink alcohol

at a very young age; they like being gangsters (big brother) and imitate foreign cultures via video or television; they do not go to school due to the reasons that they are poor or parents need them for domestic help and sometimes they behave in whatever way they want even though it is not accepted by the society. When they drop school they have no job; they are just wandering and often end up committing crimes.

Finally it is concluded that when there is a rape case, any people who approach the victim, would be best to bring her immediately to hospital or nearby community health center for forensic as well as for treatment. Meanwhile, they have to report the offence to the local police in order to arrest the perpetrator. The police have to go to the scene where the offence occurs so as to gather more evidence. The evidence resulting from the rape case should be maintained and people should never try to change the origin of the evidence intentionally. If violence happens in the rape there will always remain bruises, swell and scratched on her body and if possible, these injuries should be photographed since they will recover very soon. Therefore, especially, in the rape cases, evidences are important in order to prosecute the perpetrators

### **Poverty Alleviation in Cambodia**

One question has been repeatedly raised today: Will Cambodia ever be able to trade its back into the kind of prosperity that it had once enjoyed in earlier time?

Of course, the word "prosperity" is a relative one. In the 1960s, poorest countries in eastern Cambodia was one of the Asia, at least in term of individual income. Like so many other countries in the developing world at the time, Cambodia was a predominately agriculture country. It was able to earn foreign exchange to pay for imported goods by selling agricultural surpluses of rice, corn, and plant crops, such as peeper, rubber, and cotton.

As we all know, in the wars of the 1970's and during the Khmer Rouge period, Cambodia's normal patterns of trade were broken up. The Khmer Rouge not only allowed and orchestrated the horrific killings of 1975-1979, but also brought economic stagnation as millions of people were displaced, forced away from the cities to work in the countryside. When the fighting died down in the 1970s, Cambodian trade became lively again.

Nowadays, Cambodian is struggling to rebuild many of the economic, social, and infrastructure needed to ensure future growth and development. In order to alleviate poverty and bring up living standards (incomes and consumption) of most Cambodians, the government has no choice but to promote economic development by improving the rural agriculture sector and essential public services such as education and health services. Increasing rice and other agricultural production,

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the government encourages foreign investors to invest in the farming sectors and the introduction of advanced technology and good seeds in order to multiple yields per unit area. Incentives to these investors and farmers are being in terms of exempting all taxes for agriculture mechanized equipment, seeds and fertilizers while allowing the investors to rent the land for up to 90 years. For the market mechanisms, the government authorities have set up associations for purchase and export of agriculture produce, developing small scale industrial zones and process parks for agricultural goods. Irrigation and mine clearance is also an important point for developing the rural agricultural sector.

Cambodia's educational standards remain the lowest among Asian countries and the quality of education provision needs significant attention. Cambodia also faces an agent need for practical and relevant technical training, which is now gaining more attention from NGOs, Donors to develop in so-called field. In order to respond to the needs of the nation in the field of education, the government must ensure access to education to all and fight against illiteracy, increase national budget allocation toward education, merge the needs for education to the demand of the economy, expend vocational training, and reform school curriculum, etc.

Health care system is one of the major strategies in poverty alleviation in Cambodia, which is

now attracting more interest from both the Cambodian government and other donors who wish to develop this major system in long decade damaged country. Through this concern, there are many actions taken to improve public health services such as reproductive health, district health development, basic health care, and HIV-Aids project. The objectives of these actions are contribution the improvement of the health status, improvement consumer knowledge and the quality of health care delivery by establishing a cost recovery scheme in the public health sector, and support private sector regulation.

### **The roles of the Labor Law Unit in Unions**

The Constitution of Cambodia [article 36], relating to the freedom of Cambodian citizens in speech and in forming the trade union, states that Cambodian citizens both male and female have rights to join and form the Trade Union. It's also stipulated in article 266 of the Labor Law of Cambodia. However, the worker representatives who have come to the Labor Law Unit of LAC in soliciting legal consultation seem to be afraid of forming the union in companies and factories they are working for.

The employees' representatives from Cambodia Shinawatra Co., Ltd who requested us to provide the legal procedure on how to create the union in a successful way. In regard to their comments they have been worried in

forming the trade union because of the worry they may lose their job in case the union desires fail.

They may get pressured and threatened from their supervisors who take side with company's owner. Establishment of union issue, Employer' side does not covet the employees to establish the union in the factories or companies because employers think that the forming of union will just provide benefits to the employees parties not for the employer parties.

After discussing and comment from the employees' representative, the Labor Law Unit has provided them with effective solutions and useful advice, which are able to refrain harmful case to them concerning establish of trade union. After thorough explanation from our staff on the usefulness of the union, they felt warmly and decided to prepare relevant documents and submitted a letter to the Ministry of Labor and Vocational Training.

The staff of the Labor Law Unit, Legal Aid of Cambodia participated in the congress of WRUC, Workers Rights Union of Cambodia at Chu Hsing factory. In that occasion there were 9 unions participating in this congress.

Miss Seang Boravy, lawyer of Labor Law Unit of LAC addressed to this Union by calling upon the workers actively to participate in the union in the upcoming election, because

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a union is a legal umbrella that the workers can enter and get protection when they have problems. It will protect the workers' rights relating to their industrial relation. The purpose of forming the Trade Union is serving the collective interests of its members. The Labor Law of Cambodia [article 266], states that workers and employers have, without distinction whatsoever and prior authorization, the right to form a profession of their own choice for the exclusive purpose of studying, promoting the interests and protecting the rights as well as the moral and material interests, both collectively and individually, of the persons covered by the organization's statutes. So far many employees have still suffered physical and mental pressures from the employers such as rape, using forces from the supervisors or factory owners to the workers, threatening to dismiss the workers participating the strike...etc. In the day to come you will have the union in your work place. Do not hesitate if you have any problems concerning to your industrial relation, to your jobs or to rights abuse from the employers. You can discuss with the union leaders, who are your representatives to negotiate with them to find solutions or you can come to the Labor law Unit of LAC in order to request the legal consultation from our Unit. Our staff always welcomes and solicits the employees who have the problems on labor issues. After giving her speech to the workers who joined the congress, Miss Seang Boravy, lawyer of Labor Law Unit of LAC offered



**The Labor Unit explains workers on the rights and how to create trade union**

the souvenir package to the president of this union. The WRUC auspiciously declared that LAC is the hope of workers in seeking justice and protecting their interests and also special force that tries its best to protect every worker in any case with free charge.

The WRUC demonstrated warmly welcome to our staff and proposed LAC to go on providing legal advice and also requested to contribute some legal documents relating the workers' rights. The WRUC has requested to LAC to organize the workshop on Labor Law to trade unions, so they could disseminate what they had learned to other employees and they can defend their rights by themselves against violation from the factories' owner or powerful people. Mr. president and vice-president explained the employees' next strategies and objectives and hope that the employees would have gotten the fruitful results from union. The establishment and join union are very important

for the employees in protecting collective interests when they have problems employee' representatives will protect them, and the employees could solve their problems through their representatives. In common factory or company, which has union is less violated and disrespected from factory's owner or supervisor than other factory or company, which does not have.

### **Newsletter double interview with VBNK consultants**

#### **What do you like best about Cambodia and LAC?**

*Conor:* In my opinion, Cambodia is like a phoenix rising from the ashes – there are enormous challenges ahead, but there is also potential. The same goes for LAC. The organization is at a crossroad and faces challenges, but I see committed people and I want to support them in doing

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their work better because legal aid is essential in Cambodia. *Chhay*: I am interested in LAC because I believe it is very important that poor people receive good and free legal assistance.

**What would you like to change at LAC?**

*Chhay*: I believe it is important that there is more staff integration: with that I mean that all staff speak the same language, share the same organizational values, are a strong team and that the management practices good leadership. *Conor*: I am looking forward to creating more structure at a management level, so that the organization works on creating a new culture, where mutual understanding, cooperation and collaboration thrive. I think VBNK will provide assistance to those who need it most and from that, the new culture will emerge.

**How would you describe your counterpart?**

*Chhay about Conor*: We have worked together for 3,5 years now and we still learn a lot from each other. He finds it difficult to say ‘no’ sometimes, but he always jokes a lot. Maybe that is why all staff like him so much – he really is our most valuable resource. Sometimes the high workload makes him a bit crazy, then he shouts ‘hurry hurry’ but this is no problem for us. He is a real *barang* and he works fast and likes things to be done fast. What I learned from him is the phrase ‘quick fix’ but I also learned this is not sustainable!  
*Conor about Chhay*:

*Chhay* is one of the brightest Cambodians I have met and he is very professional. I was initially brought in to be his counterpart three and a half years ago, but I learnt just as much from him as he hopefully does from me. We are different, but complement each other very well – he is very methodical for example, and I am not! Most of all I value his friendship, and because we are both at similar phases in our lives this works very well. We really have a mutual learning cooperation. What did he say about me? Probably that I was a bit crazy sometimes? Haha! I love it when he uses English phrases he picked up from working with me, such as ‘that is absolute crap!’

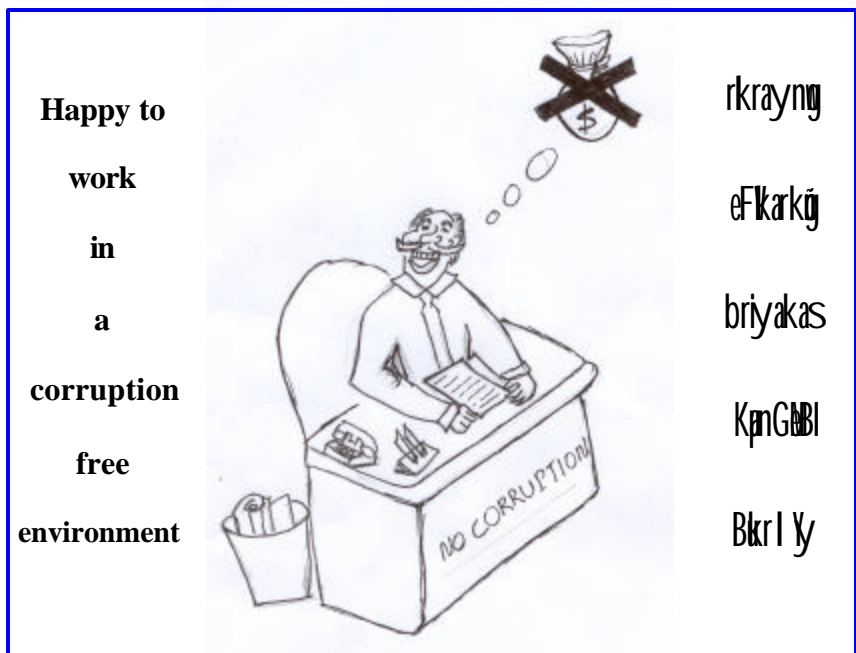
**What food do you not understand from your counterpart?**

*Conor*: Urgh, that prahok stuff, and bugs! We eat together regularly, where he happily eats little fried ants – but I would not touch that if my life depended on

it! *Chhay*: When I was in the United States, we had a sandwich from ‘Belco’, it is like a McDonalds chain food store. It looked like a Cambodian *banchao* but it tasted terrible!

**What can we expect from you, what are you good at?**

*Chhay*: I think I am an expert in systems and structures. For example, I really like doing LOG frames with an organization or exercises that make people plan their time or a project better. I guess what I am trying to do all the time is to build good leadership in an organization. *Conor*: I think I have a relatively good understanding of Western ideas about management and leadership and appreciate how I can bring this in Cambodian culture and that this takes time. I feel I understand Cambodian culture quite well after living here for so many years and I hope I can bring understanding and trust in an organization, but also realize I am continuously learning myself.



Happy to  
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