

# SHOULD CONVICTED FOREIGN CHILD SEX OFFENDERS BE DEPORTED FROM CAMBODIA?



2015

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# ***'An Analysis of the Current Context and Feasibility of Mandatory Deportation'***

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Sponsored by: Canada Fund for Local Initiatives

Canada 

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## 1.0 Executive Summary

Criminal deportation refers to the situation in which an individual is ordered or transported out of a state as a result of a criminal conviction. While in multiple countries the number of criminal deportations is rising exponentially, still less than one in three convicted foreign child sex offenders are ordered to be deported from Cambodia after finishing their sentence. Little is known about judges' motivations behind deportation orders or the absence thereof. Moreover, it is unclear whether they would support a guideline from the Ministry of Justice regarding deportation of convicted foreign child sex offenders or an amendment in the law that would make deportation mandatory. To learn about the aforementioned topics, this research was commissioned with the following objectives:

1. Review the current legal situation in Cambodia and other countries regarding deportation of convicted foreign child sex offenders.
2. Identify key motives for judges in Cambodia to order deportation for convicted foreign child sex offenders.
3. Evaluate legal opportunities to make deportation of convicted foreign child sex offenders mandatory in Cambodia.

From December 2014 until February 2015, seven interviews with judges were conducted. These interviews were the primary method of data collection. Additionally, an internal and external desk review and four interviews with NGO representatives were carried out.

In Cambodia, judges have full discretion with regards to deportation orders. For specific crimes committed by foreign nationals, they are given the freedom to order deportation as an additional penalty.

APLEs internal data shows that only 32 of the 115 convicted foreign child sex offenders were ordered to be deported after finishing their imprisonment. Thus, 83 of the convicts were or will be allowed to stay in Cambodia after they finish their sentences. When deportation numbers are examined even closer, it becomes clear that convicts from certain countries are more likely to be deported than convicts from other countries. Nationalities that are overrepresented in the deportation numbers are Americans, British, Dutch, French, Israeli, Japanese, Swedish, and Swiss.

The legal situation in the United States of America and the United Kingdom is very different from the situation in Cambodia. In those countries, the law dictates that almost all convicted foreign child sex offenders are deported through an automatic deportation process, unless an exceptional circumstance applies to them.

Most judges stated prevention motives as the primary reason to order deportation for a convicted foreign child sex offender. Consequently, most judges said they would not deport an offender if the risk of re-offending was low. Despite all their arguments, research shows that most convicted child sex offenders have already abused multiple children before they

will face the court of justice. In addition, recidivism rates show that more than half of all extra familial child sex offenders will re-offend and face new charges.

Taking into account that there are no treatment opportunities for offenders in Cambodia, foreign child sex offenders are very likely to re-offend if allowed to remain in Cambodia. Moreover, in Western countries, treatment is available and sometimes even mandatory for convicted child sex offenders. Since a significant proportion of the convicted foreign child sex offenders in Cambodia are from Western countries, they will be less likely to re-offend if deported back to their home countries.

Six out of seven judges interviewed supported the idea of a change in the law and five out of seven supported the idea of a guideline issued by the Ministry of Justice. Judges mentioned that a guideline would take less time to realize compared to an amendment in the law. On the other hand, a guideline has less weight compared to a law and judges are free to follow a guideline or not.

This research functions as a starting point for future research. Coming research will focus more in-depth on the actual support for a guideline or an amendment in the law from judges and other stakeholders (e.g. police, government officials, etc.). In addition, research will be focused on the possible design of a guideline or amendment in the law.

## 2.0 Introduction

“Deportation is an expression of the basic policing powers of the state: its agents employ this tool to enforce laws that regulate entry across and residence within its borders, and to exclude individuals who may pose a threat to the public order.”<sup>1</sup> Criminal deportation refers to the situation in which an individual is ordered or transported out of a state as a result of a criminal conviction. In recent years, the number of criminal deportations has increased significantly in several countries.<sup>2</sup>

APLE Cambodia is a non-governmental organisation [NGO] that was established in 2003. Its vision is freedom from sexual abuse and exploitation for all children and its mission is to reduce all forms of child sexual abuse and exploitation through prevention, protection, and promotion of prosecution. APLE is the only NGO in Cambodia that specializes in street-based exploitation,<sup>3</sup> a type of exploitation that is favoured by foreign nationals.<sup>4</sup> As of 31 December 2014, APLE’s investigations had led to the arrest of 320 alleged child sex offenders, including 187 (58.4 percent) foreign nationals. In total, 159<sup>5</sup> legal proceedings against foreigners are completed at the municipal court level at least. The majority of legal proceedings ended in a conviction (115, 72.7 percent). However, less than one third of the convicts were ordered to be deported. In other words, most convicted foreign child sex offenders were allowed to stay in Cambodia after they finished their prison term.

Little is known about judges’ motivations behind deportation orders or the absence thereof. Moreover, it is unclear whether they would support a guideline from the Ministry of Justice regarding deportation of convicted foreign child sex offenders or an amendment in the law that would make deportation of convicted foreign child sex offenders mandatory. The lack of information available hinders understanding of the current legal situation in Cambodia and complicates advocacy efforts. To fill the gap, in-depth interviews with judges were conducted. In addition, a desk review and interviews with NGO representatives were carried out. The objectives of this research document are to:

1. Review the current legal situation in Cambodia and other countries regarding deportation of convicted foreign child sex offenders.
2. Identify key motives for judges in Cambodia to order deportation for convicted foreign child sex offenders.
3. Evaluate legal opportunities to make deportation of convicted foreign child sex offenders mandatory in Cambodia.

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<sup>1</sup> Ellerman, A. (2009). *States against Migrants: Deportation in Germany and the United States*. New York: Cambridge University Press.

<sup>2</sup> Paoletti, E. (2010). *Deportation, non-deportability and ideas of membership*. Oxford: Refugees Studies Centre.

<sup>3</sup> Street-based exploitation is facilitated personally by the sex offender or an intermediary, who approaches children directly in a public area in order to commence a relationship with them that will lead to sexual abuse

<sup>4</sup> Primarily from Europe, America or Australia

<sup>5</sup> The actual number is 164, but for five cases the outcome of the legal process is unknown because APLE was not representing the victim(s)

## 3.0 Methodology

### 3.1 Method

Three research methods were used to collect data. The first method consisted of qualitative in-depth interviews with judges who had convicted at least one foreign child sex offender in the past. Data from these interviews will serve as the core of this report. In order to collect additional (background) data, an internal and external desk review and qualitative interviews with NGO representatives were conducted.

#### 3.1.1 Interviews with Judges

Interviews with judges were conducted with the primary goal of identifying key motives for judges in Cambodia to order deportation for convicted foreign child sex offenders (objective 2) and evaluating legal opportunities to make deportation of convicted foreign child sex offenders mandatory in Cambodia (objective 3).

#### Respondents

Judges were selected based on purposive sampling. Only judges that had convicted a foreign child sex offender in the past were eligible. To select the judges, APLEs internal database of court cases was used. In total, 15 judges were selected to participate in the research (See: Table 1). From the 15 judges, 6 had not ordered a deportation and 9 had ordered a deportation in at least one case. Eight judges were unable to meet within the set timespan or were not willing to participate in the research, making the response rate 46.7 percent (7 respondents).

All seven respondents are male. The average age of the respondents is 44.6 years and they have on average 11.4 years work experience as a judge. From all respondents, in at least one case, 6 ordered a deportation and 1 did not.

Table 1: Location of judges selected and judges participating

Location	# of judges selected	# of judges participating
Phnom Penh	4	2
Siem Reap	4	2
Sihanoukville	4	0
Battambang	1	1
Banteay Meanchey	1	1
Kandal	1	1

\* Locations of judges are based on APLE records from when they convicted a foreign child sex offender. Some judges have changed their work location, but their old work location is used in the table above.

## Data Collection

Data was collected between January and February 2015. The interview took place at a location of the respondent's preference.

Prior to the interview, respondents were informed about the objectives of the interview. The interviewer explained that the respondent could stop the interview at any point and could refuse to answer any question. Finally, it was explained that APLE would maintain their confidentiality and identifiable information would not be included in the report.

The interviewer spoke English and no Khmer therefore a translator was used to communicate. Prior to the interviews, the translator was informed about the objectives of the interview and the questionnaire was discussed in-depth.

## Interview Questions

The interview consisted of 12 questions: 4 demographic questions and 6 questions regarding deportation of foreign convicted child sex offenders (See: Appendix 1). The interview was semi-structured; the interviewer would ask additional questions depending on the response of the respondent. At the end of the interview, respondents were given space to give their own comments with regards to the interview.

### *3.1.2 Desk Review*

The desk review's most important objective was to review the current legal situation in Cambodia and other countries regarding deportation of convicted foreign child sex offenders (objective 1). Information from APLE's internal database, peer-reviewed articles, and governmental reports were collected and analyzed to provide a short, brief and clear overview of the situation in:

- Cambodia
- United States of America
- United Kingdom

The choice for these countries was primarily a matter of information availability. In addition, the three countries are located in different continents.

The desk review was conducted prior to the interviews in the period December 2014 until January 2015. Results from the desk review were used to design the interviews with judges and NGO representatives.

### *3.1.3 Interviews with NGO Representatives*

Interviews with NGO representatives were conducted with the primary objectives to review the current legal situation in Cambodia and other countries regarding deportation of convicted foreign child sex offenders (objective 1) and evaluate legal opportunities to make deportation of convicted foreign child sex offenders mandatory in Cambodia (objective 3).



## Respondents

Respondents were selected based on purposive sampling. Only representatives from NGOs that are involved with foreign child sex offenders or victims of foreign child sex offenders were eligible. In total, 7 NGOs were selected to participate in the research and 4 NGOs participated, making the response rate 57.1 percent. NGOs could opt for a face-to-face meeting, a Skype meeting, or answer the questionnaire via email. Two respondents chose face-to-face meetings while two chose to answer the questions through e-mail.

## Data Collection

Data was collected between January and February 2015. All NGOs were located in Phnom Penh. The two face-to-face interviews took place at a location of the respondent's preference.

Prior to the interview, respondents were informed about the objectives of the interview. The interviewer explained that the respondent could stop the interview at any point and could refuse to answer any question. Finally, it was explained that APLE would maintain their confidentiality and identifiable information would not be included in the report.

The interviewer spoke English and all respondents also spoke English. Thus, no translator was needed.

## Interview Questions

The interview consisted of 10 questions: 2 demographic questions and 8 questions regarding deportation of foreign convicted child sex offenders (See: Appendix 2). At the end of the interview, respondents were given space to give their own comments with regards to the interview.

### **3.2 Limitations**

This research follows a qualitative approach, involving the use of semi-structured interviews as the primary method to collect the perception and attitudes of judges. It is limited in its scope since only 7 judges were interviewed. In addition, six of those judges had indeed ordered a deportation according to APLEs records, resulting in a sample bias in favor of deportation. The respondents were also aware of APLEs stance in the mandatory deportation debate. As a result of that, it is possible that the results are also affected by social desirability bias.

Finally, the interviewer was non-Khmer speaking. In order to conduct the interview a translator was needed. The use of translation during the interviews, results in information loss and might even have caused some misunderstandings.

## 4.0 Review of Countries' Laws and Statistics

This chapter will provide a short, brief and clear overview of the situation in Cambodia, the United States of America and the United Kingdom. General laws with regards to deportation of convicted foreigners will be discussed. In addition, deportation statistics will be provided for each country.

### 4.1 Cambodia

Article 53 of the Criminal Code states as an additional penalty:

“Additional penalties are: [...] 7. Prohibition of a convicted alien from entering and remaining in the territory of the Kingdom of Cambodia”

Article 54 of the Criminal Code states the circumstances under which deportation may be ordered:

“Additional penalties may be pronounced only if they are specifically provided for in respect of the felony, misdemeanor or petty offence under prosecution. The pronouncement of additional penalties is optional. However, the pronouncement shall be mandatory if the law expressly so provides.”

Article 48 in the Law on Suppression of Human Trafficking and Sexual Exploitation [LSHTSE] states:

“For the offenses stipulated in this law, the following additional penalties may be imposed [...] 6. The ban on stay”

Summarizing, for some specific crimes in the Criminal Code and all crimes in the LSHTSE, judges are given the discretion to order a deportation. If the law; however, states it specifically, an additional penalty can become mandatory.

Article 36 of the Immigration Law states:

“The Ministry of Interior has full right to deport any alien who has dangerous behavior and activities that harm the social security of Cambodia”

In other words, even those offenders who were not ordered to be deported after their imprisonment can be deported by the Ministry of Interior if certain criteria are fulfilled.

According to APLEs data, 159 legal proceedings against foreigners have been completed in Cambodia on at least a municipal court level (2003-2014). A total of 115 (72.3 percent) foreigners were convicted and 44 (27.7 percent) were released. Considering this high conviction rate, it is surprising that only 32 (27.8 percent) of the 115 convicted foreigners were ordered to be deported after finishing their imprisonment. Thus, 83 foreigners who were

convicted for sexual crimes against children were or will be allowed to stay in Cambodia after they finish their imprisonment term.

Table 2 shows the number of convictions and deportations divided by nationality. It is apparent from this table that convicts from some countries are more likely to be deported than convicts from other countries. For example, British nationals are deported in 44.4 percent off all cases. On average; however, only 27.8 percent of convicts are deported. Convicts of other nationalities that are deported more than average are Americans (43.8 percent), Dutch (66.7 percent), French (40.0 percent), Israeli (100.0 percent), Japanese (50.0 percent), Swedish (100.0), and Swiss (50.0 percent). This data suggests that additional factors besides the decision process of the judge may play a role on the outcome whether a convict will be deported or not. Further research is needed; however, to fully understand the factors involved.

Table 2: Convictions (C) and deportations (D) divided by nationality

Nationality	# of C	# of D	Nationality	# of C	# of D
American	16	7	Italian	1	0
Australian	4	1	Japanese	4	2
Austrian	2	0	Korean	1	0
Belgian	1	0	New Zealander	1	0
British	9	4	Norwegian	1	0
Canadian	3	0	Filipino	1	0
Chinese	2	0	Russian	2	0
Danish	1	0	Spanish	1	0
Dutch	3	2	Swedish	2	2
French	20	8	Swiss	6	3
German	9	2	Thai	0	0
Greek	1	0	Turkish	0	0
Israeli	1	1	Vietnamese	23	0

#### 4.2 United States of America

The federal government of the United States of America [USA] has the authority to formally remove aliens from the USA who violate of a number of immigration or criminal laws. Once deported, these aliens may lose the right to ever return to the USA.

In the last years, thousands of foreign criminals have been deported from the USA. According to a report from ICE about the fiscal year [FY] 2014, the following is true about criminal removals:

*“In FY 2014, while total criminal removals declined from last year, a significant percentage of ICE’s interior removals—85 percent—remained focused on criminal aliens. The substantial share of convicted criminals removed from the interior represents a steady and significant increase from 2008, when that figure was just 38 percent and 2011 when it was 67 percent. ICE’s focus on criminal removals in the interior is also reflected in the total number of criminal removals: in FY 2007 and FY 2008, ICE removed 102,024 and 114,415 convicted criminals, respectively, as compared to 216,810 in FY 2013 and 177,960 in 2014.”*<sup>6</sup>

Foreign child sex offenders are among those deported from the USA. Since sexual abuse of a minor and child pornography are considered aggravated felonies under USA immigration law, there is not much a foreign convicted child sex offender can do to avoid deportation. One of the only exceptions to this is when an offender can prove he or she will likely get tortured when returning to his or her home country.

#### **4.3 United Kingdom**

In the United Kingdom [UK] the term deportation applies to individuals “whose removal from the country is deemed 'conducive to the public good' by the Secretary of State or whose removal had been recommended by a court in conjunction with conviction of a criminal offense punishable by a prison term”.<sup>7</sup>

Since 2007, the UK has a system of automatic deportation rules in place. Article 32 to 39 of the UK Borders Act 2007 sets out that the Secretary of State must make a deportation order if:

- the foreign criminal was convicted in the UK and sentenced to a period of imprisonment, and
- the period of imprisonment is 12 months or more, and
- the sentence is a single sentence for a single conviction, it must not be an aggregate sentence or consecutive sentences, and
- none of the exceptions set out in the 2007 Act apply (e.g. individuals who will likely be tortured in their home country will not be deported)

Foreign child sex offenders that are convicted in the UK will thus most likely be deported after their imprisonment. According to the Home Office a total of 4,667 foreign national prisoners were removed from the UK in 2013, a decrease of 2% from the previous year.<sup>8</sup>

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<sup>6</sup> Immigration and Customs Enforcement (19 December, 2014). Enforcement and Removal Operations Report Fiscal Year 2014. Retrieved at 21 January 2015 from: <https://www.ice.gov/doclib/about/offices/ero/pdf/2014-ice-immigration-removals.pdf>

<sup>7</sup> Blinder, S. (June 2014). “Deportations, Removals and Voluntary Departures from the UK.” Migration Observatory briefing. Oxford: COMPAS, University of Oxford. Retrieved at 21 January 2015 from: [http://www.migrationobservatory.ox.ac.uk/sites/files/migobs/Briefing-Deportations\\_o.pdf](http://www.migrationobservatory.ox.ac.uk/sites/files/migobs/Briefing-Deportations_o.pdf)

<sup>8</sup> Home Office Immigration Statistics Table rv07q. Retrieved at 21 January 2015 from: <https://www.gov.uk/government/statistics/>

## 5.0 Case Stories

In this chapter, two case stories related to deportation orders are provided. The first story shows the need to order deportation to prevent more children from being victimized. The second story underlines the importance of a good system to keep deported individuals out of Cambodia.

### 5.1 Failed to Order Deportation

In 2000, a Swiss national called Mr. Knuchel was arrested on suspicion of sexually abusing multiple underage boys. He was later released due to a lack of evidence. For a long time, nothing was heard about Knuchel, until 2009, when APLEs agents witnessed him contacting underage boys. During a conversation with one of the boys it was obtained that Knuchel had sexually abused the boy in exchange for money.

Soon a second boy was identified who lived together with Knuchel and who had been sexually abused by him as well. APLE reported the case to police and Knuchel was arrested. During a search in his house, child pornographic materials were found. Knuchel was charged with Art. 43 of the LSHTSE: 'Indecent Act against a Minor under Fifteen Years'. He was convicted and sentenced to two years imprisonment, but one year of the sentence was suspended. In addition, Knuchel had to pay compensation to his victims.

No deportation order was given. And thus, Knuchel was free to remain in Cambodia, which he chose to do. Some years later, in 2013, APLE investigated Knuchel again after he was seen talking to underage boys. During the investigation that followed, APLE interviewed a boy who revealed that Knuchel had sexually abused him in exchange for money. Knuchel was arrested and charged with Art. 34 of the LSHTSE: 'Purchase of Child Prostitution'. In July 2014, he was sentenced to two years imprisonment, one of which was suspended. In addition, he had to pay compensation, and, this time, he was also ordered to be deported.

### 5.2 Failed to Uphold Deportation

In 2010, a Swiss national called Leuthold was being monitored by APLE after he was seen contacting underage boys. One day, Leuthold took two boys inside a public toilet. After they left the toilet, APLE immediately interviewed the boys and obtained that Leuthold had sexually abused them. The boys had masturbated Leuthold and had received money in return.

That same day, police took Leuthold to the station for questioning. Based on the evidence collected by police, Leuthold was charged with Art. 43 of the LSHTSE: 'Indecent Act against a Minor under Fifteen Years'. Leuthold was sentenced to two years imprisonment, but 14 months were suspended. In addition, Leuthold had to pay compensation and was ordered to be deported after finishing his sentence.

Despite being deported, Leuthold was able to return to Cambodia through a border check between Thailand and Cambodia. In 2012, Leuthold again became the subject of APLEs investigation. He was seen taking one boy on a boat with him. After the boat ride, APLE obtained from one of the boys that he was sexually abused by Leuthold. That same boy was seen the next day going inside a hotel with Leuthold. The next morning, police raided the hotel room and found Leuthold and the boy naked in the room.

Leuthold was sentenced to five years imprisonment for Art. 34 of the LSHTSE: 'Purchase of Child Prostitution'. In addition, the judge again ordered Leuthold to be deported after his imprisonment.

## 6.0 Motives for Deportation

### 6.1 Judges

In response to questions surrounding why a judge would or would not order deportation, most respondent gave multiple reasons. Five out of seven (71.4 percent) judges mentioned preventive motives as to why they would deport a convicted foreign child sex offender. Specific, as well as general, prevention arguments were given. Specific prevention refers to the situation that a deported offender cannot commit a crime in Cambodia anymore. General prevention refers to the situation in which deportation deters other offenders from committing crimes in Cambodia. Three judges who mentioned specific prevention as a motive for deportation said:

*“When I decide whether a foreign child sex offender should be deported, I take into consideration whether he will do it again. Things that may influence my decision are whether the offender is on the blacklist of an NGO and whether the offender has the resources to commit a crime again.”*

*“I am really about preventing crimes. That is why I order foreign child sex offenders to be deported after their imprisonment. When making the decision, I take into consideration the offenders objective when coming to Cambodia. Those who come here to abuse children will do it again.”*

*“If a child sex offender has a psychological disorder, he will likely re-offend. He will want to have sex with children, not once, but again and again. If I know the offender has a psychological disorder I will deport him.”*

Two judges mentioned the general preventive effect deportation could have in Cambodia. One of them said:

*“If enough foreign child sex offenders are deported from Cambodia this might scare other offenders. As a result of that, crime levels will drop and Cambodia will become a safer place for children.”*

Finally, two judges mentioned that they would deport a convicted foreign child sex offender if the crimes committed could damage Cambodia’s culture, and one judge mentioned that he would order a deportation to help reduce the fear of the victim. Judges were also asked for their motives why not to deport a convicted foreign child sex offender. Three judges mentioned that they do an assessment of the convict’s background, situation and behavior to determine whether the convict will re-offend or not. They said:

*“I will assess the background of the offender. Questions that I will ask are: is he a first time offender? What was his reason for coming to Cambodia? If someone is indeed a first time*

*offender and he came to Cambodia to do business or work in an NGO, I will decide not to deport him.”*

*“I will try to determine whether the offender has a psychological disorder. If he has no disorder, we should not deport him.”*

*“I look at a lot of different factors. Combined all these factors give me an idea on how likely the offender will do it again. If the chances of re-offending are low, I will not deport someone.”*

One judge who admitted that he would assess the background of the offender made a disclaimer about the quality of the assessment:

*“In Cambodia we have only limited resources to collect evidence to determine whether someone will re-offend. Sometimes we don’t know if someone has already been convicted in his home country. In addition, we don’t have much information about the psychological state of the offender.”*

Two judges mentioned that they take into account whether the crime of the offender is serious enough to allow for deportation. One of them said:

*“I will not deport an offender who committed a not so serious crime. For example, someone who makes indecent pictures of children just to collect for himself, I will not deport. If he distributes the pictures; however, I will deport.”*

Finally, one judge gave a rational cost-benefit argument. He said:

*“If the advantage an offender brings to Cambodia outweighs the disadvantage the offender brings to Cambodia then I will not order for him or her to be deported.”*

## **6.2 Research**

According to the judges’ responses, whether or not an offender will re-offend is the most cited reason to order a deportation or not. Consequently, it is important to take a look at the research about re-offending and child sex offenders. The question that becomes apparent is how well a judge can determine the likelihood that a child sex offender will re-offend.

Before discussing re-offending rates, one should keep in mind that most children will never report sexual abuse.<sup>9</sup> The vast majority of victims are overwhelmed by feelings of fear, guilt, and shame and therefore they do not disclose the abuse. Finally, it is important to note that child sexual abuse cases have almost the highest rates of attrition of any offence; only a very small proportion of cases progress successfully through the criminal justice system.<sup>10</sup>

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<sup>9</sup> Newton, C. J. (2001). Child Abuse: An Overview, Mental Health Journal.

<sup>10</sup> Eastwood, C., Kift, S., & Grace, R. (2006). Attrition in child sexual assault cases: Why Lord Chief Justice Hale got it wrong. Journal of Judicial Administration 16(2): 81–91



In a study among 411 not incarcerated child sex offenders with sexual disorders (paraphilia), shocking results about victimization of children were found. In self-reports, those offenders who victimized female children admitted to victimizing on average 51.8 victims each. Those offenders who victimized male children had sexually abused 150.2 victims on average.<sup>11</sup> This study is not the only one that indicates that many child sex offenders are not caught or are only caught after many children are victimized. Another study found that adults who sexually abuse children on average victimize 76 children.<sup>12</sup> Finally, a more recent study found that the average adolescent sex offender will, without treatment, go on to commit 380 sex crimes during his lifetime.<sup>13</sup>

Although one cannot generalize these results directly to the situation in Cambodia, the results do give some interesting insights to think about. Offenders who are caught and brought to justice may have victimized a much higher number of victims than known by the court of justice. The term first time offender thus does not apply easily to child sex offenders, since they are rarely caught while committing their first offence. Recidivism rates for child sex offenders are hard to establish due to varied recidivism definitions, underreporting, and time constraints for researchers. One well-designed study; however, shows that the recidivism rate among extra-familial child sex offenders over a 25 year period is around 52 percent.<sup>14</sup> This study used a new charge against a child sex offender as a measure of re-offending. It is important to keep in mind that the rate of recidivism is probably higher since most offenders will not be caught committing a crime and thus will not be charged. Doren, a well-known researcher in the field, says about this:

*“The 52% recidivist figure should be considered as a conservative approximation of the true base rate for sex offense recidivism in previously convicted child molesters...[it]...represents the lowest approximation for extra familial child molester sexual recidivism.”<sup>15</sup>*

APLEs data supports the findings above. According to the data, most convicted foreign child sex offenders in Cambodia are already convicted for sexual crimes against children in their home country. From the 115 convicted foreign child sex offenders, 26 had a previous conviction versus 17 who did not have a previous conviction in their home country. Unfortunately, in 72 cases it is unknown whether the offender had a previous conviction or not. For cases where the background of the offender is known, 60.5 percent of the convicted foreign child sex offenders had a previous conviction. This finding suggests that Cambodia is an attractive location to travel for convicted foreign child sex offenders.

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<sup>11</sup> Abel, G. G., Becker, J. V., Mittelman, M. S. & Cunningham-Rathner, J. (1986). The self-reported molestations of nonincarcerated child molesters. Presentation to the National Institute of Mental Health meeting on the Assessment and Treatment of Sex Offenders, Florida Mental Health Institute, Tampa, FL.

<sup>12</sup> Metzner, J. L. (1988). The Adolescent Sex Offender: An Overview. Interchange, citing Abel, 1983.

<sup>13</sup> Barbaree, H. E., Hudson, S. M., & Seto, M. (1993). Sexual Assault in Society: The Role of the Juvenile Offender. In The Juvenile Sex Offender. Guilford Press, New York.

<sup>14</sup> Prentky et al. Cited in: Doren, D. (1998). Recidivism base rates, predictions of sex offender recidivism and the ‘sexual predator’ commitment laws. Behavioural Sciences and the Law, 16: 97–114

<sup>15</sup> Doren, D. (1998). Recidivism base rates, predictions of sex offender recidivism and the ‘sexual predator’ commitment laws. Behavioural Sciences and the Law, 16: 97–114

## 7.0 Mandatory Deportation

### 7.1 Judges

Judges were presented with two ideas with regards to deportation of convicted foreign child sex offenders: a guideline from the Ministry of Justice regarding deportation of convicted foreign child sex offenders and an amendment in the law that would make deportation of convicted foreign child sex offenders mandatory. Five respondents supported the idea of a guideline by the Ministry of Justice. Six out of seven judges agreed, at least partly, with the idea of an amendment in the law. One judge clearly stated that he did not agree with the idea to make deportation for foreign convicted child sex offenders mandatory. He said:

*“Whether to deport a foreigner or not is up to the discretion of the judge. This should stay this way. A judge will assess the situation of the offender and make a decision to deport or not to deport. Some sexual crimes against children are not serious enough to deport an offender.”*

The judges were asked whether they preferred a guideline or an amendment in the law. Some of the responses were:

*“Although I support the idea of a guideline for judges, you have to be careful that such a guideline does not conflict with the law.”*

*“Before you make a guideline, first an assessment is needed about the situation in Cambodia. We need to research whether foreign child sex offenders are a problem or not. And if it is a real problem, then still I would not want to make a habit of guidelines. I would support a change in the law more, since I am a judge I need to follow the law.”*

*“A guideline takes on average not much time to make, but it is good to remember that a guideline is not a law. I am a judge and I respect the law, I do not have to follow a guideline.”*

*“To change the law is a long and hard process. I think it is best to focus first on a guideline by the Ministry of Justice. This can function as a first step towards an amendment in the law.”*

Some judges mentioned that there should be a few exceptions to mandatory deportation. Two judges said:

*“Sometimes it is unfair for an offender to be deported. For example, some offenders will be prosecuted again if they are deported to their home country.”*

*“I agree for 80 percent with an amendment in the law. In by far most cases, deportation will be the right thing to do, but not in all cases”*

One other judge elaborated on the execution of the law. He said:

*“Sometimes a deportation is ordered, but not executed. It seems like nobody knows if the person is deported or who is responsible for the deportation execution. This is a clear gap and this needs to be addressed. People should know their role and know other people’s roles.”*

## **7.2 NGOs**

All NGOs consulted supported the idea of a guideline from the Ministry of Justice regarding deportation of convicted foreign child sex offenders and an amendment in the law that would make deportation of convicted foreign child sex offenders mandatory.

All four respondents stressed the psychological impact on the victim if a child sex offender is not deported after his imprisonment. Three of them said:

*“If an offender is deported after his imprisonment then this can have a very positive effect on the victim’s rehabilitation process. In those cases where offenders are allowed to stay in Cambodia after their imprisonment, victims are often confronted with feelings of fear.”*

*“We had one case in which the offender was released from prison back into Cambodia. This made all his victims very scared and this brought them back one step in their recovery.”*

*“When a convict is being deported, victims are not afraid they will see the offender again, or that the offender will threaten their family. On top of this, they feel supported by the Cambodian Government and justice system [...]. They know the Justice system is acting to protect them.”*

One NGO mentioned that training for judges could be a first step towards an amendment in the law. This NGO representative said:

*“Before changing the law, you could try to train judges about sexual abuse and exploitation and its effects on victims. If we provide more information to judges about the pathology of child sex offenders, it will be easier for them to understand that almost all of these foreign child sex offenders will re-offend and should be deported.”*

## 8.0 Conclusion

Currently, less than one out of three convicted foreign child sex offenders are ordered to be deported after their imprisonment in Cambodia. The situation in the USA and UK is very different. In those countries, the law dictates that almost all convicted foreign child sex offenders are deported, unless an exceptional circumstance applies to them.

Interviews with judges revealed that most of them are motivated by prevention motives when deporting a convicted foreign child sex offender. Moreover, if they decide not to deport offenders this is often based on their opinion that the offender will not re-offend. Research shows; however, that most convicted child sex offenders have already victimized multiple children before they will face the court of justice. In addition, more than half of all extra familial child sex offenders will re-offend and face new charges. Recidivism is highest when offenders are not receiving any treatment. In Cambodia, one can be sure that a foreign child sex offender will not receive treatment and thus will likely re-offend. This is different in many offenders' home countries, where treatment is available and sometimes even mandatory for convicted child sex offenders. In other words, foreign child sex offenders will have a much lower chance of re-offending if they are deported to their home country.

Judges participating in the research were supportive to the idea of making deportation of foreign child sex offenders mandatory. The idea of a guideline, as well as an amendment in the law, was supported. However, it was stressed that the idea of a guideline will take less time to realize compared to an amendment in the law. On the other hand, judges made clear that a guideline does not function as a law. As a result of that, they don't have to follow it.

The results from this research will be used as a starting point for future research. It is necessary to examine the amount of support for a guideline or an amendment in the law from more judges and other stakeholders (e.g. police, government officials, etc.). In addition, it is necessary to find out what a guideline by the Ministry of Justice or an amendment in the law would look like. This report should thus be seen as a working document that will undergo changes over time.

## Deportation of Convicted Foreign Child Sex Offenders

### Introduction

Thank you for meeting with APLE today. APLE aims to conduct several interviews with judges who have prosecuted and sentenced foreign child sex offenders in the past. Topics that will be covered during the interview are the current situation with regards to deportation orders of convicted foreign child sex offenders, and the possibility of an amendment in the law to make deportation of convicted foreign child sex offenders mandatory.

The interview will take approximately 30 minutes and the interviewees are able to terminate the interview at any time. APLE will maintain the confidentiality of the interviewee and his/her identifiable information.

### Objectives

Having worked in the field of child sexual abuse and exploitation for more than a decade, APLE, specialized in street-based exploitation, has been confronted with a high number of traveling sex offenders who prey on Cambodia's children. APLE is committed to strive and advocate for better protection of children and therefore the objectives of this research are to:

- Identify key motives for judges in Cambodia to order deportation for convicted foreign child sex offenders.
- Evaluate legal opportunities to make deportation of convicted foreign child sex offenders mandatory in Cambodia.

### Questionnaire

#### 1.0 Judge's Profile

1. Age:

2. Gender:

3. Place of work:

4. How long have you been working as a judge:

#### 2.0 Mandatory Deportation

5. According to our records, you have prosecuted and sentenced a foreign child sex offender in the past. Did you or did you not order the foreign child sex offender to be deported after finishing his imprisonment sentence? Why?

6. What would be a reason to/to not order a deportation orders for convicted foreign child sex offenders?
7. Do you support or not support the idea to have the Ministry of Justice issue a guideline for judges on the effective use of deportation orders for convicted foreign child sex offenders? Why?
8. Do you think it should be to the discretion of judges to order or not order deportation for foreign convicted child sex offenders or that this should be mandatory in the law? Why?
9. What do you think would be the difficulties with regards to an amendment in the law that would make deportation of convicted foreign child sex offenders mandatory?
10. Besides a guideline or an amendment of the law, what measures could be taken in order to prevent convicted foreign child sex offenders in Cambodia from re-offending
11. Do you have anything you want to add or ask?

Thank you very much for participating in the interview!

## **Deportation of Convicted Foreign Child Sex Offenders**

### Introduction

Thank you for meeting with APLE today. APLE aims to conduct several interviews with NGOs that in the course of their work have been confronted with foreign child sex offenders and/or have dealt with victims of foreign child sex offenders. Topics that will be covered during the interview are the current situation with regards to deportation orders of convicted foreign child sex offenders, the possibility of an amendment in the law to make deportation of convicted foreign child sex offenders mandatory, and the effect of deportation orders on the well-being of victims.

The interview will take approximately 30 minutes and the interviewees are able to terminate the interview at any time. APLE will maintain the confidentiality of the interviewee and his/her identifiable information.

### Objectives

Having worked in the field of child sexual abuse and exploitation for more than a decade, APLE, specialized in street-based exploitation, has been confronted with a high number of traveling sex offenders who prey on Cambodia's children. APLE is committed to strive and advocate for better protection of children and therefore the objectives of this research are to:

- Review the current legal situation in Cambodia and other countries regarding deportation of convicted foreign child sex offenders.
- Evaluate legal opportunities to make deportation of convicted foreign child sex offenders mandatory in Cambodia.

### Questionnaire

#### 1.0 NGO

1. Name of NGO:

2. Type of NGO:

#### 2.0 Mandatory Deportation

3. If any, how many cases can you recall that your organization was involved in regarding foreign child sex offenders?

4. In those cases, do you know if there was a deportation ordered for the offender?

5. Why do you think judges do/do not order deportation orders for convicted foreign child sex offenders?
6. In cases APLE was involved, about one in three convicted foreign child sex offenders was ordered to be deported after finishing their imprisonment sentence. Do you think this number is low, high or about right? Why?
7. Do you think that if offenders are being deported this has an effect on the recovery of the victim? What kind of effect?
8. Do you think it should be to the discretion of judges to order or not order deportation or that this should be mandatory in the law? Why?
9. Do you support or not support the idea to have the Ministry of Justice issue a guideline for judges on the effective use of deportation orders for convicted foreign child sex offenders? Why?
10. Besides a guideline or an amendment of the law, what measures could be taken in order to prevent convicted foreign child sex offenders in Cambodia from re-offending?
11. Do you have anything you want to add or ask?

Thank you very much for participating in the interview!