

**ROYAL UNIVERSITY OF LAW AND ECONOMICS**

**ENGLISH LANGUAGE BASED BACHELOR OF LAW PROGRAM**

**Topic: Sufficiency of Murder Sentence**

Subject: **Professional Legal Skill**

Lecturer’s name: **HING VANDANET**

**Group members:** ANG SEAKMENG

KEO SOTHEARAK

SOMART SOKHAI

SUOS SAK KADINOL

TOU VIREAKBOT

 **Academic Year: 2020-2021**

**Table of Content**

1. **INTRODUCTION 1**
2. **ROOT CAUSE 1**
3. **IMPACT ON SOCIETY AND PEOPLE 2**
4. **COMPARISON (CAMBODIA’S LAW VS OTHER NATION’S LAW) 3**
5. **LEGAL SOLUTION AND RECOMMENDATION 6**
6. **CONCLUSION 9**
7. **INTRODUCTION:**

One of the significant strategies to develop a State shall be made through the elimination of chaotic and derivative actions in community and society. The notorious crime, mainly murder, stagnates the development of a State. With this regard, each country must have its own law in order to govern this criminal act to preserve justice and stability for their social improvements. Cambodia is one of the countries, which is currently trying to establish itself to become one of the Rule of Law states. The criminal act such as murder, homicide, and other criminal acts that would impede State’s development is embodied in the 2009 Criminal Law of Cambodia. However, the official national statistics of crime recorded by the police in 2007 and provided by the Ministry of Interior (MOI) are presented below (rates per 100,000):

- Murder 2.32

- Attempted murder 0.75

- Robbery murder 0.55

- Rape murder 0.09

This kind of crime is one of the biggest issues that stop the state from growing. Therefore, we should strengthen the law or try to at least amend them.

**Research Question:**

1. **Does murder sentencing in Cambodia sufficient?**

- Whether the law related to murder crimes implemented in Cambodia is severe enough or not?

- Should Cambodia apply for capital punishment?

**Research Objective:**

This research paper has the objective to study about the cause and effect of murder to Cambodia. In addition, one of the main root cause to murder is relating to the implementation of the law and its penalty. Comparing to other countries, Cambodia has a less severe sentencing or penalty in response to the most serious crime or capital punishment. Cambodia has a high rate of crimes compared to the neighboring countries and China. Due to the increasing crime rate in Cambodia, especially murder, this research will seek for solution and dive deep into the sufficiency of the penalty or sentencing to the offender for committing murder.

1. **ROOT CAUSE**
	1. Family conflict
	2. Drunken rage
	3. Under influence of a drug
	4. Personal conflict
2. **IMPACT ON SOCIETY AND PEOPLE**
3. **Impact on Society**

Murder does not affect only on the people but it affects to society and community as well. It makes that country unsafe and anarchy. People feel afraid inside and outside their own home. Tourists will decrease and national income will decrease. Moreover, the more crimes increase in the community the more chances residents move out to another place, house or land value get lower and less local participation.[[1]](#footnote-1)

1. **Impact on People**

Murder is like a nightmare to some people who encounters that such event because sometimes they lose their beloved person or n ot but such horrible event still hunt them every day which make them feel uneasy. A murder impacts on not only the victim but also their family and relative also which called “co-victims”. Due to the loss of their child, partner, parent, brother, or sister, co-victim encounter some consequences. These consequences are emotional and psychological problems, physical and social problems, and practical and financial issues.

1. **Emotional and Psychological Problems**

 The feeling of losing a loved one is indescribable and that emotion will become less intense over the years however, they could be worsened at certain events such as holidays, birthdays, and anniversaries of their loved one’s death. Most of co-victim have depression, insomnia, nightmares, and fears. The crime changed to co-victim, they became another person, and they had become more afraid of losing another loved one.

1. **Physical and Social Problems**

After the crime co-victim frequently encounters headaches, sleeping problems, tiredness or stress. Moreover, after the crime they tried to avoid other people by locking themselves in a room or not going outside or a place where they had memories of their loved one’s death.

1. **Practical and Financial Problems**

After the crime, they lost a part of their loved one’s profit, which is the main problem when the dead one is the one who is responsible for the whole family. Additionally, the co-victim has to spend more money on the funeral or other traditional ceremony.

1. **COMPARISON**
2. **Whether the law related to murder crimes implemented in Cambodia is severe enough or not?**

The provision of the murder offense in Cambodia existed since UNTAC Criminal Code in 1992 at Article 32, and it was called “Voluntary Manslaughter” and the person who committed such an act shall be liable to 8 to 15 years imprisonment. This provision was later amended by the Law on Aggravating Circumstance of 2020; any person who committed such an act shall be liable to a punishment of 10 to 15 years imprisonment. Afterward, Cambodia had amended the Penal Code in 1992 to the current Criminal Code of Cambodia in 2009. For anyone who has committed a serious crime such as murder and with aggravating circumstance of murder, he/she shall be punishable accordingly from Article 199 to Article 205 of Criminal Code of Cambodia. According to the Criminal Code of Cambodia “Murder shall mean the willful killing of another person with or without a weapon with no aggravating circumstances within the meaning of Article 200 (Definition of premeditated murder) to 205 (Murder accompanied by torture, cruelty or rape) of this Code”.[[2]](#footnote-2)The purpose of this article is when the offenders commit murder by using weapon or without weapon with intent to kill the victims in order to kill the victims without stopping his/her acts voluntarily, but was interrupted solely by circumstance beyond his/her own control.[[3]](#footnote-3) Weapon here refers to any item designed to kill or cause bodily harm. It was used to kill, wound or threaten and intended to be killed, including an animal that is used to kill, wound or threaten.[[4]](#footnote-4) Therefore, if she/he has committed murder they shall be punishable by 10 to 15 years imprisonment.[[5]](#footnote-5)In addition, the judge can only sentence the defendants by imprisonment;[[6]](#footnote-6) according to the provision that stated relating to murder, there is no fine as a penalty. However, the maximum of sentence of imprisonment incurred shall be reduced by half for minors over the age of 14 years who has committed murder.

In the practical manner in the Court of First Instance of Cambodia, after the judge, who is holding the case of murder, found that the offender is guilty, the trial judge shall decide to punish the defendant by judgement. The punishments depend on the judge's decisions; however, it shall be according to the law. The defendant has to be imprisoned from 10 to 15 years, which means that the trial judges punish the defendant, by imprisonment between 10 years to 15 years. The judge's decision is depending on the evidence and the circumstances when the crime was committed; the chrematistic of the defendant and the victims or the causes of crime shall be considered too. Obviously, according to Criminal Judgement No. 10 “E” issued on 20th February 2018 and Criminal Case No. 227 of The Prosecution of Kampong Chhnang Court of First Instance, issued on 05th April 2017, the defendant has killed two victims immediately without plan and he confessed his guilt to the court. The defendant showed his sincere apologies to the victims for what he had done. Furthermore, he did not escape from the crime scene after committing murder. In such a manner, he did not cause trouble for the court to seek the truth or hinder the court procedures. Therefore, the judge decided to punish that defendant for 10 years imprisonment. Additionally, on the Criminal Judgement No. 738 “C” issued on 04th November 2020 and Criminal Case No. 157 of The Prosecutor of Kampong Cham Court of First Instance, issued on 20th March 2020, the court decide to punish the defendant for 13 years imprisonment, for attempted murder with the reasons that the defendant intended to kill the victim by using the weapon to caused serious injury to the victim. But the incident was interrupted solely by circumstances beyond his/her own control. In addition, the defendant escaped from the crime scene after he committed a criminal offense. Even though a victim in this case did not die, the defendant had intention to kill and escaped from being criminally responsible that caused the consequences to the court judgement.

 In practice, at Takeo Court of First Instance had sentenced two minors who had committed murder by imprisonment for 6 years. The court did not punish them as an adult or those who had reached legal age, because they are minors and had less of understanding and lack of consideration of their conduct. Thus, the court had sentenced them to only 6 years of imprisonment.[[7]](#footnote-7)

1. **Should Cambodia apply for Capital Punishment?**

Nowadays, some countries in Asian that still remain to impose an execution and death penalty to the offenders who commit a serious criminal offence.For instance, Republic of China, Thailand, Vietnam, Singapore, Japan and Indonesia are executed the prisoner to death penalty in case that the defendant had commit a serious crime such as drug trafficking, murder, terrorism, etc.

Pursuant to article 302 of Penal Code of Singapore whoever commit murder - “the act by which the death is caused is done with the intention of causing death”[[8]](#footnote-8) shall be punish with death penalty. Whoever commits murder within the meaning of section 300(*b*), (*c*) or (*d*) shall be punished with death penalty or imprisonment for life and shall, if he is not punished with death, also be liable to caning. There are murder case rate in Singapore from 2015 to 2018:

- Murder rate for 2015 was 0.25, a 1.18% decline from 2014

- Murder rate for 2016 was 2016 was 0.32, a 27.16% increase from 2015

- Murder rate for 2017 was 0.19, a 39.48% decline from 2016

- Murder rate for 2018 was 0.18% decline from 2017.[[9]](#footnote-9)

As well as, in 2019 murder rate was 0.2 cases per 100,000 population and this rate has gradually from 1 cases per 100,000 population in 2000 to 0.2 cases per 100,000 population in 2019.[[10]](#footnote-10) Hence, those who had a commit a murder crime in Singapore in each years shall be libel for death penalty.

However, there shall be no capital punishment in Cambodia, as state in Constitution of Cambodia, “everybody shall have the rights to life, freedom, and personal security. Capital punishment is prohibited”;[[11]](#footnote-11) for that reason, even the defendants have committed an extremely serious crime acting such as “Premeditated Murder”, which is a felony offense. The best that the court can do is give the maximum sentence of life imprisonment.[[12]](#footnote-12) The premediated murder is a murder committed with premeditation or by ambush. Premeditation consists of the plan conceived beforehand to make an attempt against the person of the victims. For an ambush consists in the act of violence against the victim.[[13]](#footnote-13)

In actual existence, the Phnom Penh Court of First Instance was executed and sentence the defendants for life imprisonment by the reasons of that the defendants is reach over 18 years old and they intended to conduct a premeditated murder by prepared the plan to kill the victim. Their act and intention was so cruel within extremely serious misconduct and the defendants tried not to be criminally responsible, so the court was sentenced to life imprisonment.[[14]](#footnote-14) Attempted murder or premeditated is a very serious form among all homicide; therefore, the punishment for this crime shall be most severe too.

1. **Legal Solution and Recommendations**
2. **Legal Solution**

**A. Legal System**

Murder does not only occur in Cambodia but also occur everywhere in the world. Murder is an act that causes the country unstable and unsafe. In order to prevent murder from our society the governments should take it into consideration. The government alone cannot prevent the crime from happening. It needs cooperation from the citizens as well. There are some legal resolutions that the government shall take into consideration such as the legal system, educational system, and related authorities.

Many people believe murderers deserve death penalty, but offenders are not given the penalty of death in vast majority of murder case. According to article 199 of Criminal Code, murder shall be punishable by imprisonment from 10 to 15 years and those who committed aggravating circumstance under article 201 to 204 is liable to punished from 15 to 30 years. However, this crime minimum sentence of imprisonment incurred is more than 10 years, and shall be reduced to 2 years.[[15]](#footnote-15) Even those who committed an extreme misconduct under article 200 and 205 that the offender shall be punished for life imprisonment, but the judge granting the benefit of mitigating circumstances may impose a sentence of between 15 years to 30 years.[[16]](#footnote-16) Hence, in order to enforce the law more effective in Cambodia we should amend some article related to murder and increase the maximum of the years imprisonment because people doesn’t fear enough since there still can be mitigated circumstance in some case. Even so,according to our research reference the law practice in the Court of First Instance in Cambodia such as Court of First Instance in Phnom Penh, Takeo, Tbong Khmum and Kampong Chhnang the decision to punish the defendants are depend on the judge's decision,however, it is based on the law it means the judges look at the minimum and maximum of the law in order to punish the offenders.Thus, the theory and actual practice are not differences.

There are some reasons that Cambodia should be apply and should not apply for capital punishment. The capital punishment concept in Cambodia is should not apply because capital punishment is very precious and although the offender committed a worst murder the state should not expropriated their life. The death penalty undermines human dignity and is in direct opposition to human rights, particularly the most important part of human rights: The rights to life. In case, that Cambodia adopted the law of death penalty might be execution for poor citizen, uneducated at countryside and marginalized people. In the other hand, the death penalty may not stop the offenders from committing a crime. Moreover, capital punishment very costly the court cannot process the legal trail of death penalty without any lawyer and protect the people who face in this case because some of Khmer citizen cannot afford their own lawyer to defense them, so the state has to assign or appointed the lawyer to find the proper solution and the court also need to pay a cost of the prosecution as well. In Texas, a death penalty case cost average of 2.3 USD million,[[17]](#footnote-17) there is very costly if Cambodia adopt the capital punishment.

However, there should be apply capital punishment as well in Cambodia since death penalty is not illegal under international law unless state is party to the second optional protocol of the ICCPR. Therefore, death penalty is legally and morally correct. So, the extremely serious crime particular rape among the family or relative. There is also a provision stated that *“murder preceded or followed by torture, cruelty or rape shall be punishable by life punishment”[[18]](#footnote-18)*However, this provision does not specify the perpetrator and the victim. The perpetrator is the father or step father or relative who rape their own child or relative and the victim is their child or relative. The fact that the father or relative rapes their own child is not acceptable and it is so cruel. We all are human beings, not animals. This matter also impacts the society and family, the other kids may feel insecure to their own father or step father. The parents or relatives shall be the sample to their child, so they should educate their kid not tourture or rape their kid just for their own sex desire. There are so many cases where the father or step father rapes his own daughter and kill her or kill her first and rape. For instance, in Sihanoukville, on 20 January 2020, a father raped his 12 year old daughter 5 times until being caught by his wife and was arrested by the local police.[[19]](#footnote-19)

 **B. Education Systems**

 School is a place where it not only teaches people how to think and know what is good and what is bad but also teaches people how to be well behaved. Knowledge is not the only thing people should acquire, but behavior is more important to acquire since a child. There are people who acquire a lot of knowledge and still commit a crime whether a serious one or not. Everyone should be equally educated. The related ministries should include the effect of crime into the curriculum from primary school. Moreover, not only school but also church or pagoda is a place where it teaches people to avoid doing bad things. In Cambodia, most people are Buddhist. They obey the Buddhist theory, which believes in good and bad and not to kill other animals or people. The government should encourage Buddhism to educate more people through traditional culture.

**C. Related Authorities**

Related authorities such as local authorities, judicial police, or court need to be aware of their power in order to maintain the safety and crack down on the offense and punish the offender. The top rank authorities should sometimes check their low rank authorities because there might be corruption or any error in the crime procedure. The court must be an independent institution. Authorities should help people in times and in place when they are in need of help. By doing this, related authorities can improve their relationship with local authorities.

**D. Understanding of the Criminal Psychology**

Sentencing the murderer to prison is not always be the best solution. It is also important to understand the reason behind why they commit such crimes; thus, we can also help them by sending them to rehabilitation after their imprisonment.[[20]](#footnote-20) The criminal cannot get away from what they have done, they will get what they deserve, but what is important is when they are released from prison, we have to make sure if the criminal has mental health, then we shall help them by restoring their health to normal again. Therefore, when the criminal is released, they can start their new life.

**2. Recommendation**

The laws alone cannot secure or exercise the whole country without cooperation from citizens and the competent authorities. The government should encourage the competent authorities who perform well in their duty and provide more workshops for them to make sure that they have enough knowledge regarding their power and so they can exercise their right according to the laws and avoid making innocent people suffer. For instance, in the report of the Cambodia Criminal Justice Assistance Project (CCJAP) stated that the project is engaging to work with the criminal justice system where they support the police-court-prison meetings. These were created to point out the basic operational issues. There are conferences for NGOs and UN human rights agencies to bring out their concern on individual cases[[21]](#footnote-21). Providing and educating people a short course about our laws and punishments in rural areas or where people find it difficult to get education. Making or filming educational videos and sharing them on social media. The videos should be short around one to three minutes and include our laws and the laws should be understandable for everyone even for people who never go to school. More importantly, when the crime occurred, it is important to find the culprit or the murderer; otherwise, the murderer will keep killing innocent people like a serial killer. Therefore, it is important to have a standard forensic scientist to collect evidence from the crime scenes to do the analysis in the laboratory.[[22]](#footnote-22) When the forensic scientist is involved, they could collect evidence from the crime scenes such as fingerprints, footprints, tire tracks, blood and the percentage that the murderer could get away is lower than without them.[[23]](#footnote-23)

1. **CONCLUSION**

With our current human population on earth, it is impossible to monitor everyone at once.

States cannot improve or develop with their full potential regarding either economics or infrastructure if there are chaotic, crime, political instability that will most likely affect the society and people first. Despite some States having a death penalty, there are people who are willing to do it due to their mental issue. We cannot obliterate crime from society because of its nature; however, we can reduce it by strengthening the law by implementing it, educate people with both knowledge and behavior, help the criminal having mental health and improve the forensic scientist. Therefore, we will minimize the crime rate to the lowest point as much as we possibly can.

1. Ralph B. Taylor, *The impact of Crime on Communities*, Annals of the American Academy of Politic and Social Science, Vol.539, *Reactions to Crime and Violence*. (May, 1995), p.28-45. [↑](#footnote-ref-1)
2. Criminal Code of Cambodia, *Article 199 paragraph 1*. [↑](#footnote-ref-2)
3. Criminal Code of Cambodia, *Article 27.* [↑](#footnote-ref-3)
4. Criminal Code of Cambodia, *Article 87.* [↑](#footnote-ref-4)
5. Criminal Code of Cambodia, *Article 199, paragraph 2*. [↑](#footnote-ref-5)
6. Criminal Code of Cambodia, *Article 97*. [↑](#footnote-ref-6)
7. Criminal Judgement No. 40 “H” issued on 03rd June 2021 and Criminal Case No 410 of The Prosecutor of Takeo Court of First Instance'', issued on 16th July 2020. [↑](#footnote-ref-7)
8. Penal Code of Singapore, *Article 300, paragraph 1.* [↑](#footnote-ref-8)
9. Macro Trends *Singapore Murder/Homicide Rate (1990-2021)*, <https://www.macrotrends.net/countries/SGP/singapore/murder-homicide-rate>. [↑](#footnote-ref-9)
10. Ibid. [↑](#footnote-ref-10)
11. The Constitution of the Kingdom of Cambodia, *Article 32, paragraph 2*. [↑](#footnote-ref-11)
12. Criminal Code of Cambodia, *Article 200, paragraph 4.* [↑](#footnote-ref-12)
13. Criminal Code of Cambodia, *Article 200, paragraph 1.* [↑](#footnote-ref-13)
14. Phnom Penh Criminal Judgement No. 226 “P”issued on 07 June 2015 & Criminal Case No. 4541 of The Prosecutor of Takeo Court of First Instance, issued on 17th December 2014. [↑](#footnote-ref-14)
15. Criminal Code of Cambodia, *Article 94, paragraph 1.* [↑](#footnote-ref-15)
16. Criminal Code of Cambodia, *Article 95.* [↑](#footnote-ref-16)
17. Death Penalty Information Center, *Costs of the Death Penalty,* Accessed in 19 April 2018, <https://deathpenaltyinfo.org/costs-death-penalty>. [↑](#footnote-ref-17)
18. Criminal Code of Cambodia, *Article 205.*  [↑](#footnote-ref-18)
19. KBN news, January 21, 2020, Inhuman father rapes his 12 year old daughters many times until being caught at the 6th times by his wife, available at: <https://kbn.news/archives/147818>. [↑](#footnote-ref-19)
20. Aman Tiwari, *International Journal of Advanced Research (IJAR)*, A Study of Criminal Behavior (Causality & Prevention of Crime), (May, 2020), p.441. [↑](#footnote-ref-20)
21. Marcus Cox, Cambodia Case Study, Evaluation of Australian Law and Justice Assistance, (December, 2012), p,27. [↑](#footnote-ref-21)
22. Joseph Peterson et al, *The Role and Impact of Forensic Evidence in the Criminal Justice Progress*, (September, 2010), pp.15. [↑](#footnote-ref-22)
23. Ibid, pp.77. [↑](#footnote-ref-23)