



KINGDOM OF CAMBODIA
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Response to OHCHR's inquiries dated 19th June 2013

On

Access to Justice for Children

Human Rights Council Resolution 22/32 on
“The Right of the Child to Enjoyment of the Highest Attainable Standard of Health”

08 November 2013

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Introduction

The Kingdom of Cambodia is being requested by the United Nations Human Rights Office of the High Commissioner to provide information on “Access to Justice for Children” as part of the Human Rights Council Resolution 22/32 on “the Rights of the Child to the Enjoyment of the Highest Attainable Standard of Health.” This succinct report provides the most up-to-date information on the issue.

It is noteworthy that Cambodia ratified the United Nations Convention on the Rights of the Child (UNCRC) in 1992 and many other conventions, treaties, and protocols related to children. Cambodia has been taking necessary steps to ensure the full realization of children’s rights and that children enjoy the highest attainable standard of physical and mental health. In addition to the country’s constitution that upholds child rights, Cambodia adopted and/or put in place laws, legal frameworks, policies, programs, and mechanisms to protect and promote children’s rights. Remarkable efforts have been made to ensure access to justice for children, although some key challenges remain. The following briefly presents the situation and the country’s efforts on the subject matter.

A. Existence and availability of child-friendly justice procedures and mechanisms under criminal, civil and administrative law

1. Cambodia embarks on legal and judicial reform strategy in which Criminal Procedure Code, Criminal Code, Civil Procedure Code and Civil Code were subsequently enacted and promulgated. These codes take into account child participation in the judicial system. They contain numerous provisions setting out mechanisms and child-friendly justice procedures. The 2006 Civil Procedure Code has provisions for children’s complaint process. The 2007 Civil Code encompasses articles on limitation of children’s capacity to act, the rights to rescind minor’s acts, minor’s rights to property management and to do business, conditions for child’s emancipation, and child work contract. The 2007 Criminal Procedure Code includes provisions on child custody, pre-trial detention, non-physical coercion, legal representation, and interpretation service. The 2009 Criminal Code includes provisions on legal age of criminal responsibility, measures applicable for children, principal sentence applicable for children aged 14 and above, community work for children, non-application of provision on recidivism, benefit from aggravated circumstances for children, special obligation concerning suspended sentence, and child-imprisonment conditions.
2. Cambodia is drafting Law on Juvenile Justice laying down the scope and procedural mechanisms to deal with minors in a child-friendly manner and to fully protect the rights and best interest of the child. The 2011 Law on Prison offers special treatment to child prisoners. The law provides that all prisons must have separate prisoner records for children and that all children must be detained separately from adults and be properly assessed before they could be asked to labor. It also prohibits all forms of physical punishment.

B. Specific obstacles/barriers faced by children in accessing justice

3. In spite of the many progresses, justice for children is still a stand-alone program mainly motivated/driven by donors and few attempts carried out to mainstream it into the relevant national and sub-national frameworks, and across broader governance and rule of law initiatives. Monitoring and enforcement mechanisms of the existing laws that protect children in the justice system as alleged offenders, victims, and witnesses are still in their early stages. The finalization and adoption of the Juvenile Justice Law will help accelerate the process of justice for children agenda. The delay in the endorsement of the Law delays the development of models of diversion, alternatives to detention, and restorative justice for children in contact with the law (CICL) by the government. Until the Law is passed, the general procedures for adults are automatically applied to cases of children. As there is no specialized juvenile justice system in Cambodia, the current system often failed to consider the needs and best interests of children or address the root causes of offending and the individual circumstances of the child involved. There are no children courts, specialized judges, and prosecutors in the area of child rights.
4. Cambodia's justice system is still understaffed, poorly resourced, and not adequately equipped to respond to cases in accordance with national and international standards. With the establishment of the Centre for Lawyer Training and Legal Professional Improvement under the Bar Association of the Kingdom of Cambodia (BAKC) in 2001 and of the Royal Academy for Judicial Professions (RAJP) in 2006, a new cadre of lawyers, judges, and prosecutors was formed and are slowly improving their capacities. With only around 280 incumbent judges and prosecutors and 500 practicing lawyers in Cambodia servicing 13.8 million people, the justice system is not yet fully able to promptly and efficiently provide remedies to violations of (child) rights.
5. As the Government is not yet fully able to offer a comprehensive legal aid scheme for poor and vulnerable populations, the defense of children in the justice system is often left to legal aid NGOs, which are poorly resourced and understaffed. As of 2010, there were only around 80 pro bono lawyers in NGOs offering full-time legal aid services for various vulnerable groups in the entire country. The vast majority of children did not meet with a lawyer prior to their trial, as courts often did not inform or appointed lawyers until one day before the trial.
6. In the recent past, the justice system has been strengthened with the passage of fundamental laws mainly the Civil Code, Civil Procedure Code, Criminal Procedure Code, and Criminal Code. Relevant laws such as the 2008 Law on Suppression of Human Trafficking and Sexual Exploitation, and the 2010 Anti-Corruption Law were also passed. However, other core legislation necessary for efficient functioning of the justice system, such as the Law on Organization of the Courts, the Statute of Judges and Prosecutors, the Law on Amendment of the Organization and Functioning of the Supreme Council of Magistracy, and the Police Law are still being developed.
7. The capacity of most justice actors to implement the new and emerging legal framework is generally still weak. Police, judges, and prosecutors rarely consider alternatives to deprivation of liberty despite existing national laws allowing for bail, conditional release, and suspended sentences. The role of social workers as case managers and support providers for children in the justice system is not recognized. Collaboration among key

justice actors is insufficient, which often results in children's rights and best interests not being well represented in the judicial process.

8. Other key challenges include: (1) limited coordination amongst provinces to strengthen monitoring and referral delaying the process of handling children cases at sub-national level and tracking results for children across sectors; (2) no national policy or strategy on provision of legal aid; (3) a need to develop comprehensive and effective data reporting, complaints, and monitoring mechanisms at national and subnational levels; (4) limited multidisciplinary approaches are available on implementing child-friendly procedures within the justice system involving judges, prosecutors, police, lawyers, and social workers; and (5) limited resources to strengthen the demand side through promoting the legal empowerment of children, women, and families to improve their access to justice and redress violation of their rights.

C. Systems to channel complains by children

9. Since 2004, all communes in the country established Commune Committee for Women and Children (CWCC) providing a local mechanism where children can report their issues or grievance. CWCC opens for participation from children representatives to discuss, share, and claim for their rights. Together with the government and in compliance with the Decentralization & De-concentration process, Child Protection Mechanism supported by NGOs/IOs is implementing within the CWCC at all levels.
10. There is also administrative post in every commune offering yet another venue for children to report abuses they experience or the violation of their rights. The Department of Anti-Trafficking and Juvenile Protection under the Ministry of Interior operates a 24 hours hotline (in Khmer and English) in which all children and people can report children-related issues, especially child trafficking. Children are also accessible to a 24/7 child-helpline service run by NGO Child Helpline Cambodia, and in 2012 alone, 53,435 children and youths contacted and received counseling and advice from the Child Helpline.
11. In 2006, the Ministry of Social Affairs, Veterans, and Youth Rehabilitation (MoSVY) issued a Prakas on Minimum Standards for Residential Care for Children, and in 2008 a Prakas on Minimum Standards for Community-Based Care for Children. The Minimum Standards mandate all child-care centers/providers to establish complaint mechanism for children in alternative care to report their grievance, and to make sure children are fully aware of their rights and procedures to lodge a complaint.
12. The 2011 Law on Prison requires every detention facility to develop complaint procedure through which (child) prisoners can lodge their complaint in a secret manner. Complaint boxes are available in 27 detention centers across the country to receive complaints from detainees and their visiting families.
13. Ministry of Education, Youth, and Sports (MoEYS) developed a complaint/reporting procedure for students at schools to effectively implement the Education Law and the

National Policy on Child-Friendly School. Such enables pupils and their parents to report issues affecting children at schools and matters vis-à-vis children's education.

D. Legal standing, legal capacity and legal representation for minors under relevant laws

14. Various provisions under Cambodian laws allow minors¹/children to have a legal standing in the justice system, offer legal capacity, and have legal representation. According to article 143 of the Criminal Procedure Code, when an accused appears for the first time, the investigating judge shall check his identity and inform the person of the specific crime that s/he is being charged with. The judge must inform the accused of the rights to remain silent, but if the accused wish to make statement, the judge must record it immediately. A charged minor must always be accompanied by a lawyer. If the accused does not choose a lawyer, the court shall appoint a lawyer. Article 206 of the Code provides that an investigating judge who would provisionally detain the accused shall notify the accused accordingly and ask for the accused's observations. If the accused has a lawyer, the lawyer must present means of defense available to the accused. Articles 365 and 366 of the Code allow convict to appeal the court verdict. The convict may be represented by a lawyer, but latter must obtain a specific power of attorney from the convict authorizing his/her activity. A minor convict may be represented by his/her parent or guardian, and in this event, the representative is not required to have a power of attorney for representation. All in all, minors have a means to challenge in the legal proceedings according to their legal capacity or through their legal representatives.
15. In case of conflict of interest with a legal representative, minor may request a new representation under article 36 of the Civil Procedure Code, which provides that:
 - A person- intending to conduct litigation against a person lacking the capacity to litigate in cases where that person has no legal representative, or where the legal representative cannot represent that person- may apply to the court before which the action is pending for the appointment of a special representative upon establishing to a preliminary showing that there exists a danger of damage occurring due to the delay;
 - The court may at any time replace the special representative;
 - A decision to appoint or replace a special representative shall also be notified to the special representative;
 - The special representative shall have the same authorization as a guardian to conduct litigation.

E. Child participation in the judicial process

16. Minors and children can participate in the judicial process and have the rights to have their voice heard. Minor is qualified as a legal person who has the right to participate in the judicial process. Article 3 of the Criminal Procedure Code stipulates that criminal actions apply to all natural persons or legal entities, while article 6(1) says that any person claiming to be a victim of an offence can file a complaint. Under article 2 of the Civil Procedure Code, civil action intends that the court addresses the civil conflict based on laws to protect the

¹Article 16 of the Civil Code provides that incompetent persons are minors, while article 18 says that an act committed by a minor without the consent of his/her parental power holder or guardian may be rescinded.

rights of the private person, and all persons are guaranteed to have the rights to court for civil conflict. Article 32 of the Civil Code provides that:

- Individual who is entitled to exercise rights or assume obligations in his/her name pursuant to the provisions of the laws may be plaintiff or defendant in a civil suit;
- A person who has a capacity to act independently may file a suit on his/her own as a plaintiff, defend his/her self against a law suit as a defendant, or engage in acts of litigation;
- Minors or adults placed under guardianship may not conduct acts of litigation except through their legal representative. However, this shall not apply where the persons are authorized to perform legal acts independently.

F. Legal assistance for children

17. According to Article 16 and 32(3) of the Civil Procedure Code, the capacity to act of a minor is limited and that a minor can only conduct acts of litigation through his/her legal representative. It is, thus, of utmost importance that minors/children are accessible to both legal representation and legal assistance when required. The Criminal Procedure Code provides that an accused minor must always be assisted when appearing before a judge. It is considered to be miscarriage of justice if an accused minor is not represented in the court of law.
18. BAKC and civil society organizations supported development process of the National Legal Aid Policy and provision of legal aid and social services to more than 100 CICL every year. Legal representation services were strengthened through training on child rights, juvenile justice, and relevant laws and procedures.

G. Alternatives to judicial proceedings for children

19. Article 39 of the Criminal Code stipulates that a minor who committed an offence is subject to the measures of surveillance, education, protection, and assistance. Nevertheless, the court may pronounce a criminal conviction against a minor aged 14 years or above if the circumstances of the offence or if the personality of the minor in question warrants. This also means that a child under 14 who committed an offence is not subject to legal action. Under article 96(11) and 212 of the Criminal Procedure Code, minor under 14 shall not be held in the police custody and pre-trial detention. The investigating judge may send the minor temporarily to his/her guardian or to education and care center pending the court's decision.
20. Other alternatives are also available to minor who committed an offence, including: (1) handover a minor to a parent, guardian, caregiver or other trusted person as deemed suitable or (2) handover a minor to qualified institution providing care for children, hospital, specialized institution, or place a minor under the judicial protection depending on situation. Also, according to the principles of laws the court may have options other than imposing criminal penalty on the minor, for example, through community work, reprimanding, and probation.

H. Access to justice for child victims

21. Cambodia does not have a separate law providing protection for (child) victims, however existing provisions enable child victims to seek justice through a complaint filed with competent institutions as provided for in Article 6(1) of Criminal Procedure Code. By filing a complaint, child victims would receive justice in two-related ways: (1) the perpetrator would be prosecuted since the prosecutor can request the court to duly punish the offender; (2) damage is restituted through a civil action filed by the victim on top of a criminal action undertaken by the prosecutor. A civil action can be brought by the victim of an offense, but in order to be compensated the injury must be a direct consequence of an offence, personal damage, actually occurred and exist at the present time. An injury can be a damage to property, or physical or psychological damage. The victim must directly file a civil action demanding the restitution of the damage caused. An injury can be compensated by payment, by giving back to the victim the property lost or by restoring damaged property to its original state. The reparation shall be proportionate to the damages (article 14).Article 533 of the Code provides that when a civil party does not receive payment for damages or compensation from the convict or the civil defendant, s/he may request the prosecutor to impose imprisonment in lieu of payment.
22. The Prakas on the Use of Court Screens and TV Linked Testimony for Child/Vulnerable Victims and Witnesses was issued by the Ministry of Justice in 2008, complementing the installation of court screens in all provincial courts and of video-conferencing equipment in five provincial courts in priority provinces. The Prakas and child-friendly equipment are meant to enable child victims and witnesses to provide a more accurate testimony in a non-intimidating environment.

I. Children's knowledge of their rights

23. The Royal Government of Cambodia promotes the implementation of children's four fundamental rights: rights to survival, development, protection, and participation. Authorities at all levels, especially the CWCC, play an important role to promote understanding about laws and policies related to child rights. Ministries, public institutions, and private institutions have widely raised awareness on child rights through televisions, radios, newspapers, posters, banners, training, community education, and the list goes on. MoEYS has mainstreamed child rights into curricula for primary and higher level of education. Many NGOs have cooperated with government agencies to provide child rights training to children at schools and communities.

J. Training of police officers and judicial professionals on children's rights

24. Public institutions and civil society organizations have jointly prepared, published, and distributed training manuals/booklets on child rights, especially to educate judicial police and judicial professionals. For instance, the Ministry of Interior has used these child-rights training manuals to train masters of trainers in 24 municipality/provinces. Training Center for Lawyer Profession has incorporated these training tools into the training curriculum for lawyer students and professional lawyers. RAJP has also incorporated child rights into the curriculum for judge students and professional judges. NGO Legal Aid of Cambodia has trained all judicial police (police and gendarme) in the provinces of Siem Reap and Banteay Meanchey about children's rights, the rights of CICL, and other

laws and policies related to children in 2011 and 2012 with financial support from Save the Children and European Commission. Law enforcement officers at national and sub-national levels were trained on child-interviewing skills and child-friendly techniques for dealing with children who are offenders, victims, or witnesses.

25. Among many noticeable efforts, two instructional videos on the justice system for child victims and witnesses and for CICL titled, “Through a Child’s Eyes: Introduction to the Justice System”, were completed in 2009 and disseminated by the Child Justice Working Group (CJWG) to relevant stakeholders, together with a facilitator’s guide. The videos are meant to assist social workers, lawyers, and other criminal justice actors in preparing children for their encounter with the criminal justice system, and have also been used by the CJWG as a sensitization tool in coordination meetings among criminal justice actors.

K. Education/training of parents/teachers/people working with and for children about children’s rights and how they can access justice

26. The Royal Government of Cambodia has made serious effort directly or indirectly to promote child rights. The Cambodia National Council for Children (CNCC)² has organized many child rights training workshops participated by (senior) officials from line ministries. The Ministry of Information developed short skits/documentaries on child rights and publicized them through medias in an effort to raise public awareness on the issue. MoEYS provides regular training on UNCRC for school (deputy) directors, teachers, and students at primary and high schools across the country. Many NGOs cooperated with government agencies to disseminate UNCRC and organized awareness raising events on child rights to students at seven pedagogic schools, teachers and students at many primary and high schools, and parent groups at communities.
27. With support from UNICEF and development partners, over 1000 judges, prosecutors, judicial police, social workers, and rehabilitation/corrections officers were trained on international principles and standards, as well as national laws, regulatory frameworks and tools on justice for children. More judges and prosecutors have demonstrated increased observance of laws and procedures pertaining to children and sensitivity towards their needs. Social workers in the priority provinces have also demonstrated improved skills in case management and reintegration of CICL and stronger collaboration with NGOs and prison/rehabilitation staff.
28. “Children in detention” training manual was developed and tested in 2008. In 2010, 78 prison staff/guards from 24 provincial prisons were trained on child rights, child development and juvenile justice by the General Directorate of Prisons (GDOP).

L. Effective remedies for children

29. Under the support of UNICEF, a community-based juvenile delinquency prevention and diversion program and mechanism were set up in the provinces of Battambang and

²Established in 1995, CNCC acts as a specialized government agency for advising, coordinating, monitoring, and reporting on the implementation of child rights activities, and for ensuring that children’s issues are prioritized in national development plans.

Banteay Meanchey, and Siem Reap. Sub-Committees of the CCWC on Juvenile Delinquency Prevention were created to identify at-risk children and CICL, make recommendations on diversion options, and promote community-based solutions to meet the needs of target children. The sub-committee members have been increasingly involved in determining reintegration options and solutions for children at-risk and in conflict with the law, and have also sought support services and referrals for these children.

M. Specific measures to assist particularly vulnerable groups of children to access to justice (As mentioned above).