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## **Cambodia's Juvenile Justice System: Overcoming Challenges to Protect the Rights of Cambodian Youth**

*Jenissy Rodriguez*

### **I. INTRODUCTION**

At thirteen years old, Chanlina was detained at a prison in Cambodia where she resided with eighty-seven other prisoners in a one-room cell.<sup>1</sup> Despite her young age, she spent over eight months awaiting trial for drug possession alongside adults in detention, and had little access to an attorney for the first four months. During International Bridges to Justice's ("IBJ") interview with Chanlina, she described how an officer arrested her for drug possession and proceeded to take her to the police station.<sup>2</sup> At the station, he drafted a statement for her to sign.<sup>3</sup> She refused to sign it because she is illiterate and could not read or write.<sup>4</sup> However, after physical threats from the officer, she signed the false confession with her thumbprint.<sup>5</sup> She expressed to IBJ how she "feels as if [she] has no purpose" and cannot imagine a life "outside of these walls."<sup>6</sup> While pre-trial detention should be a measure of last resort for juvenile defendants, a report by the Cambodian Center for Human Rights states that Cambodian youth in conflict with the law are routinely detained.<sup>7</sup> Although the minimum age of criminal responsibility is fourteen years old,<sup>8</sup> children as young as thirteen, such as Chanlina, are held in pre-trial detention contrary to law.<sup>9</sup> Additionally, due to the lack of birth certificates, something that is especially common in rural areas, lawyers cannot provide the ages of young offenders who are arrested and detained,<sup>10</sup> which leads to further delays.

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<sup>1</sup> Author is a graduate of Loyola University Chicago School of Law and is a Legal Program Officer with International Bridges (IBJ) in Phnom Penh, Cambodia. She works on issues of pre-trial detention especially among Cambodian juveniles including Chanlina's case. She is also a Lecturer for the English-based Bachelor of Law Program at the Royal University of Law and Economics in Phnom Penh. She would like to thank the team of wonderful law students, Sowell Chan, Sok Sambath Pichny, Nhong Ros Prathna, Koem Ravy, Rothanak Voeun, and Tha Zanarith, who assisted her in researching, editing, and providing the perspectives of young Cambodians for this article.

<sup>2</sup> Interview with Chanlina, detainee at Prey Sar Prison, in Phnom Penh, Cambodia (July 1, 2016) (on file with author). For example, the author met with Chanlina during a visit to Prey Sar visit before her trial. Chanlina was playing in a field one day when a police officer approached her and accused her of drug possession. Although she had no drugs on her, the police officer falsely arrested her and physically threatened her if she refused.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Joshua Lipes, *Cambodians Regularly Face Pre-trial Detention: Rights Groups*, RADIO FREE ASIA (Dec. 4, 2013), <https://www.rfa.org/english/news/cambodia/trial-12042013163734.html>; *see also* Vong Sokheng & Peter Sainsbury, *Long Pretrial Detentions Planned*, PHNOM PENH POST (Aug. 4, 2000, 7:00 PM), <http://www.phnompenhpost.com/national/long-pretrial-detentions-planned>.

<sup>8</sup> LAW ON JUVENILE JUSTICE art. 7 (Cambodia) [hereinafter JUV. JUST.].

<sup>9</sup> JUV. JUST., *supra* note 8, art. 14. Article 14 states that any minor under 14 who is apprehended must be referred to a designated representative immediately upon arrest rather than pre-trial detention.

<sup>10</sup> Kong Vanny and Ariel Hofher, *Birth Registration Gives Every Child Their Right to an Identity*, UNICEF CAMBODIA (Aug. 17, 2015), <http://unicefcambodia.blogspot.com/2015/08/birth-registration-gives-every-child.html>.

Cambodia has the largest youth and adolescent population in Southeast Asia and, as of 2015, about two-thirds of the country's total population is under the age of thirty.<sup>11</sup> Despite strong economic growth and a tourist boom, Cambodia is still recuperating from the systematic execution of 1.7 million people by the brutal Khmer Rouge regime in the 1970s.<sup>12</sup> As a result of the Khmer Rouge era, Cambodia has endured a generation without a functional judicial system. Each day, hundreds of Cambodians are held in excessive and arbitrary pre-trial detention that subjects them to harsh and unacceptable living conditions.<sup>13</sup> This Article will examine how Cambodia continues to struggle with the demand for an effective delivery of justice, especially in protecting its juveniles. Part II will provide a brief history of children's rights in Cambodia. Part III will discuss the current legal environment in Cambodia and the changing landscape after the passage of the new juvenile justice bill in late 2016. Lastly, Part IV will examine possible solutions through the new juvenile justice law to improve diversion, alternatives to detention, the creation of separate juvenile facilities, and criminal data collection and centralization in addition to the consideration of Khmer culture and Buddhism in applying Western-style rule of law.

## II. BRIEF HISTORY OF THE KHMER ROUGE AND CHILDREN'S RIGHTS IN CAMBODIA

From 1975 to 1979, the Khmer Rouge<sup>14</sup> led a mass genocide that killed 1.7 million people by torture, execution, starvation, disease, and forced labor.<sup>15</sup> Pol Pot, the leader of these atrocities, was driven by an extreme communist ideology inspired by the anti-colonial struggle against France and wanted to return Cambodia to an agrarian, classless utopia.<sup>16</sup> Individuals such as lawyers, urban residents, the educated, artists, and monks were labeled as enemies and imprisoned in labor camps or killed.<sup>17</sup> Ouk Vandeth, Country Director of the non-governmental organization ("NGO") IBJ in Cambodia, recalls that he had to work as a rice farmer and hide his education at a labor camp where many around him died from starvation and a lack of basic medicine.<sup>18</sup> Something as simple as wearing glasses, practicing Buddhism, or speaking French could mean death. Attempting to destroy everything in their path, the Khmer Rouge wanted to erase history and restart Cambodia at year zero.<sup>19</sup> In 1979, the Vietnamese army along with Cambodian rebels overthrew the Khmer Rouge to establish

<sup>11</sup> United Nations Population Fund Cambodia, *Fact Sheet – Cambodia Youth Data Sheet 2015*, (Feb. 25, 2016), [http://cambodia.unfpa.org/sites/default/files/pubpdf/Flyer\\_Cambodia\\_Youth\\_Factsheet\\_final\\_draft\\_%28approved%29.pdf](http://cambodia.unfpa.org/sites/default/files/pubpdf/Flyer_Cambodia_Youth_Factsheet_final_draft_%28approved%29.pdf).

<sup>12</sup> Adam Taylor, *Why the World Should Not Forget Khmer Rouge and the Killing Fields of Cambodia*, WASH. POST (Aug. 7, 2014), [https://www.washingtonpost.com/news/worldviews/wp/2014/08/07/why-the-world-should-not-forget-khmer-rouge-and-the-killing-fields-of-cambodia/?utm\\_term=.00390272db99](https://www.washingtonpost.com/news/worldviews/wp/2014/08/07/why-the-world-should-not-forget-khmer-rouge-and-the-killing-fields-of-cambodia/?utm_term=.00390272db99).

<sup>13</sup> See generally *Defining the Problem*, INT'L BRIDGES TO JUST., <http://www.ibj.org/programs/defining-the-problem/> (last visited Dec. 6, 2017).

<sup>14</sup> *Cambodia's Brutal Khmer Rouge Regime*, BBC NEWS (Aug. 4, 2014), <http://www.bbc.com/news/world-asia-pacific-10684399> [hereinafter BBC News]. The Khmer Rouge was a Communist Party in Cambodia that took power in 1975 after a devastating civil war. It pursued ruthless tactics that led to the death of a quarter of the Cambodian population until they were ousted by Vietnamese and Khmer rebellion forces in 1979.

<sup>15</sup> *Id.*; See also *Key Facts on the Khmer Rouge*, AL JAZEERA (Feb. 3, 2012), <http://www.aljazeera.com/indepth/features/2012/02/20122314155454169.html>.

<sup>16</sup> Taylor, *supra* note 12.

<sup>17</sup> *Id.*

<sup>18</sup> International Bridges to Justice, *Ouk Vandeth-Country Director for Cambodia*, YOUTUBE (June 12, 2017), <https://www.youtube.com/watch?v=zRHNIKqLJII>.

<sup>19</sup> Taylor, *supra* note 12.

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the People's Republic of Kampuchea. However, this new government struggled to gain recognition from the international community until 1991.<sup>20</sup>

These scars run deep in the Cambodian people and the legacy of the Khmer Rouge is still clearly visible in issues of infrastructure, such as in the justice sector.<sup>21</sup> Over the past twenty years, reconstruction efforts have culminated into some political stability with an elective constitutional monarchy.<sup>22</sup> Nearly thirty years later, the Extraordinary Chambers in the Courts of Cambodia (ECCC), a hybrid tribunal with judges from both the United Nations and Cambodia, was established to begin efforts to punish Khmer Rouge leaders for their crimes against humanity.<sup>23</sup> However, after eleven years and nearly \$300 million, there have been only three convictions.<sup>24</sup> Despite the high cost, many believe that it has allowed stories to be recorded and provided a path to healing for many victims.<sup>25</sup> Unfortunately, restorative justice efforts have been less successful in healing the Cambodian people, especially the children who grew up with a justice system punctured by dysfunction and inadequate protections.<sup>26</sup> The psychological repercussions of the genocide continue to affect those who lost parents and grandparents to the Khmer Rouge.<sup>27</sup> Experts now believe that “trauma [that is not dealt with] can transfer from the first generation to the second,” which is only aggravated by the poverty and poor access to healthcare and social resources that is experienced by many Cambodian juveniles.<sup>28</sup>

In 1992, Cambodia ratified the United Nations Convention on the Rights of the Child (“UNCRC”), as well as two optional protocols on the Convention on the Rights of the Child regarding child soldiers and child exploitation.<sup>29</sup> Although the rights and protections provided in these treaties are guaranteed under Article 48 of the Cambodian Constitution, many juveniles still lack access to justice services.<sup>30</sup> The child welfare community in Cambodia is hopeful that the King's recent signing

<sup>20</sup> United Nations, *The Spectre of the Khmer Rouge over Cambodia*, U.N. CHRON. (Apr. 2008), <https://unchronicle.un.org/article/spectre-khmer-rouge-over-cambodia>. Additionally, just to put in perspective, only about five fully trained lawyers existed in the entire country in 1992. See AusAID, *Cambodia Case Study Evaluation of Australian Law and Justice Assistance*, AUSTRALIAN GOV'T (Dec. 2012), <https://www.oecd.org/countries/cambodia/cambodia.pdf>.

<sup>21</sup> Vicheth Sen, *Cambodia's Untreated Wound*, PEACE & CONFLICT MONITOR (Aug. 12, 2008), [http://www.monitor.upeace.org/archive.cfm?id\\_article=53](http://www.monitor.upeace.org/archive.cfm?id_article=53).

<sup>22</sup> BBC NEWS, *supra* note 14. However, recent developments in Cambodian politics may shift this stability such as the dissolution of the main opposition party, the Cambodian National Rescue Party and arrest of its leader, Kem Sokha for treason.

<sup>23</sup> Tom Fawthrop, *Cambodia's Khmer Rouge Tribunal: Mission Accomplished?*, DIPLOMAT (July 17, 2017), <https://thediplomat.com/2017/07/cambodias-khmer-rouge-tribunal-mission-accomplished>.

<sup>24</sup> Seth Mydans, *11 Years, \$300 Million and 3 Convictions. Was the Khmer Rouge Tribal Worth it?* N.Y. TIMES (Apr. 10, 2017), <https://www.nytimes.com/2017/04/10/world/asia/cambodia-khmer-rouge-united-nations-tribunal.html>. Over the past nine years, nearly \$300 million was spent on the convictions and subsequent appeals of three former Khmer Rouge officials. The reasons for the delays and high costs include disagreements between Cambodian and international judges and prosecutors, possible political interference, budget problems, and corruption.

<sup>25</sup> *Id.*

<sup>26</sup> Emily Gleeson, *Transitional Justice in Cambodia – Too Little Too Late?*, E-INT'L REL. STUDENTS (Mar. 22, 2016), <http://www.e-ir.info/2016/03/22/transitional-justice-in-cambodia-too-little-too-late/>.

<sup>27</sup> *Id.*

<sup>28</sup> IRIN, *Localizing Treatment for Emotional Trauma in Cambodia*, RELIEFWEB (Jan. 24, 2014), <https://reliefweb.int/report/cambodia/localizing-treatment-emotional-trauma-cambodia>.

<sup>29</sup> International Bureau for Children's Rights, *Making Children's Rights Work: Country Profiles on Cambodia, Indonesia, Sri Lanka, Timor Leste, and Vietnam*, U.N. ECON. & SOC. COUNCIL 1, 9 (2006), <http://www.ibcr.org/wp-content/uploads/2016/07/Making-childrens-rights-work-in-South-East-Asia.pdf>.

<sup>30</sup> *Id.* at 8.

of the Juvenile Justice Bill, discussed in Part IV of this article, will establish a safer rule of law for children.<sup>31</sup>

### III. THE CURRENT LEGAL ENVIRONMENT IN CAMBODIA

The judicial system in Cambodia faces many challenges in its organization, structure, and development, and struggles to cope with the demand for an effective delivery of justice. As of June 2017, there were a reported 25,500 prisoners in Cambodia.<sup>32</sup> Of these 25,500 prisoners, 70.6% are without a final judgment, 34.1% are in pre-trial detention and 36.5% are awaiting a final judgment.<sup>33</sup> In addition, because of the government's recent series of strict anti-drug measures,<sup>34</sup> the prison population is quickly increasing,<sup>35</sup> placing an additional strain on the limited capacities of the justice system. Over 17,800 people have been arrested during this war on drugs, with more than half being arrested on small drug possession charges as opposed to trafficking, which is a more serious offense.<sup>36</sup> Moreover, as of April 2018, there is still no comprehensive, state-sponsored legal aid system.<sup>37</sup> However, the government increased the legal aid budget to the Bar Association of the Kingdom of Cambodia to about \$220,000, continuing a positive trend from previous years.<sup>38</sup> In August 2017, the United Nations Office of the High Commissioner ("UNOHCHR") held a conference with a variety of stakeholders from the Ministry of Justice and legal aid NGOs to discuss the challenges affecting legal aid, as well as recommendations for improving and increasing legal aid services, including those for juveniles.<sup>39</sup> Stakeholders agreed that legal aid advocacy and casework are invaluable instruments in the justice system and must be included in domestic policy, of which the drafting process will start soon.<sup>40</sup> Additionally, the Ministry of Justice invited legal aid NGOs to collaborate with them during

<sup>31</sup> Kong Meta & Erin Handley, *New Facility for Young Offenders*, PHNOM PENH POST (Sept. 20, 2016), <http://www.phnompenhpost.com/national/new-facility-young-offenders>. This new Juvenile Justice law was signed by Royal Proclamation in July 2016 and was disseminated in both Khmer and English in mid-2017. *See also Q&A on the Newly Adopted Juvenile Justice Law in Cambodia*, UNICEF CAMBODIA (Sept. 19, 2016), <http://unicefcambodia.blogspot.com/2016/09/q-on-newly-adopted-juvenile-justice-law.html> [hereinafter UNICEF].

<sup>32</sup> Cambodia, *World Prison Brief Data*, WORLD PRISON BRIEF, <http://www.prisonstudies.org/country/cambodia> (last visited Oct. 9, 2017) [hereinafter *World Prison Brief Data*].

<sup>33</sup> *Id.*

<sup>34</sup> In early 2017, an intensive anti-drug campaign began in Cambodia to crackdown on "small-scale drug users and dealers and to better monitor the nation's borders to stop the entry of narcotics." However, it has led to the detention and conviction of thousands with no option of rehabilitation for many incarcerated users. *See Lay Simean & Erin Handley, Top Officials Vow Harder Line with Drugs Initiative*, PHNOM PENH POST (Dec. 23, 2016), <http://www.phnompenhpost.com/national/top-officials-vow-harder-line-drugs-initiative>.

<sup>35</sup> Between 2010 and 2015, the prison population increased by almost 25%. *World Prison Brief Data*, *supra* note 32.

<sup>36</sup> Nhem Chheng & Erin Handley, *Mixed Results in Cambodia's drug war: officials*, PHNOM PENH POST (Feb 6, 2018), <https://www.phnompenhpost.com/national/mixed-results-cambodias-drug-war-officials>.

<sup>37</sup> Final Report from IBJ to UNOHCHR, Dec. 2017, CMB/09/CI/01 Cambodia B415, "Legal Aid at the Court of Appeal in Cambodia" [hereinafter *Legal Aid at the Court of Appeal in Cambodia*].

<sup>38</sup> Pech Sotheary, *Legal Aid Budget to Rise by Half*, KHMER TIMES (Aug. 30, 2017), <http://www.khmertimeskh.com/5080576/legal-aid-budget-rise-half/>.

<sup>39</sup> IBJ Internal Memorandum, Dec. 2017. The Bar Association of the Kingdom of Cambodia's (BAKC) 2017 figures show that there is a total of 1011 practicing lawyers in Cambodia. In July 2017, the OHCHR established that there were only 135 lawyers practicing as legal aid lawyers (full or part time) in the country. Predictably, only a few of the lawyers are willing and able to refuse more lucrative areas of practice in favor of the very modest salary that NGOs can afford.

<sup>40</sup> *See generally* Jenessy Rodriguez, International Bridges to Justice, Internal Meeting Notes (Nov. 2017) (on file with author).

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this drafting process in order to share lessons learned and best practices for a more comprehensive legal aid policy.<sup>41</sup>

Unfortunately, in past years, international funding for access to justice in Cambodia has reached a standstill.<sup>42</sup> Despite the fact that international donors have supported the justice sector for years and understandably believe that it is time for the domestic justice sector to sustain itself, the reality is that Cambodia is not fully prepared to embrace a self-sufficient model. While millions of dollars pour in for transitional justice work,<sup>43</sup> the day-to-day justice system continues to be ignored at the expense of thousands of Cambodians.<sup>44</sup> The denial by the international community of Cambodia's lack of readiness to take ownership of its domestic justice sector will lead to a regression in access to justice for countless Cambodians, especially those in rural and remote areas.<sup>45</sup>

In February 2016, the Child Rights International Network (CRIN) released its international ranking of each country's diligence in protecting the rights of children.<sup>46</sup> This study focused on the legal status of the child, court remedies available to children, evaluation of sentencing, pre-trial detention rates, etc.<sup>47</sup> Cambodia did not fare well during this assessment and is currently ranked 166 out of 197 countries in the study.<sup>48</sup> Limited job opportunities, lack of adequate nutrition, hunger, forced labor, and poor health conditions are just a few of the problems that Cambodian children face.<sup>49</sup> When children come into contact with the law, these conditions subject them to abuse and violate their rights, such as through restricted access to legal representation, harsh pre-trial detention conditions, and a lack of alternatives to imprisonment.<sup>50</sup> The newly formed Legal Aid Technical Working Group spoke of these issues at their meeting on November 30, 2017, and discussed the need to prioritize children in the national legal aid policy in order to strengthen rule of law.<sup>51</sup>

#### *A. Why Worry About the Rising Rate of Detention Among Cambodian Juveniles?*

Cambodian juveniles are often held in pretrial detention for months, without a warrant or reasonable cause.<sup>52</sup> Additionally, they are tried without legal counsel in adult criminal courts and given unnecessarily harsh sentences for petty crimes.<sup>53</sup> A minor in Cambodia is defined as eighteen years of age or younger and the Cambodian Criminal Procedural Code (CPC) limits detention to children fourteen to eighteen years of age.<sup>54</sup> The CPC states that pre-trial detention can only be used in limited circumstances, such as "where it is necessary to prevent the harassment of witnesses or victims, to prevent the offense from happening again...to preserve evidence [and] to preserve public order."<sup>55</sup> Nevertheless, Cambodian authorities regularly violate the CPC by using this last resort

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<sup>41</sup> *Id.*

<sup>42</sup> IBJ Internal Memorandum, A Worsening Situation for Domestic Justice (Sept. 2017).

<sup>43</sup> Mydans, *supra* note 24.

<sup>44</sup> IBJ Internal Memorandum, *supra* note 42.

<sup>45</sup> *Id.*

<sup>46</sup> Jonathan Cox, *Cambodia Near Bottom in Global List of Children's Access to Justice*, KHMER TIMES (Feb. 14, 2016) <http://www.khmertimeskh.com/news/21373/cambodia-near-bottom-in-global-list-of-children---s-access-to-justice>.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *A Measure of Last Resort: The Current Status of Juvenile Justice in ASEAN Member States*, 44 RAOUL WALLENBERG INST. OF HUM. RTS. & HUMAN. L. 9, 49 (2015) <http://rwi.lu.se/app/uploads/2015/04/Juvenile-Justice-Report.pdf>. [hereinafter *A Measure of Last Resort*].

<sup>50</sup> *Id.* at 44.

<sup>51</sup> See generally Rodriguez, *supra* note 40.

<sup>52</sup> Carmela Ferraro, *Cambodia Opens the Door to Juvenile Justice Reform*, THE GUARDIAN (Oct. 23, 2012), <http://www.theguardian.com/global-development/2012/oct/23/cambodia-children-rights-justice-reform>.

<sup>53</sup> *Id.*

<sup>54</sup> CRIMINAL PROCEDURE CODE OF THE KINGDOM OF CAMBODIA art. 212 (Cambodia) [hereinafter C. CRIM. PROC.].

<sup>55</sup> *A Measure of Last Resort*, *supra* note 49, at 35.

measure as the first option for juveniles. Children like Chanlina, who are from impoverished areas, are especially vulnerable, as their case presents no opportunity for bribery and no way to move at a quicker pace.<sup>56</sup>

According to the Convention on the Rights of the Child, pre-trial detention is an absolute last resort and, if used, should only last for the shortest appropriate period of time.<sup>57</sup> Often, juveniles who commit petty offenses, or survival crimes, are driven by extreme conditions of poverty and their arrest results in long periods of detention in breach of international standards and national law.<sup>58</sup> In 1999, juveniles represented 3.3% of the prison population;<sup>59</sup> however, that rate steadily increased to 4.1% in 2016.<sup>60</sup> According to the Phnom Penh Post, “in the most recent monitoring period in 2012, almost 92% of juvenile offenders were held in pre-trial detention compared to 71% of adults.”<sup>61</sup> Non-custodial sentencing is very rare and most juveniles are convicted and sentenced to prison.<sup>62</sup> The number of children under eighteen in prison increased from 403 in 2005 to nearly 1,050 in 2016.<sup>63</sup> A study conducted by Legal Aid of Cambodia, which interviewed children in prison to gather information, revealed harsh situations of coerced confessions, bribery, and extortion.<sup>64</sup> Cambodia is in clear violation of international and domestic law prohibitions when officers arbitrarily detain children without charge or trial and subject them to such horrific conditions.

Once a juvenile is detained, they are not guaranteed legal representation during the first 24–48 hours of their arrest.<sup>65</sup> This is worrisome because Cambodia relies heavily on confession-based investigation<sup>66</sup> and the first 24 hours are a “period of time when mistreatment, rape, and extortion can take place.”<sup>67</sup> Chrolong, a Cambodian juvenile, described in a Human Rights Watch report how he was arrested while walking at night: “...there was no reason given for [my] arrest.<sup>68</sup> They said, “You stroll in the night; strolling at night is not good... I never saw a lawyer.”<sup>69</sup> The Law on Juvenile Justice affirms a juvenile’s procedural right to be assisted by lawyer at the earliest possible stage.<sup>70</sup> However,

<sup>56</sup> *Id.* The possibility of bribery is present at every step of a criminal proceeding in Cambodia. From police officers asking for bribes from poor defendants to eschew formal charges to bribes paid for bar admission, corruption is endemic in Cambodia’s judicial system.

<sup>57</sup> Convention on the Rights of the Child art. 37(b), Nov. 20, 1989, 1577 U.N.T.S. 3.

<sup>58</sup> Ellen Travers, *Upholding Children’s Rights in the Judicial System: An NGO’s Experience of Working for Juvenile Justice in Cambodia*, EFFECTIVE JUST. SOLUTIONS 1, 2 (2011), [http://effectius.com/yahoo\\_site\\_admin/assets/docs/Upholding\\_childrens\\_rights\\_in\\_the\\_judicial\\_system\\_Ellen\\_Travers\\_Newsletter12.9520604.pdf](http://effectius.com/yahoo_site_admin/assets/docs/Upholding_childrens_rights_in_the_judicial_system_Ellen_Travers_Newsletter12.9520604.pdf).

<sup>59</sup> Roderic Broadhurst, Thierry Bonjours, & Chenda Keo, *Crime and Justice in Cambodia*, HANDBOOK OF ASIAN CRIMINOLOGY 174 (Jianhong Liu, Susyan Jou, & Bill Heberton eds., 2013).

<sup>60</sup> *World Prison Brief Data*, *supra* note 32.

<sup>61</sup> Laignee Barron, *Juvenile Detention Rate Alarming*, PHNOM PENH POST (Oct. 28, 2014), <http://www.phnompenhpost.com/national/juvenile-detention-rate-alarming-org>.

<sup>62</sup> *A Measure of Last Resort*, *supra* note 49, at 40.

<sup>63</sup> Ferraro, *supra* note 52. *See also World Prison Brief Data*, *supra* note 32.

<sup>64</sup> Of those 93 children interviewed in the study, 74% were not given any reason for their arrest, none of them had a social worker or parent present during police questioning, nearly 50% claimed to have been beaten by the police and some were even asked to pay bribes. *A Measure of Last Resort*, *supra* note 49, at 44–45.

<sup>65</sup> *Id.* at 36.

<sup>66</sup> Travers, *supra* note 58, at 4.

<sup>67</sup> ‘*Skin on the Cable*,’ *The Illegal Arrest, Arbitrary Detention and Torture of People Who Use Drugs in Cambodia*, HUM. RTS. WATCH 1, 32 (Jan. 2010), <https://www.hrw.org/sites/default/files/reports/cambodia0110webwcover.pdf> [hereinafter *Skin on the Cable*].

<sup>68</sup> *Id.* at 27.

<sup>69</sup> *Id.*

<sup>70</sup> JUV. JUST., *supra* note 8, art. 6.

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in practice, this is often not the case due to the shortage of pro bono attorneys,<sup>71</sup> particularly in rural areas where rates of pre-trial detention are steadily increasing.<sup>72</sup> Furthermore, most lawyers working in Cambodia reside in Phnom Penh while the majority of cases involving vulnerable people are in the countryside.<sup>73</sup> Most of these individuals do not have the financial means to travel to Phnom Penh and many pro bono lawyers do not have the resources for transportation.<sup>74</sup>

#### IV. HOW CAMBODIA CAN IMPROVE CONDITIONS FOR JUVENILE DETAINEES THROUGH THE IMPLEMENTATION OF THE NEW JUVENILE JUSTICE LAW

Over the past decade, Cambodia continuously drafted and redrafted its juvenile justice bill without ratification.<sup>75</sup> The law was finally addressed at the 2016 mid-year National Assembly where it was ratified and promulgated by the King.<sup>76</sup> The law focuses on offering alternatives to detention through diversion, rehabilitation, and social support.<sup>77</sup> Deborah Comini, representative to Cambodia for UNICEF, said she was pleased by the Senate's ratification because "the draft law is the first measure of its kind to protect the rights of children in conflict with the law in Cambodia. It focuses on diversion and training as proper responses to youth criminality rather than punishment."<sup>78</sup>

The Juvenile Justice Law makes significant and progressive changes to the current juvenile system that benefits children who come into conflict with the law. Article 6 of the Juvenile Justice Law provides for a variety of procedural guarantees, such as the right to refuse to answer questions without the presence of the lawyer, the right against self-incrimination, the right to be informed of the charge, the right to have a designated representative, the right to be assisted by a pro bono lawyer at the earliest possible time, the right to present evidence, the right to cross examine witnesses, and the right to request bail.<sup>79</sup> The new law also provides for other procedures, such as "the presence of a support person for the child through the criminal justice process and allows children to give evidence from behind a screen."<sup>80</sup> Regarding the issue of age verification, Article 25 obligates a prosecutor to undertake a "preliminary investigation as soon as possible in order to ascertain the real age of the minor" and, if an investigation proves inconclusive as to the age, the prosecutor must "issue [an] introductory requisition to the investigating judge."<sup>81</sup> The following section will discuss the implementation of the Juvenile Justice Law as it relates to diversion, alternatives to detention, the creation of a separate juvenile court and prison, data collection, funding, and cultural norms.

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<sup>71</sup> Ben Sokhean, *Bar Members bemoan low payment for pro bono work*, PHNOM PENH POST (Oct. 17, 2017), <https://www.phnompenhpost.com/national/bar-members-bemoan-low-payment-pro-bono-work> [hereinafter Sokhean].

<sup>72</sup> See generally Rodriguez, *supra* note 40.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> Meta & Handley, *supra* note 31.

<sup>77</sup> Zoe Halman, *Youth Justice Law 'due this year'*, PHNOM PENH POST (Jan. 6, 2016), <http://www.phnompenhpost.com/national/youth-justice-law-due-year>.

<sup>78</sup> Vong Sokheng, *Juvenile justice law clears Senate hurdle*, PHNOM PENH POST (July 1, 2016), <http://www.phnompenhpost.com/national/juvenile-justice-law-clears-senate-hurdle>.

<sup>79</sup> JUV. JUST., *supra* note 8, art. 6.

<sup>80</sup> Martin de Bourmont & Kong Meta, *Gaps persist in law protecting kids: UN*, PHNOM PENH POST (July 12, 2017), <http://www.phnompenhpost.com/national/gaps-persist-laws-protecting-kids-un>.

<sup>81</sup> JUV. JUST., *supra* note 8, art. 25.



### A. *Diversion/Alternatives to Pre-Trial Detention*

The new Juvenile Justice Law makes it clear that pre-trial detention is a “measure of last resort.”<sup>82</sup> However, as pre-trial detention and imprisonment for drug offenses increase, it is difficult to ascertain whether this will happen in practice. While Article 28 and 38 of the Juvenile Justice Law provide for discretion in authorizing diversion plans for minors who commit petty crimes or misdemeanors,<sup>83</sup> there are a lack of alternative measures to detention or imprisonment for juvenile offenders, and the development of locations to supervise young juveniles is slow.<sup>84</sup> Billy Gorter, Executive Director of This Life Cambodia (TLC), a juvenile rehabilitation NGO, stated that “children should always be separated from adults in detention facilities and, foremost, provided robust therapeutic interventions to meet each child’s individual needs.”<sup>85</sup> The majority of children who are convicted of a crime are sentenced to prison with adults or detained alongside adults in drug detention centers.<sup>86</sup> These drug detention centers falsely claim to provide health, education, and recreation services, and are used to house “undesirables” such as street children.<sup>87</sup> In fact, these centers are reputed to have conditions that “are worse than [what] exist[s] in Cambodian prisons.”<sup>88</sup> This includes conditions that Chanlina experienced such as overcrowding, limited access to food and clean water, shortage of medical care, and few educational opportunities.<sup>89</sup>

Diversion to pre-trial detention or imprisonment is also challenging to prevalent social norms in Khmer rural villages. Informing the public is the first step so that communities can understand the benefits of diversion plans and alternative sentencing, which is necessary in order to avoid communities taking punishment into their own hands through mob mentality violence.<sup>90</sup> For example, at the Legal Aid Technical Working Group meeting in November 2017, Chin Malin, spokesman for the Ministry of Justice, suggested that an alternative sentencing program<sup>91</sup> is possible, but is difficult because it is not accepted by the Cambodian public in general.<sup>92</sup> Sowell Chan, a law student, said that “young people in Cambodia may not receive the forgiveness that they deserve...once those minors have committed a crime, they are unlikely to be excused no matter how small or serious that crime is...even after they have been punished.”<sup>93</sup> The cultural values concerning forgiveness are discussed in Section E below.

<sup>82</sup> JUV. JUST., *supra* note 8, art. 39.

<sup>83</sup> *Id.* art. 28, 38.

<sup>84</sup> *See generally* Rodriguez, *supra* note 40.

<sup>85</sup> Meta & Handley, *supra* note 31.

<sup>86</sup> *Skin on the Cable*, *supra* note 67, at 6, 75. Article 76 of the new Juvenile Justice Law promotes the establishment of a Youth Rehabilitation Center but its exact function is still being determined. However, it seems that “children will still be detained in adult prisons as well” but that “detention officers will receive appropriate training on child psychology, child welfare and international standards on child rights.” Verstraeten, *infra* note 99, at 23.

<sup>87</sup> *Skin on the Cable*, *supra* note 67, at 18, 75.

<sup>88</sup> *Skin on the Cable*, *supra* note 67, at 20; *See also* Michael Garcia Bochenek, *Children Behind Bars: The Global Overuse of Detention of Children*, HUM. RTS. WATCH (2010), <https://www.hrw.org/world-report/2016/children-behind-bars> (explaining that in Cambodia, eight drug detention centers have about 1,000 people at any time, at least one in ten of those detainees is a child under the age of eighteen).

<sup>89</sup> *Skin on the Cable*, *supra* note 67, at 20.

<sup>90</sup> *See generally* Rodriguez, *supra* note 40.

<sup>91</sup> Niem Chheng, *Jail Alternative Possible*, PHNOM PENH POST (Dec. 4, 2017), <http://www.phnompenhpost.com/national/jail-alternative-possible>. *See also* Rodriguez, *supra* note 40.

<sup>92</sup> On November 30, 2017, the UNOCHR along with the Ministry of Justice held a meeting with a variety of justice stakeholders including legal aid organizations to discuss the drafting of Cambodia’s legal aid policy. *See* Rodriguez, *supra* note 40.

<sup>93</sup> *See generally* Rodriguez, *supra* note 40.

Additionally, judges often do not use alternative non-custodial solutions that are available under the law, which leads to severe penalties for non-violent offenses and prison overcrowding.<sup>94</sup> For example, Article 38 states that “once the investigating judge decides to divert, he/she shall stay proceeding and issue order to pre-trial release of the minor immediately if the minor is in pre-trial detention.”<sup>95</sup> Since diversion and restorative justice mechanisms do not yet exist, it is difficult for a lawyer to argue for an alternative to prison.<sup>96</sup> In fact, most offenders are detained in Prey Sar prison near Phnom Penh due to the lack of youth shelters or other centers offering rehabilitative services.<sup>97</sup> If a judge is to recommend services, it must be in the context of what is actually available. It would be beneficial to obtain recommendations from social workers and NGOs such as Transcultural Psychosocial Organization (TPO), to identify what services are currently available to juveniles.<sup>98</sup> While Cambodian law provides for these diversion plans, there must be guidelines that further develop mechanisms for action.

### ***B. The Need for Multiple Juvenile Courts and Prisons***

The law also seeks to create separate facilities for juveniles because the lack of a separate system or facilities for juveniles leads to prosecution alongside adults and imprisonment in the same cells as adults, subjecting them to dangerous environments that are filled with more violence and crime.<sup>99</sup> Rachel Watkins, who works with *TLC's* Children and Families Department, stated that incarcerating children alongside adults leaves an already vulnerable group open and exposed to potential exploitation and abuse.<sup>100</sup> In her annual report to the UN in late 2017, Special Rapporteur Rhona Smith wrote that the Ministry of Social Affairs confirmed that a sub-decree would soon be issued to establish the country's first juvenile court and prison.<sup>101</sup> However, Smith and others working for juvenile rights in Cambodia are concerned that one facility in the country's capital is not sufficient.<sup>102</sup> IBJ suggests that opening centers in the provinces will allow children to remain in contact with their families, since the majority of people do not have the finances to travel to Phnom Penh. The lack of specificity in the new law is worrying for human rights organizations because “such ambiguity...leaves us highly concerned about the reality of how the youth rehabilitation centers would operate in practice and whether they serve to further (intentionally or otherwise) isolate and disconnect disenfranchised youth from their families, communities and society at large.”<sup>103</sup>

<sup>94</sup> Australian Department of Foreign Affairs and Trade, *CAMBODIA JUSTICE SECTOR DELIVERY STRATEGY 1, 1* (Apr. 26, 2012), <https://dfat.gov.au/about-us/publications/Documents/cambodia-law-justice-sector-delivery-strategy-2012-16.pdf>.

<sup>95</sup> *JUV. JUST.*, *supra* note 8, art. 38.

<sup>96</sup> UNICEF, *supra* note 31.

<sup>97</sup> While this prison is located in the capital, it is often very distant for those from rural provinces. Kong Meta and Janelle Retka, *Government to build rehab centre for juveniles*, *PHNOM PENH POST* (Oct. 27, 2017), <https://www.phnompenhpost.com/national/government-build-rehab-centre-juveniles>.

<sup>98</sup> *See generally About Us*, TPO CAMBODIA, <http://tpocambodia.org/tpo-about/> (last visited Mar. 4, 2018).

<sup>99</sup> Tina Verstraeten, *THE STATUS OF CHILDREN IN CONFLICT WITH THE LAW IN CAMBODIA AND VIETNAM* 1, 32 (2016).

<sup>100</sup> Erin Handley, *Cambodia to soon establish juvenile prison: Social Affairs*, *THE PHNOM PENH POST* (Aug. 18, 2017), <http://www.phnompenhpost.com/national/cambodia-soon-establish-juvenile-prison-social-affairs>.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

The introduction of a juvenile court would allow children to be tried separately from adults,<sup>104</sup> as well as lighten the workload of other courts.<sup>105</sup> Touch Chiva, project coordinator at Legal Aid of Cambodia, states that “[i]n principle, the law considers juveniles differently, but in practice we lack the mechanisms and specific legal guidance on how to separate adults and children.”<sup>106</sup> However, having just one juvenile court in Phnom Penh, in addition to the shortage of pro bono lawyers<sup>107</sup>, may cause further delays and an ever increasing list of juveniles waiting for a lawyer at the court in Phnom Penh, hundreds of miles away from their families. For example, IBJ’s Appeals Project coordinated with the UNOHCHR has confronted challenges due to the delays in transferring final verdicts from provincial courts to the only Court of Appeals, which is located in Phnom Penh.<sup>108</sup> Due to this delay, the accused will often stay longer than even their original sentence if they choose to appeal their conviction.<sup>109</sup> If a juvenile court is only established in Phnom Penh, there will most likely be delays in the transfer of documents from rural provincial courts and prisons to the court in Phnom Penh.<sup>110</sup> This will impair the juvenile’s criminal procedural rights and likely lead to a backload of cases. Additionally, Billy Gorter states that, while a “separate juvenile court with trained legal specialists...is always preferential...the reality is that Cambodia is a long way off [from] being structurally and administratively able to establish a child-oriented juvenile justice system that guarantees the rights of children.”<sup>111</sup> While the new Juvenile Justice Law is a step in the right direction, international assistance and monitoring is still needed for the adequate protection of procedural guarantees for juveniles.

Additionally, the law affirms the need for proper training of judicial police, prosecutors, judges, and rehabilitation workers that have special training in working with juveniles<sup>112</sup> in order to understand why and how it is important to treat children with dignity and respect. At the moment, there remains a shortage of pro bono lawyers, especially since legal representation must be provided to juveniles at the earliest time of procedure under the new law.<sup>113</sup> Most pro bono lawyers live in Phnom Penh and lack the resources to travel lengthy distances multiples times throughout the

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<sup>104</sup> *A Measure of Last Resort*, *supra* note 49, at 43.

<sup>105</sup> IBA Human Rights Institute, *Justice versus Corruption: Challenges to the independence of the judiciary in Cambodia*, INT’L BAR ASS’N 36 (Sept. 2015), <http://www.ibanet.org/Document/Default.aspx?DocumentUid=4b065d2c-d691-46e5-86bf-0a17c993c938> [hereinafter IBA Human Rights Institute].

<sup>106</sup> Although funding is difficult to secure, the more difficult problem is implementation of the law. Barron, *supra* note 61.

<sup>107</sup> Sokhean, *supra* note 71.

<sup>108</sup> Legal Aid at the Court of Appeal in Cambodia, *supra* note 37.

<sup>109</sup> For example, IBJ’s client Paoskha, was sixteen when he was arbitrarily arrested and charged with drug trafficking. After four days in a cell with no access to a lawyer, he was taken to court where a judge informed him that a default judgment had already been entered against him. At a retrial, he was acquitted as this was a case of mistaken identity but the prosecutor upheld the conviction. He appealed and an IBJ lawyer was assigned to his case through a UN-sponsored project, however, he was not allowed to leave the prison while awaiting his appeal. His acquittal was eventually upheld but Paoskha spent over a year in prison (both because of the backlog and administrative issues) waiting for his appeal and away from his family and community. *Id.*

<sup>110</sup> This is the current issue with processing appeals at the only Court of Appeal in Phnom Penh. Often, final judgments take months to obtain from rural provincial courts and transported to the capital. This leads to several administrative issues and longer imprisonment times for defendants whose convictions are reversed on appeal. *Id.*

<sup>111</sup> Erin Handley, *New law ‘urgent’, but imperfect*, PHNOM PENH POST (Dec. 29, 2016), <http://www.phnompenhpost.com/national/new-law-urgent-imperfect>.

<sup>112</sup> JUV. JUST., *supra* note 8, art. 12, 24, 3, and 84.

<sup>113</sup> JUV. JUST., *supra* note 8, art. 6.

investigatory and trial stages. Therefore, the increasing legal aid budget provided by the Ministry of Justice to the Bar Association should include allocations for permanent, provincial lawyers.<sup>114</sup>

### *C. Juvenile Defense Training and Awareness Campaigns*

Inadequate training of legal and social justice professionals in working on juvenile cases is another challenge.<sup>115</sup> While several NGOs work to train various officials, the Ministry of Justice should implement a countrywide training program for court officials and judicial police.<sup>116</sup> Furthermore, there should be better educational training in law school that enables lawyers to advocate more effectively in the courtroom for juveniles. In addition to training, there should be a forum where legal officials can come together to discuss best practices and obstacles specifically in the field of juvenile justice. For example, IBJ hosts roundtable discussions that bring government officials, prosecutors, judges, prison officials, police officers and other stakeholders together to discuss how to best implement parts of the adult Criminal Procedure Code in addition to trainings for lawyers on numerous topics, including how to advocate using proper evidentiary procedures.<sup>117</sup> Due to limited funding opportunities, many legal related NGOs face difficulties in supporting their existing offices and must reduce their operational costs or close despite the fact that these offices are the sole providers of legal education in many of Cambodia's most remote areas.<sup>118</sup>

Lastly, similar to the Street Law Program at many American law schools, there must be grassroots education campaigns to educate Cambodian juveniles about their legal rights.<sup>119</sup> Enabling citizens to stand up for their rights and share this information with others is important to community empowerment through a bottoms-up approach.<sup>120</sup> While it is ideal for this class to be in person, perhaps these classes could be conducted in innovative ways such as through social media or through participation from local law students.

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<sup>114</sup> There are no permanent pro-bono offices in most Cambodian provinces. Currently, IBJ Cambodia is struggling to maintain its provincial offices open due to the lack of funding from international donors. In many provinces, IBJ is the sole provider of legal representation as many pro-bono lawyers live in Phnom Penh. Cambodia is in dire need of more legal aid lawyers in order to answer the increasing demand of access to justice.

<sup>115</sup> See generally Rodriguez, *supra* note 40.

<sup>116</sup> An example of an NGO doing such work is IBJ who began a nationwide Legal Defense hotline and Wiki in 2013 to increase access to legal information and representation along with another NGO, Legal Aid Cambodia. Both NGOs work on building training partnerships in the area of domestic criminal procedure to promote law that complies with international norms and standards while developing support for Cambodian public defender associations. John Vijghen, *Assessment of Juvenile Justice Practices in Cambodia*, ACADEMIA, [http://www.academia.edu/2771317/Assessment\\_of\\_Juvenile\\_Justice\\_Practices\\_in\\_Cambodia](http://www.academia.edu/2771317/Assessment_of_Juvenile_Justice_Practices_in_Cambodia) (last visited May 6, 2016). See also IBJ in Cambodia, *Providing Countrywide Legal Protection*, INT'L BRIDGES TO JUST. (2014), [http://www.ibj.org/wp\\_main/wp-content/uploads/2014/10/IBJ-Annual-Report-2013-14\\_Cambodia\\_sm.pdf](http://www.ibj.org/wp_main/wp-content/uploads/2014/10/IBJ-Annual-Report-2013-14_Cambodia_sm.pdf) [hereinafter IBJ in Cambodia].

<sup>117</sup> IBJ in Cambodia, *supra* note 116.

<sup>118</sup> IBJ Internal Memorandum, *supra* note 42.

<sup>119</sup> Street Law aims to teach young people practical law lessons and is usually taught by law school students in low income communities. Using this methodology, IBJ conducts rights awareness campaigns using posters, brochures, community education events, radio call-in shows and public service announcements to help individuals understand and gain access to their legal rights. See generally Country Programs, INT'L BRIDGES TO JUST., <https://www.ibj.org/programs/country-programs/> (last visited Mar. 4, 2017).

<sup>120</sup> *Community Empowerment in Cambodia*, VBNK (Sept. 9, 2016) <http://www.vbnk.org/community-empowerment-cambodia/>.

#### D. Legal Aid Budget and Data/Court Monitoring

While the legal aid budget increased to \$220,000 in 2018, it is still difficult to adequately provide legal aid for thousands of indigent clients for a few reasons.<sup>121</sup> First, the shortage of both domestic and international funding only allows for legal aid lawyers at trial (where they meet their client for the first time), who are unable to provide an adequate defense due to lack of time, preparation and resources.<sup>122</sup> These lawyers cannot get to know the defendants fully, and lack the funds for both transportation to the rural areas where these crimes occurred and the funds to gather all the evidence adequately.<sup>123</sup>

Second, the lack of economic resources available to courts and judges greatly impacts the efficiency of the courts and leads to corruption.<sup>124</sup> Public confidence in the judicial system is low and bribery is far too common at many stages of the Cambodian judiciary.<sup>125</sup> Since bribery often goes unpunished, there must be more cases charging and convicting those officials accepting bribes to build accountability.<sup>126</sup> The lack of proper disciplinary measures as well as the misuse of disciplinary procedures damages public confidence in the Cambodian judiciary and reform in this area should enforce appropriate disciplinary tools. Salaries should commensurate with the workload, in order to remove the incentive to accept bribes. This is easier said than done, but perhaps international assistance would allow the government to achieve “tangible results more quickly.”<sup>127</sup> Additionally, an independent third party should manage the funds for a judicial budget; however, the government would have to agree to outside regulation.<sup>128</sup> Foreign pressure through soft pressure tactics such as public declarations on the issue by foreign states might assist as tougher forms of pressures such as economic and diplomatic sanctions may not be appropriate at this moment.<sup>129</sup>

Third, issues with case management are a significant issue and mechanisms for juvenile justice data collection continue to be pushed for by several legal aid organizations in order to improve case management.<sup>130</sup> At the moment, only twelve out of the total twenty-four Courts of First Instance have an official electronic database system that is kept up to date.<sup>131</sup> However, data collection and centralization from at least half of these courts is an improvement from previous years when there

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<sup>121</sup> This is an increase from 2013 when the legal aid budget was only \$75,000. While this is an improvement, it is still difficult to allocate sufficient amounts for pro-bono services for the entire country especially in light of the increased detention of drug offenders. Pech Sotheary, *Legal Aid Budget to Rise by Half*, KHMER TIMES (Aug. 30, 2017), <http://www.khmertimeskh.com/5080576/legal-aid-budget-rise-half/>.

<sup>122</sup> Cambodia follows a civil law system rather than a common law system which has a pre-trial investigating judge.

<sup>123</sup> See generally Rodriguez, *supra* note 40.

<sup>124</sup> IBA Human Rights Institute, *supra* note 105, at 8.

<sup>125</sup> *Id.*

<sup>126</sup> Abby Seiff, *Cambodia: Corruption in the Judiciary 'Endemic'*, INT'L BAR ASS'N (Sept. 21, 2015), <http://www.ibanet.org/Article/Detail.aspx?ArticleUid=63af01f5-7bf3-4433-8edb-bbeb512395d7>. For example, in February 2015 Judge Ang Mealaktei was removed from his position as a high-ranking judge after accepting a five-million-dollar bribe. However, his removal was done without the proper disciplinary procedures. IBA Human Rights Institute, *supra* note 105, at 33.

<sup>127</sup> See generally Rodriguez, *supra* note 40. As stated earlier, Cambodia is not ready to take ownership of an effective state sponsored legal aid system and is in need of outside support.

<sup>128</sup> Sarah Kryz, *Justice v. Corruption: Challenges to the Independence of the Judiciary in Cambodia*, GLOBAL ANTICORRUPTION BLOG (Oct. 12, 2015), <https://globalanticorruptionblog.com/2015/10/12/justice-v-corruption-challenges-to-the-independence-of-the-judiciary-in-cambodia/>.

<sup>129</sup> *Id.* See also IBA Human Rights Institute, *supra* note 105, at 20.

<sup>130</sup> See generally Rodriguez, *supra* note 40.

<sup>131</sup> Since Cambodia is based on a French civil law system, the Courts of First Instance are comparable to trial courts in a common law system. *Id.*

was no electronic recordkeeping and most court documents were kept in dusty backrooms of courthouses with little access by lawyers.<sup>132</sup> The Legal Aid Technical Working Group was informed by the UNOHCHR in November 2017 that Cambodia is working towards an electronic database at each provincial court, which will be able to produce statistical reports and will begin to consider the creation of a centralized database at the Ministry of Justice.<sup>133</sup> Currently, the data that is collected does not include several “quantitative indicators,” such as dates of trials, which would allow us to measure pre-trial detention periods.<sup>134</sup> Better data collection, including electronic databases, will allow for more quality data monitoring and ensure better implementation of the Juvenile Justice Law.

Fourth, an independent mechanism to monitor court proceedings, particularly those involving juveniles, would create a visible presence in the courts for observers and monitors of proceedings.<sup>135</sup> World Vision reports that “the weakest spot in the system [is] the failure to establish an independent National Preventative Mechanism to monitor and prevent torture and ill-treatment in places of detention” since “children who are convicted of a crime in Cambodia are almost exclusively sentenced to prison.”<sup>136</sup> However, due to rising political tension over the past year, it has become increasingly difficult for NGOs to secure the necessary permits to visit prisons and there is much resistance to allow any NGOs to enter prisons.<sup>137</sup>

### ***E. Using a Culturally Specific Model that Recognizes Patron-Client Relations and Buddhist Principles***

There is not a one-size-fits-all model for justice. Cambodia must incorporate measures that are rooted in the desires of its people in order to have a greater chance at making a long-term impact and satisfying victims’ needs. In many rural areas, a preference remains for a punitive approach consistent with local customs, traditions, and cultures.<sup>138</sup> Social relationships in Cambodia are hierarchal and the majority of Cambodians favor feudal or paternalistic local government.<sup>139</sup> While principles of fairness are interpreted differently, it is important to note that patron-client relationships are less about power and more about nuanced reciprocity.<sup>140</sup> This is why Western conceptualization of justice and civil society often have “low relevance and applicability to Cambodia.”<sup>141</sup> Additionally,

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<sup>132</sup> Legal Aid at the Court of Appeal in Cambodia, *supra* note 37. Additionally, another issue with only having paper copies is that court clerks will often ask for bribes in order to retrieve documents for lawyers.

<sup>133</sup> See generally Rodriguez, *supra* note 40.

<sup>134</sup> Verstraeten, *supra* note 90, at 30.

<sup>135</sup> Krys, *supra* note 128.

<sup>136</sup> Handley, *supra* note 100.

<sup>137</sup> See generally Rodriguez, *supra* note 40. See generally Hul Reaksmey, *NGO Law Having Negative Impact on Freedoms of Assembly and Political Participation: Community Group*, VOA CAMBODIA (Apr. 4, 2018) <https://www.voacambodia.com/a/ngo-law-having-negative-impact-on-freedom-of-assembly-and-political-participation-community-group/4332115.html>.

<sup>138</sup> Verstraeten, *supra* note 99, at 42.

<sup>139</sup> “Fifty-six percent of Cambodians said that local government ‘is like a father and the people like a child.’” People expect for government to operate as a mutual assistance scheme, like children obey their parents and parents care for their children. Tara Urs, *Voices from Cambodia: Imagining locally-motivated accountability for mass atrocities*, SUR (Jan. 2007), <http://www.conectas.org/en/actions/sur-journal/issue/7/1000062-vozes-do-camboja-formas-locais-de-responsabilizacao-por-atrocidades-sistematicas>. See also Dr. Judy Ledgerwood, *Understanding Cambodia: Social Hierarchy, Patron-Client Relationships and Power*, N. ILL. U., <http://www.seasite.niu.edu/khmer/ledgerwood/patrons.htm>.

<sup>140</sup> Dr. Ledgerwood, *supra* note 139.

<sup>141</sup> Louise Coventry, *‘It’s Complicated’: Cambodia’s NGOs and International Donors*, IAPS DIALOGUE (Aug. 7, 2017), <https://iapsdialogue.org/2017/08/07/its-complicated-relationships-between-cambodian-ngos-and-international-donors>.

Cambodian culture tends to avoid confrontation because it is essential to never “lose face.”<sup>142</sup> Those who come into contact with the law often “lose their reputation,” which can lead them to “change their identity and even residence,” says Sowell Chan, who is a law student at the Royal University of Law and Economics (RULE).<sup>143</sup> Parental expectations of their children are very high and can often place a great deal of stress on children. Sok Sambath Pichny, another law student at RULE, echoed her mother’s words that, “millions of eyes are watching and the reputation of the whole family is in [her] hands.”<sup>144</sup> Since a child’s actions reflect their parents’ values, “many parents always expect their child to be perfect and live under much pressure,” and find it near impossible to forgive a child who has “broken” the law.<sup>145</sup>

Moreover, patron-client relations are also essential to understanding Khmer culture. Since “Khmer Buddhism...arises from an agrarian society that places a high value on patron-client relationships and harmony as well as strong disincentive to challenge the social order,”<sup>146</sup> it is integral to everyday interactions. It is a about nuanced reciprocity where the patron uses their power to assist clients and the clients provide their loyalty and services.<sup>147</sup> Additionally, dispute resolution is usually left to more traditional means rather than a formalized state mechanism in most provinces.<sup>148</sup>

Peacekeeping and crime prevention are not usually externalized as activities of agencies such as the police, but remain, at least in rural areas, in the domain of village and commune chiefs...and [are] based on...long standing practices of mediation and reparation. Only the most serious criminal matters gravitate to district and provincial centers, and therefore, to outside scrutiny.<sup>149</sup>

Tha Zanarith, a law student at RULE, believes that “the tradition in Cambodia creates a wide gap that separates Cambodia from other countries... Cambodia should enforce laws in a different way from other countries” due to these cultural and societal differences.<sup>150</sup> It is important for outside organizations, including NGOs and international assistance, to understand that a Western-style judicial system may struggle in a society that values patron-client relationships and collectivity rather than individualism.

While restorative justice aligns with Buddhist values about collective responsibility, acceptance, and healing, it also differs in various ways. For example, many restorative practices include the “accept[ance of] the expression of anger by victims”, this expression being almost

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For example, Western traditions value an impartial adjudicator while Cambodians often seek out mediators who are familiar with the community and disputants. Bloomfield, *infra* note 146, at 51.

<sup>142</sup> COMMUNICAID, Country: Cambodia, <https://www.communicaid.com/country/cambodia>.

<sup>143</sup> See generally Rodriguez, *supra* note 40.

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> David Bloomfield et al., *Reconciliation After Violent Conflict A Handbook* 51 (2003), <https://www.idea.int/publications/catalogue/reconciliation-after-violent-conflict-handbook>.

<sup>147</sup> Dr. Ledgerwood, *supra* note 139.

<sup>148</sup> AUSAID, *Cambodia Case Study: Evaluation of Australia law and justice assistance* (Dec. 2012), <https://www.oecd.org/countries/cambodia/cambodia.pdf> [hereinafter *Cambodia Case Study*].

<sup>149</sup> *Id.*; Rod Broadhurst & Thierry Bouhours, *Policing in Cambodia: legitimacy in the making?*, 19 POLICING & SOC’Y 174, 175 (2009).

<sup>150</sup> See generally Rodriguez, *supra* note 40.

necessary for healing in a trauma framework.<sup>151</sup> Theravada Buddhism acknowledges that while people will be angry, you are discouraged from expressing it and in fact, the restraint of anger is prioritized.<sup>152</sup> If diversion plans that include restorative justice are put into place, then proper incorporation of these principles must be included in order to have a long-term positive impact on juvenile justice. There must be further research and implementation of these principles in rule of law structures to ensure the full participation of the Cambodian people and perhaps longevity in constructive rule of law.

## V. CONCLUSION

It is clear that children in Cambodia are vulnerable to violations of their fundamental rights especially as the rates of detention increase while international funding for legal aid organizations diminishes.<sup>153</sup> Cambodia must provide protection to children at each stage of the legal process based on a system that promotes equal justice and the rule of law. Unnecessarily holding juveniles in detention is abusive and counterproductive, resulting in punitive practices that violate the fundamental rights of children. Future plans for juvenile justice must include construction of separate juvenile courts and prisons, as well as mechanisms for implementing diversion plans. There should be training for police officers, legal and social justice professionals, prison guards, and all other stakeholders in working on cases with juveniles. Mechanisms to enforce accountability must be made a priority as well as non-custodial alternatives that provide a safe environment for juveniles. Lastly, the adoption of a Buddhist lens and an incorporative attitude toward patron-client relations are essential in constructing a rule of law that complements Cambodia. The international community has been trying to promote a Western-style rule of law system in Cambodia since the early 1990s with slow progress. We must work with these deeply ingrained cultural norms instead of against them in order to truly protect the rights of Cambodia's children.

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<sup>151</sup> Pen Khék Chear, *Restorative Justice in the Cambodian Community: Challenges and Possibilities in Practice*, BOS. U. SCH. OF SOC. WORK (May 2011), <http://restorativejustice.org/10fulltext/Pen%20Khek%20Chear%20-%20Restorative%20Justice%20in%20the%20Cambodian%20Community.pdf>.

<sup>152</sup> *Id.*

<sup>153</sup> *See generally* footnotes 46, 49, 52, and 58.