

# **ACCESS TO JUSTICE FOR CHILDREN: CAMBODIA**

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## **I. What is the legal status of the Convention on the Rights of the Child (CRC)?**

### **A. What is the status of the CRC and other relevant ratified international instruments in the national legal system?**

The Constitution of the Kingdom of Cambodia 1993 (the “Constitution”) does not explicitly determine the status and authority of international treaties.<sup>1</sup> However, it requires the state to recognise and respect the rights stipulated in human rights conventions, including the CRC. Article 31 of the Constitution states that “the Kingdom of Cambodia recognises and respects human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights, women’s and children’s rights.”<sup>2</sup> Moreover, Article 48 states that “the State protects the rights of the children as stipulated in the Convention on Children, [in] particular, the right to life, education, protection during wartime, and from economic or sexual exploitation. The State protects children from acts that are injurious to their education opportunities, health, and welfare.”<sup>3</sup> Furthermore, the King is considered to be the “guarantor of international treaties<sup>4</sup>.”

The National Assembly approves treaties and international conventions<sup>5</sup> and the King signs and ratifies them after a vote of approval<sup>6</sup>. Academics consider this fact as an indication that treaties are granted the same authority as written national law adopted by the Assembly<sup>7</sup>.

### **B. Does the CRC take precedence over national law?**

The CRC does not take precedence over national law. However, according to case law national law must be interpreted in a way that is consistent with both the Constitution and international human rights treaties, including the CRC.<sup>8</sup>

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<sup>1</sup> Comments on this report provided by Legal Aid of Cambodia (LAC) and the Cambodian Defenders Project (CDP), September 2015.

<sup>2</sup> The Constitution of the Kingdom of Cambodia 1993, Article 31. Available at: <http://www.asianlii.org/kh/legis/const/1993/1.html#A031>

<sup>3</sup> The Constitution, Article 48.

<sup>4</sup> The Constitution, Article 8.

<sup>5</sup> The Constitution, Article 90.

<sup>6</sup> The Constitution, Article 26.

<sup>7</sup> Kuong Teilee, *Cambodian Constitutional Provisions on Treaties: A Story of Constitutional Evolution Beyond Rhetoric*, Cambodian Yearbook on Comparative Legal Studies, 2010, Vol. 1, p. 7. Available at: [http://www.harvard-yenching.org/sites/harvard-yenching.org/files/HYI\\_-\\_KUONG\\_Teilee\\_Cambodian\\_Constitutional\\_Provisions\\_on\\_Treaties.pdf](http://www.harvard-yenching.org/sites/harvard-yenching.org/files/HYI_-_KUONG_Teilee_Cambodian_Constitutional_Provisions_on_Treaties.pdf)

<sup>8</sup> Decision No. 092/003/2007 dated 10 July 2007, Cambodian Constitutional Council. Available at:

C. Has the CRC been incorporated into national law?

The CRC has not been directly incorporated into national law. The rights of the child are recognised by certain subject-specific implementing legislation (e.g. The Law on Inter-Country Adoption, the Law on Education, the Law on the Prevention of Domestic Violence and Protection of the Victims, etc).<sup>9</sup>

D. Can the CRC be directly enforced in the courts?

The CRC is not directly enforceable in domestic courts.<sup>10</sup> However, as the CRC is listed in Article 31 of the Constitution, a violation of the CRC amounts to a violation of the Constitution (see part III.A below).

E. Are there examples of domestic courts using or applying the CRC or other relevant international instruments?

The provisions of the CRC are rarely invoked or directly enforced by tribunals, courts and administrative authorities.<sup>11</sup> The Cambodian Constitutional Council discussed the CRC in its 2007 decision on a civil society petition challenging the Law on Aggravating Circumstances for Felonies and ruled that the law must be applied in accordance with the CRC.<sup>12</sup> The court concluded that, although the Law on Aggravating Circumstances for Felonies allowed for high custodial sentences for minors that conflicted with the CRC, it could not have been the intent of the legislature to violate the CRC.<sup>13</sup>

**II. What is the legal status of the child?**

A. Can children and/or their representatives bring cases in domestic courts to challenge violations of children's rights?

The Constitution guarantees the right to denounce, make complaints, or file claims against any breach of the law by the State and social organs or by members of such organs committed during the course of their duties.<sup>14</sup> Moreover, all persons have the right to access court in order to solve civil disputes.<sup>15</sup> Furthermore, any person who claims to be a victim of an offence

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<http://www.crin.org/Law/instrument.asp?InstID=1456>

<sup>9</sup> UN Committee on the Rights of the Child, *Concluding observations on the combined second and third periodic report of Cambodia*, CRC/C/KHM/2-3, 20 June 2011. Available at:

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fKHM%2fCO%2f2&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fKHM%2fCO%2f2&Lang=en).

<sup>10</sup> Decision No. 092/003/2007 dated 10 July 2007, Cambodian Constitutional Council.

<sup>11</sup> UN Committee on the Rights of the Child, para. 8.

<sup>12</sup> Decision No. 092/003/2007 dated 10 July 2007, Cambodian Constitutional Council.

<sup>13</sup> Decision No. 092/003/2007 dated 10 July 2007, Cambodian Constitutional Council.

<sup>14</sup> The Constitution, Article 39.

<sup>15</sup> All references to the Code of Civil Procedure are to the Draft of the Code of Civil Procedure of Cambodia, Tentative English Translation (5 November 2003). The original in Khmer was submitted to the Council of Ministers in June 2003. The Code of Civil Procedure, Article 2. Available at:

[http://hthcambodia.com/law/Civil/code\\_of\\_civil\\_procedures-Eng.pdf](http://hthcambodia.com/law/Civil/code_of_civil_procedures-Eng.pdf)

can file a complaint.<sup>16</sup> Perpetrators of child rights violations may be prosecuted in criminal court, although prosecutions for human rights violations are rare.

**B. If so, are children of any age permitted to bring these cases by themselves in their own names/on their own behalf, or must the case be brought by or with the assistance of a representative?**

Children may only bring cases with the assistance of a legal representative. Minors do not have the capacity to litigate independently without a legal representative.<sup>17</sup> Minors in criminal proceedings may be represented by parents/guardians,<sup>18</sup> or an orphanage centre or provincial Department of Social Affairs, Veterans and Youth Rehabilitation (DoSAVY) if he/she has no guardian or parent in practice.

A plaintiff who intends to conduct litigation against a person who lacks the capacity to litigate and has no legal representative may request that the court appoint a special representative. The plaintiff must make a preliminary showing that damage may occur as a result of a delay during the time that the defendant does not have a legal representative.<sup>19</sup>

In general, competent parties, including minors with legal representatives, may represent themselves in litigation or appoint themselves a representative.<sup>20</sup> An appointed representative must be an attorney, except if (1) the representative is permitted by other laws to conduct litigation; (2) the state, the executive department, or a state entity is a party, in which case that entity may designate an employee to act as representative; or (3) the court approves a third party who is not an attorney to act as representative and the subject-matter of the action is valued at less than one million riels.<sup>21</sup>

**C. In the case of infants and young children, how would cases typically be brought?**

The law defines “minors” as all persons under the age of eighteen.<sup>22</sup> The law does not have specific provisions for young children or infants with regard to bringing suits.

**D. Would children or their representatives be eligible to receive free or subsidised legal assistance in bringing these kinds of cases?**

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<sup>16</sup> All references to the Code of Criminal Procedure are to the Code of Criminal Procedure of the Kingdom of Cambodia, English Translation (September 2008). The original in Khmer was adopted by the National Assembly on June 7th, 2007. The Code of Criminal Procedure, Article 6. Available at: [www.oecd.org/site/adboecdanti-corruptioninitiative/46814242.pdf](http://www.oecd.org/site/adboecdanti-corruptioninitiative/46814242.pdf)

<sup>17</sup> The Code of Civil Procedure, Article 32.

<sup>18</sup> Criminal Procedure Code, Article 366.

<sup>19</sup> The Code of Civil Procedure, Article 36.

<sup>20</sup> The Code of Civil Procedure, Article 52.

<sup>21</sup> The Code of Civil Procedure, Article 53.

<sup>22</sup> The Civil Code, Article 17.

An accused minor shall have a lawyer at all times. If the accused minor does not choose a lawyer, a lawyer shall be appointed according to the conditions of the Law on the Statute of Lawyers<sup>23</sup>.

In practice, however, legal aid is not used often, and there have been cases where minors have been convicted without legal assistance.<sup>24</sup>

See Section IV.B below.

- E. Are there any other conditions or limits on children or chosen legal representatives bringing cases (e.g., would a child's parents or guardian have to agree to a case being brought)?

There are no conditions requiring a child's parents or guardian to agree to a case being brought in the Civil Code or Code of Civil Procedure.

### **III. How can children's rights violations be challenged before national courts?**

- A. If there is a potential violation of the Constitution or other principles established in domestic law, or with the CRC or other relevant ratified international/regional instruments, how can a legal challenge be brought?

As international conventions are recognised and respected under the Constitution<sup>25</sup>, a violation of the CRC can be considered as a violation of the Constitution. According to Article 122 of the Constitution, "after the law is promulgated, the King, Prime Minister, the President of the Assembly, 1/10 of the assembly members, or the courts, may ask the Constitutional Council to examine the constitutionality of that law."<sup>26</sup> Citizens have a right to appeal against the constitutionality of the laws through their representatives or the President of the Assembly.<sup>27</sup>

Alternatively, a citizen, who is a party to a legal proceeding, may bring challenges, known as interlocutory questions, to the constitutionality of laws, royal decrees, sub-decrees and other administrative decisions.<sup>28</sup> Citizen parties to litigation may complain to the court of first instance, which should then submit the complaint to the Supreme Court.<sup>29</sup> If the Supreme Court finds the complaint to be valid, it will in turn submit the complaint to the Constitutional Council.<sup>30</sup> The court of first instance will suspend its hearing on the matter until the Constitutional Council answers the interlocutory question.<sup>31</sup>

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<sup>23</sup> The Code of Criminal Procedure, Article 143.

<sup>24</sup> <http://www.phnompenhpost.com/national/juveniles-denied-right-lawyers>.

<sup>25</sup> The Constitution, Article 31.

<sup>26</sup> The Constitution, Article 122.

<sup>27</sup> The Constitution, Article 122.

<sup>28</sup> [http://www.ccc.gov.kh/whatisccc\\_en.php](http://www.ccc.gov.kh/whatisccc_en.php).

<sup>29</sup> [http://www.ccc.gov.kh/whatisccc\\_en.php](http://www.ccc.gov.kh/whatisccc_en.php).

<sup>30</sup> [http://www.ccc.gov.kh/whatisccc\\_en.php](http://www.ccc.gov.kh/whatisccc_en.php).

<sup>31</sup> [http://www.ccc.gov.kh/whatisccc\\_en.php](http://www.ccc.gov.kh/whatisccc_en.php).

The Code of Criminal Procedure states that the victim of an offense may bring a civil action. In order for a victim to be compensated for an injury, (1) the injury must be a direct consequence of an offense; (2) the injury must result in personal damage (either damage to property or physical or psychological damage); and (3) the injury must have occurred and exist at the present time.<sup>32</sup> If the victim is a minor or an adult under legal guardianship, a civil action can be filed on behalf of the victim by a legal representative.<sup>33</sup> In the case of the death of the victim, a civil action may be brought or continued by a successor.<sup>34</sup>

B. What powers would courts have to review these violations, and what remedies could they offer?

The Constitutional Council has “the duty to safeguard respect for the Constitution and to interpret the Constitution and the laws passed by the Assembly.”<sup>35</sup> Provisions of any article ruled by the Council as unconstitutional may not be promulgated or implemented.<sup>36</sup> Decisions of the Council are final.<sup>37</sup>

Furthermore, in civil actions courts finding violations of a party’s rights may award remedies. Remedies include compensatory damages or restitution (“PADITIAN”).<sup>38</sup> Damages must be proportionate to the injury suffered.<sup>39</sup>

C. Would such a challenge have to directly involve one or more individual child victims, or is it possible to challenge a law or action without naming a specific victim?

It does not appear possible to challenge a law or action without naming victims.

D. Is any form of collective action or group litigation possible, with or without naming individual victims?

Litigation may be brought jointly. Multiple people may sue or be sued as joint litigants under any of the following circumstances: (1) they share common rights or obligations comprising the subject-matter of the action; (2) the rights or obligations comprising the subject-matter of the action arise out of the same grounds in fact and law; or (3) the rights or obligations comprising the subject-matter of the action are of the same type and are based on the grounds in fact and law.<sup>40</sup> In ordinary joint litigation, acts of

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<sup>32</sup> The Code of Criminal Procedure, Article 13.

<sup>33</sup> The Code of Criminal Procedure, Article 15.

<sup>34</sup> The Code of Criminal Procedure, Article 16.

<sup>35</sup> The Constitution, Article 117.

<sup>36</sup> The Constitution, Article 123.

<sup>37</sup> The Constitution, Article 123.

<sup>38</sup> Code of Criminal Procedure, Article 14.

<sup>39</sup> Ibid.

<sup>40</sup> The Code of Civil Procedure, Article 39.

litigation conducted by one joint litigant have no effect on the other joint litigants.<sup>41</sup> In compulsory joint litigation, acts of litigation conducted by one joint litigant, where the rights or obligations comprising the subject-matter of the action are determined jointly for all joint litigants, will affect all joint litigants.<sup>42</sup> Multiple people with a common interest may nominate one or several people to serve as the plaintiff or defendant on their behalf.<sup>43</sup>

E. Are non-governmental organisations permitted to file challenges to potential children's rights violations or to intervene in cases that have already been filed?

Third parties are generally allowed to intervene in a case. A third party with a legal interest in the outcome of litigation may participate to assist a party to that litigation.<sup>44</sup> To apply to intervene, the third party must state to the court which party it seeks to assist and the reasons for intervention.<sup>45</sup> The procedure for intervention and the rights of an assisting litigator are determined by the Code of Civil Procedure<sup>46</sup>.

The law allows certain “associations” formed with the purpose of protecting human rights to act as the plaintiff in civil cases on behalf of victims. An association that made a valid declaration that it is concerned with the “struggle against sexual violence or domestic violence or violence against children” is entitled to be a plaintiff in any of the following civil actions: (1) intentional threat against life; (2) harassment against personal integrity; or (3) sexual harassment.<sup>47</sup>

An association that made a similar valid declaration that it is concerned with the “struggle against kidnapping, trafficking of persons or commercial sexual exploitation” is entitled to be a plaintiff in a civil action under the Law on the Suppression of Kidnapping, Human Trafficking and Commercial Sexual Exploitation.<sup>48</sup>

An association that made a similar valid declaration that it is concerned with the “struggle against racial discrimination and supports the rights or victims of discrimination based on national origin, ethnicity, race, or religion” is entitled to be a plaintiff in a civil action for the following offenses: (1) discrimination; (2) intentional threat against life or personal integrity; or (3) “destruction or damaging.”<sup>49</sup> The offense must have been committed because the victim is or was presumed to be of a particular national origin, ethnicity, race, or religion.<sup>50</sup>

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<sup>41</sup> The Code of Civil Procedure, Article 40.

<sup>42</sup> The Code of Civil Procedure, Article 41.

<sup>43</sup> The Code of Civil Procedure, Article 42.

<sup>44</sup> The Code of Civil Procedure, Article 43.

<sup>45</sup> The Code of Civil Procedure, Article 44.

<sup>46</sup> The Code of Civil Procedure, Articles 45-49.

<sup>47</sup> The Code of Criminal Procedure, Article 17.

<sup>48</sup> The Code of Criminal Procedure, Article 18.

<sup>49</sup> The Code of Criminal Procedure, Article 19.

<sup>50</sup> The Code of Criminal Procedure, Article 19.

In the above cases, an association's complaint will be admissible only if the victim or his legal representative agreed to the action.<sup>51</sup> In the case of a "threat on someone's life," the association's complaint will be admissible only if it can be shown by certified evidence that the action was agreed to by the victim's successor (which assumes that the victim was actually killed in the offense).<sup>52</sup>

See, however, part V below for the recent restrictions imposed on associations and NGOs.

**IV. Practical considerations.** Please detail some of the practical issues, risks and uncertainties that might be involved in bringing a case to challenge a violation of children's rights, such as:

A. Venue. In what courts could a case be filed (e.g., civil, criminal, administrative, etc.)? What would the initial filing process entail?

A constitutional challenge may be brought in the Constitutional Council (see part III.A above).

The filing process and procedural rules for civil actions are set out in the Code of Civil Procedure<sup>53</sup>.

B. Legal aid / Court costs. Under what conditions would free or subsidised legal aid be available to child complainants or their representatives through the court system (i.e., would the case have to present an important legal question or demonstrate a likelihood of success)? Would child complainants or their representatives be expected to pay court costs or cover other expenses?

Parties in civil actions are responsible for court costs.<sup>54</sup> A filing fee is determined based on the value of the subject-matter of the action.<sup>55</sup> The parties are also responsible for "other court costs." Litigation costs are owed by the losing party or by the prevailing party if that party performed unnecessary acts of litigation or delayed the proceedings.<sup>56</sup> Furthermore, when a legal representative, appointed representative, or court clerk intentionally or by gross negligence causes unnecessary costs, the court may order that person to pay the costs.<sup>57</sup>

The Code of Civil Procedure provides for a form of "aid in litigation," known as *in forma pauperis*. The court may order *in forma pauperis* if a person does not have the means to pay the costs necessary for the preparation and maintenance of an action or if a person will face extreme

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<sup>51</sup> The Code of Criminal Procedure, Article 20.

<sup>52</sup> The Code of Criminal Procedure, Article 20.

<sup>53</sup> The Code of Civil Procedure, Book Two Proceedings at the Court of First Instance.

<sup>54</sup> The Code of Civil Procedure, Article 59.

<sup>55</sup> The Code of Civil Procedure, Article 61.

<sup>56</sup> The Code of Civil Procedure, Article 64.

<sup>57</sup> The Code of Civil Procedure, Article 64.

hardship by paying such costs.<sup>58</sup> Aid will be either a deferral of payment or an exemption from payment.<sup>59</sup> An *in forma pauperis* motion will be denied if the requesting person clearly has no prospect of prevailing in the action.<sup>60</sup> The requesting person must establish the grounds for *in forma pauperis* in a preliminary showing and the court will rule whether or not aid will be granted.<sup>61</sup>

In criminal actions the court fees shall be the responsibility of the state<sup>62</sup>. Each convicted person shall pay all procedural taxes to the state<sup>63</sup>.

- C. Pro bono / Financing. If legal aid is not available, would it be possible for child complainants or their representatives to obtain legal assistance from practising lawyers on a pro bono basis, through a children's rights organisation, or under an agreement that does not require the payment of legal fees up front?

Legal Aid of Cambodia (LAC) is an NGO that provides free legal services to Cambodia's poor.<sup>64</sup> It currently has the following locations in Cambodia: Phnom Penh (headquarters), Battambang, Siem Reap, Banteay Meanchey, Kampong Cham, Kampong Thom, Pailin, Preyveng, Svay Rieng and Khmoung Khmoum provinces.<sup>65</sup> It has a General Legal Aid program that supports the Khmer Rouge Tribunal (Cambodia's war crimes tribunal) and provides legal services to poor Cambodians.<sup>66</sup> LAC also has a specialised program on the wellbeing of children.<sup>67</sup>

Legal Support for Children and Women is an NGO based in Phnom Penh that provides free legal advice to women and children victims of crime and victims of human trafficking in Cambodia.<sup>68</sup>

In practice, the legal aid NGOs are struggling. At a provincial level, there is no legal aid provided by NGOs, unless the case is high profile. Cambodian Defenders Project (CDP) currently has no lawyers on active duty, Cambodia International Bridges to Justice's (IBJ) funding situation is uncertain as of November, and LAC also has less and less lawyers.<sup>69</sup> There is a Cambodian Bar Association (BAKC) but it does not provide a lot of funding or legal aid.

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<sup>58</sup> The Code of Civil Procedure, Article 69.

<sup>59</sup> The Code of Civil Procedure, Article 70.

<sup>60</sup> The Code of Civil Procedure, Article 69.

<sup>61</sup> The Code of Civil Procedure, Article 69.

<sup>62</sup> The Code of Criminal Procedure, Article 553.

<sup>63</sup> The Code of Criminal Procedure, Article 554.

<sup>64</sup> <http://lac.org.kh/en/>.

<sup>65</sup> <http://lac.org.kh/en/>.

<sup>66</sup> <http://lac.org.kh/en/>.

<sup>67</sup> <http://lac.org.kh/en/>.

<sup>68</sup> <http://www.lscw.org/>.

<sup>69</sup> For numbers and locations of legal aid lawyers in Cambodia, see [http://cambodia.ohchr.org/WebDOCs/DocProgrammes/Number\\_and\\_location\\_of\\_legal\\_aid\\_lawyers\\_in\\_Cambodia.pdf](http://cambodia.ohchr.org/WebDOCs/DocProgrammes/Number_and_location_of_legal_aid_lawyers_in_Cambodia.pdf).



- D. Timing. How soon after a violation would a case have to be brought? Are there any special provisions that allow young adults to bring cases about violations of their rights that occurred when they were children?

The statute of limitation for civil actions is five years.<sup>70</sup> When civil and criminal actions are brought concurrently, the civil action cannot be brought before a criminal court after the statute of limitations of the criminal action has expired.<sup>71</sup> The statute of limitations for criminal claims is set forth in the Code of Criminal Procedure. The limitations are 15 years for a felony offense, five years for a misdemeanor, and one year for a petty offense.<sup>72</sup> A crime of genocide, a crime against humanity and war crime has no statute of limitations.<sup>73</sup>

- E. Evidence. What sort of evidence is admissible/required to prove a violation? Are there particular rules, procedures or practices for dealing with evidence that is produced or presented by children?

The court may consider all matters and circumstances that are revealed at oral argument.<sup>74</sup> When a party offers evidence, it must specify which fact the evidence supports and make efforts to show the relevance of the evidence<sup>75</sup>. Parties do not need to prove admitted facts or facts that are obvious.<sup>76</sup> Evidence may be offered at preparatory proceedings before oral argument or earlier.<sup>77</sup> Evidence is examined on the first day of oral argument; any evidentiary documents must be submitted to the court a reasonable time before the start of the examination unless such evidence will be used to challenge the credibility of witnesses, etc.<sup>78</sup> Parties are entitled to attend the examination.<sup>79</sup> Evidence may also be examined in a foreign country. Foreign examination of evidence is carried out by a government officer in the country, an ambassador, ministerial envoy, or consul of the Kingdom of Cambodia.<sup>80</sup> Foreign examination of evidence is valid if it conforms to the Code of Civil Procedure, regardless of whether or not it conforms to the evidence laws of the foreign country.<sup>81</sup>

According to the Code of Civil Procedure if the witness to be examined is under sixteen years of age or does not understand the meaning of an oath, an oath shall not be administered.<sup>82</sup>

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<sup>70</sup> The Code of Civil Procedure, Article 482.

<sup>71</sup> The Code of Criminal Procedure, Article 26.

<sup>72</sup> The Code of Criminal Procedure, Article 10.

<sup>73</sup> The Code of Criminal Procedure, Article 9.

<sup>74</sup> The Code of Civil Procedure, Article 123.

<sup>75</sup> The Code of Civil Procedure, Article 125.

<sup>76</sup> The Code of Civil Procedure, Article 123.

<sup>77</sup> The Code of Civil Procedure, Article 125.

<sup>78</sup> The Code of Civil Procedure, Article 127.

<sup>79</sup> The Code of Civil Procedure, Article 128.

<sup>80</sup> The Code of Civil Procedure, Article 129.

<sup>81</sup> The Code of Civil Procedure, Article 129.

<sup>82</sup> The Code of Civil Procedure, Article 137

The Extraordinary Chambers in the Court of Cambodia (ECCC) has strong witness and victim protection, so the court can use fake names for witnesses/victims if it seems necessary to conceal their identity.<sup>83</sup>

**F. Resolution.** How long might it take to get a decision from the court as to whether there has been a violation?

The Code of Civil Procedure states that the court must set a preparatory hearing date within thirty days after the plaintiff files the complaint, unless there is a special justification for a later date.<sup>84</sup> The Code also states that, “a pronouncement of judgment shall be made within one month of the date on which oral argument is concluded.”<sup>85</sup> The Code makes an exception when the “case is complex or where certain special circumstances exist.”<sup>86</sup> A judgment becomes final at the expiration of the period in which an appeal or a petition to set aside the judgment may be filed.<sup>87</sup>

**G. Appeal.** What are the possibilities for appealing a decision to a higher court?

The Code of Civil Procedure lists three types of appeals that may be made to a higher court. An Uttor appeal may be made against a judgment issued by a court of first instance.<sup>88</sup> A Satuk appeal may be made against a judgment issued by an Uttor appellate court.<sup>89</sup> A Chomtoah appeal may be made against a ruling.<sup>90</sup>

An Uttor appeal may be made against the judgment of a court of first instance; an appellate court hears the Uttor appeal.<sup>91</sup> An Uttor appeal can be made only by the party who lost the first trial.<sup>92</sup> An Uttor appeal is unavailable if the parties agreed not to make an Uttor appeal and agreed in writing to reserve the right to make a Satuk appeal, or if a final judgment was entered in a civil or commercial case not exceeding 5,000,000 riels.<sup>93</sup> The Uttor appeal must be filed within one month of receipt of a written judgment or a ruling denying a motion to set aside a judgment.<sup>94</sup> The Uttor appeal must be made with the original court; it should identify the parties, indicate the judgment of the court of first instance, and include a statement that an Uttor appeal is being filed with regard to the judgment.<sup>95</sup>

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<sup>83</sup> See <http://www.eccc.gov.kh/en/blog/topic/1276>.

<sup>84</sup> The Code of Civil Procedure, Article 80.

<sup>85</sup> The Code of Civil Procedure, Article 187.

<sup>86</sup> The Code of Civil Procedure, Article 187.

<sup>87</sup> The Code of Civil Procedure, Article 193.

<sup>88</sup> The Code of Civil Procedure, Article 259.

<sup>89</sup> The Code of Civil Procedure, Article 259.

<sup>90</sup> The Code of Civil Procedure, Article 259.

<sup>91</sup> [http://www.kas.de/wf/doc/kas\\_31083-1522-1-30.pdf?120720080927](http://www.kas.de/wf/doc/kas_31083-1522-1-30.pdf?120720080927).

<sup>92</sup> [http://www.kas.de/wf/doc/kas\\_31083-1522-1-30.pdf?120720080927](http://www.kas.de/wf/doc/kas_31083-1522-1-30.pdf?120720080927).

<sup>93</sup> The Code of Civil Procedure, Article 260.

<sup>94</sup> The Code of Civil Procedure, Article 264;  
[http://www.kas.de/wf/doc/kas\\_31083-1522-1-30.pdf?120720080927](http://www.kas.de/wf/doc/kas_31083-1522-1-30.pdf?120720080927).

<sup>95</sup> The Code of Civil Procedure, Article 265;  
[http://www.kas.de/wf/doc/kas\\_31083-1522-1-30.pdf?120720080927](http://www.kas.de/wf/doc/kas_31083-1522-1-30.pdf?120720080927).

A Satuk appeal may be made against the final judgment of the Uttor appellate court. The Satuk appellate court (Supreme Court) has jurisdiction over the Satuk appeal, called “the final trial.”<sup>96</sup> The purposes of the Satuk appeal are to protect parties from unfair trials and to achieve a common law interpretation, thus, only violations of the constitution, laws or ordinances may be the basis for the Satuk appeal and not the damages determined by the Uttor judgment.<sup>97</sup> A Satuk appeal may be made to the Supreme Court either against a final Uttor decision or against a final judgment of the court of first instance in which both parties reserved the right to make a Satuk appeal.<sup>98</sup> A Satuk appeal may always be made if (1) the trial or appellate court was not composed according to law; (2) a prohibited judge unlawfully participated in the judgment; (3) the jurisdiction was unlawful; (4) some defect existed with respect to the authority of the legal or appointed representative; (5) provisions related to public access of oral argument were violated; or (6) the judgment did not provide the grounds for the decision or the grounds provided were inconsistent.<sup>99</sup> The procedure for filing a Satuk appeal is the same as filing an Uttor appeal.<sup>100</sup> The Supreme Court reviews the judgment on the grounds raised by the Satuk appeal and will either reverse and amend the decision or remand it back to the court of first instance.

A Chomtoah appeal is an independent process of filing an appeal to the higher courts against a court ruling on a motion, as opposed to a judgment.<sup>101</sup> Rulings that may be challenged are provided for by law, for instance, a ruling dismissing a complaint when the plaintiff did not cure defects is one such ruling.<sup>102</sup> However, a ruling on a Chomtoah appeal cannot later be appealed by another Chomtoah.<sup>103</sup> The procedure of filing a Chomtoah appeal is the same as filing an Uttor or Satuk appeal.<sup>104</sup>

H. Impact. What are the potential short-term and long-term impacts of a negative decision? Is there a possibility for political backlash or repercussions from a positive decision?

See part IV.I below.

I. Follow up. What other concerns or challenges might be anticipated in enforcing a positive decision?

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<sup>96</sup> [http://www.kas.de/wf/doc/kas\\_31083-1522-1-30.pdf?120720080927](http://www.kas.de/wf/doc/kas_31083-1522-1-30.pdf?120720080927).

<sup>97</sup> The Code of Civil Procedure, Article 284;  
[http://www.kas.de/wf/doc/kas\\_31083-1522-1-30.pdf?120720080927](http://www.kas.de/wf/doc/kas_31083-1522-1-30.pdf?120720080927).

<sup>98</sup> The Code of Civil Procedure, Article 286;  
[http://www.kas.de/wf/doc/kas\\_31083-1522-1-30.pdf?120720080927](http://www.kas.de/wf/doc/kas_31083-1522-1-30.pdf?120720080927).

<sup>99</sup> The Code of Civil Procedure, Article 285.

<sup>100</sup> The Code of Civil Procedure, Article 286.

<sup>101</sup> [http://www.kas.de/wf/doc/kas\\_31083-1522-1-30.pdf?120720080927](http://www.kas.de/wf/doc/kas_31083-1522-1-30.pdf?120720080927).

<sup>102</sup> [http://www.kas.de/wf/doc/kas\\_31083-1522-1-30.pdf?120720080927](http://www.kas.de/wf/doc/kas_31083-1522-1-30.pdf?120720080927).

<sup>103</sup> The Code of Civil Procedure, Article 259;  
[http://www.kas.de/wf/doc/kas\\_31083-1522-1-30.pdf?120720080927](http://www.kas.de/wf/doc/kas_31083-1522-1-30.pdf?120720080927).

<sup>104</sup> The Code of Civil Procedure, Article 304;  
[http://www.kas.de/wf/doc/kas\\_31083-1522-1-30.pdf?120720080927](http://www.kas.de/wf/doc/kas_31083-1522-1-30.pdf?120720080927).

The Cambodian government is hostile to human rights advocates (see part V below). As such, the government may not seek to enforce a positive decision protecting human rights.

Moreover, according to a 2015 report by Freedom House, the “judiciary is marred by inefficiency, corruption, and a lack of independence. There is a severe shortage of lawyers, and the system’s poorly trained judges are subject to political pressure from the CPP”.<sup>105</sup>

**V. Additional factors.** Please list any other national laws, policies or practices you believe would be relevant to consider when contemplating legal action to challenge a violation of children's rights.

Human rights advocates in Cambodia face serious threats. According to the Cambodian Center for Human Rights, Cambodia is more dangerous for human rights defenders now than in recent years.<sup>106</sup> The centre reports that the Cambodian government engages in strategies to silence human rights defenders including physical violence, arrests without charges, and legal and judicial harassment.<sup>107</sup> Those targeted include people defending land and housing rights, trade unions, members of opposition political groups, human rights lawyers, and the local NGO community.<sup>108</sup>

The Cambodian government is increasingly applying pressure and intimidation to certain NGOs.<sup>109</sup> In 2015 the Law on Associations and NGOs was passed by the government and signed into law by the King.<sup>110</sup> The law mandates registration for all NGOs and associations (although such organisations are not clearly defined in the law),<sup>111</sup> and this can only be done by at least three founding members who must be at least 18 years of age.<sup>112</sup> The registration requirements are complex and burdensome.<sup>113</sup> The law does not provide procedural safeguards and the government has full discretion to deny registration of an organisation.<sup>114</sup> Once an organisation successfully registers, the law requires advance notice and approval by the government for specific activities.<sup>115</sup> NGOs are subject to quarterly reporting requirements.<sup>116</sup>

There is currently no separate juvenile justice system, although a draft juvenile

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<sup>105</sup> <https://freedomhouse.org/report/freedom-world/2015/cambodia>.

<sup>106</sup> [http://www.cchrcambodia.org/media/files/news/1147\\_2001\\_en.pdf](http://www.cchrcambodia.org/media/files/news/1147_2001_en.pdf).

<sup>107</sup> [http://www.cchrcambodia.org/media/files/news/1147\\_2001\\_en.pdf](http://www.cchrcambodia.org/media/files/news/1147_2001_en.pdf).

<sup>108</sup> [http://www.cchrcambodia.org/media/files/news/1147\\_2001\\_en.pdf](http://www.cchrcambodia.org/media/files/news/1147_2001_en.pdf).

<sup>109</sup> <http://www.icnl.org/research/monitor/cambodia.html>.

<sup>110</sup> <http://www.licadho-cambodia.org/flashnews.php?perm=138>;  
<http://www.phnompenhpost.com/national/king-signs-law-ngos>.

<sup>111</sup> <http://www.icnl.org/research/monitor/cambodia.html>.

<sup>112</sup> Article 5 of the Law on Associations and NGOs.

<sup>113</sup> <http://www.icnl.org/research/monitor/cambodia.html>.

<sup>114</sup> <http://www.icnl.org/research/monitor/cambodia.html>.

<sup>115</sup> <http://www.icnl.org/research/monitor/cambodia.html>.

<sup>116</sup> <http://www.icnl.org/research/monitor/cambodia.html>.

justice law should come into effect soon.<sup>117</sup> Legal Aid Cambodia, Children's Rights International, and other groups such as UNICEF and Save the Children, are working together to introduce a child-friendly legal system in Cambodia.<sup>118</sup> The joint effort includes professionals who will work with Cambodian judges, prosecutors,<sup>119</sup> court administrators, police, and correction officials to raise awareness.<sup>119</sup> However, there are no special children's courts and children are often sentenced as adults and detained in adult prisons.<sup>120</sup>

As at April 2015, Cambodia has not established a national human rights institution. The UN Human Rights Committee noted in its concluding observations on Cambodia that a draft law on the establishment of a national human rights institution remains under review, and that the creation of such an institution has long been delayed.<sup>121</sup>

*This report is provided for educational and informational purposes only and should not be construed as legal advice.*

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<sup>117</sup> <http://www.crin.org/resources/infoDetail.asp?ID=26414&flag=report>, citing to the UN Committee on the Rights of the Child, UN Committee against Torture, UN Special Rapporteur on the situation of human rights in Cambodia; <http://www.crin.org/resources/infodetail.asp?ID=29662>.

<sup>118</sup> <http://www.crin.org/resources/infodetail.asp?ID=29662>.

<sup>119</sup> <http://www.crin.org/resources/infodetail.asp?ID=29662>.

<sup>120</sup> <http://www.crin.org/resources/infoDetail.asp?ID=26414&flag=report>.

<sup>121</sup> UN Human Rights Committee, *Concluding observations on the second periodic report of Cambodia*, CCPR/C/KHM/CO/2, 27 April 2015, para. 6. Available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fKHM%2fCO%2f2&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fKHM%2fCO%2f2&Lang=en).