

Symposium on Recent Developments concerning the Convention on the Rights of the Child

Child Justice programs in Vietnam and Cambodia

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I am speaking today in my capacity as Chair of Children's Rights International (CRI), an NGO formed out of the World Congress movement on Family Law and the Rights of Children but now completely independent of it.

I became Chair of CRI in March 2010 having previously been its founding patron and one of its founding board members. Its mission is to promote, protect and advance the human rights of children, primarily in developing countries, and to promote understanding of, adherence to and effective implementation of the UN Convention on the Rights of the Child (CRC). See <http://www.childjustice.org/>

To achieve these objectives CRI works with the approval of host country governments and in partnership with host country organisations or community groups committed to the rights of children. Such work may be project based and involve education, training, mentoring, monitoring and representation.

CRC sets a very high standard for the protection and nurture of children.

Despite the good will of the signatory nations the sad truth is that the basic rights of children and youth are still not universally recognised and they suffer violence, abuse, exploitation and discrimination in increasing numbers every day. Many of these problems are exacerbated by poverty, lack of opportunity, sexual abuse and virtual slavery in the workplace, war and its associated problems of torture and brutality and the use of children and youth as child soldiers and sexual slaves. Indigenous children and youth of many nations are particular victims of this regime of neglect and abuse.

This is not to say that CRC has failed but rather that the task that it has embraced is a huge one and the mere ratification of a treaty or the passage of suitable legislation does not of itself make its provisions a reality. Indeed there is plenty of evidence of this in countries like Australia where Federal and State Governments not infrequently breach it.

Its existence is nevertheless of persuasive importance and countries like Cambodia and Vietnam are conscious of it and in the latter case take pride in the fact that it was one of the first to sign and ratify it. This means that such countries are usually receptive to programs directed at children that do not have the political implications of more general human rights instruments.

CRI aims to bring together judges, lawyers, psychologists, medical practitioners, mediators, counsellors, mental health workers, media representatives, child carers, teachers, police, corrections officials & allied professionals to contribute their specialised expertise in a practical manner through education, concrete action and other means to promote and protect the interests of children and youth.

Access to justice as a human rights issue should lie at the heart of any justice system. If children and youth do not have access to justice, an enormous percentage of the population of countries like Cambodia and Vietnam is disenfranchised and ignored. In developing countries like these, this proportion of children and youth is much greater than in countries like Australia and we must remember that injustice and lack of access to justice amounts to mistreatment and neglect of children and may involve the payment of a heavy price as they become older.

I propose in the course of this address to concentrate on Cambodia and Vietnam, with which I have had recent contact and experience through CRI but I am sure that what I have to say could be reflected in many other developing countries.

My comments are not intended to be critical of the countries concerned. It must be remembered that all have emerged from a colonial past where the development of child protection and juvenile justice was not given great emphasis.

Many have been ravaged by war, in Cambodia's case well into the 1990s and there are movements in most of them to catch up and take their place as good members of the international community.

However I think that the area of access to justice for children represents one of their greatest challenges. Each has an exploding population of children and youth. To the endemic problems can be added the breakdown of traditional families caused by various wars and large numbers of children who are orphans.

Coupled with this, justice and court systems are ill equipped to deal with the problems thrown up and professional and social supports are not available to anything like the extent that are available in western countries. For example, in Vietnam and Cambodia there are very limited numbers of social workers, psychologists and psychiatrists and even less, ones who specialise in children. In both countries professionals including medical doctors are not trained in the detection of child abuse and if they do detect it there are limited avenues open to them to take action to prevent its continuation.

Similarly, judges, prosecutors and police have little or no specialised knowledge in these areas and require education in the best methods of dealing with children and court systems need to be adapted to their needs. In Cambodia at least and to a lesser extent in Vietnam issues of endemic corruption in the justice system need to be addressed.

There are no specialist family or children's courts in either country and children in the criminal justice system are dealt with in ordinary criminal courts, usually more leniently than adult offenders. However such lenience as there is much harsher than would be the case in most western countries.

While there are many problems in both countries this is not to say that responsible people, including judges and senior officials, are unaware of them or are necessarily content to allow the present situation to continue. I have encountered many who are most anxious to take steps to alleviate these problems and are in fact working towards doing so. In January 2011 I had the privilege of meeting with a number of senior Cambodian judges to discuss this issue and I was impressed by their interest and enthusiasm for action. I have had similar discussions with Vietnamese judges and other officials and health professionals.

I stress that these are problems of the countries themselves and it is obviously inappropriate for westerners to seek to impose their own systems on these countries. Co-operative arrangements with host governments and local NGO's are essential to the success of programs such as these. At CRI we do not wish to depict ourselves as people who have all of the answers nor do we see ourselves as such. We think that knowledge of Australian systems may help these developing countries to adapt their systems to pick up the points that suit them and fit their culture, but it is for them and not us to develop programs to achieve this.

One difficulty that we have experienced is that the concept of a specialist court is relatively unknown in both countries. Traditionally courts have been generalist, dealing with all issues that come before them and such a role is reflected in the constitutions of both countries and others in the developing world.

This should not be regarded as an insuperable problem. Other countries like England and New Zealand have similar court structures but have either developed divisions of the general court or have chosen particular judges to exercise special jurisdiction in children's matters.

Cambodia

Background and context

Cambodia has a rapidly expanding population of approximately 14 million people, about 41% of whom are under 18. This proportion is expected to increase rapidly in coming years.

The large proportion of children in the Cambodian community provides both a challenge and an opportunity for reform. Children represent the future of Cambodia, and as such their experiences in the justice system are important determinants of their attitude towards the law and their willingness to respect and uphold it. Proper treatment of children in all aspects of the justice system is an important component in achieving this objective. Unfortunately Cambodia has a long way to go in this regard.

Cambodia ratified UNCROC in 1992, but is as yet unable to fulfil the legal obligations and human rights protection of children that such ratification requires. The country has no separate juvenile justice system and has been

unable to develop a culture that recognises the separate rights of children and their entitlement to special treatment in the justice system.

Widespread poverty and inequitable distribution of income, coupled with poor communications and infrastructure, lack of government services, inadequate education and health services and widespread corruption place many children at risk and vulnerable to situations where they can be manipulated by adults for criminal purposes and otherwise come into contact with the criminal justice system. Sexual abuse and exploitation of children is widespread, as is family neglect, causing many children to live on the streets and support themselves the best way they can, often in gangs. As a consequence, many turn to the commission of crimes and thereby become involved as defendants, witnesses and victims in the justice system.

Diversion from the court system and rehabilitation of offenders are under-developed features of Cambodian practice, as is the right of children to be heard. Children spend up to two years in custody on remand for serious offences. Although representation is usually available at trial, this not the case in the pre-trial period which is a time of critical importance in an inquisitorial system. When children are represented at trial, such representation is often inadequate and many children do not see their lawyer until just before the trial starts.

Children are commonly held with adult prisoners in jails. In 2009, more than 800 children were in prison across the country, representing an increase of approximately 80% in four years. These are usually children of the poor, because those with wealthier parents can take advantage of the corrupt system. The delays in processing matters before the courts, in turn exacerbates the uncertainty of outcomes for children and denies them the right to timely justice.

The need for change is recognised by Government but its implementation has presented problems. The goal for the Plan of Action for Implementing the Legal and Judicial Reform of 29 April 2005 was:

“The establishment of a credible and stable legal and judicial sector upholding the principles of the rights of the individual, the rule of law and the separation of powers in a liberal democracy fostering private sector led economic growth.”¹

¹ Bulletin, Legal and Judicial Reform, Office of the Council of Ministers, Council for Legal and Judicial Reform, No.1 October, November December 2008

As well as its adherence to UNCROC as part of its domestic law, access to justice forms part of the Cambodian Constitution, and the Cambodian Criminal Procedure Code specifically provides for a right to legal representation for minors while held in police custody and at trial².

The justice system in Cambodia has in recent years adopted a new Penal Code and Criminal Procedure Code.

A draft Juvenile Justice Law has been prepared, to which CRI has had input, and is awaiting finalisation by the Council of Ministers. It has been some 11 years in gestation. This is a most important potential development so far as treatment of children and the law are concerned, but again when it is enacted, it will require considerable training and the education of all relevant parties if it is to be effective.

Cambodian authorities have been aware of the problems they face in this area, but progress is slow. In recognition of the need for a more cohesive approach an Inter Ministerial Child Justice Working Group (CJWG) was established in 2006 by the Ministry of Justice (MoJ) with a view to enhancing collaboration among key child justice actors. It was mandated to develop guidelines and protocols for inter-ministerial cooperation and in child-friendly handling of cases of child victims and children in conflict with the law, as well as to facilitate review of the draft Juvenile Justice Law.

In 2008 the Office of the Council of Ministers of the Royal Government of Cambodia recognised a number of challenges to the Plan of Action for Implementing the Legal and Judicial Reform Strategy. These included:

- Lack of correct actions for improving individual rights and freedom.
- Lack of sufficient training of new basic laws (penal procedure code, civil procedure code, civil code and other laws and regulations) due to insufficient time frame.

In 2009 the CJWG formalised a partnership with the NGO Working Group on Child Justice under the NGO Committee on the Rights of the Child, resulting in the GO-NGO Working group on Child Justice with the common goal of

² Article 98 Cambodian Criminal Procedure Code

protecting and promoting the best interests and rights of children in the justice system through coherent and effective cooperation between all key players³.

“In accordance with the principles of UNCROC, it will achieve this by raising awareness and developing expertise and capacity in those who, in their various professional capacities, work in the justice system in order to achieve the vision of a child friendly legal environment from the time children first come into contact with the system until they leave it.”

The challenge is to convince judges, prosecutors, police, court administrators, corrections staff and the community as a whole of the need to understand and accept a new approach when dealing with children. A legal aid survey by the Council for Legal and Judicial Reform in 2006 and subsequent dialogues held in 2009 revealed a general lack of knowledge of new laws and legal rights and access to legal aid and justice services in Cambodia.

CRI has for many years worked in close co-operation with a local NGO, Legal Aid Cambodia. It forms part of the NGO Working Group mentioned above, who have been working with the Justice Department of Cambodia to address these problems as well as playing a very active role on the ground in representing children in court, assisting with their education while in prison and educating and assisting judges, court officials, police and corrections authorities in carrying out their duties in relation to children. It has also been active in the improvement of the criminal law so far as it relates to children and has been working closely with the Justice Department in the development of the new Juvenile Justice Law.

In 2006, CRI assisted LAC in attracting funds for the Juvenile Justice programme in the Battambang province entitled ‘Enhancing Implementation of UNCROC and Cambodian Law in Battambang Province.’

Our present project developed following a visit to Australia in 2007 by three members of Legal Aid Cambodia for internships sponsored by CRI.

In Australia they worked with the Victorian Children’s Court and Legal Aid Victoria and met with the Parliamentary Human Rights Committee in Canberra. They have since become drivers of the present project in Cambodia.

³ Programme Summary 2006-10 Royal Government of Cambodia – UNICEF Programme of Cooperation on Justice for Children.

Since then Bill Jackson, the CEO of CRI and I, have had extensive discussions throughout Cambodia with lawyers, government, police and others relevant persons concerning child justice issues.

In 2009 representatives of LAC were sponsored by CRI and AusAID to attend the 5th World Congress on Family Law and Children's Rights held in Halifax, Nova Scotia. This resulted in Congress resolutions which supported the Cambodian Government's proposed Juvenile Justice Law and urged it to introduce child justice systems complying with the United Nations Convention on the Rights of the Child.

In 2010, I made two visits to Cambodia in connection with the present project and in July 2010, co-chaired a seminar in Phnomh Penh with HE Ith Rady, the Under Secretary of State for Justice, to examine the possibility of setting up a Children's Court in Cambodia. That seminar was co-sponsored by Legal Aid Cambodia and Every Child Cambodia and was attended by a wide range of persons including judges and court officials, Cambodian Government representatives, police and representatives of NGO's. The seminar was opened by the Cambodian Minister for Justice HE Ang Vongvathana and the then Australian Ambassador to Cambodia, HE Margaret Adamson.

The seminar revealed widespread support for action in this area and a working party was set up with the approval of the Minister, to consider further action.

That working party recommended that the existing court in Battambang be set up as a child friendly court. Because the Juvenile Justice Law has yet to come into effect, the court will have to apply existing criminal law but will work to do so in a child friendly manner.

I returned to Cambodia in January 2011, April-May 2011 and December 2011 to discuss the proposal further with relevant people and if possible to attract interest from UNICEF, AusAID and philanthropic organisations in this project. Because the Cambodian Government is in no position to finance the project itself, such aid is essential to its future progress.

On each of my visits to Cambodia, I have had great assistance and co-operation from the successive Australian Ambassadors during the period, Ms Margaret Adamson and Ms Penny Richards and from AusAID staff and Ms Jennifer Lean in particular. This has been vital in obtaining Cambodian Government acceptance of the project and UNICEF assistance.

A challenge is to convince judges, prosecutors, police, court administrators, corrections staff and the community as a whole of the need to understand and accept a new approach when dealing with children. A legal aid survey by the Council for Legal and Judicial Reform in 2006 and subsequent dialogues held in 2009 revealed a general lack of knowledge of new laws and legal rights and access to legal aid and justice services in Cambodia.

The objects of the CRI project are to provide capacity building support to the court and associated organisations in order to achieve the goal of becoming a child friendly court. The overall goal of the project is to protect the human rights and improve the circumstances, welfare and treatment of children in the Cambodian justice system, including child offenders, victims of crime and/or witnesses.

Specifically, the project will skill relevant professionals to a level where they can identify and initiate culturally appropriate child friendly practices and allow them to gain the knowledge and confidence to develop and manage the education, training and implementation of such practices, first in Battambang Province and subsequently in Cambodia as a whole.

The substance of the project is to provide relevant Cambodian professionals with the opportunity to visit Australia for a two week period in each of three years for the purpose of studying the Australian child justice system. This will include visits to Melbourne and Canberra, with briefings at the Children's Court, Children's Court Clinic, examination of Family Group Conferences and other diversion programs conducted by the Children's Court and police, visits and discussions with Judges and officials of other courts and correction and detention institutions and meetings with relevant government officials and University academics specialising in the area. The programme is an iterative one and will benefit from feedback from participants as it is rolled out, allowing for the involvement of those who have received the training, and providing them with the confidence to share their knowledge to colleagues on their return to Cambodia.

In addition, over the three years of the project, at least three training sessions of similar length will be conducted in Cambodia by Australian and international professionals at locations to be determined after discussions with relevant Ministries and others which will include: education as to human rights standards, the effect of Cambodian laws and their interaction with UNCROC,

improvement of court administration and case management systems in relation to children, the training of judges, prosecutors, court administrators and correction officials in the proper treatment of child offenders, victims and witnesses, the development and implementation of appropriate diversion programs for child offenders and the development of guidelines for all parties as to what is required to achieve a child friendly justice system

Studies will also be conducted to gather detailed statistical information about child prisoners for the benefit of those participating in the project, and a pilot project for the emergency housing of child offenders on release is under consideration as a trial in Battambang.

Periodic evaluations will be conducted and a post implementation review will be conducted on completion.

In developing this project in Cambodia it will be noted that concentration has been on juvenile justice issues rather than child protection. There are a number of reasons for this. They include the fact that the notion of a court exercising child protection jurisdiction is a new one to Cambodia. There are therefore no judges or court officials with this experience. Further there is currently no Department with responsibility for this issue and most importantly there is no existing infrastructure to put it in place.

This is not to underrate the importance of a child protection project involving the Courts. However our view is that if a satisfactory juvenile justice system is set up in Cambodia then it will pave the way for such a further development.

I am pleased to say that we have been successful in attracting sufficient funding from AusAID, UNICEF and an Australian Foundation to enable this project to commence in 2012 and we believe that we will have sufficient funds to continue the project for its expected three year duration.

The first party of approximately nine Cambodians will arrive in Melbourne on 30 July for a two week visit. They include some high ranking officials including a Secretary and Under Secretary of State for Justice, a prosecutor and judge from Battambang and two and possibly three legal aid lawyers.

While here they will visit the Children's Court and its clinic, family group conferences, correction facilities and will consult with human rights experts, Legal Aid personnel, academics social workers and psychologists who are familiar with the juvenile justice system here. There will also be a short visit to

Canberra for discussions with the Attorney-General's Department and other relevant persons.

In December/January of this year we expect to send a number of Australian volunteers including retired and serving judges, and lawyers, social workers and police and corrections experts to conduct training projects in Battambang and Siem Reap.

If the first two visits are successful we will repeat the process over the next few years, hopefully extending the participants to other provinces of Cambodia. In this way we hope to train a sufficient number of people in the Cambodian system to act as trainers and to develop better systems within their own country.

Vietnam

Vietnam presents some differences because of the different structure and greater development of its legal and court system. Additionally, motivation for the setting up of a child protection project as well as one relating to juvenile justice has come from within the country. Thus in Vietnam, we have been approaching the problem from a different perspective.

In November 2009 I was asked to join a group from the Royal Children's Hospital International Foundation of Melbourne to visit Vietnam in order to examine the issue of child protection and juvenile justice in that country. The Foundation had been working for many years with the National Paediatric Hospital (NPH) in Hanoi which was interested in developing better child protection programs.

The NPH conducted two seminars addressing the issue during my visit. The first was a seminar directed at hospital doctors and other relevant medical staff on the detection of child abuse addressed by Dr Anne Smith of the Royal Children's Hospital and Professor David Wells of the Victorian Institute of Forensic Medicine.

The second seminar was the first Vietnamese national seminar to be held on the subject of child abuse and child protection, in which I had the honour of participating as a co-chair.

This intensive seminar involved a number of senior Government officials from the Ministry of Health, MoLISA (the Ministry responsible for child protection), the National Assembly of Vietnam, National Women's Union, police and representatives of various NGO's, including UNICEF and Save the Children. It was also addressed by the two Australian medical experts mentioned above, together with Professor Michael Dunne of the Queensland University of Technology and Dr Ngyuen Thanh Huong of the Hanoi School of Public Health on the incidence of child abuse in Vietnam. The overall conclusion of the seminar was that child abuse represented a significant problem in Vietnam that needed to be addressed as a matter of urgency.

I later had the privilege of a meeting in Melbourne with the Chief Justice of Vietnam, the Hon. Truong Hoa Binh, and a number of his judicial colleagues from the Supreme People's Court.

I again returned to Hanoi in January 2010 together with another member of the CRI Board, Ms Sally Nicholes. The purpose of this visit was to make further contact with representatives of the Vietnamese legal system including the Ministry of Justice, the Supreme People's Procuracy and the Supreme People's Court and to make follow up contact with representatives of the Ministry of Health and MoLISA, with a view to assisting the various parties to work together to arrive at a consensus as to what the next steps should be in the development of child protection and juvenile justice in Vietnam. Such discussions also explored how Australia may be able to assist the process from a medical, legal and social work point of view.

On both visits I also met with the Australian Ambassador to Vietnam, Mr Allaster Cox and with Embassy and AusAID officials and also with representatives of UNICEF, all of whom showed great interest in the proposals under consideration.

Subsequently, in 2010 the Director of the Royal Children's Hospital Foundation, Professor Garry Warne and I met in Melbourne with Dr Tran Tuan, the Director of the Vietnamese NGO, Research and Training Centre for Community Development (RTCCD) and we agreed to combine with his organisation in relation to the project.

In April 2011, when I returned to Hanoi we set in motion a train of events which led to a further large conference in Hanoi in December 2011. This proposal, which was supported by the Australian Government and UNICEF,

was received with such enthusiasm that the management of the conference was taken over by the National Assembly of Vietnam. It was held over two days in Hanoi at which I presented a paper as to the Australian system. Presentations were also made by UNICEF, a Judge from Singapore specialising in child justice and the Australian Ambassador Allaster Cox

A very wide range of government Ministries, Departments and organisations made submissions, including a surprisingly frank statement by the Supreme people's Court as to inadequacies of the present system of controlling child abuse. It said in part:

“Learning from factual experiences during the fight against child abuse, specific difficulties and inadequacies of the justice sector were identified, including::

- *Current law on prevention of child abuse is not very comprehensive, including too general and unspecific articles.*

For example, the definition of child abuse is limited, the distinction between child abuse criminals and those who break the law on administrative management is not clear. In the area of crimes, the penal code consists of article 112 on child rape, article 114 on child sexual assault, article 115 on intercourse with children, and article 116 on child obscenity, however, the definition of child sexual abuse is considerably narrow⁴. Moreover, the penalties towards some child abuse actions are not proportionate to the nature and danger of the crimes, therefore they are not powerful enough as a deterrent.

- *The capacity of the officers who are responsible for legal matters does not meet the requirements/needs of the prevention of child abuse.*

Many countries over the world employ a specific system of inspection, prosecution and court or a specific group of officials responsible for child abused cases. Vietnam does not currently have such a system or group, as well as a qualified human resources sufficient for fighting child abuse⁵. Consequently, child abuse cases are currently treated as any other kind of case without more thorough consideration of causal factors (for example, the trial of a child abused case has not concern to underlying causes led to the abuse circumstances, rehabilitation, or protective methods which should be applied after the trial to prevent the impact of the trials, etc). The justice system has considered the “prosecution” aspect, not that of “prevention”.

⁴ Action of watching pornographic movies or pictures, or having sexual activities in front of the child to arouse sexual desire of the child has not been defined as child obscenity act in the Vietnamese law.

⁵ Officials responsible for dealing with child abuse cases are required to have understandings and perceptions on children's psychophysiology, in addition to professional knowledge on law and specialist skills.

- *A reporting system on child abuse has not been set up, making difficulties for recognition and processing, in addition to an unsupportive habit of Vietnamese people which encourages the concealment of abuse cases (“đẹp đẽ phô ra, xấu xa đậy lại”).*

Prosecution of abuse crimes is the final step of child protection. In fact, there are many cases where the abusers were the child’s relatives or acquainted, leading to a concealment of the behavior that made the recognition and investigation increasingly difficult. Vietnam currently lacks an intergrated professional service system which provides the messages related to prevention and early detection to abused children. It results that the number of investigated cases may be remarkably lower than factual number.

- *Shortage of effective international collaboration, lack of close cooperation among legal agencies and other relevant organizations, limited legal understandings and attitude of the victims and families, cultural matters, etc.*

This was an impressive statement of some of the difficulties facing the courts in child abuse cases and suggests that there is a real will to address the issues at the highest level of the legal system in Vietnam.

The upshot of the conference was to set up a working party to plan further action, which was the outcome that we sought. As yet the future is not clear but I am hopeful of setting up a similar process to that agreed with Cambodia.

In conclusion I would say that despite the difficulties facing countries like Cambodia and Vietnam in providing access to justice for their children, their entitlement to it is a human right and the difficulties involved are not and should not be insuperable. These are long term projects and I commend them to all of you as worthwhile contributions to the furtherance of the rule of law and human rights.

In conclusion I should mention the coming 6th World Congress to be held in Sydney from 17-20 March 2013. See <http://www.wcflcr2013.com> we expect to be participating and hopefully bringing speakers from Cambodia and Vietnam to attend. It represents a good opportunity to raise consciousness of these and other relevant issues.