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# **A SYSTEM JUST FOR CHILDREN**

Voices of child victims and witnesses about their experiences  
in the Cambodian Criminal Justice System

Dr. J.K. Reimer

unicef 

## **Disclaimer**

*This report was made possible through funding and support from UNICEF. The views expressed in this report represent those of the authors. The report does not therefore necessarily represent the views of UNICEF or Hagar.*

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## Foreword

***The release of this report represents an important opportunity to hear from some of Cambodia's most vulnerable citizens. It is an evidence base from which government and civil society can work together to advance the cause of social justice and to protect the rights of children in the judicial system.***

***For over 20 years, Hagar has been serving women and children who have suffered the most extreme forms of human rights abuse, many of whom are victims and witnesses in Cambodian courts. Their engagement within the judicial process represents a small but important part of their journey towards the achievement of social justice. Their protection throughout the process should be of paramount concern in the pursuit of criminal justice. This study indicates that we have some way to go.***

***It has been said that 'there can be no keener revelation of a society's soul than the way in which it treats its children' (Nelson Mandela). This study is an expression of collective commitment to realizing their human rights.***



**Steve Penfold**  
**Country Director, Hagar Cambodia**

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***The research team is deeply grateful for each and every child who participated in this research project, and to the ‘silent many’ they represent – and is galvanized by their desire for justice and their amazing courage in pursuit of that. It is our hope that this research will serve to make the criminal court system more conducive to achievement of justice and an easier place to navigate in that quest. The team is also indebted to numerous government officials and court authorities in the four focus provinces –for their flexibility in scheduling meetings with us and their candour in responding to our questions.***

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***Dr. J. K. Reimer  
Research Team Leader  
August, 2014***

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## Acronyms & abbreviations

<b>ADHOC</b>	<b>The Cambodian Human Rights and Development Association</b>
<b>APLE</b>	<b>Action Pour Les Enfants [legal aid NGO]</b>
<b>ARM</b>	<b>American Rehabilitation Ministry [social service NGO]</b>
<b>ATPJPU</b>	<b>Anti-Human Trafficking Police and Juvenile Protection Unit</b>
<b>Cambodia ACT</b>	<b>Cambodia Against Child Trafficking [social service NGO]</b>
<b>CCHR</b>	<b>Cambodian Center for Human Rights[human rights NGO]</b>
<b>CCWC</b>	<b>Commune Committee for Women and Children</b>
<b>CDP</b>	<b>Cambodia Defenders Project [legal aid NGO]</b>
<b>CNP</b>	<b>Cambodia National Police</b>
<b>CRI</b>	<b>Child Rights International [social service NGO]</b>
<b>CVWC</b>	<b>Child victims and witnesses of crime</b>
<b>CWCC</b>	<b>Cambodian Women's Crisis Centre [social service NGO]</b>
<b>DoSVY</b>	<b>Department of Social Affairs, Veterans and Youth</b>
<b>EWMI</b>	<b>East-West Management Institute [international NGO]</b>
<b>GBV</b>	<b>Gender-based Violence</b>
<b>IJM</b>	<b>International Justice Mission [human rights/legal aid NGO]</b>
<b>JJ</b>	<b>Juvenile justice</b>
<b>LAC</b>	<b>Legal Aid Cambodia [legal aid NGO]</b>
<b>LAO</b>	<b>Legal aid organisation</b>
<b>LEAP</b>	<b>Law Enforcement Advancing Protection of Children and Vulnerable Persons</b>
<b>LEASETC</b>	<b>Law Enforcement Against Sexual Exploitation &amp; Trafficking of Children</b>
<b>LICADHO</b>	<b>The Cambodian League for the Promotion and Defence of Human Rights</b>
<b>LSCW</b>	<b>Legal Support for Children and Women [legal aid NGO]</b>
<b>LSHTSE</b>	<b>Law on Suppression of Human Trafficking and Sexual Exploitation</b>
<b>LTC</b>	<b>Center for Lawyers Training and Professional Improvement</b>
<b>MoH</b>	<b>Ministry of Health</b>
<b>Mol</b>	<b>Ministry of Interior</b>
<b>MoJ</b>	<b>Ministry of Justice</b>
<b>MoU</b>	<b>Memorandum of Understanding</b>
<b>NECHR</b>	<b>National Ethical Committee for Health Research</b>
<b>NGO</b>	<b>Non-governmental organisation</b>
<b>PJJ</b>	<b>Protection of Juvenile Justice [legal aid NGO]</b>
<b>PJS</b>	<b>Public justice system</b>
<b>RAJP</b>	<b>Royal Academy of Judicial Professionals</b>
<b>RGC</b>	<b>Royal Government of Cambodia</b>
<b>RSJP</b>	<b>Royal School for Judges and Prosecutors</b>
<b>SSO/P</b>	<b>Social service organisation / providers</b>
<b>ToR</b>	<b>Terms of Reference</b>
<b>UN-CRC</b>	<b>United Nations Convention on the Rights of the Child</b>
<b>UNIAP</b>	<b>United Nations Inter-Agency Project on Human Trafficking</b>
<b>UNICEF</b>	<b>United Nations Children's Fund</b>
<b>WHI</b>	<b>World Hope International [social service NGO]</b>

## EXECUTIVE SUMMARY

### **Introduction**

*Over the past two decades, Cambodia's justice system has improved markedly. More people are being processed through the system, with greater fairness and speed than ever before. More complaints are being investigated and perpetrators are more likely to be convicted and serve at least part of their sentence. Solid protocols and procedural documents governing the rights of children are firmly in place and frequently cited by high-ranking officials. However, implementation of 'child-friendly justice' remains limited. Cambodia is not unique in this respect. The need for operationalising the concept of the best interest of the child (offender, victim, or witness) in matters of criminal justice is recognised globally, and appropriate means for doing so are debated with equal vigour in high, middle, and low-income nations. In Cambodia, the "debate" is in its early stages.*

*This research is one of the first conducted in Cambodia to look in detail at the experience of child witnesses and victims who go through the Cambodian criminal justice system. It particularly aims to give voice to children's views in order to contribute to the development of criminal court procedures that more fully reflect the UN Convention on the Rights of the Child (CRC), especially Article 12.*

### **Methodology**

*The study is primarily qualitative and compiles information from 103 respondents representing five major stakeholder groups: children, judicial authorities, Bar Association (BAKC), NGO staff (from legal aid and social services groups) and police. In order to ensure that the voices of children were clearly heard and well represented, the majority of respondents were children: 54 in total (10 male). The research follows strong ethical principles based on best practice from child research organisations and the United Nations Inter-Agency Project on Human Trafficking (UNIAP), ensuring amongst other things, avoidance of re-traumatisation, confidentiality and informed consent for all participants. The research protocol was approved by the Cambodian National Ethics Committee for Health Research in August 2012. Children involved in the research were identified by legal aid and social service agencies according to clear criteria. The majority of information was gathered by semi-structured interviews with a more structured survey form also being used to gather quantitative information.*

### **Background and literature review**

*Cambodia's current legal system is historically based on an inquisitorial structure, strongly shaped by the French system. Previously, a customary law arrangement was widely used and it is still highly influential, with informal legal systems operating at village and commune level. There are many international and national instruments in effect safeguarding children's rights; however, an absence of attention to the special needs of child victims and witnesses is*

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*apparent at policy level. Significant support has been given to capacity building in the legal sector, although work related to child witnesses and victims has mainly been at an awareness raising level. There has been no systematic effort to implement specialised skills or systems for the treatment of juveniles, with the focus in the majority of training more on the treatment of child offenders. A number of initiatives have aimed to implement more child-friendly procedures including screens, better interviewing techniques and video conferencing.*

*Many countries recognise the need for child-friendly procedures in criminal justice systems. Research has led to some consensus on good models for dealing with child interviews, in particular the use of a single interview and either CCTV or an interview room with a two-way mirror to conduct interviews. Although such methods are shown to be effective, it is also common internationally for them to be questioned by court officials.*

*There has been other large-scale research internationally on children's views on legal and judicial issues. Some of the key findings of this research include: the importance of family involvement for child well-being, the difficulty for children to trust authorities (who often overlook children's views), and how central it is for children to be given clear information about their own case, and the right to make appropriate decisions within the legal process.*

*Research in Cambodia has mainly been on adult witnesses and victims and shows significant weaknesses in regard to the treatment of victims, gender responsiveness, understanding of the law, and investigative processes. Delays in cases are common and widespread, something that has been shown to be extremely difficult for children (as well as adults) in the court system.*

*It is very difficult to obtain clear and reliable figures on the number of children who are victims of crime. Figures and definitions vary between different sources. There are large differences between government records and NGO records on numbers of cases involved. Generally, very few cases result in successful prosecution and sentencing.*

## **Findings**

*This research looks at children's experience of the legal system as victims and witnesses. It includes initial reporting of the crime, police involvement, investigation/arrest, NGO assistance, medical examination, legal representation, pre-trial preparation, experience in court (summons, appearing in court, testifying and sentencing) and post-trial issues. The 54 children interviewed were being supported by 15 different NGOs; their experiences are therefore likely to be more positive than a child without this help. The majority (34) had suffered rape; other crimes included sexual abuse, trafficking, assault and domestic violence. The ages of the victims at time of the research ranged from 10-19 years. The majority of the perpetrators (72%) were Khmer.*

*The crime was seldom immediately reported to police. For nearly half of children interviewed, it was within a week but for many (42%) it was longer than this. Children were required to describe what had happened multiple times to different parties in the system; this was acknowledged by some children and parents to be very difficult for children and damaging to*

**their recovery. Generally, police were felt to treat the children 'normally'. There were some examples of kindness and care, more often reported by younger children. In 10 cases the police acted disrespectfully or been mocking, with children being laughed at, ignored, or not taken seriously.**

**There was a significant number of cases where proper basic procedures were not followed by police, such as not reading the child's statement back, or children being interviewed on their own. A female police officer was present in the police station in only two cases. In six different cases the child saw the perpetrator at the police station, which was highly upsetting.**

**The children interviewed reported paying money in order to get services in about 20% of cases. Often this was in relation to paying for gasoline or other specific costs and was in the range \$10-\$50. With the other costs of going to court these payments are extremely difficult for families and involved borrowing money from family or others. Many children (25%) did not know if money was exchanged at some point in the system.**

**Medical examination was another cost (\$30-\$60), usually met by the supporting NGO. Medical staff were reported to be kind and gentle on a number of occasions (12 respondents) although in a few (3) cases they treated the victim disrespectfully. Despite the fact most of the children in the study were girls and had suffered rape or sexual abuse, less than 10% met with female doctors. Often parents or adults were not allowed to be with the child during the examination, and in more than half the cases the exam results were not shared (even verbally) with the victim and family. In 45% of cases the examination was carried out more than one week after the crime, meaning evidence of the assault may have vanished.**

**The majority of the children (65%) were living in an NGO shelter at the time of the court process. Many families saw NGO support as vital, meaning they were less likely to have to make payments or face other difficulties in their case. However the research team did note a number of examples where residing in the shelter did not appear necessary; in two cases the children asked the research team to tell the NGO they wanted to return home.**

**Children had very limited time with lawyers, many meeting for the first time on the steps of the court or just one or two days before the hearing. In one case the lawyer interviewed the child for the first time in a van on the way to the courthouse, with the perpetrator in the van with them. NGO staff tended to be negative or ambivalent about existing systems and the role of lawyers, citing these issues of time allocation and poor attitudes to children. Children did not get any choice about the gender of their lawyer and showed some thoughtfulness about this; they did not necessarily want a lawyer of the same sex and several children indicated that gender was not important if the person was competent and cared about their case.**

**Children usually had limited preparation for court. Those children living in NGO residential care often received the fullest preparation for trial, with a minority (about 40%) having been shown photos/drawings, engaged in a role play, shown a video or had the court process explained using toys or dolls. Many received only brief preparation and general**

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**encouragement to ‘tell the whole story’ and ‘be brave’. Parents or relatives were seldom involved in any preparation. There is no standard curriculum or tools available in regard to preparation for court; this would be useful.**

**Some court procedures made things difficult for children in at least some cases and could be improved in line with global best practice. First, court case schedules are posted publicly including the name, age and gender of victims, leaving no confidentiality. Although sometimes the court was emptied of strangers before the child’s trial, this was not done in many cases; on one occasion witnessed by the research team media representatives were also in the courtroom. Children often had to sit through other cases, having to listen to details of violent crimes including rape. Other issues included difficulties with translation where needed and little attention to the physical comfort of the child. Although it is reported that there are child-friendly waiting rooms in some courts, no child in the research had ever seen or used one.**

**Children reported being afraid in court in almost all cases; one so much that she vomited while giving testimony. They exhibited a wide range of physical (somatic) symptoms of this distress. They reported anger at hearing false testimony from the perpetrator, and shame/embarrassment at having to tell their story, particularly to a judge (who was often of the opposite sex) and in a public setting.**

**The fact that nearly every child interviewed had been exposed to the perpetrator on the way to or at the court – sometimes travelling there in the same van – requires immediate attention. The child was close to the perpetrator in the courtroom in the majority of cases, at times just 2-3 metres away. This was the most commonly mentioned difficulty children cited in regard to their experience. Despite the 2008 Prakas instructing the use of screens and TV-linked testimony for child victims and witnesses, such things were mainly not used to help children feel less vulnerable in the courtroom. Children who did not have a screen did not know they could ask for one; no child had any knowledge or experience of using video conferencing. While court authorities were aware of video rooms, they were not used in three of the research locations due to lack of resources or because the room was being used for another purpose. In Phnom Penh it was reported that the video room was always used; however, this was not the experience of children interviewed there.**

**Most children were accompanied by one or more adults in the courtroom, but were often not allowed to have these adults standing near them when they testified. When it was allowed, children reported it being very helpful in terms of increasing their comfort and confidence to speak. In some cases, parents could not come with their children because of late notification of the court dates. The lawyers’ actions in the courtroom were seen in various ways by children; some lawyers being supportive and explaining what was happening but the majority not speaking with the child or interacting with them in any way during the courtroom time. Despite this, they did appear active in often stopping aggressive or inappropriate questioning from the defence lawyer.**

***Social services and legal aid staff commonly expressed that judges' behaviour towards children in court had improved in the last few years. Specifically, judges used less intimidating tone of voice, gave children more time to answer questions, and were better at helping victims to tell their story. Importantly, judges were more inclined to show belief in the victim's story rather than the perpetrator's account, which is the opposite situation to a few years ago. There were a number of specific examples of where a judge had considered the victim's feelings and circumstance, allowing staff to stand with the victim or the victim to stand near to the judge so they did not have to speak so loudly. More often it was reported that the judge used a somewhat loud and intimidating voice; many children saw this as part of the judge's role rather than an indicator of disrespect. It was difficult for children to ask the judge or other officials to repeat themselves, so there were times when children did not understand some of what was said. Loud voices and the banging of the gavel contributed to making the courtroom a frightening environment.***

***There were some cases reported where the judge asked inappropriate questions or laughed at the victim; this seemed more likely with older girls and boy victims of sexual abuse or violence. There were also a number of reports of court clerks taking a major role in questioning, although only the judge and lawyers are legally authorised to ask questions. Such incidents showed the need for continuing training. Court authorities and police themselves said that high turn-over of staff makes maintaining learning and change difficult. In addition, often only higher-level staff members are trained, although lower-level staff members spend much time with child victims. The lack of specialisation was also highlighted by police and judicial authorities; they expressed the need for a core of specialists to be trained to deal with all such cases.***

***Another issue was the behaviour of defence lawyers. Although there were some good examples of the way they treated child witnesses, these examples seemed to be with younger witnesses. There were some accounts of defence lawyers trying to confuse, trick or intimidate the child, and in a few cases, the judge addressed this behaviour; more often the child's lawyer requested that such lines of questioning be stopped.***

***When the hearing or case came to a close, it was evident that many children left the courtroom without clear information on what conclusions had been reached or when the verdict would be announced. More generally, the information given to children by the court and by their own lawyers was limited. They (or their guardians) did not get a copy of their own statements or other relevant documents. Ten percent of those interviewed in the research said they did not know whether their case has finished or not. Such lack of information makes it hard for children to deal with the judicial process and can be highly unsettling.***

***When children did hear the verdict they had mixed reactions: sometimes relief and a feeling of safety, particularly if a long prison sentence was handed down; sometimes anger and renewed fear if the sentence was seen as light. Most children said they would like to hear the verdict, although a few did not wish to be there due to concerns about a short sentence and***

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***practical issues such as the cost of more travel and lost working time for their family members.***

***While average case length was difficult to calculate, examples ran from 14-48 months. It was often a long process due to non-apprehension of the perpetrator, appeal of the verdict, change of lawyers (on perpetrator's side), and lack of translation resources, meaning court dates were rescheduled. Clearly, more could be done to expedite cases and reduce the distress experienced by children.***

***Once the trial had ended, some children felt relief even if the sentence was not as long or harsh as they thought was just. However some felt disappointment at the perpetrator not confessing, and for some (where they knew the perpetrator was not in prison) they were living in constant fear. There was usually no debriefing after a court session, although some children would have opportunities to discuss in ongoing counselling. No evidence was seen of most NGO staff or lawyers understanding the value of debriefing these experiences and further work may be needed on this. No child appealed the verdict of their case; not one child was aware that an appeal was possible.***

***Of significant concern to children and their representatives was the implementation of the sentence and their safety after the trial. Further, the research team only saw one example of compensation awarded in court actually being received. There was also concern about whether prison sentences would be served and when the perpetrator might appear again in the community. The research team heard no comment about this from court authorities and it appeared that there were no clear responsibilities for child victim or witnesses safety after (or during) the period of trial.***

***While there was evidence of improved practice in the court system in the treatment of child victims and witnesses, a greater emphasis seems to have been put on dealing with child offenders. The understanding of 'child-friendly' was mainly limited to speaking softly and carefully to children, rather than concepts of sharing information, or procedures that protect children's safety and rights. There was a marked distrust of NGOs, who were felt by court authorities to prompt and influence children to provide or even manufacture information to support their case. This explains some of the reluctance around allowing support to children in the court room.***

***Generally, more training was seen as key to implementing better procedures for child victims and witnesses. Several judges and court authorities suggested a specialised court and staff should be in place for dealing with child cases. Judges are currently expected have an immense breadth of knowledge, covering civil and criminal law. It was also suggested that implementation of the Juvenile Justice Law and more school-based education on the justice system would be helpful. Those supporting children felt there was no particular pattern of better or worse child treatment by location or gender of court authorities; the particular personalities and attitudes of the court authorities dealing with the case seemed the most important determining factor in how the child was treated.***

*With the majority of children going to trial being female, gender was particularly looked at as a variable in this research. The majority of court authorities, at all levels, are male; for example, 80% of the Phnom Penh court staff members are male. While all men interviewed said that gender neither influenced their views or the ability of child victims and witnesses to testify, other research contradicts this, as does the reported experience of children in this research. For female victims (and in some cases also for boys) there were reports of inappropriate questions, insinuations that there was consent, and sometimes a sense that the victim was to blame. It appeared that this mainly applied to older children, from 13-14 years of age and up.*

## **Analysis and recommendations**

*The analysis of this research identified four key underlying issues to be addressed in any responses: (1) gaps in the overall justice system; (2) ensuring compliance with existing policies; (3) addressing socio-cultural norms around adult/child relationships, and (4) changing attitudes to gender that hinder justice. Continuing work that gives a clear voice to children's views is vital in this area if the real needs and rights of children are to be successfully met. Suggestions from children themselves about more child-friendly court proceedings are included in this research and have informed the recommendations.*

*There are a number of important recommendations which would address the issues identified by the research, many of which are echoed in other reports. These recommendations are laid out in full in Section 7 of this report. They are summarised below:*

### **1. Improve police and court logistical practices**

*Specifically, ensuring children have access to screens in the courtroom if they wish, increasing the use of video link equipment and making sure the victim and perpetrator are separated at all times; at the police station, court and while being transported. Significant improvements could be made in avoiding frequent re-interviews of the child and allowing support in the court from trusted adults. In the longer term, establish interview procedures, ensure availability of child-focused facilities at court, and provide trained staff, especially women, to sensitively carry out medical testing.*

### **2. Increase children's wellbeing and understanding of legal procedures**

*This research demonstrates clearly that children want to be respected and to be taken seriously. Preparing children for the court experience, ensuring they can choose screens, giving them the chance to hear the verdict and debrief will all help with this. Further improvements could include a curriculum and guidance for child victim and witness preparation, formal mechanisms for regularly listening to and directly interacting with children, and certifying lawyers, police, judges and court officials who complete training on working with children.*

### **3. Build the capacity of justice system personnel for dealing with children**

*Although much effort has been given to improving systems, this research showed a need for improving and monitoring the implementation of current guidance on matters involving children. It is particularly important to ensure that child victims or witnesses (including older children) are not criminalised in the legal process and that lines of questioning are appropriate and sensitive. A deeper understanding of dealing with children, the impact of trauma and responding equitably in terms of gender would all improve the justice system for child victims and witnesses. A system of specialist court professionals is recommended as the most effective long-term way to provide more genuinely child-friendly justice.*

### **4. Improve the efficiency and effectiveness of justice systems**

*Listening to children's experiences and ideas through this research suggested that expediting child cases, implementing stronger and better procedures for interviewing and dealing with children (including specialist staff), and ensuring results are given promptly and clearly to all participants would greatly improve the justice system for children. Further challenges are to ensure there are no investigation costs borne by children or their families, that sentences (including compensation amounts) are enforced and that post-trial security is improved. In terms of legal changes, the implementation of the juvenile justice law and clear guardianship laws are important priorities. Engaging other actors in supporting child justice and publishing case law would also be helpful steps towards a stronger child justice system.*

### **5. Increase monitoring and research**

*The research demonstrated the importance of monitoring and researching facilities actually available at courts for children. National monitoring and reporting on these facilities, as well as cases heard and implementation of sentences, would increase accountability and trust in the system. Alongside this, it would be valuable to research reasons that current policies are not implemented, what informal legal systems operate and how this could be tackled; including implementing sanctions where proper procedures are ignored.*

*For children, experience of the Cambodian justice system is inconsistent and treatment of children by authorities (police, medical personnel, court officials, etc.) is erratic. Treatment of children by adult authorities ranged from exceptionally sensitive to outright derision. Generally, children described being 'fearful' or 'very fearful' at various stages in the criminal justice process. It is vital that work continues (and in some areas, begins) to address these issues. Improving the experience of child victims and witnesses in the Cambodian justice system will require disciplined planning and action from all stakeholders involved in this research, and continuing attention to the voices of children in this process.*

# 1. Introduction

## 1.1 Background

*Appropriate and adequate care and protection of children who proceed through the criminal justice system is a pressing need, in both highly industrialised nations and low-income countries around the world. The need to operationalize the concept of ‘the best interests of the child’ through the creation of ‘child-friendly courts’ is recognised globally, and debated hotly in high-income nations like Australia and Canada, as well as developing countries such as Cambodia and South Africa.<sup>1</sup>*

*As well as having a weak and highly complex judicial system influenced by multiple donor countries, Cambodia’s situation is further complicated by the absence of a separate/independent juvenile justice system. This means that child witnesses, victims and children in conflict with the law must be tried in adult courts under adult law. There are some provisions for juvenile sentencing (Ministry of Justice (MOJ), Criminal Procedure Code of Kingdom of Cambodia, 2007). Children proceeding through the Cambodian justice system, regardless of the reason, are frequently dealt with inappropriately by police, the courts and others in authority, often because people in these official capacities do not have sufficient knowledge or concern for addressing child rights.*

*In 2009, resolutions passed during the 5th World Congress on Family Law and Children’s Rights supported the Cambodian Government’s proposed Juvenile Justice Law (JL) and urged it to introduce child justice systems complying with the United Nations Convention on the Rights of the Child (UN-CRC). Based on that recommendation, Child Rights International (CRI) proposed piloting a child-friendly court in Battambang province; this has been delayed but is expected to commence in late 2013. Hagar was one of three non-governmental organisations (NGOs) consulted by the Phnom Penh Court, because of its significant experience with child victims in legal proceedings, to support an innovative child-friendly court facility in Phnom Penh. Clearly, momentum is building toward making the judicial system more child-friendly.*

## 1.2 Research rationale

*Cambodian courts are difficult places for victims and witnesses of any age to navigate. Initial research by Hagar demonstrated the existence of real difficulties for victims and witnesses in courts:*

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<sup>1</sup> For more details, see

[http://www.childjustice.org/index.php?option=com\\_content&view=article&id=91:childrens-rights-international-in-cambodia-and-vietnam&catid=97:conferences-and-initiatives-&Itemid=64](http://www.childjustice.org/index.php?option=com_content&view=article&id=91:childrens-rights-international-in-cambodia-and-vietnam&catid=97:conferences-and-initiatives-&Itemid=64).

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*“...victims and witnesses<sup>2</sup> continue to face major challenges during judicial proceedings. In a report in 2010, the Cambodian Center for Human Rights highlighted gaps in the protection of victims in Cambodian courts after monitoring several trafficking trials. Gaps included a lack of confidentiality, safety, gender sensitivity and criminalisation of victims. Victims were subjected to expressions of disbelief and verbal abuse by court personnel, confrontations with alleged perpetrators, threats and intimidation and long delays during trials.” (Hagar, 2010).*

*Such challenges are exacerbated when those victims and witnesses are children. This research is one of the first studies ever conducted in Cambodia specifically about the experiences of child witnesses and victims who go through the Cambodian criminal justice system, as expressed by children themselves. Two small-scale studies focusing on child victims have been done, one by the International Justice Mission (IJM) and one by Hagar.*

*In 2007-2008, IJM conducted a survey, Trial follow-up child interviews, with 27 respondents (23 children) about their experiences, reactions and opinions regarding pre-trial preparation, treatment by court officials, testifying in court, caregiving approaches, post-trial processing, and child-friendly court procedures. The IJM study painted a clear portrait of the Cambodian criminal court system as a frightening and difficult environment for children to navigate. The majority of children interviewed by IJM described feeling scared, nervous, shy, stressed or strange while waiting to testify, and described somatic symptoms such as dizziness, numbness, cold extremities, sweating and shaking. Most children felt scared, afraid, angry, bad or confused when talking to judges and lawyers in the courtroom. Having a caregiver (NGO staff and/or family) in close physical proximity made children feel calm, confident and safe in the courtroom (IJM, 2008).*

*In 2011, as a precursor to the current research, Hagar conducted a study on The rights of child victims and witnesses in criminal justice proceedings, to analyse impediments to justice faced by children who are victims of trafficking, domestic violence and sexual abuse, in an attempt to gain redress through the formal criminal justice system. That study, which consisted of interviews with legal aid agencies, social service organisations, and seven children in Hagar’s care, identified several major practical impediments to justice. They are highlighted in Table 1 below:*

Table 1: Impediments to child-friendly practices in Cambodia’s justice system

	<b>Shared impediments</b>	<b>Unique impediments</b>
<b>Police</b>	<b>Lack of knowledge about relevant laws and their application.</b> <b>Insufficient training on working with</b>	<b>Harsh interviewing techniques and intimidation of plaintiffs; corruption during investigation; lack of proper investigative procedures and techniques.</b>

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<sup>2</sup> The report did not specify whether or not the victims and witnesses in question were adults and/or children.

	Shared impediments	Unique impediments
Judiciary	<p>children.</p> <p>Insufficient awareness about special needs for victims of sexual and physical abuse.</p> <p>Insufficient communication of information to child victims (amount and type)</p>	<p>Lack of impartiality; corruption; insufficient notice to participants about trial dates; lack of confidentiality during trials; court delays and long duration; child cases not prioritised; forcing children to testify even if they do not want to; inadequate attention to the need for interpreters; judges and other court authorities speaking harshly to children.</p>
Lawyers	<p>Active gender discrimination (girls blamed by judges for the rape, judges use pejorative language when talking about rape of girls; judges mock boy victims of sexual violence). Inadequate gender sensitivity.</p> <p>Excessive frequency of interviews.</p>	<p>Unreliable – late to court, do not always show up for court, may drop the case without sufficient warning; not sharing information with their clients (the child victims); insufficient time to build rapport and trust; insufficient preparation time with child clients; do not inform children about court procedures and expectations of child’s involvement.</p>

*The way children are treated in the Cambodian court system is of great interest and importance to Hagar. Hagar deals with approximately 50 criminal justice proceedings per year involving its clients as victims and/or witnesses of crime. These judicial proceedings concern cases of child labour, trafficking, rape, sexual abuse and other forms of sexual exploitation, and domestic violence. Children constitute the majority of the victims involved in judicial proceedings. During criminal justice proceedings against alleged offenders, these young victims are often requested to testify as witnesses in court. This study provides evidence specifically related to children’s experiences of the legal process as a basis for recommendations for improving the criminal justice system for children in Cambodia, to make it more closely comply with UN-CRC Article 12:*

1. *States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.*
2. *For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.*

### 1.3 Research objectives

*The primary objective of this study was to give voice to child victims and witnesses who have gone through, or are currently going through, the Cambodian criminal justice system, on their experiences in the system, to contribute to the development of criminal court procedures for children that better reflect the UN-CRC. It is anticipated that the information provided by*

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***respondents will ultimately lead to the development and consistent implementation of child-friendly processes that work towards achieving justice for all child victims and witnesses in Cambodia; that is, policy and practice changes at both sub-national and national level.***

***This research intentionally did not focus on civil offences. This research did not address the views of children and youth in conflict with the law. While great effort was made to include children that had experienced different crimes, the majority of participating children were victims of just two different types of crime (rape and/or trafficking). It is also important to note that all respondents had received assistance from legal aid organisations; most respondents had also received support from social service organisations.***

## 2. Methodology

*This is primarily a qualitative study. Qualitative research methods are the most appropriate for exploring issues not previously researched, as in this case of ‘child victims and witnesses in court’. Open-ended, semi-structured interviews were the primary means for gathering information. By combining the open-ended questions with a brief questionnaire, this research also provides a descriptive quantitative situational assessment of the experiences of child respondents. In future, building on the groundwork laid by this primarily qualitative research, quantitative research methods can be employed.*

*Field-work and data analysis was conducted by a team of four people; a team leader and three others. The team comprised two expatriates (one female, one male) and two Khmer (one female, one male). All researchers had extensive prior experience working with children in a research setting.*

### 2.1 Research ethics

#### 2.1.1 Basic ethical principles

*The ethical principles for this research were based on best ethical practices of working with children as found in the manual: The right to be properly researched: How to do rights-based, scientific research with children<sup>3</sup> which outlines 11 ethical rules. The team were guided more generally by concepts in the United Nations Inter-Agency Project on Human Trafficking (UNIAP) Guide to Ethics and Human Rights in Counter-Trafficking Research and Programming (UNAIP, 2008). All members of the research team read both sets of guidelines and signed a statement of agreement to comply with those guidelines. The primary set of ethical rules that guided this research is shown in Table 2 below.<sup>4</sup>*

Table 2: Ethical rules guiding this research

<b>Eleven (11) ethical rules guiding this research</b>
<b>Rule 1: Protect research participants from harm.</b>
<b>Rule 2: Ensure the safety of researchers.</b>
<b>Rule 3: All research participation must be voluntary.</b>
<b>Rule 4: Respect cultural traditions, knowledge and customs.</b>
<b>Rule 5: Establish as much equality as possible.</b>
<b>Rule 6: Avoid raising unrealistic expectations.</b>
<b>Rule 7: Reciprocity.</b>
<b>Rule 8: Respect privacy.</b>
<b>Rule 9: Ensure confidentiality.</b>
<b>Rule 10: Take responsibility for the behaviour of visitors.</b>
<b>Rule 11: Take responsibility for images.</b>

<sup>3</sup> *The right to be properly researched: How to do rights-based, scientific research with children. Black on White Publications, Norwegian Centre for Child Research, & World Vision, 2009.*

<sup>4</sup> *The right to be properly researched (Manual 2) – How do we protect children? (2009, pp. 2.13-2.18).*

### **2.1.2 Referral mechanism in the event of (re)traumatisation**

*Interviewers were instructed to refer any respondents in need of counselling as a result of being interviewed to Hagar or another appropriate NGO (contact information for such agencies was provided to research team members prior to their contacting any respondents). This safeguard was put in place to ensure that all participating children (as well as adults) in need of support would have the required services. No children or adults requested this support.*

*In two cases, the respondents (one girl and one boy) exhibited signs of trauma such as anger, confusing or conflicting answers, or gaps in their memory of feelings or events. When this happened, the researchers allowed the children to take frequent breaks so that they could calm down and receive support from their accompanying adult. One of these interviews ended early as the child (a teenage boy who had been both sexually and physically assaulted by a sex tourist) was exhibiting signs of distress. In both cases, caregivers in the related NGO were informed of the children's response and asked to take appropriate steps to care for them.*

### **2.1.3 Confidentiality & informed consent**

*Confidentiality of interviews and data is a key part of Hagar's ethics policy, which all staff members have committed to follow. It is particularly important when dealing with vulnerable populations such as child victims. There was no unique identifying information on the questionnaires. Participants were never asked for names and instead were given a unique identification number to protect their identity. Background information obtained about some children who lived in shelters was added to files some time after the interview to prevent interviewers from visually connecting children with specific details about the crime they had experienced. Hard copy data was stored in a secure location.*

*For this study, the research team followed two levels of informed consent. First, using a structured consent form (administered in the child's mother tongue, Khmer or Vietnamese), the guardians of respondents were informed about the objectives, procedures, benefits and risks of the study prior to asking for their consent. Second, if the guardian agreed, researchers used more simple vocabulary to (re)explain the research to the child directly prior to asking for their consent. In all cases, the team obtained verbal consent rather than asking for written consent because of the reticence that many Cambodians have for signing documents. Researchers obtained a separate verbal agreement for interviews to be electronically recorded. Interviewers did not proceed with any interview until clear consent was obtained. All respondents agreed to participate in the research, and just two respondents did not agree to have their interview recorded.*

*As much as possible, the actual interviews with child respondents were conducted with each respondent in a quiet and private place.*

*To facilitate participation and communication, at all times at least two adults were present with the child respondent (that is, the child was never left alone in the presence of just one*

*non-related adult). In some cases, respondents were interviewed in the company of a family caregiver (mother, sister, father), and sometimes an NGO counsellor, social worker or legal representative was present. In some instances for children living in a shelter, a pair of researchers interviewed the child without the presence of NGO staff or a guardian. In the four cases where children were more comfortable speaking Vietnamese than Khmer, the research team was assisted in communication by an ethnic Vietnamese NGO staff member.*

#### **2.1.4 Remuneration for respondents**

*Respondents who had to travel to the interview were given an appropriate amount of money to cover the cost of transportation. Where distance and environment dictated, some respondents were given money for meals; a few respondents were also given money to cover a night of basic accommodation.*

*Absolutely no other incentives, gifts or other forms of remuneration were used during the research field-work.*

#### **2.1.5 Formal ethics approval**

*In early 2012, a summary and full research protocol was written in English and translated into Khmer. These were submitted to the National Ethical Committee for Health Research (NECHR) for approval. NECHR approved the research at its meeting on 24 August, 2012 and issued a letter to this effect dated 30 August, 2012.*

*The Ministry of Justice provided a supporting letter which facilitated the research team's field-work, and in particular, greatly assisted the team's ability to arrange meetings with court and legal authorities.*

## **2.2 Research participants**

### **2.2.1 Sample size and sampling procedures**

*During the course of this research, the team interviewed 103 respondents from five major stakeholder groups as seen in Table 3 below:*

Table 3: Detailed information about research respondents

<b>No.</b>	<b>No. respondents</b>	<b>Stakeholder group description</b>
<b>1</b>	<b>54</b>	<b>Child victims or witnesses (44 female, 10 male)</b>
<b>2</b>	<b>29</b>	<b>NGO staff (including four lawyers) from 18 different NGOs</b>
<b>3</b>	<b>15</b>	<b>Judicial authorities</b>
<b>4</b>	<b>2</b>	<b>Members of the Bar Association of the Kingdom of Cambodia (BAKC)</b>
<b>5</b>	<b>3</b>	<b>Police officers (one senior member of the Anti-Human Trafficking and Juvenile Protection (AHTJP) unit, two commune-level police)</b>

*To locate respondents, the research team used a combination of purposive sampling<sup>5</sup> and convenience sampling.<sup>6</sup> Originally, the research team had envisioned working with MoJ and UNICEF to obtain information in advance about types of cases and scheduled trial dates to facilitate contact with children not served by NGOs. However, the system was unable to provide such information sufficiently in advance of court appearances. Therefore the only way to identify and contact child respondents meeting the study's criteria was through assistance from associated NGOs.*

## **2.2.2 Connecting with children**

*Child respondents were identified by legal aid and social service agencies working with children in the target provinces. The agencies included well-established child protection agencies such as ADHOC, APLE, ARM, Cambodia ACTS, CDP, CWCC, LICADHO, LSCW, World Hope (WHI), and World Vision (WV).<sup>7</sup> Detailed criteria for child participants were emailed to and discussed with numerous NGOs (Annex 7). All organisations and children agreed to assist in the research on the condition that standard child protection protocols were followed, including assurance of the child's anonymity; the presence of relatives, counsellors or other trusted adults during the interview; and limiting questions to a child's experience with the Cambodian justice system rather than the crimes committed and experienced by the children. To honour this last point, but facilitate better understanding of a child's situation and perspective, the research team requested that agencies provide some background information about the child and her/his case (see Annex 8). Most NGOs provided this additional information, though not all.*

*The majority of interviews were conducted by a lead interviewer and one assistant who took notes and probed for clarifying or additional information as needed to complete the questionnaire. Exceptions occurred on three occasions when children's appointments unexpectedly overlapped, requiring the research team to split up and conduct interviews with the children separately from each other (though there was at all times at least two adults in the room with the child, e.g. the child's NGO social worker or parent in addition to the interviewer).*

*For the male research team, an adult female was present during all interviews with female children, and care was taken to ensure that the questions avoided potentially sensitive and embarrassing topics. All children were given the opportunity to skip any question that made*

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<sup>5</sup>Defined as: statistically non-representative sampling that is constructed to serve a specific need or purpose. For example, the researchers will attempt to interview children that are associated with different types of alleged crimes; which children are selected will depend in large part on who is present that day, something over which the Research Team has no control and cannot know detailed information about in advance.

<sup>6</sup>Defined as: a matter of taking what you can get. It is, in that sense, an accidental sample. Although selection may be unguided, it probably is not random if using the technical definition of 'everyone in the population [in focus], having an equal chance of being selected.'

<sup>7</sup> The RT contacted many more agencies than actually participated in this research. One common reason given for non-participation was that the NGO did not want to disrupt the lives of "our children" or to re-traumatise or re-victimise the children. In total, 15 NGOs referred children to the research team.

*them feel uncomfortable, and when they had difficulty describing their feelings or experiences, the researchers used standardised props such as drawings and chess pieces to help the children visualise and reflect on their interactions with various actors in the justice system.*

### **2.2.3 Connecting with authorities**

*To communicate with court authorities and police, the research team wrote letters introducing Hagar and explaining the research, requesting a meeting with the Court President and with the local police chief. This letter included a copy of the ethics approval letter. Frequent follow-up telephone calls ensured a higher positive response.*

*Police were more reluctant than court authorities to meet with the research team. Despite expending significant effort to arrange meetings, researchers met with just three police officers – two at the community level and one representative of the Anti-Human Trafficking Department in Phnom Penh.*

## **2.3 Research instruments**

### **2.3.1 Consultation with civil society representatives**

*Early in the research process, the research team organised a meeting with representatives from 12 legal aid organisations and social service organisations. The purpose of this meeting was three-fold. First, the research team shared the details of the proposed research with like-minded agencies and solicited expressions of interest for collaboration on identifying child respondents. Second, the team aimed to gather statistical information about cases of child victims testifying in court to enable Hagar to develop a clearer composite picture of the situation in Cambodia.<sup>8</sup> Third, researchers obtained key stakeholder input on their observations of how child victims are treated by authorities along the justice system continuum.*

### **2.3.2 Questionnaires and question guides**

*The major instrument for gathering data was a combined questionnaire and open-ended question guide for child participants (see Annex 5). This instrument was refined through a three-stage process. One of the research pairs tested the initial draft questionnaire with 10 children living in Hagar shelters. After survey questions, lay-out and procedures were subsequently modified, the second pair of researchers tested a second draft with three more Hagar children. A third set of changes was made based on the outcome of this second smaller set of interviews and Hagar management's review of the second draft, particularly its desire to centrally incorporate questions about child experiences with police as well as with medical personnel.*

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<sup>8</sup> *This second aim was not fulfilled because none of the participating agencies were able to provide reliable data. Some agency representatives agreed to send statistical information later, but none did.*

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**Questions on the quantitative portion of the survey related to six domains. Those included: 1) demographic information, 2) reasons for going to court, 3) experience with police, 4) experience with medical examination, 5) experience in court (before, during, after) and 6) experience with assisting NGO/s.**

**Researchers posed a set of open-ended questions to obtain additional and more detailed information about: 1) personal reaction to court experience (before, during and after giving testimony; response to questions by various actors; perception of how well a child's lawyer performed; etc.), 2) personal reaction to the trial verdict; 3) personal reaction after the trial was over; and 4) child recommendations for child-friendly court procedures. The third major source of primary data was semi-structured interview/s for adult stakeholders, specifically: social service NGO staff, legal aid agency staff, lawyers, police, judges and court clerks. See Annex 6 for an example of question protocol used with adult stakeholders. These interviews lasted one to two hours on average. Some respondents were interviewed twice if follow-up or clarification was deemed necessary.**

### **2.3.3 Observation**

**Finally, in addition to conducting interviews with various stakeholders, the research team observed five court sessions in three locations, and toured court facilities in all four focus provinces.**

## **2.4 Data collection, management, analysis**

**Information was recorded in two ways during child respondent interviews. One person of the research pair took hand-written notes during the interview. Digital audio recordings of each interview were taken if the child gave explicit permission to do so. All these recordings were then reviewed and 90% were transcribed to confirm the researcher's written notes. To facilitate dialogue with the children about their police, medical and court experience/s, researchers asked the children to use chess pieces to demonstrate what happened and who was involved in the child's experience.**

**Interviews with adult stakeholders (including the initial meeting with multiple NGOs) were not recorded, but rather information was captured solely through written notes.**

**All surveys and interviews were written up in English as MS Word files and sent to the team leader. Soft copy files of all questionnaire surveys were eventually sent to Digital Data Divide (DDD) for entry into a simple Excel sheet to facilitate analysis. As the purpose of this research was primarily to provide a description of the situation from the children's perspective, requisite descriptive statistics were derived from the Excel files. Additional qualitative research software was not used.**

**Research pairs debriefed at the end of each day to ascertain major themes or observations. This same process was done at the end of field-work in each province within two weeks of completing the field-work. Once all field-work had been completed, the research team spent**

*another day together discussing major themes, key trends, general observations and common or unusual ideas expressed by various stakeholders.*

## **2.5 Major research limitations**

*There were several limitations which have a direct bearing on the findings and conclusions of this report. They are:*

- 1. The four research sites may not be representative of the national criminal justice systems, for the past decade, all have received intentional input and capacity building from UNICEF and other donors interested in developing the justice system.*
- 2. Time restrictions, combined with absence of timely information about court case dates and times, did not allow for much observation of court time. The research team observed a total of five court proceedings. One of these sessions consisted of an official pronouncement of a delay due to the failure of the defendant to obtain an interpreter, while another was the announcement of verdicts for five separate cases, none of which involved any children.*
- 3. Several interviews with children were cancelled prior to or just after the interview began.<sup>9</sup> This usually occurred because the researchers determined that the children were either too young or shy to articulate answers, or because the children had not yet had sufficient experience in the justice system to warrant the interview (i.e. their case had not yet been tried in court). This prevented the research team from reaching the full quota of 10 children per province (nine were interviewed in Battambang, eight in Kampong Som, nine in Siem Reap, and 29 in Phnom Penh).*
- 4. In some cases, the researchers attempted to conduct interviews but gathered little useful data because children had a lot of difficulty remembering details. In contrast, researchers found that some children had significant experience with the justice system and great willingness and ability to narrate their experiences.*
- 5. The majority of victims interviewed were victims of sex crimes: therefore, their experience may not be representative of experience of victims of other crimes who proceed through the criminal justice system.*
- 6. The sample size of child victims was (probably) small. However it is not possible to state with accuracy what actual proportion of total child victims/witnesses in court was interviewed, as no reliable national-level statistics are available.*

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<sup>9</sup> *In two instances, NGOs that had scheduled interviews with children cancelled a day, or just hours, before the appointment time. No explanation was given other than that “the children are too busy with school” and in neither case did the NGO reschedule.*

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- 7. Some court officials chose to be interviewed as a group rather than as individuals, and given the strictly hierarchical nature of social and professional relations in Cambodia, that setting may have restricted some people from speaking freely.***
  
- 8. There is very limited statistical data available about child victims and witnesses in the criminal justice system in Cambodia. Neither the government nor NGOs systematically collect data about related cases, which makes it impossible to identify trends over time.***

## 3. Literature review

### 3.1 The Cambodian justice system

#### 3.1.1 History

*Prior to becoming a French Protectorate, Cambodia's legal system was essentially a customary law system with widespread use of mediation and reparation to settle local disputes and crime (Broadhurst, Bouhours & Keo, 2012; Holligan & Abdulhak, 2011). The French imposed an official legal system patterned after the laws and courts of France; that is, an inquisitorial system in relation to criminal law (Forest, 1979, cited in Broadhurst, Bouhours & Keo, 2012).*

*Since the Paris Peace Accords in 1991, the official system has remained inquisitorial and is primarily based on a civil law mixture of French-influenced codes from the UNTAC period, royal decrees and acts of the legislature, with influences of customary law and remnants of communist legal theory. However, most cases continue to be dealt with informally at the village or commune level (Broadhurst, Bouhours & Keo, 2012, p. 7).*

#### 3.1.2 Major components of the Cambodian criminal justice system

*The Cambodian criminal justice system has three branches: police,<sup>10</sup> judiciary, and corrections.<sup>11</sup> Specific government agencies comprising the criminal justice system include the Ministry of Interior (MoI), the National Police Department, the Gendarmerie Militaire and the Department of Prisons. The MoJ is responsible for the court system. The Supreme Council of Magistracy is responsible for managing judges and prosecutors.*

*The role of the Judicial Police and its Central Department of Criminal Police is similar to the role performed by policing agencies in many other countries (i.e., mediation, complaint handling, investigation and arrests). According to the law, Judicial Police can also act as prosecutors and are often appointed to conduct investigations, but in this role they have limited powers of arrest and must seek authority from a prosecutor. As in most inquisitorial systems, the investigating judge appointed to the case can conduct further inquiries (Broadhurst, Bouhours & Keo, 2012, p. 8).*

*In practice, among other implications of the inquisitorial model of justice, it is incumbent upon the court (specifically, the Prosecutor) to actively conduct and pursue investigations. Few Prosecutors have adequate or sufficient investigative skills (Amnesty International, 2010; Broadhurst, Bouhours, & Keo, 2012 / 2007; Cox & Ok, 2012; EWMI, 2012; IJM, 2013; UNODC, 2012). It also means that police are responsible both to the Prosecutor as well as to their*

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<sup>10</sup> The Cambodian National Police (CNP) includes a number of central departments such as Traffic, Means, Training, Scientific and Technical, Human Trafficking and Child Protection, Public Order Police, Border Police, Security Police, and Judicial Police.

<sup>11</sup> The public justice sector (PJS) consists of six distinct but related components: the police, prosecution, defence, judiciary, penitentiary and social services including health services.

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*direct-line manager during investigation, an unfortunate situation that can confuse and hinder actual investigations and police involvement (SISHA, personal communication, March 2013). The recent shift of responsibility for rape cases back to the National Police's CID (criminal investigation department) and away from Anti-Human Trafficking may also be having an adverse impact on investigative capacity and inclination of related authorities as indicated by confusion expressed during this study by commune-level police about procedures for investigating rape cases.*

*As in every country in the world, actual practice by stakeholders across these components differs from policy and prescribed procedures. For instance, describing changes in the justice system's response to the specific issue of "commercial sexual exploitation of children in Cambodia," a recent IJM report summarises the current status of the CJS:*

*Prior to the development of the Royal Academy of Judicial Professionals in 2004, the lack of formal legal training available resulted in a complete absence of discernible technical or ethical expectations for the role. [That] the majority of citizens distrusted the judicial system resulted in a lack of will from victims to engage with the courts. Families also often decided to 'settle' the case with the perpetrator directly. Currently, judges, prosecutors and court clerks are growing more knowledgeable on the laws and court procedures. However, significant struggles and gaps remain.*

*The current number of judges is insufficient, causing backlogs....Courts continue to struggle with limited resources and lack of training in skills and knowledge. Cooperation with the police is still sub-optimal. The Cambodian government continues to maintain strong influence over the courts and corruption is endemic with little quality oversight. There is no published jurisprudence that could improve accountability, and public trust in the courts remains very low. (IJM, 2013, p. 8)*

### **3.1.3 Children's rights in Cambodian law**

*There are multiple international, regional and national instruments theoretically in effect in Cambodia which comprise of an enviable legislative framework for safeguarding children and child rights (Huang, 2010; van Goor, 2011; UNICEF, 2007a). (See Annex 18 for details).*

*Despite this framework of legislation, an absence of attention to the special needs of child victims and witnesses in Cambodia is clearly apparent at policy level. For example, the Royal Government of Cambodia (RGC)/Ministry of Social Affairs, Veterans and Youth Rehabilitation (MoSVY) Policy and minimum standards for protection of the rights of victims of human trafficking (2009), does not contain a single reference to how children in the system should be treated. There has been some work on developing policy; however, three potentially useful laws and provisions that do intentionally address children in the system have been in draft form for more than four years:*

- (1) Draft instructions on how to handle child victims and witnesses in the child justice process (UNICEF);*

- (2) Draft inter-ministerial prakas on cooperation and coordination in the child justice process (RGC); and**
- (3) Draft Juvenile Justice Law (RGC). It is unclear when these pieces of guidance and legislation will move forward to completion.**

### **3.1.4 Capacity building in the judicial system**

**Support for various elements of the Cambodian public justice system comes from multiple sources. Foreign assistance to the judiciary (and related sectors) tends to be channelled by multilateral and bilateral donors through the Royal University of Law and Economics (RULE), the Royal School for Judges and Prosecutors (RSJP), and the Cambodian Bar Association's Lawyer Training Center.**

**One of the larger overarching long-term programmes addressing judicial capacity is the Australian-funded Cambodia Criminal Justice Assistance Project (CCJAP) that has been running since 2007. A second is the Law Enforcement Against Sexual Exploitation and Trafficking of Children (LEASTC) project, which commenced in 2000 in response to increasing reports of trafficking and sexual exploitation of children in Cambodia.**

**Numerous NGOs also provide capacity building for lawyers working with legal aid and human rights organisations, for example, Legal Aid Cambodia (LAC) and LICADHO. As an example, the American Bar Association supports legal education reform and civic education through RULE. In addition, a limited number of NGOs work with various branches of the police force, providing training and equipment. The East-West Management Institute (EWMI) is involved with enhancing the capacity of the General Inspectorate for Judicial Affairs of MoJ in court administration and case management, with the aim of improving efficiency.<sup>12</sup> One intended impact is to restore the faith of the general public in the formal justice system.**

### **3.1.5 Building capacity on working with children in the justice system**

**There has been minimal systematic awareness-raising, training or education of government professionals in key related areas (judicial, police, social services) about concepts relating to working with children (UNICEF, 2007). While there has been significant external input into training of police and law enforcement officials over the past decade,<sup>13</sup> especially the anti-trafficking police unit, minimal attention has been allocated to systematic awareness-raising and education about 'child-friendly' practices (especially for victims and witnesses) across other related ministries and authorities (such as MoJ, MoSVY, Ministry of Women's Affairs (MoWA), etc.).**

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<sup>12</sup> Details about EWMI's country programming in Cambodia can be found at: <http://www.ewmi-praj.org/>

<sup>13</sup> Significant assistance in this regard has been provided by AFESIP, IJM, SISHA; UNIAP, ARTIP, IOM, the Asia Foundation and Winrock; the British Embassy; and Australian Aid's multi-year Criminal Justice Assistance Project (CCJAP). UNICEF's LEATSECT project (Law Enforcement Against Sexual Exploitation & Trafficking of Children) is prominent among efforts to improve all aspects of law enforcement related to sexual exploitation of children. Focus has been on general capacity building for police in topics of investigation, setting up a hotline, construction and/or equipping child-friendly interview rooms at police stations. However because there has been insufficient monitoring and accountability, many of these efforts are not actually functioning at ground level.

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**Training to date tends to focus on investigative skills, interviewing skills, report writing and making arrests. Any attention to children seems to occur in an ad hoc manner as part of larger training initiatives, and is very brief. A senior officer at SISHA explained ‘We train judicial police, the Criminal Investigation Division; we conduct an intensive two-week training for about 150 police officers each year. But we can only talk briefly about children, like how to have a conversation with them and what kind of environment is good for interviewing, because it’s a long training’ (SISHA representative, personal communication, 6 March, 2013).**

**UNICEF has been a major source of technical and financial support for issues relating to child rights and protection within the criminal justice system. For example, UNICEF has financially supported specialised training about child psychology and child rights for the RAJP and the Center for Lawyers Training and Professional Improvement, known as the Lawyer Training Center (LTC) of BAKC. The concepts of ‘child rights’ and ‘juvenile justice’ were incorporated into the 2008 and 2009 Royal Academy for Judicial Professionals (RAJP) training curriculum.**

**A total of 230 incumbent judges and prosecutors representing around 80% of all incumbent judges and prosecutors from 24 provincial/capital courts completed the RAJP mandatory ‘continuing legal education course’ on child rights and juvenile justice in 2008 and 2009. In addition, 122 student judges and prosecutors completed RAJP’s initial training course on child rights and juvenile justice. The judges and prosecutors also acquired skills in interviewing and defending children from a multi-disciplinary training team from the court (a judge and a prosecutor), MoSVY (a social worker) and two INGOs (a lawyer and a psychologist).**

**Two training videos for court officials, presenting interview methods for child victims and children in conflict with the law were also produced by RAJP, with technical assistance from UNICEF and in consultation with court officials and relevant NGOs. The videos were produced with support from another donor and were used during the 2009 refresher trainings for judges and prosecutors. These trainings, combined with inter-disciplinary workshops for criminal justice actors in priority provinces, have had a positive impact. According to the 2010 NGO Shadow Report on Cambodia’s implementation of the Convention on the Rights of the Child (CRC):**

**‘There has been a gradual change in the mindset of court and law enforcement officials who have received training on juvenile justice issues, in understanding the procedures and relevant laws, as well as an improved system of communication between police, officials and the courts. Legal aid NGOs noted a definite increase in knowledge and understanding regarding juvenile justice among the beneficiaries of the trainings’ (NGOCRC, 2010, p. 23).**

**However, pedagogically speaking, the training described above is more accurately described as ‘exposure’ or ‘awareness-raising’ as it mainly consisted of a one-hour presentation on occasion, rather than in-depth or sequenced training on an on-going basis.**

*Additional efforts by UNICEF to raise awareness about child-friendly practices include organising field visits for high-ranking MoJ officials to exemplary countries (Thailand, Australia) and providing technical assistance to a collaborative effort at drafting a Juvenile Justice Law for Cambodia.*

*UNICEF continues to work at improving the justice system for children. Future strategic efforts will include supporting model courts, setting up a mechanism called ‘PCP meeting’ (Police-Court-Prison) at the provincial level to bring together stakeholders around a child-focused agenda, and support for a national registry (database) that will include a ‘child snapshot’ to overview the situation for all children in the criminal justice system.*

*While these training and capacity building efforts include information relating to child rights and child protection, to date there has been no concerted or systematic effort to develop specialised awareness, skills and systems for treatment of juveniles – victims, witnesses or offenders (Broadhurst & Keo, 2011). Training about children has generally focused more on child offenders than on child victims.<sup>14</sup> In many discussions with adult stakeholders during this research, although interviewers repeatedly emphasised their exclusive interest in child victims and witnesses, invariably the respondent would begin talking about efforts made to ameliorate the hardship suffered by children in conflict with the law.*

*Every legal aid agency contacted through the course of this research reported that they provide some basic awareness-raising for their own lawyers about special needs of children, and practical advice on how to work with children. However, this too occurs on an ad hoc basis, is of short duration, and given the turn-over of staff, would not likely be consistently available to all staff.*

*In summary, given the low level of awareness of people in related NGOs, offices and government ministries about best interests of children in the criminal justice system, it is imperative that systematic training be conducted for major stakeholders. Government and NGO staff alike are insufficiently conversant in the UN-CRC. Many related resources are available in the English language and selected resources could be translated into Khmer, published and widely circulated.<sup>15</sup> For example, it would be very useful to translate (and appropriately adapt) the English-language child-friendly version of the UN guidelines on matters involving child victims and witnesses of crime.*

### **3.1.6 Deploying child-friendly mechanisms**

*The MoJ began piloting child-friendly procedures in several courts in late 2007. These included using screens to separate perpetrators from victims, asking people not associated*

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<sup>14</sup> See UNICEF’s trend analysis on juvenile justice (2010).

<sup>15</sup> Interestingly, very few NGO staff were aware of existing resources such as UNICEF’s “National and International Laws pertaining to Children in the Criminal Justice System”, which consists of a set of 12 booklets (all in diglot Khmer and English) about laws relating specifically to children. Staff members were also unfamiliar with the MoJ/ UNICEF resource “Checklists for professionals working with children in the criminal justice system” which contains, among other checklists, one specifically aimed at social workers.

*with the trial to leave the room, allowing children to wait outside the courtroom until their time to testify if the child chose, and controlling intimidating interview styles or derogatory words used by court officials or lawyers (IJM, 2007-08, p. 9).*

*In addition to providing training for judicial authorities over the past decade, UNICEF has provided infrastructure support for child-friendly facilities. For example in 2006, UNICEF installed child-friendly investigation rooms at the central level in five provinces ‘to prevent re-traumatisation of the victim/witness child in the reporting and investigation process’ (UNICEF, 2007). That same year, Mol trained more than 1,000 local police on ‘how to approach children who have been raped, child interviewing techniques, collection and preservation of forensic evidence’ (UNICEF, 2007, p. 26). In 2008, video conferencing facilities were installed in four provincial courts on a pilot basis (Battambang, Siem Reap, Kampong Som and Banteay Meanchey). This initiative expanded in 2009 to install video screens in all 24 provincial courts; however, as UNICEF and court authorities explained, these facilities are not used regularly. There are several reasons: in some cases, the equipment is ‘broken’; staff members lack the technical expertise to run the equipment; electricity supply is insufficient and sporadic. In the case of Battambang provincial court, the room was subsequently designated as an office for lawyers so is seldom used for accommodating children.*

*The most explicit related response from the RGC to this capacity building work has been to issue a policy (prakas) about The Use of Court Screen and Courtroom TV-Linked Testimony from Child/vulnerable Victims or Witnesses (2008). While this is an excellent step, there is evidence that the application of the prakas is limited and sporadic at best.*

*Two other related measures that have been done are noteworthy. Hagar and World Vision were instrumental in getting a ‘child-friendly waiting room’ set up in the Phnom Penh Court of First Instance; however, it appears that this facility is seldom actually used as a waiting room for children. Furthermore, the NGO Child Rights International (CRI) has for the past two years planned to set up a model child-friendly court in Battambang, but so far start-up has been plagued by delays (personal communication, LAC, February 2013).<sup>16</sup>*

## **3.2 Global standards on child-friendly justice systems**

### **3.2.1 Major components and principles of child friendly systems**

*Global standards for child-friendly and victim-friendly justice procedures are quite well defined (UNODC, 2006, UNODC, 2009a, UNODC 2009b). The major components for consideration in making procedures and systems ‘child-friendly’ can be neatly summarised as: protection, participation and proof (Biejer & Liefgaard, 2011). While all three components must be accounted for, protection is paramount. Many countries, rich and poor, are*

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<sup>16</sup> For detailed explanation of the anticipated project, see <http://www.childjustice.org/index.php/projects-and-initiatives/92-legal-aid-of-cambodia-s-lac-juvenile-justice-project-in-the-battambang-region>.

*experimenting with practical ways to implement theoretical ‘best practice’ especially around alternative means for obtaining and representing child testimony that do not (re)traumatise children (Instituto WCF-Brasil, 2009).*

*For this research the United Nations’ 10-point framework for Justice in matters involving child victims and witnesses (UNODC, 2006) was used as the standard against which to assess how child-friendly Cambodia’s criminal justice system is for child victims and witnesses. The rights of children in the justice system are listed in detail below in Table 4.*

Table 4: Rights for children in the justice system (UNODC, 2006)

<b>Child victims and witnesses have the right to:</b>
<b>1. Be treated with dignity and compassion.</b>
<b>2. Be protected from discrimination.</b>
<b>3. Be informed.</b>
<b>4. Be heard and to express views and concerns.</b>
<b>5. Effective assistance.</b>
<b>6. Privacy.</b>
<b>7. Be protected from hardship during the justice process.</b>
<b>8. Safety.</b>
<b>9. Reparation.</b>
<b>10. Preventative measures.</b>

### 3.2.2 Techniques for questioning child witnesses

*A major element of child-friendly justice systems is the way child witnesses are interviewed and questioned. The comprehensive Testimony Without Fear: non-revictimising cultures and practices ‘map of practice’ (Instituto WCF-Brasil, 2009) outlines experiences in 28 countries (two in Asia – India and Malaysia), with questioning minors about criminal events. Importantly, this research notes that the reasons for being ‘child friendly’ are not only out of respect for children, but also because empirical evidence demonstrates that the best quality of evidence results when children are relaxed and the interviewer is well trained and using appropriate techniques (Biejer & Liefwaard, 2011). In other words, justice is better served when accurate testimony is obtained.*

*The research in Testimony without fear (Instituto WCF-Brasil, 2009) also notes a consensus on some components that comprised general ‘child forensic interview protocol’. These include rapport building, truth-lie discussion, practice in answering free recall questions, and so on (see WCF-Brasil, 2009, p. 24 for a comprehensive list), though there are distinct and varied models for such protocols. Most of these ‘child forensic interview protocols’ are aimed at a single interview because repeated interviewing is very stressful for children. Best practice for child interviews involves two major models; either via CCTV for video-recorded testimonies, or using a room with a two-way mirror for taking testimony.*

*Despite the research showing advantages of child interview via CCTV or a mirrored interview room, global research also shows it is common that this sort of ‘secondary data’ or ‘hearsay evidence’ is often resisted by court officials who assume that it is more difficult for a witness to lie when in the presence of the accused, that the gravity of testifying on the stand improves the quality and accuracy of the testimony, and that the ability of authorities (judges, jury) to detect deception is impeded if the witness is not physically present (Biejer & Liefwaard, 2011, p. 94; WCF-Brasil, 2009, p. 28). However, overall, extant literature does not provide support for the common assumption that testimony given via videotaped forensic interviews or CCTV decreases child witness accuracy compared with face-to-face live confrontation in court. Indeed, face-to-face confrontation in some cases may hamper rather than facilitate children’s ability (and willingness) to provide complete and accurate testimony (Goodman et al., 1998 and Zajac & Haynes, 2003 - as cited in WCF-Brasil, 2009, p. 28).*

*The availability of alternative ways of interviewing is significantly affected by whether a nation’s legal system is common law (*adversarial*, used in the UK and other countries influenced by that legal history such as the USA) or a civil law system (*inquisitorial*, common in European nations). In adversarial systems, it is difficult to comply with CRC guidelines that aim to protect children from hardship during proceedings, as legally, children are required to give testimony in the courtroom and can be cross-examined by the defence (Joachim, 2008, McGrath, 2005).<sup>17</sup>*

*However, there is recognition that crimes of a sexual nature must be regarded as ‘special’ because of the nature of the crime and the unique psychological and physical damage caused. In several countries, children under the age of 14 do not have to appear in court for sex crimes. Rather, their testimony must be heard outside the main hearing (as video or audio), and defendants are not allowed to question the children directly. There are many different ways to represent a child’s testimony in the courtroom. For instance, in Israel a forensic interviewer testifies in place of the child; in England the prosecution pre-sets the videotaped forensic interview in court; in Norway, the judge, prosecutor and defence attorney watch the interview through a one-way mirror and can submit questions for the child to the interviewer at that time (WCF-Brasil, 2009, p. 25). It is notable that in the majority of countries, specialists and highly trained professionals conduct interviews with children.*

### 3.3 Other research on children’s views of justice systems

#### 3.3.1 International research

*Increasingly, countries are undertaking provincial or national-level qualitative studies aimed at listening and attending to children’s views on these legal and judicial issues which directly affect them. For example, the Council of Europe surveyed 4,000 children across 25 member*

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<sup>17</sup> For a clear comparative explanation of the two systems, see *Alternative pre-trial and trial processes for child witnesses in new Zealand’s Criminal Justice system, Appendix B – A comparison of the inquisitorial and adversarial systems*. Retrieved 15 March, 2013, from <http://www.justice.govt.nz/publications/global-publications/a/alternative-pre-trial-and-trial-processes-for-child-witnesses-in-new-zealands-criminal-justice-system/appendix-b-a-comparison-of-the-inquisitorial-and-adversarial-systems>

*states (2010). A province-wide study in British Columbia, Canada looked at meaningful child participation in court processes in (HCRD/LFBC, 2006).*

*The first study resulted in three main conclusions. First, it found that family is very important for children who are involved in the justice system – children are more likely to confide in family, trust family and seek information and explanations from family than from non-family sources. Second, children have a generalised mistrust of authorities which is compounded by the sense that adult authorities do not respect children, do not understand children, do not communicate in an age-appropriate manner, and are not empathetic toward children. Third, this study found that children want to participate actively in cases involving them, both in terms of receiving adequate information and speaking directly to authorities who will make decisions about their lives.*

*Major findings from the second study were similar and concluded that:*

- 1) children, even very young children, want and need information on an on-going basis about procedures and options;*
- 2) children want to speak directly to decision-makers;*
- 3) lawyers tend to overlook the child client they represent, make assumptions about what children want, and do not treat children respectfully – children take exception to this;*
- 4) more time spent in the justice system is associated with greater stress for children; and*
- 5) there is a need for specialised training for various authorities working with children (lawyers, judges, etc.).*

### **3.3.2 Cambodian research**

*Some recent research initiatives address related issues, such as how the efforts of adult female rape victims to access justice are impeded by the judicial system (Amnesty International, 2010; CAMBOW, 2010; EWMI, 2012); and the deplorable situation of children in conflict with the law (see LAC and LICADHO reports; Broadhurst, Bouhours & Keo, 2007; Travers, 2011), especially children who have been imprisoned.<sup>18</sup>*

*A recent study (EWMI, 2012) about low rates of prosecution of cases of gender-based violence (GBV) in the justice system notes that many cases either go unreported, partially due to lack of confidence in the system, or never proceed further than the police. Cases which do go to court have very poor clearance rates: ‘In 2010 the percentage of GBV prosecutions that*

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<sup>18</sup> *Around 730 juvenile prisoners were incarcerated in Cambodia's 25 prisons as of April 2011. “The General Department of Prisons defines juvenile prisoners as those who were between ages 14 and 17 when they committed their crime; they may continue to be classified as juvenile prisoners if they reach their 18th birthday in prison. Fourteen is the age of criminal responsibility in Cambodia.” Press Release. LICADHO to Mark International Children's Day 2011 with Prison Visits. Released by Cambodian League for the Promotion and Defence of Human Rights (LICADHO) (available on: <http://www.licadho-cambodia.org/pressrelease.php?perm=249>). The situation for incarcerated minors is very harsh; additional separate in-depth research should be conducted to capture the perspectives of child offenders, both those in the process of being tried, and those who are imprisoned. This current research focused on child victims and witnesses.*

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**led to a final verdict at trial was 16% whereas the clearance rate for all other criminal case averages more than 80%' (EWMI, 2012, p.3). Among the root causes of poor clearance rates, EWMI identifies the following: inequitable views of women promoted and sustained by the dominant patriarchal and hierarchical social system, Buddhist religious practices that reinforce discrimination against women and girls, and the (psychological and emotional) difficulty of testifying in court.**

**In practice, these take the form of negative attitudes by (predominantly male) authorities toward female victims and offenders, trivialisation of domestic violence and sexual violence (e.g. women are (mis)judged to have provoked the violence or seduced the rapist), gender-insensitive court procedures, gender stereotypes that affect court proceedings and rulings, and the under-representation of women in positions of authority within the public justice system.<sup>19</sup> The report contains a detailed set of guidelines for gender responsive procedures for the judiciary and court staff. Likewise, a study also done in 2012 by local NGO Legal Support for Children and Women (LSCW) concludes that gender sensitivity is not well understood in Cambodia.**

**In the inquisitorial model of justice, it is incumbent upon the court (specifically, the prosecutor) to actively conduct and pursue investigations. Few prosecutors have adequate or sufficient investigative skills (Amnesty International, 2010; Broadhurst, Bouhours & Keo, 2012/2007; Cox & Ok, 2012; EWMI, 2012; IJM, 2013; UNODC, 2012). It also means that police are responsible to the prosecutor as well as to their direct line manager during investigation, an unfortunate situation that can confuse and hinder actual investigations and police involvement (SISHA, personal communication, March 2013). The recent shift of responsibility for rape cases back to the National Police's criminal investigation department (CID) and away from the anti-human trafficking unit may also be having an adverse impact on investigative capacity and inclination of related authorities, as indicated by confusion expressed during this study by commune-level police about procedures for investigating rape cases.**

**The Cambodian Center for Human Rights (CCHR) has published several monitoring reports on Fair Trial Rights in Cambodia and more specifically, has reported on Human trafficking trials in Cambodia. These reports describe generally poor treatment of victims by the Cambodian criminal justice system but do not contain much information about children. CCHR cites impediments to justice. They include: court officials lacking knowledge about related laws and their application; lacking basic respect for victims (and accused); and lacking gender awareness. Within the system, there is no respect for confidentiality and there are often excessive delays. By generally recommending adherence to various UN standards and guidelines for Justice in matters involving children (for example: 'trials involving juveniles should be closed to the public and to the press' and 'model guidelines for child-specific practices include...reducing formality of the courtroom by measures such as removing robes**

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<sup>19</sup> There are few female judges in the Cambodian system. No research has yet been done in Cambodia about the treatment of GBV court cases by male vs. female judges.

*of advocates’), CCHR reports state that the current system does not have those basic measures in place.*

*All over the world, actual practice by stakeholders across these components differs from policy and prescribed procedures. For example, describing changes in the justice system’s response to the specific issue of commercial sexual exploitation of children in Cambodia, a recent IJM report summarises the current status of the criminal justice system:*

*‘ Prior to the development of the Royal Academy of Judicial Professionals in 2004, the lack of formal legal training available resulted in a complete absence of discernible technical or ethical expectations for the role. [That] the majority of citizens distrusted the judicial system resulted in a lack of will from victims to engage with the courts. Families also often decided to ‘settle’ the case with the perpetrator directly. Currently, judges, prosecutors and court clerks are growing more knowledgeable on the laws and court procedures. However, significant struggles and gaps remain.*

*The current number of judges is insufficient, causing backlogs....Courts continue to struggle with limited resources and lack of training in skills and knowledge. Cooperation with the police is still sub-optimal. The Cambodian government continues to maintain strong influence over the courts and corruption is endemic with little quality oversight. There is no published jurisprudence that could improve accountability, and public trust in the courts remains very low (IJM, 2013, p. 8).’*

### **3.4 Current issues relating to children in the justice system**

#### **3.4.1 Practical weaknesses in the justice system**

*As in all countries there are gaps between published policy and the implementation of legal systems in Cambodia. Several recent publications highlight flaws and gaps in the Cambodian criminal justice system. Some of the points most commonly identified are: weak practical skills (such as investigation, gathering evidence, forensic examinations poorly executed, documentation and court procedures); court officials lack basic respect for others in the courtroom; frequent violations of the right to confidentiality; bias against the poor; endemic corruption; weak knowledge about laws and how to apply them; significant delays in getting cases to court and then processing them through the system; safety of victims and witnesses; lack of transparency with information; lack of female authorities; and medical examinations fall very short of WHO 2003 international standards for forensic examination (Amnesty International, 2010; Broadhurst, Bouhours & Keo, 2012; CCHR, 2010; SISHA interview, 2013; van Goor, 2010).*

*A recent study on a decade of progress in the Cambodian judicial system concluded that a significant gap remains between theory and practice within the criminal justice system. Although the legal framework has improved significantly, it appears that prosecutors and judges were not strengthening at the same pace. Interviewees had little to say positively regarding improvements of the work of judges and prosecutors in the last ten years. Remaining gaps and challenges are: lack of capacity, lack of integrity, and ongoing impunity*

*issues of the rich and powerful. A lack of mutual respect and understanding exists between police, prosecutors and investigating judges hampering a fruitful cooperation. Additionally there is a lack of supervision to ensure that judges and prosecutors function properly (IJM, 2013, p. 122).*

### **3.4.2 Additional barriers for victims and witnesses**

*Additional barriers to justice for victims and witnesses of crimes are described below. Due to the vulnerabilities inherent in being a child, minors experience the negative impact of these barriers even more strongly than adults, though of course all victims are adversely affected.*

*Legal representation: One of the most practical problems plaguing Cambodia's criminal justice system, and which affects the poor disproportionately because they rely on legal aid, is simply a dearth of lawyers. There are too few lawyers for the population and most lawyers do not provide legal aid. In 2012, 855 lawyers were registered at the BAKC (646 practicing, 97 trainees) (IJM, 2013, p. 99). A Cambodian Human Rights Action Committee (CHRAC) study in November 2010 found that at the time, only 119 legal aid lawyers were available to work with the poor, and 78 of these were based in Phnom Penh.*

*Gender sensitivity: The legal system is characterised by a low level of gender sensitivity. Gender concepts are not well understood by legal professionals that deal with women and children on a daily basis. This lack of sensitivity can, and often does, result in re-traumatisation for female victims of crime (LSCW, 2012). The view that females are inferior to males, which underlies social structures and ideologies (and by association - political, economic and legal relations), places females at a disadvantage in male-dominated courtrooms, and indeed, at every major point in the criminal justice system (Wong, 2012; Wong, 2010). Courts (and police stations) are intimidating, insensitive and disrespectful environments, particularly for female victims of sexual violence (Amnesty International, 2010; CCHR, 2010).*

*Criminalisation of victims: Another frequent travesty of justice is the criminalisation of victims. Huang (2010) outlines three common forms this takes in Cambodia. Sometimes prosecutors accuse child victims of wrong-doing, rather than the offenders. Sometimes, their own families and communities treat child victims as guilty because the perpetrator and/or police (or judges) say the child has done something wrong. And in some cases involving foreign perpetrators, NGOs and/or the child victim/s are accused of bringing false complaints in order to extort money from the foreigner.*

*Accountability: Overall accountability in the court system is lacking – court judgments are not published and therefore judges can easily avoid scrutiny of their work; generally the population does not trust the judicial system to be impartial, free or fair (Broadhurst, Bouhours & Keo, 2012; IJM, 2013, p. 94). The Special Rapporteur on the situation of human rights in Cambodia recently pointed to the lack of confidence in the judicial system prevalent in Cambodian society in a report to the UN's Human*

***Rights Council: ‘People seem to be generally fearful of the courts’ and ‘corruption seems to be widespread at all levels of the judiciary’ (Subedi, 2010).***

***The amount of time it requires for a case to proceed through the various processes of a court hearing and come to a final conclusion (even in the absence of an appeal by the accused) generally is lengthy.<sup>20</sup> The reasons for such extended periods vary from mundane matters of poor logistics and communication, to more complex issues of intentional delays by the defence, and corruption.***

***As well as these issues there are a number of procedural problems which were further investigated by this research. Some of the common practical ways in which the criminal justice system can be rendered more child friendly, even in a low-resource context such as Cambodia’s, were highlighted in a UNICEF-sponsored training conducted by LICADHO (2006) as detailed in Annex 12. LICADHO suggests trying to reduce the number of interviews undertaken with a child prior to trial; avoiding prolonged questioning of children in the courtroom; having a separate waiting area for children; and reducing the contact between perpetrator and victim. In summary, ‘the best interests of the child concept requires a holistic approach which takes into account the child’s security and all aspects of their physical, psychological and emotional development’ (LICADHO, 2006).***

### **3.4.3 Inappropriate behaviour by officials towards victims**

***There is substantial evidence in the literature to suggest that inappropriate behaviour by officials is common. For example, although trainings include modules on appropriate victim and witness interviewing techniques, at a recent SISHA training, a group of predominantly male police officers who will work with predominantly young female victims of sex trafficking:***

***‘...started laughing unprofessionally when presented with the physical evidence of a used condom and women’s underwear. This is not the way to gain the trust of the public, nor is this a shining example of the police respecting citizens’ human rights. The police have to understand not only the technical elements of upholding the law but also the policies behind the law; once the police understand the meaning of human rights and start respecting such rights, they will be able to more effectively work with the public’ (Huang, 2010, p. 29).***

***A recent CCHR report (2010) tells two very disturbing stories of behaviour by judges in the cases of an 8-year-old female victim and a 6-year-old female victim of human trafficking and sexual exploitation. The judge in the first case asked how long the 8-year-old had been working as a prostitute and the judge in the second case asked if the child had ‘experienced thrill and hurt’ when she was raped.***

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<sup>20</sup> ***IJM reports that, on average, child sexual exploitation cases require 1.4 years between arrest and judgment (2013, p. 99). Some cases take many years. Annex 11 contains more detailed information about the duration of court cases experienced by research respondents.***

*Klauth (2012) writes of police in Phnom Penh who solicited (unpaid) sex (and massage, kisses and other inappropriate forms of physical intimacy) from female commercial sex workers from whom they were supposed to be taking statements. This was reportedly a common, rather than exceptional, occurrence.*

### **3.4.4 The role of culture**

*Some elements of prevailing socio-cultural attitudes governing adult-child relations in Cambodia may render it difficult to actually implement ‘best practice’ for children being processed through the justice system. For example, among Cambodian adults, it is commonly asserted that children have no opinion of their own and cannot think independently (Rodier, 1999; UNESCO, 2002). Understanding among adults that children’s viewpoints are legitimate, and adults’ skills to communicate with children are generally low (Ketchum & Ketchum, 2008; Miles, 2008; Miles & Thomas, 2007). There is a tendency on the part of adult authorities to take a transactional view of the relationship with children; that is, to ‘act friendly’ or ‘act like an uncle’ in order to obtain the results they want, as noted in related literature (Miles, 2008)*

*‘Cultural norms dictate that children will be obedient and do what adults ‘know’ is best. So there is a tendency to be manipulative and to expect the child to act in a way that is convenient for the service provider; for example, in court, to be a good witness so that the case is successful’ (L. Carter, personal communication, February 2013).*

## **3.5 Statistics about child victims of crime**

*It is difficult to know with certainty, how many minors are victims of crime in Cambodia as there is no centralised database holding that information. There are several commonly cited sources of information about ‘victims’ and ‘crime’, but it is difficult to compare their information, as definitions and points of focus differ. The Mol’s ATJP Unit is frequently referred to as a source of reliable statistics. Of NGOs that focus on reporting crimes of sexual exploitation, including rape and human trafficking, among the most cited are ADHOC Annual Situation Reports, COSECAM’s NGO Joint Database figures, and LICADHO Annual Reports.*

### **3.5.1 Numbers of victims**

*The Mol Department of Anti-human Trafficking and Juvenile Protection compiled statistics about ‘victims’ for a two-year period (2010-2012, see Table 5 below). Unfortunately, figures for 2012 do not include ‘rape’ because responsibility for that type of case was transferred to the Cambodia National Police (CNP) Criminal Investigation Department (CID). Mol reports the following figures:<sup>21</sup>*

*Table 5: Mol figures for rape/trafficking cases (2010-2012)*

<i>Mol figures for rape / trafficking cases (2010-2012)</i>
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<sup>21</sup> *Rape and trafficking were selected because these are the events experienced by most of the child respondents who participated in this research.*

<b>Mol figures for rape / trafficking cases (2010-2012)</b>
<p><b>2010: 281 cases of rape (attempted, committed, +murder)</b></p> <ul style="list-style-type: none"> <li>• 99 were girls under age 15; 57 were girls aged 15-17</li> <li>• 66 cases of trafficking (42 domestic, 24 across border)</li> </ul>
<p><b>2011: 141 cases of rape (attempted, committed, +murder)</b></p> <ul style="list-style-type: none"> <li>• 37 were girls under age 15; 32 were girls aged 15-17</li> <li>• 48 cases of trafficking (30 domestic, 18 across border)</li> </ul>
<p><b>2012: 0 cases of rape recorded (because responsibility shifted to CNP/CID)</b></p> <ul style="list-style-type: none"> <li>• 40 cases of trafficking (14 domestic, 26 across border)</li> </ul>

The statistical picture from NGO sources is slightly different, as demonstrated by information from two of the most often quoted sources, ADHOC and COSECAM (NGO Joint Database). ADHOC figures are shown in Table 6 below; for COSECAM figures see Annex 10. In addition to being about twice what is reported through government sources, these NGO reports also show alarming gaps in the system, with significant sequential decreases in: the number of rape cases reported<sup>22</sup> the number of cases actually investigated, number of offenders arrested, number of offenders who go to trial, the number of offenders who are convicted and the number who actually serve any time in prison. Further, in many instances the cases do not reach court as they are ‘solved’ by local mediation.

Table 6: ADHOC (2012) figures on annual rape cases officially reported

<b>ADHOC (2012 Situation Report) figures on annual rape cases</b>
<ul style="list-style-type: none"> <li>• 2006-2009: 473 rape cases (on average) reported annually</li> <li>• 2010: 501 cases of rape reported</li> <li>• 2011: 476 cases of rape reported (72% were minors, &lt;age 18)</li> <li>• In 2011, 11.34% of rape cases were ‘solved’ through local mediation and just 2.52% went to court</li> <li>• In 2011, 51.62% of perpetrators were detained and convicted; and 25.2% of perpetrators reportedly ‘escaped’</li> </ul>

COSECAM figures of ‘flow through’ are greater than ADHOC’s. COSECAM’s Joint NGO Database reported that in 2010, of 303 rape cases which went to court, only about 10% (33

<sup>22</sup> And, as in many countries, generally the number of reported rape cases is thought to be much lower than actual cases.

## ***A System Just for Children***

***cases) resulted in conviction of the offender. For 2011, COSECAM reported that of 658 total rape cases known to NGOs, 637 were reported to police (95%); 580 were investigated (91%); 434 were filed in court (68%); 67 trials were held (11%); 63 cases ended in conviction (10%); half of the convicted offenders received a jail sentence of 7-10 years; and three offenders were freed from police custody immediately after being sentenced.***

## 4. Findings

*The detailed interviews and fieldwork from the research have produced rich information about children’s experience in the justice system. It is important to remember that the participants in this research had access to support. All children interviewed had at least some association with social service NGOs, and the majority of them had received assistance of some form. In the majority of cases, the children had spent time in NGO residential care, thereby benefiting from a secure and consistent environment that provided adequate food and comprehensive material care and support and education. Furthermore, all the children interviewed had received assistance from legal aid agencies.<sup>23</sup> It should be kept in mind that the situation and experience for participants in this research is likely to be significantly better than for children who might make their way through the system unaided.*

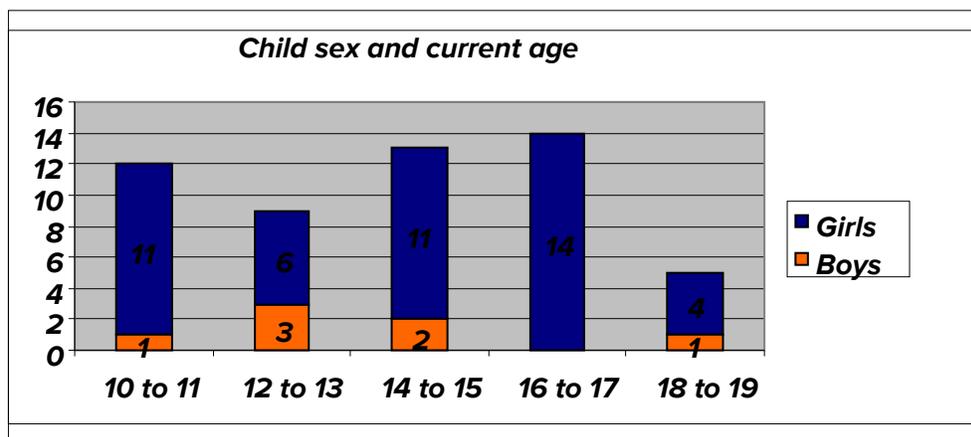
### 4.1 Profile of child-respondents

*A total of 54 children participated in this research: 44 girls and 10 boys. These children were associated with 15 different NGOs (legal aid agencies and/or social service organisations).<sup>24</sup>*

#### 4.1.1 Statistics about respondents

*The ages of respondents ranged from 10 to 19<sup>25</sup>, with most being in the 16-17 year old age range, as shown in Figure 1 below.*

Figure 1: Child respondent sex and current age



<sup>23</sup>In one case, the child victim’s father called LICADHO for assistance after his daughter was raped. This family received no other assistance than a lawyer. Most of the other children interviewed were currently residing in, or had previously lived in, NGO shelters.

<sup>24</sup> 24% of the children interviewed were referred by Hagar.

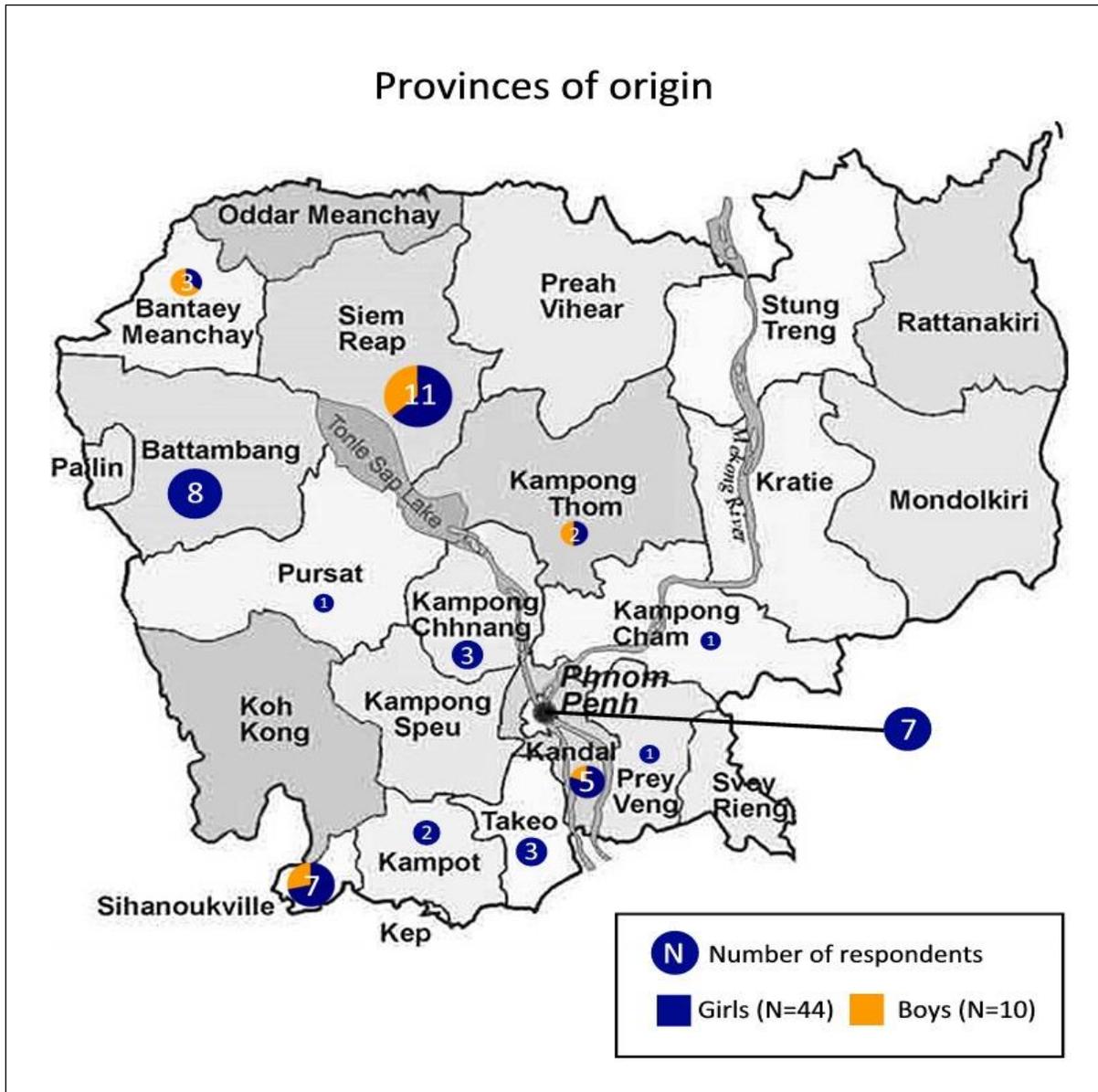
<sup>25</sup> A few participants were 18 or 19 and now young adults rather than children. However for the sake of brevity they will be referred to as children in this report.

**A System Just for Children**

Three children spoke Vietnamese; while the rest (51) spoke Khmer as a first language. Three of the children were physically handicapped: one boy had hearing difficulties; one girl was blind from birth; one girl had cerebral palsy.

The children who participated in this research originated from 13 different provinces, including the municipality of Phnom Penh (see Figure 2 below).

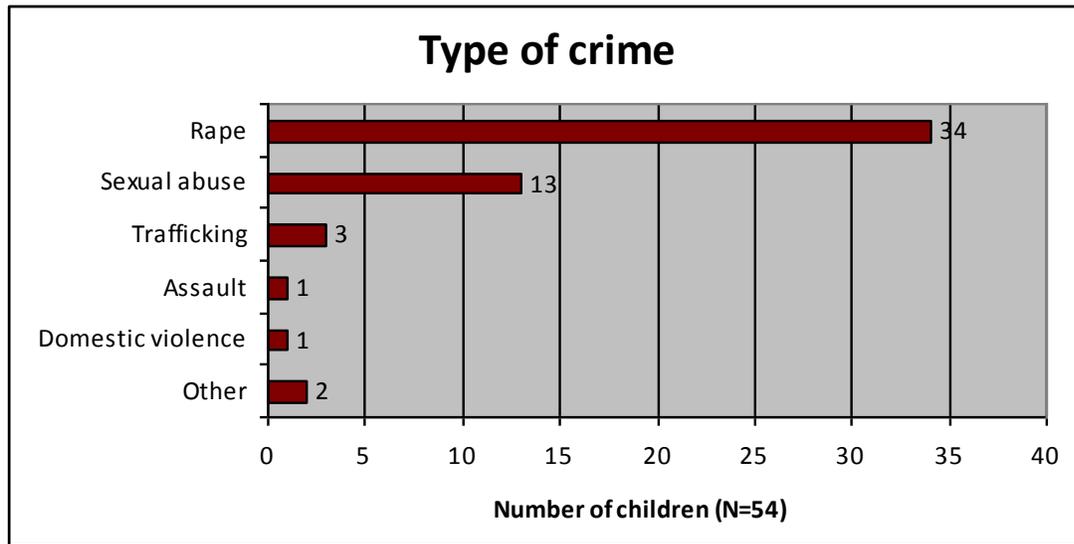
Figure 2: Provinces of child origin



At 63%, rape was the crime most child respondents experienced. Other crimes included sexual abuse (24%), trafficking (6%), assault (2%) and domestic violence (2%), as shown in Figure 3 below.



Figure 3: Type of crime



***In most cases, the perpetrator/s of these crimes against children were Khmer (72%); foreigners were the second largest category of perpetrators as Figure 4 below shows.***

Figure 4: Perpetrator nationality



***Most children could not remember exactly when their most recent court appearance was. In responding to survey questions, many children also combined different times at court (i.e. investigation meetings with judges and/or clerks; and the actual appearance in court when they testified before the full panel of three judges).***

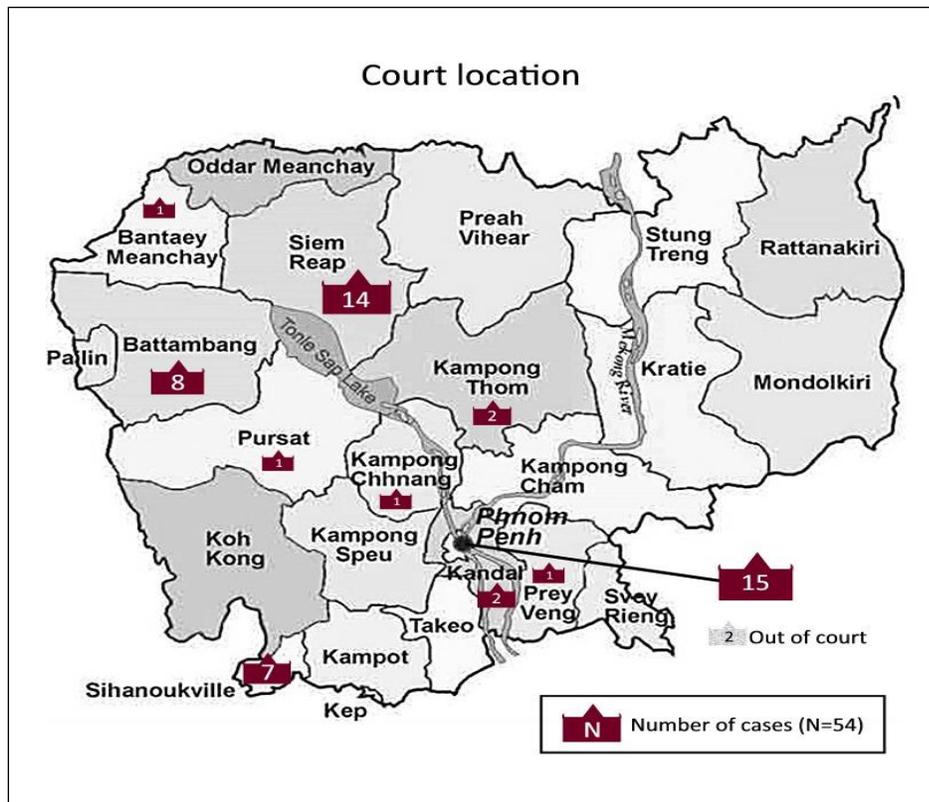
***Children who had already been to trial had not necessarily completed legal proceedings, but could talk about 'court experience' as they had actual experience in the courtroom (see Figure 5 below).***

Figure 5: Cases that have gone to trial



The experiences detailed by the children did not seem to differ much by province. The Courts of First Instance that children reported having hearings in were located in ten different provinces. About 28% of the total number of respondents had their court appearance in Phnom Penh; 26% appeared in court in Siem Reap; and 15% went to court in Battambang. See Figure 6 below.

Figure 6: Location of Courts of First Instance



#### 4.1.2 Who is affected: The children behind the numbers

*It is important to keep in mind that the reason a child is in court is because she or he has been a victim of a crime or has witnessed a crime. In Cambodia, crimes which actually reach court are often very violent; and many of the crimes involving children are of a sexual nature. This section contains the details of how/why several child respondents found themselves giving testimony in a criminal court. More stories are included in Annex 9.*

##### **The children behind the numbers**

**Story 1 (B-03):** *Two sisters, aged 10 and 9, were raped by the same perpetrator in entirely separate incidents a few months apart. The man is a neighbour in their small village. He has not yet been apprehended.*

**Story 2 (P-05):** *One girl, who stated her age as 17 (though a supporting NGO had the age of 19 on their records) experienced an exceptionally violent event. After raping her, the perpetrator slashed her throat in an attempt to kill the girl. She woke up in the hospital but didn't remember how she got there. Upon release from the hospital, she went home. Shortly after that, LICADHO staff came to her home to document the event.*

*The girl said that the police did not do their job well. They were kanchang with the perpetrator (lit. on the side of the perpetrator). After giving her statement at the police station, she arrived back home to find the perpetrator there waiting for her. She immediately called the police who said, 'Oh he is not there', and refused to come to her house. A few days later the perpetrator returned to the girl's house at night and attempted to murder all four family members but he was scared off before he could succeed.*

**Story 3 (P-01, P-02):** *Two girls attending the same school experienced sexual harassment from a 70-year-old man who would lure them to his house near the school, with 1,000 riel notes and kind words. Sometimes he tried to hold their hand, and sometimes he asked them to take off their clothes. Eventually, police came to their school to tell the girls they knew what was happening, and asked if the girls (along with five others) wanted to file charges against the man. The girls did. They have been to court once to testify but the verdict is still pending.*

**Story 4 (B-07):** *One child, physically disabled, was raped by an uncle multiple times over the course of many years, starting when she was a very young girl. She used to go to his house and help prepare snacks for sale. She told no one about this until recently when she realised that 'he was doing something wrong'.*

**Story 5 (SR-08):** *A 12-year-old girl was raped by her stepfather in January 2013. Though the girl and her mother filed a complaint with the police, and subsequently met with LICADHO to document the case, the girl/family had*

**The children behind the numbers**

*not yet requested specific assistance to take the case to court because the perpetrator and his commune chief are pressing for an out-of-court settlement.*

*Story 6 (KS-03): A 10-year-old girl working as a domestic helper was battered and beaten by her employers (a married couple). Her case did not proceed to court; rather, the police negotiated with the offenders to remove the child from her home and place her in a government orphanage. The child's mother was dead and her father had disappeared when she was very young.*

## 4.2 Decision to pursue justice through the court system

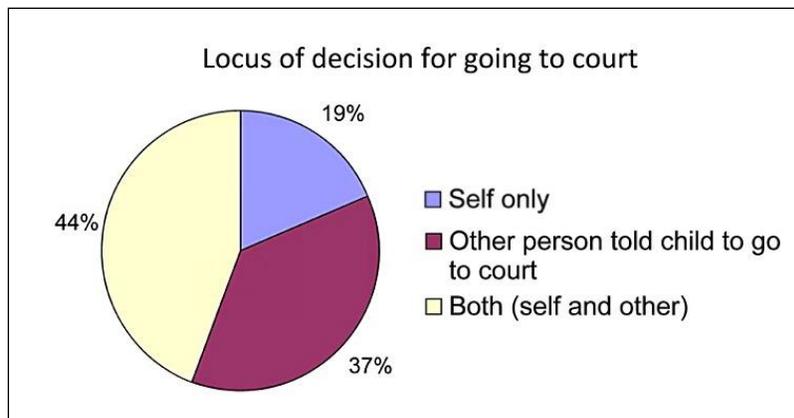
*The decision to formally pursue justice through the criminal justice system is a complex and difficult one, regardless of where the actual responsibility for decision-making lies.*

### 4.2.1 Who decides to go to court

*Children described being encouraged, or even directly instructed, to take their case to court, by various adult stakeholders: a parent or other family members; village chief; police; NGO staff, etc. In cases where someone else either made the decision for the child, or with the child, this person was most often the child's mother, followed by the father or other family members (see Figure 5 below). The younger children often did not participate in decision-making, partially a result of the Khmer cultural emphasis on children doing what they are told. Perhaps it is not uncommon in many countries that young children would be sent to court by parents or by mandated individuals or institutions. Still, there is potential for some children to resent this decision being made for them, and this may exacerbate the stress felt by the child as well as the family, as children proceed through the criminal justice system. It may also affect the outcome.*

*NGOs played a very significant role in getting some children to go to court, especially in the case of foreign pedophiles (i.e. APLE, Mlop Tapang). In a few cases children told researchers that they had been approached by police to file charges. In two clear instances, the police who were already investigating a case with multiple victims took the initiative to get the children to file a complaint and testify against the alleged offender/s. See Figure 7 below for details.*

Figure 7: Decision to going to court



### 4.2.2 Why children choose to go to court

*Many children, especially older ones, had a clear notion of the reason for going to court, which they expressed as a desire for justice. Perhaps this is because they have been raised during a period when there has been much effort to establish rule-of-law in Cambodia. Interestingly, children often used the word 'justice' (ahyutetowah) to describe redress for wrongs committed, though most had difficulty defining the term.*

*It is possible that some children and/or parents decided to go to court only after settlements failed.<sup>26</sup> However, many parents were extremely committed to seeking justice for their children, and to overcoming obstacles including logistics (distance to travel), poverty and threats to their property or person, in order to support their children through court proceedings.*

## 4.3 Experience of reporting crimes

### 4.3.1 Timing of reporting the crime

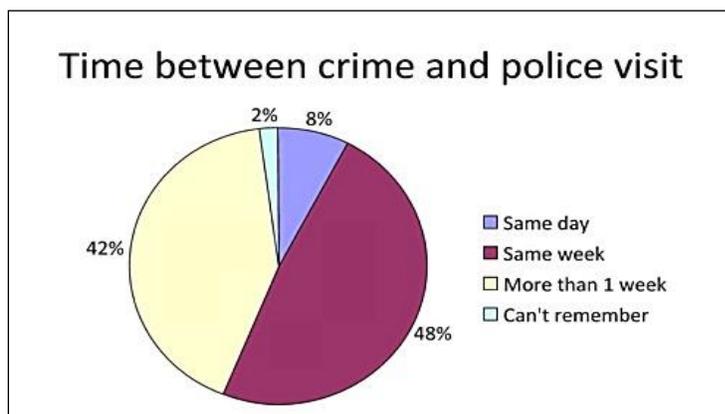
*The majority of child crime victims said that they reported the crime to local police within a week (see Figure 8 below). Only a very small number went to police on the day the crime occurred. The timing of reporting to the police may have a direct bearing on the issue of relevant evidence (e.g. medical evidence can be gathered before wounds heal, etc.).*

*In some cases, children said they went to the village chief or commune authorities before going to the police – technically this is an unnecessary step and may hinder police ability to catch a perpetrator or negatively affect an investigation if too much time is taken. However, it is understandable that a village chief is the first point of contact in the event of an emergency or crisis. It also points to the fact that more education is needed at village-level to inform people about the steps for reporting crimes and taking crimes to court.*

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<sup>26</sup> *It would be interesting to see if the decision to go to court was affected by whether or not the perpetrator was a relative. In one case, for instance, a child wanted the crime to be known and to take legal action against the perpetrator. However, the child's father dropped the case reportedly because the accused was the father's brother. A complicating factor was that the child was not in fact a blood relation to the father, but an informally adopted child (kone chin chum).*

Figure 8: Time between crime and police visit



### 4.3.2 Experience of reporting what happened

*Children reported being required to give their statement many times to different people in the system. They specifically mentioned: village chief, commune chief; local, commune, district level police, and even different police in the same station; investigating judge; court clerk; lawyers; NGO counselling or social work staff; and during the actual trial in court.*

*One common explanation given by government and NGO adult authorities for requiring this repetition was (in the words of one NGO lawyer): ‘Children forget details; they forget a lot and forget quickly. Children cannot always explain clearly, dates and events are not so clear for children. So it’s important to ask the child to tell her story frequently’. This ‘problem’ of memory could be solved by recording an expert interviewer taking details from a child as soon as possible after the event. Using video recordings could potentially reduce the number of times a child must tell the story to multiple people in the system.*

***IT’S USELESS TO ASK THE SAME QUESTIONS! One father (of a 10-year-old rape victim) was very angry about this repetition. He said he and his daughter had gone to the court house twice for questioning by the prosecutor. The police also interviewed them twice. ‘Maybe adults can put up with this, but it really affected my daughter to have to answer the same questions about the incident. It really upset her after she was recovering. It’s useless to ask the same questions after the initial report has been filed and thumb-printed. I understand that this is necessary to follow the legal process, but I do not agree with the process.’ (KS-08)***

*One child’s response to the research team’s interview gives insight into the stress it causes children to retell their ‘story’. ‘I feel happy that you came to ask and to listen. But I also feel a bit bad because I just want to try to forget what happened. And when I talk, the memories come back again’ (H-04). Note that the research team did not ask questions about the actual crime and that in this particular case, the court proceedings had already been closed for two years.*

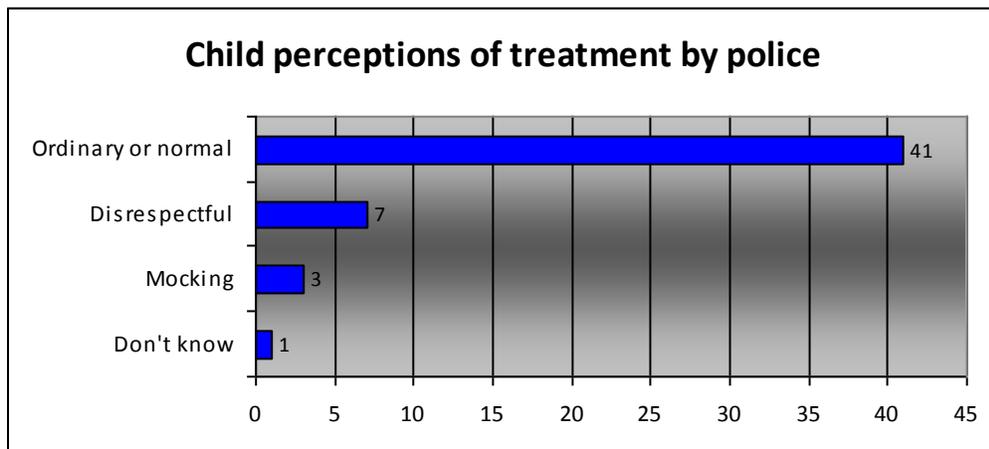
### **4.3.3 General treatment of child victims by police**

*Children were asked a series of questions about their experience with the police at the police station at the time of reporting the crime. Reports from children demonstrate a varied experience with police ranging from children saying they felt respected and protected to children saying they were laughed at, ignored, shouted at, or not taken seriously. Generally, children reported being treated ‘normally, nothing different’ (see Figure 9 below).<sup>27</sup> Still, about one-fifth of respondents (10 in total) felt they were treated disrespectfully or even mocked.*

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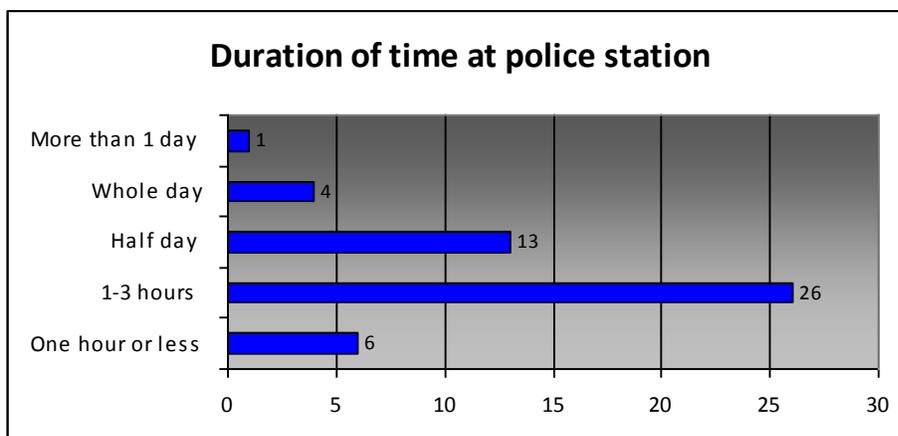
<sup>27</sup> *Young female victims of sex crimes seem to be treated much better than older females who are explicitly associated with commercial sex work. Commercial sex workers do seem particularly vulnerable to abuse and further exploitation by men in positions of authority – see especially Amnesty’s Breaking the Silence (2010) and Klauth (2012).*

Figure 9: Child perceptions of treatment by police



*There was no evidence of any physical mistreatment by police, and no evidence of victims having had any personal items stolen by police, two things which were reported to be frequently experienced by adult females who go to register complaints at police stations. Perhaps this is because of the age and poor living situation of most of the children involved in this research.*

Figure 10: Duration of time at police station



*In most cases (72%), children reported that they waited 'no wait / not long' at the police station before being served; 9% said they waited about an hour; just one child reported waiting for a half-day. In a couple of cases, children were told to return later (either in the afternoon or the next day) to file their complaint. The total time child respondents spent at the police station is shown in Figure 10 above.*

*Many children and parents reported that officers were polite and even kind to them. A few children said the police had given them water or candy at the station. There seems to be a correlation between police treatment and age of (especially girl) victims. That is, in cases where the victim was young (11-12 years or less), police seemed to pity the child or express*

## **A System Just for Children**

*indignation about the crime. However, this tendency was not as strong for older victims, and there were instances of police blaming the victims for what had happened (i.e. 'she must have wanted sex'). In addition to older girls, kathoey (effeminate gay males or 'lady-boys' in the vernacular) may also be more vulnerable to teasing and possibly blaming.*

*Respondents said some police used course language and spoke in loud and frightening tones. Interestingly, several of the children who described this also excused the behaviour, saying it was 'normal' for police to behave that way.*

**BECAUSE THEY ARE BIG THEY SPEAK LOUDLY.** *One girl explained her experience with police: 'The police were normal; but I was afraid of them because they are big (thom) people! Because they are so big [this is the reason that] sometimes they speak loudly, but sometimes they speak gently. The police didn't talk to me very much; but they asked my mother to answer questions' (B-03).*

*A boy respondent echoed this sentiment: 'In general, the police were friendly to me as well as my family and friends [witnesses] who came with me. Their friendliness made me believe that I could trust them. But a few [police] used loud voices and bad language, but they were not rude or offensive to me; and I could see that some were used to using strong language with perpetrators, so it was normal for them [to talk that way](P-19).*

*Very few police provided information for this research, as the research team's multiple requests for interviews were declined. Generally, police who were interviewed gave the impression of being aware of some very basic 'child-friendly' actions, such as the need to ask questions in a way that the child can understand, and the need for children to be accompanied by an adult caregiver when talking to police.*

### **4.3.4 Procedural issues at police station**

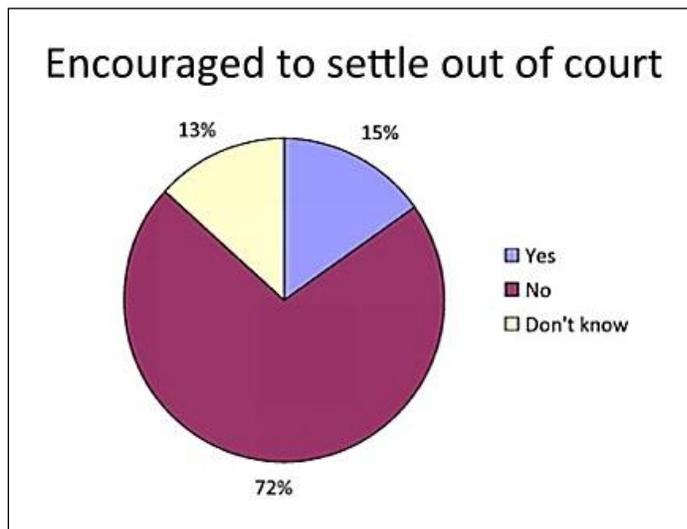
*There were a significant number of cases in which proper basic procedures were not followed by police. For example, a victim's statement was not always read back to the victim for approval (23% of children reported this and 13% of children did not remember). In some cases the victim was not asked to thumb-print the formal report document. Sometimes the child's caregiver was asked questions and the child was not permitted to answer. Several children said that they were interviewed on their own in a room that may/may not have had a window with just one police officer present (22% of children said this happened to them). Only two children stated that they had a female officer present during their visit to the police station; she did not necessarily accompany them for their statement, but was present in the police station. In a small number of cases, accompanying adults (parents) were informed that they were not allowed to be with the minor during the interview.*

*There were six instances reported by children during this research when the child encountered the perpetrator at the police station. In all cases this upset the child very much. Greater care should be taken to ensure there is no personal confrontation between the victims and perpetrators during the investigation process.*

#### 4.3.5 Encouragement to settle out of court<sup>28</sup>

*Sometimes the police encouraged children (or their parents) to settle out of court, as shown in Figure 11 below. This happened infrequently, perhaps because of the relatively young age of the children in question. If victims are of marriage-able age, marriage to the perpetrator can be promoted by police as a form of settlement. It is noteworthy that sometimes police encouraged the victims and their families to go to court in order to get financial compensation from the perpetrator, though the child and/or family may have been reluctant to start down that path for justice.*

Figure 11: Asked to settle out of court



#### 4.3.6 Financial costs of using the justice system

*Children were specifically asked if police requested money for police services.<sup>29</sup> Though the children participating in this research often did not know whether any money had been paid to police to expedite service (25%), about 20% (10) of the children interviewed reported paying money to police for services. Guardians were often reluctant to give details about such payment, perhaps fearing recrimination or because they were embarrassed about behaviour that NGOs do not condone.*

<sup>28</sup> The settlement itself is not illegal as it could be regarded as "civil compensation". However it is illegal if the settlement affects the criminal offence; that is, if as a result of the settlement, the police or prosecutor withdraws the case from further investigation/ prosecution. The police are often party to such settlements and illegally remove the case from court.

<sup>29</sup> Though respondents were not asked directly whether they had paid money to other officials in the justice system, this practice did emerge as being a common feature of the process.

**RELUCTANT ADMISSION:** *One girl who had been trafficked told researchers that when she went to give her statement the police asked for 'gasoline money'. However, the girl's mother, who was present throughout the interview, immediately contradicted her daughter and reproached the girl for speaking ill of authorities. (B-04)*

*Despite this, there were a number of examples reported of payments being made. In one case 'The police asked for \$30 for gas money and to help them catch the perpetrator' (KS-01). Some children said they had not overtly been requested to pay; nevertheless, money was given to police. One mother whose 10-year-old daughter had been raped said that the police did not ask her for any money. However, the police transported her and her daughter to a hospital for the medical examination, 'So I paid them 50,000 riel [\$12.50] to take us around' (P-23). The most frequently cited rationale given by the police for asking crime victims for money was that they need to purchase petrol to conduct investigations. It appears that payments are more likely to occur at points in the system where plaintiffs are not assisted by NGOs. For example, one mother reported that she sold land to get sufficient money for 'catching the perpetrator and talking to the police'. This happened in the six-month period prior to the woman's daughter entering the NGO care stream (H-03).*

**THE PRICE OF JUSTICE:** *One mother, whose 11-year-old daughter had been raped, told the following story (P-06): 'Until we gave them money, the police seemed not to care much about our case. They did extortion, demanding money before they did their work. In speaking they were gentle (sloat) and did not yell, but they were not good.' She continued, 'The [commune] police kept asking me for money. They even telephoned me at night to ask for money! I told them I am the mother of four children and I must feed them so I cannot give you money!' Eventually her brother sold his cell phone to get money to pay the police. 'Then the district-level police asked for money too. So my brother borrowed some money from other people to pay them. After they got this money, they caught the perpetrator within two days!' In total, this woman estimated that she paid \$50.*

*The small number of police who were interviewed all denied that either police generally, and they personally, take money from plaintiffs. However, this assertion contradicts reports from both children and their caregivers. Further, it is widely recognised among related NGOs that the national police are under-funded and have little if any budget with which to conduct investigations (IJM, 2013, p. 81). This dearth of operational funding acts as a disincentive for active engagement by police, and is also likely regarded by them as an insurmountable obstacle.*

*There are other costs associated with proceeding through the justice system. For example, transportation to the courthouse, food and accommodation if away from home and income*

*lost because of the time required to be in court. As the majority of victims of crime are from poor families, these costs can be prohibitive.*

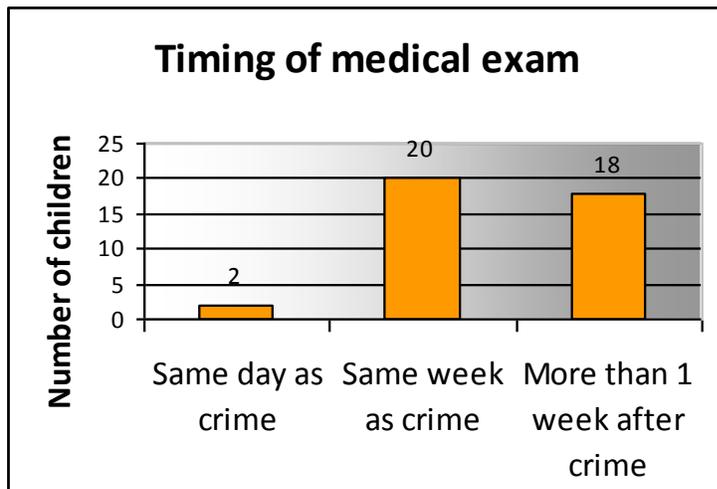
#### **4.3.7 Experience with medical examination**

*A large number of children were referred by police, or by NGOs, to provincial hospitals for a medical examination and official certificates (kosalvichye). This is an indication of awareness of police about proper procedures for collecting evidence. However, too often the medical examination occurred quite a long time after the fact, which in the event of sex crimes, means that evidence will have vanished (unless it involves very serious injury) – see Figure 12 below.<sup>30</sup> There appeared to be excessive faith put on the outcomes of the medical examination, as though it were an inerrant piece of evidence. This is unfortunate and disingenuous because in cases where sexual abuse has been prolonged over a period of time, the medical examinations are unlikely to show ‘damage’ (or worse, to be an indicator of consent) and this can be used as evidence to support a perpetrator’s defence, rather than help a child get justice.*

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<sup>30</sup> *This delay may not be related to the police, but may be because the victim/family reported the crime to police long after the event occurred.*

Figure 12: Average timing of medical examination

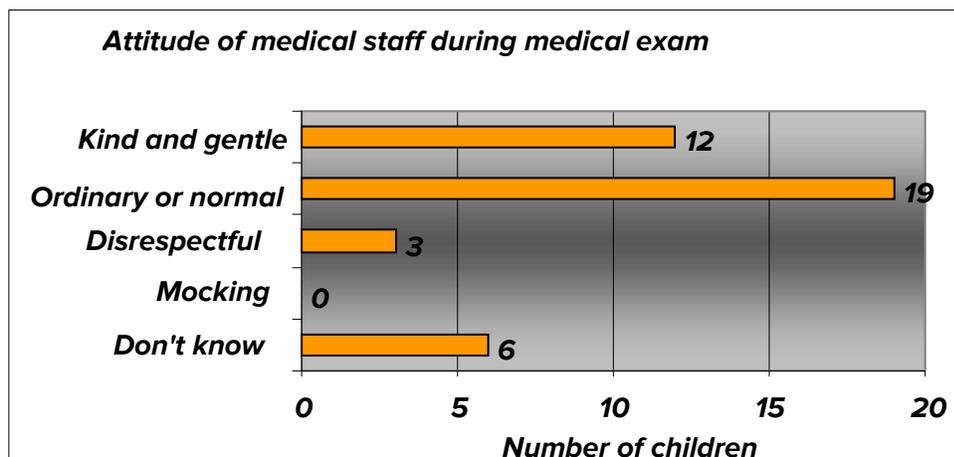


*Most children reported that medical personnel used appropriate language and treated them ‘normally’ (see Figure 13 below). However, there were some instances where the attitude and behaviour described was very inappropriate.*

***DO NOT COMPLAIN! One 15-year-old rape victim described her visit to the hospital for a forensic exam: ‘They spoke disrespectful words to me. I was not satisfied with the way that I was treated. I felt much pain when they were doing the procedure and I told the doctor but he said, “I don’t have time to spend with patients so do not complain”.’ (B-01)***

*This dismissive behaviour exhibited by medical staff was echoed by another child: ‘All of the staff members were female. I had to wait awhile to see them. When I got in, they were quick. They were not so friendly or polite and they were in a big hurry. Also, they did not let the [NGO worker] stay with me during the exam’ (KS-05).*

Figure 13: Attitude of medical staff during medical exam



*A few children commented on the degree of care or kindness demonstrated by medical personnel. One disabled girl said: ‘They were kind. A woman working there cried when I came in because she felt such pity that this could happen to [someone like] me’ (B-02). Another child said: ‘I was treated very well by the [female] doctor and staff who talked directly to me. They were very kind’ (B-08). A third instance of unusually kind treatment was described by a 15-year-old girl: ‘There was one male and two female medical staff. They were friendly and used good tone with me. They even called me kamouy [niece]’ (SR-04).*

*Very few children, less than 10%, interacted with female doctors, though nearly 82% of respondents were girls, and of these the majority had been raped or suffered other forms of sexual abuse. One explanation for this may be the general lack of female physicians in Cambodia.<sup>31</sup> Still, as there are only a limited number of medical facilities officially endorsed to conduct forensic exams and produce the related medical certificates (one site per province), it is conceivable that at least one female physician could be made available at each site to attend all forensic exams involving female victims.*

*A small number of respondents indicated that they were required by authorities to undergo more than one forensic exam, though they did not know why. Hagar staff indicated that this could be due to the fact that only a very limited number of doctors/sites are authorised to conduct official forensic exams that will be valid for court. In this instance too, it is advisable that effort be made by the RGC (MoJ and MoH) to facilitate victim access to authorised medical care and examinations, and to reduce the number of times a victim must undergo forensic exams.*

*In contravention of a child’s rights, in many cases, parents/adults were prohibited by authorities from accompanying the child during the examination. Additionally, more than half of children and/or their parents were not provided with the results of the medical examination*

<sup>31</sup>World Health Organisation (2012) reports that 16% (375) of the 2,300 Cambodian physicians currently employed, are female.

*by medical personnel (52.5% not given, 2.5% did not know). This may be a procedural problem – legally the medical establishment cannot give the original report to the victim/family because it must go in a sealed envelope to the police or the court. But this withholding of information from the ‘less powerful’ also fits with the strict hierarchical social order which affords the medical system and personnel inordinate honour, and discourages patients from asking any questions. The law does not prevent medical personnel from verbally sharing the information with the victim and family, even if the original hard copy report cannot be given to the family (personal communication, LICADHO, March 2013). Failure to provide this information denies the victim and parents their rights to access private/personal information.*

*As a final note, it is important to recognise that the forensic examination is not free. NGOs are usually the ones to pay the examination charges (which were reported to range from USD \$30-\$60). The MoJ and MoH should ensure that medical examinations for victims of crime are a free government service, especially for minors who are victims of sexual abuse crimes.*

## **4.4 Experience of support before going to court**

### **4.4.1 NGO support for children**

*NGO support seems to be a critical variable in whether or not children (and their families) choose to proceed through the criminal justice system. Literature suggests that Cambodians generally trust NGOs more than they do their own police and court authorities (Broadhurst, Bouhours & Keo, 2012); and in this research, several families indicated that they thought they would have had to pay, or that their efforts would have been obstructed, had they not been accompanied by NGO staff at various points in the system. The majority of children participating in this research lived in NGO shelters for some or all of the period of their court process, as shown in Figure 14 below. Children and families interviewed were generally very complimentary of and expressed gratitude for NGO intervention and services.<sup>32</sup>*

*Nevertheless, not all NGO support is consistently constructive. Some children may have been referred to NGO shelters unnecessarily (Jordanwood & Lim, 2011). Though time in care often resulted in development of close and supportive relationships with NGO house-parents, counsellors and so forth, NGOs need to consider ways to mobilise outreach workers/paralegals/counsellors to provide this level of support to children remaining in their own homes or in the community. It is in the best interests of children, and it is RGC policy, for children to remain in family care (assuming that risk factors allow for this to be judged safe for the child).*

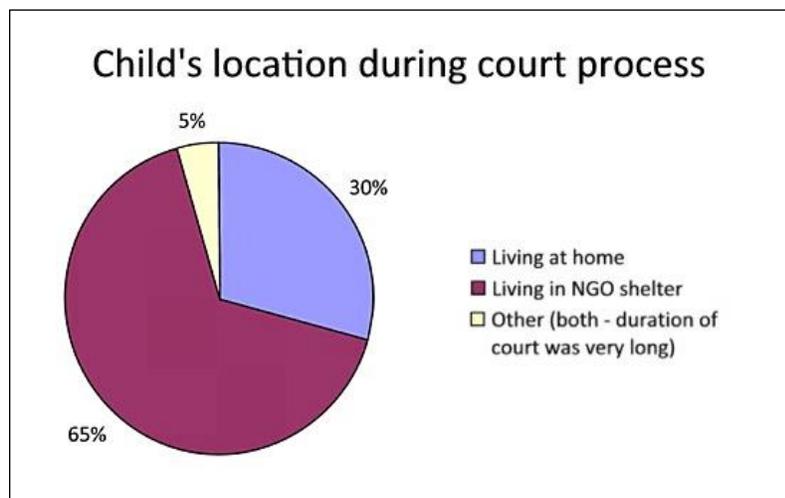
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<sup>32</sup> *Children were not always aware of (or could not remember) the names of the NGOs that assisted them, nor could their adult family members. This could be the case because many NGO names use English (either the full word or an acronym) and/or because multiple NGOs provide assistance at different points in the process of accessing the justice system. Nevertheless, it is important that NGOs intentionally and deliberately honour a child's right to information about their own lives and care – NGOs should make greater effort to ensure that children and their families are apprised of details about the supporting NGO.*

## ***Voices of Children in Court***

***In some cases, children remained in NGO care because their court case was not yet finalised, and for no other reason known to the child. Two children asked if the research team would tell the NGO that they wanted to go home, and no longer wanted to reside at the NGO shelter.***

Figure 14: Child's location during court proceedings



*In a small number of cases, NGO staff explained that minors remain in NGO shelters long after a case has been closed. One common reason for this is that the child wants to complete school. Other reasons are security and fears for personal safety.*

***I AM AFRAID HE WILL TAKE REVENGE:*** One 16-year-old stated bluntly: 'I am still fearful that the man's relatives will take revenge on me for sending him to jail. That is why I still live here [in the NGO shelter] and why I will not go home' (H-04).

*At a different NGO shelter, a mother who came in from Takeo to participate in the interview with her daughter that lived in the shelter told the interviewers she had admitted a second (younger) daughter into the same shelter, 'Because I am afraid that the same thing [rape] will happen to her'. While security concerns are legitimate, it is not appropriate for NGO shelters to be used in this way.*

*By its own admission, it is the responsibility of the Government of Cambodia to ensure protection for Cambodian children as outlined in multiple policy documents and affirmed through public speeches and participation at international events. However, child and guardian respondents in this research reported that there was little to no support from MoSVY, the RGC ministry tasked with child protection. There is significant room for involvement by MoSVY with children who are victims of sex crimes.<sup>33</sup> The same is true for MoWA, given their mandate to protect and support vulnerable women and children.*

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<sup>33</sup>DoSVY's capacity for active involvement is limited, at least in part, by a lack of human resources. DoSVY does not have social workers at the commune level. At the district level, DoSVY tends to have coordination/administrative staff, not social workers. In light of this, it may be useful to consider ways that the Commune Committees for Women and Children (CCWC) can be engaged in assisting child victims of crime, as discussed by COSECAM, 2011a. For details, see "The Functioning of Commune Committees for Women and

#### **4.4.2 Experience with lawyers at pre-trial stage**

*Generally, children were positive about their lawyer, or at least did not have negative things to say about the lawyer assigned to their case. Notably, very few children expressed any strong feelings about this person, who is critical to their time in court. One reason for this may be that the majority of children who were interviewed reported that they actually spent very little time with their lawyer before going to trial. A few children said that they met their lawyer for the first time ‘on the steps of the court’ going in for the child’s court hearing. Many children indicated that they met their lawyer the day prior to their court hearing, or two days before. Clearly, meeting just one or two times prior to hearings is insufficient for developing enough trust and open communication between the two parties. Nor is it always enough for the lawyer to clearly understand the child’s case.*

*Perhaps because lawyers are assigned to children, and are simply one more official person with whom they must interact during the course of ‘going to court’, it was difficult to ascertain from children interviewed for this research if they felt as though they had been forced by a lawyer to testify, or to reveal particular elements of their testimony, or otherwise felt uncomfortable interacting with their lawyer.*

*NGO staff members were negative or ambivalent in describing the behaviour and attitude of lawyers who assist children in NGO care. Several staff observed that lawyers are often disrespectful of children and of time (i.e. showing up to appointments late, expecting immediate responses to calls for meetings, cancelling meetings with no explanation, etc.).*

*It was reported that one serious constraint in a lawyer’s ability to represent a child is simply a lack of time spent with the child ahead of time.*

**THEY MEET ON THE COURTHOUSE STEPS:** *‘Often the lawyer meets the kid just before going into court, on the steps sometimes; so they cannot know the child or the case very well. This is a bad system!’ (NGO social worker).*

*One counsellor spoke of a situation where the lawyer was interviewing the child for the very first time while in a van enroute to the courthouse. ‘There were many other people in the van, including the perpetrator. That was not right!’*

#### **4.4.3 Gender matching: lawyers and child victims**

*Not one respondent said they were allowed to choose whether they had a male or female lawyer.<sup>34</sup> Rather, a lawyer was assigned to them.<sup>35</sup> See Figure 15 below for details on*

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*Children” prepared by the National Committee for the Management of Decentralization and Deconcentration Reform (2008).*

<sup>34</sup> *Obviously the shortage of female lawyers may prohibit a child from being represented by a lawyer of their choosing, but it is important to have this conversation with children and to acknowledge that children usually do*

## ***A System Just for Children***

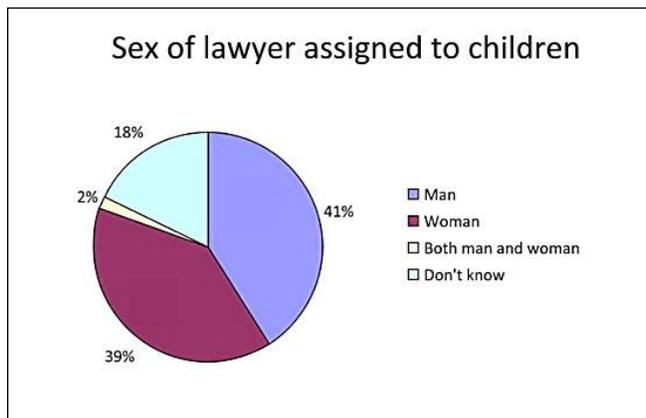
***representation by sex of lawyer. Most children expressed a clear preference for being represented by lawyers of one sex or***

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***have preferences to work with authorities of one sex or the other, and as much as possible, to honour their desires.***

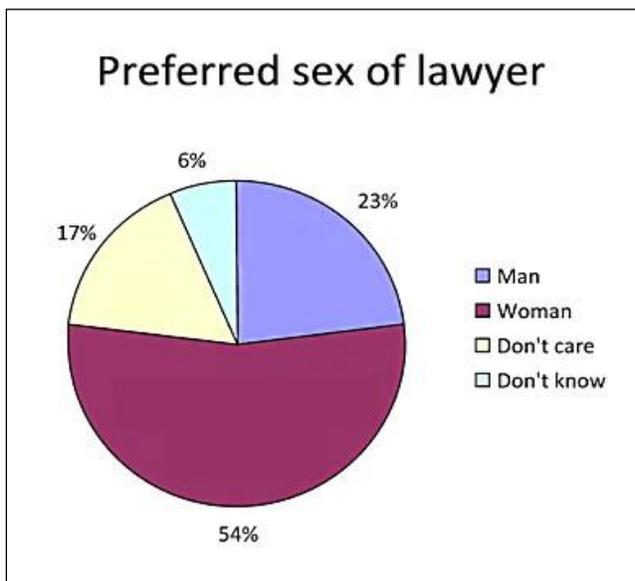
**<sup>35</sup> *The Khmer legal advisor of a major international NGO that works with sexually exploited and trafficked children, explained: “We do not ask the child [if they want a male or female lawyer] because we already know that a girl wants a female lawyer.” Not only is this attitude disrespectful, it also contravenes a child’s right to information and to choose; and in cases where a girl client would prefer a male lawyer, this assumption may delay her case as it is much easier to access male than female lawyers in Cambodia. BAKC has 818 lawyers enrolled, of which just 147 (19%) are women.***

Figure 15: Sex of lawyers assigned to children



*the other (male or female lawyers) and supplied rationale for their preference. More than half of all respondents expressed a preference to be represented by a female lawyer (53%); nearly one quarter (23%) expressed a preference to be represented by a male lawyer; while several children said they did not care about the lawyer's sex (shown in Figure 16 below).*

Figure 16: Child preference for lawyer



*One of the most frequently cited reasons for wanting a female lawyer had to do with victims being shy or embarrassed to tell the details of their story. But a 17-year-old male stated: 'I want a woman lawyer because they are better than men lawyers and they can think more deeply'.*

*Reasons for child respondents preferring to be represented by female lawyers or to be represented by male lawyers are included in Annex 13. It is important to note that though the majority of children wanted a lawyer of their same gender, not all girls wanted female*

*lawyers, and not all boys wanted male lawyers: several children said they did not care, as long as the lawyer was competent and cared about the child.*

**THOUGHTFUL AMBIVALENCE:** *A 15-year-old girl succinctly stated: 'Man is ok, woman is ok. The main point is the person should be able to deal with my case well.' A 15-year-old boy echoed the sentiment: 'I don't care about gender if they can help me!'*

*This underscores the fact that authorities should not make assumptions about what is best for the child but should engage with children to hear their views, opinions and preferences.*

#### **4.4.4 Experience of pre-trial preparation**

*Children living in NGO residential care received the most extensive and comprehensive preparation for court. Figure 15, below, gives an overview of the types of preparation received. Children who do not have assistance from social service agencies may not receive much preparation at all. For example, one girl's father contacted an NGO directly to report that his daughter had been raped, and subsequently the NGO transferred the girl's case to a Protection of Juvenile Justice (PJJ) lawyer to represent her. This girl received minimal preparation compared to some others in full time NGO care.*

**PREPARED TO SPEAK?** *'My mother told me not to be afraid (kome pye). She also told me to be sngop ('peaceful, calm' like water without wind blowing it). My lawyer told me to not be afraid and to be clear with my answers' (P-24).*

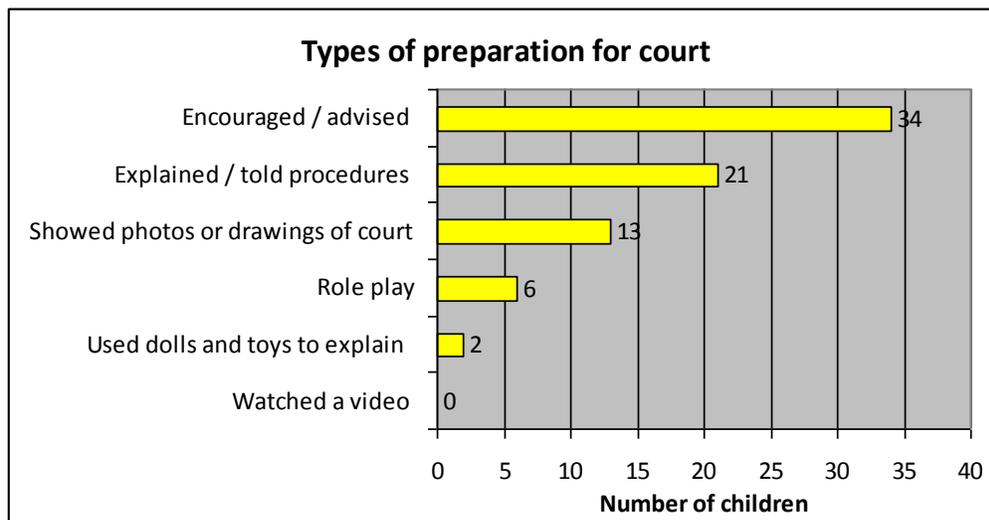
*One common activity used by NGO social service staff to prepare children for court was role play. Children who already had experience in the courtroom and staff took on the roles of various authorities to demonstrate how the system works. Having adult authorities simply talking the child through the procedures was also commonly identified as a form of preparation. Use of photographs of the courtroom and of court authorities was also commonly reported by children and considered helpful, as was using dolls to enact courtroom proceedings.*

*Many children said that their lawyer had given them some words of advice (such as 'tell your whole story') and some idea about the procedures and processes they could expect in court. They said they found the lawyer to be correct in these outlines of activities. Figure 15 below gives a clear picture of the frequency with which various forms of preparation were used.<sup>36</sup>*

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<sup>36</sup> Note – children were asked to state all the ways in which they were prepped for court, so a child could provide more than a single answer.

Figure 17: Type of preparation given to children for testifying in court



**Overall, lawyers appeared to provide minimal information to children about what to expect in the courtroom, though there were exceptions. For example, one girl explained that her lawyer said: ‘Do not be afraid. My lawyer encouraged me, he said no one will yell at me in the courtroom. He also said if I didn’t want to answer questions, then I didn’t have to. And if I needed a break, then I could ask for one’ (P14).**

**The most common response to the question: ‘Did you receive any preparation for going to court?’ was a description of advice and encouragement received from lawyers and from NGO caregivers. The generic Khmer term for such advice or ‘guidance’ is ‘nye noam,’ a phrase which embodies a sense of moral instruction and pointing recipients toward ‘good behaviour’. Such advice is meant to ‘loke toke chet’ (lit. raise the waters of the heart, or ‘encourage’). A common refrain cited by children as advice they had received from caregivers was simply ‘be brave’. Other frequent words of advice from adult caregivers included: ‘tell the truth’ and ‘tell the whole story’. While these are important things and will help children in their court time, this nye noam should not substitute for more rigorous and methodical preparation of children.**

**BE BRAVE:** ‘The [social service agency lawyer] reviewed the important points of my case with me and encouraged me to be brave when telling my story in court. She also said to speak as clearly as possible in the court’ (SR-09).

**Six children said that they had found it helpful to have seen legal shows on television (not educational materials, but popular television shows). This helped them see what was expected. Four children reported that they had been shown a video about court proceedings. The video was later identified as the instructional video called *Through children’s eyes* produced by the Child Justice Working Group and funded by UNICEF. The children who saw it**

*said they found this interesting and helpful. No children reported having a ‘walk through’ at the court itself.*

*It was seldom reported that parents or relatives were included in the preparation for going to court (though sometimes children said that their mother ‘gave advice’ or ‘told me to be brave’). One reason for this could be that, as most children were residing in NGO shelters, families/parents felt content to leave responsibility for all aspects of the child’s well-being to the organisation. Another might be that parents and guardians may not be aware of legal proceedings and may not understand that they have the right to observe. It seems logical that these stakeholders participate in the preparation, both so that they can support their children leading up to and during the hearings, and so they understand the actors and proceedings themselves.*

*There is no single standard curriculum, process or guidelines used by NGOs to prepare children for court. There may also not be adequate awareness of the value of such a tool. A senior child rights monitor in a prominent legal aid agency said: ‘There is no curriculum to teach from because the counsellors and social workers are all very experienced.’ All NGOs reported that poor communication from courts about appearance dates and schedules is a significant constraint in their preparation efforts. There is a reluctance to prepare the children too far in advance because this may upset them or cause greater anxiety. But the NGO often has just one or two days’ notice; in those cases, a child has very limited preparation.*

*Depending upon the NGO, there is an attempt by social workers and counsellors to be responsive to individual children in their need for information, relaxation techniques, and so forth. Generally, NGO staff said that they did not observe any differences in preparation for boys and girls – they said a child’s personality determines what activities they use rather than the gender of the child.*

## **4.5 Experiences in court; procedures**

*One of the critical aspects of ensuring that justice is carried out in matters involving child victims and witnesses of crime, relates to actual court logistics: scheduling for the courthouse event, physical facilities available for children, confidentiality of a child’s case details and exposure of the child to other criminal cases. Several logistical issues described below demonstrate the gap between global best practice and actual treatment of children in the Cambodian justice system.*

### **4.5.1 Lack of confidentiality**

*One of the most obvious non-compliance issues is lack of confidentiality – courts publicly post schedules for court appearances, which include details such as a victim’s name, age and gender, and crime that is being tried. This information is posted for minors and adults in municipal courthouses.*

#### **4.5.2 Scheduling of court hearings**

*Courts do not seem to take steps to accommodate the special requirements of child victims. For example, some children missed their hearings because of exams or other schedule conflicts, such as parents working and not being able to take them to the courthouse.*

*Schools should also be encouraged to accommodate court hearings. For example, a 15-year-old female rape victim described a situation where her trial date had been set for January 2013. However, she and her lawyer both were unable to attend because of school exams and a scheduling conflict, respectively. The perpetrator had also not yet been apprehended. However the trial still occurred despite her lawyer's request for an extension. Based on the testimony of two witnesses on the child's side, the perpetrator was sentenced in absentia (SR-02).*

*Several children said they had been to the court house more than once because when they arrived for a scheduled appointment they discovered it had been cancelled. They were not informed of the change until they got to the court house, and in no case was an explanation provided for the cancellation.*

#### **4.5.3 Showing up on time**

*Several children said that their court case had started late because the plaintiff's lawyer or the defence lawyer was late. It was also reported by children that sometimes a hearing was delayed because a judge was late.*

#### **4.5.4 Exposure to other cases**

*Numerous respondents reported that they were required to sit through other court proceedings or trials before their own trial commenced. These children were able to describe in detail the court proceedings they saw – four men accused of theft, two boys caught snatching a purse, an old man on trial for raping a young girl, and so forth.*

#### **4.5.5 Strangers in the courtroom**

*Two judges informed the research team that if lawyers request it, judges can make the trial a 'closed court' and not allow any strangers to be present. It is curious that this is the exception rather than the rule. It is also interesting that a child may be required to sit in a room with many strangers prior to her own case being heard, even if the judge dismisses strangers before the child's case. Younger children especially, stated that even being merely present in a room so full of people was frightening: 'If there are many people, it makes me feel afraid' (P-09).*

*The majority of the children who went to hear their verdict reported that there were numerous other people in the room also waiting to hear results of their respective criminal cases. In these instances, the child's case did not necessarily receive priority. Children are forced to hear about a variety of other cases, forced to have strangers hear the details and results of their case, and forced to see the perpetrator yet again.*

**EVERYONE LEFT THE ROOM:** *One girl (B-01) said that while she waited in the courtroom for her own trial to begin, there were many strangers present. But when it came time for her trial, the judge asked everyone not directly related to the case (including police) to leave the room and everyone complied. A similar scenario was described by several children.*

*The research team observed one trial (of a foreign male accused of paying for sex from three under-age boys) at which two young male journalists were present. No one from the multitude of accompanying social service agency staff, legal aid agency staff, lawyers from either side, or court authorities questioned their right to be present. For one hour prior to entering the courtroom, the journalists walked up and down the hall trying to speak with the children, their guardians and NGO representatives.*

*There are clear standards stipulating that trials involving juvenile offenders should be closed to the public and the media (UN - The Beijing Rules). These same standards should be upheld for all children in the Cambodian justice system, whether victim, witness or offender.*

#### **4.5.6 Keeping children comfortable**

*Authorities in the formal system pay scant attention to the physical comfort of child victims/ witnesses during the periods in which children must wait in either the courthouse or courtroom. Reportedly, there are 'child-friendly waiting rooms' in some provincial courthouses (equipped with a bed, floor mats, toys and colourful posters on the walls); however, no child participating in this research had any knowledge of such facilities.*

*Some of the child victims are very young, and thus very small in size. In no way are accommodations made in the courtroom for these children (e.g. using smaller chairs or desks, providing pillows for a child to sit on so they can see clearly, etc.). Only a couple of children said that they had been given toys to play with during their time in the court, and these were provided by the accompanying NGO rather than court authorities. Just two children said that they had been given snacks and water while in the courtroom waiting for their trial to proceed.<sup>37</sup> Both appreciated this very much.*

#### **4.5.7 Issues relating to translation**

*It is incumbent upon court authorities to ask about the need for, and then to supply if necessary, translators in the event that a child (or perpetrator) is not a native speaker of Khmer. However, this is not practiced consistently. One clear reason for this ostensible oversight is that judges interviewed, as well as NGO social workers who have attended*

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<sup>37</sup>Actual trials did not usually take a long time, perhaps an average of one to two hours. However, sometimes children had to wait for one to two hours before they were admitted to the courtroom. Or they came for a morning appointment, proceedings ran over time, and then the child was required to return in the afternoon.

*dozens of court sessions with the children in their care, said court officials are afraid that a translator/interpreter ‘will not speak the truth’ or ‘will tell the child what to say’.<sup>38</sup>*

*For children that are of Vietnamese origin<sup>39</sup> the assumption is made that they completely understand Khmer and are fluent in that language. Children do not readily contradict this, even if they are not very comfortable speaking in Khmer. Possible reasons why children do not request an interpreter may include:*

- *children do not know they have a right to this kind of service*
- *children are too afraid to ask for an interpreter*
- *children believe that having an interpreter will jeopardize their chance at justice*
- *children may overestimate their capacity to comprehend Khmer and/or underestimate the ‘fear factors’ that could limit comprehension*

*Even if a non-native speaker is relatively conversant in Khmer, the language used in a courthouse may be too technical or difficult to understand, as it is not ordinary, everyday language. Given that most victims are young girls and most authorities are adult males, the fear engendered may interfere with a child’s ability to understand and/or to communicate. It is therefore imperative that caregivers, including authorities, proactively take the initiative to ensure that language issues are addressed.*

## **4.6 Experiences in court: children’s feelings**

*Children were asked specifically to describe their emotional feelings as well as their physical/physiological response during the period of being in court.<sup>40</sup> Nearly all children very clearly expressed that all facets of court hearings were frightening for them, and recommended that more child-friendly procedures be used, particularly those that prevent face-to-face confrontation with perpetrators.*

### **4.6.1 Children’s fear in court**

*Almost all children reported being fearful (pye) or afraid (klaitch). There were some variations on this description, for example, one girl described her feeling as ‘pye pye’ and ‘pye klang’ (B-06). A 16-year-old girl said, ‘I wanted to cry because I was so afraid to be in court. But I did not’ (B-05).*

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<sup>38</sup> *Additionally, some of the lawyers interviewed stated their opinion that in cases where perpetrators are non-Khmer, and especially when the accused is a foreign national, failure to provide an interpreter is often used as a delaying tactic by the defence lawyer, as the courts do not want to incur the expense of hiring interpreters.*

<sup>39</sup> *Few children in this research self-identified as Vietnamese.*

<sup>40</sup> *The high prevalence of somatic symptoms of mental and emotional distress among Cambodians is well documented (somatic means experiencing mental and emotional distress as physical sensations or bodily states). Specific forms of somatisation have been discussed by a variety of studies of Cambodian mental health issues, with Cambodian refugees in the U.S.A. and with local Cambodian populations. See, for example, Hinton et al. (2012), "PTSD and Key Somatic Complaints and Cultural Syndromes among Rural Cambodians: The Results of a Needs Assessment Survey", *Medical Anthropological Quarterly* (26) 3, 383-407.*

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***A small number of children had an extreme reaction to the fear they felt. As one 10-year old girl explained, 'I was so afraid when I was telling my story to the judge that I vomited. The judge gave me time for a break and when I came back after, I felt much better' (P-23).***

***Some of the child respondents were able to describe their feelings of fear, and the reason for their fear, in more detail (see box below). One girl articulated, 'I was afraid that someone would yell at me. I was also afraid that we would lose the case and the perpetrator would not go to jail' (B-02). A 12-year-old said, 'My body was trembling, my limbs were shaking, and my heart was beating fast. I was thinking about what he did to me and that the perpetrator might try to kill me in the future. I was afraid he might hurt me because I was testifying against him' (SR-09).***

***I FELT VERY HESITANT: 'I felt very hesitant. I wanted to go into the court and talk (testify) but at the same time I just wanted to run away!' (B-04).***

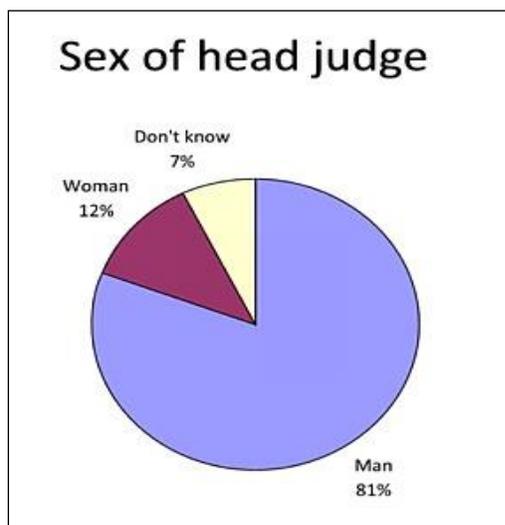
***I WAS AFRAID: A 17-year-old girl said, 'I was afraid that they would ask me questions I could not answer' (B-07).***

***MY HEART WAS SKIPPING: A 17-year-old rape victim at the Siem Reap court said, 'I felt a little afraid when I took the stand because I had never done it before, and it felt like a cage. Also the judge spoke in a voice that was very loud. I was afraid that I would make a mistake, or say the wrong thing. My heart was skipping a little!' (SR-06).***

### **4.6.2 Shame and embarrassment**

***Many of the child victims of sexual exploitation expressed a preference for being represented by a lawyer of the same sex for the explicit reason that they would be embarrassed to tell their story and explain details to someone of the opposite sex. It is thus a logical extension to presume that these children will experience shame and embarrassment when telling their story to an authority of the opposite sex – which is precisely what happens for the majority of victims of sex crimes (see Figure 18 below). Though 81% of respondents were girls, just 12% of head judges were women; and there were just two instances where a woman judge was among the two assistant judges at a child's trial.***

Figure 18: Sex of head judge at child court hearings



Some children described feeling shy or embarrassed to talk to court authorities about what happened to them (KS-01). One girl said: ‘The judge asked me about so many details that I was ashamed and embarrassed. I had to tell the judge, “The foreigner came into my room....”’ (P-03). Sometimes a child’s shame or embarrassment is exacerbated by the inappropriate behaviour of persons in authority. One 14-year-old girl who was raped by a Japanese man in Siem Reap described her experience in court:

***I WAS SO EMBARRASSED:*** ‘Yes...I could understand the language [the judge] used, but sometimes he spoke a bit softly so it was difficult to hear him. The judge was very old so I don’t think that he could talk louder than that. He spoke in normal tone of voice. But he asked bad questions about the rape that were too direct – some that I felt like I did not want give the answer for because I was so embarrassed. He gave me enough time so that I could give him answers at a normal pace. His questions were straight to the point, but sometimes I didn’t want to repeat my answer when the same questions were asked’ (SR-04).

### 4.6.3 Children’s responses to fear and distress

Children were specifically asked about how they responded physically to their experience of being in the court house (i.e. waiting to testify, actually testifying, seeing the perpetrator, hearing the perpetrator’s testimony and hearing the verdict). As well as being afraid, the vast majority of children described in detail somatic symptoms of their distress (Table 7 below).

Table 7: Child somatic responses to court proceedings

Child somatic responses to court proceedings
<ul style="list-style-type: none"> <li>• Cold hands</li> </ul>

<b>Child somatic responses to court proceedings</b>
<ul style="list-style-type: none"><li>• <b>Cold hands and feet</b></li><li>• <b>Cold body</b></li><li>• <b>Abnormally fast heartbeat</b></li><li>• <b>Dizziness</b></li><li>• <b>Stomach ache</b></li><li>• <b>Headache</b></li><li>• <b>'My body was shaking.'</b></li><li>• <b>'My hands were sweaty.'</b></li><li>• <b>'I could eat, but just a little bit.'</b></li><li>• <b>'My mind was not working well.'</b></li><li>• <b>'I was so afraid I forgot to think.'</b></li><li>• <b>'I was sleepy, just wanted to sleep!'</b></li><li>• <b>'I felt tired; I had no energy.'</b></li></ul>

**Support from adults both before and in the court was helpful in managing these feelings of fear. Several children responded to the question about what helped them overcome their fear by saying that they had received helpful advice or encouragement from associated adults. For example, 'My counsellor told me not to be afraid' (B-01). Or, 'A person from the legal aid agency came with me to court and they encouraged me to speak well. This helped me feel less afraid' (P-15). As another example: 'I remembered that the NGO staff told me not to be afraid, they would stay close to me. That made me feel better' (B-05). One child simply said, 'There is nothing I can do to make myself feel better or calm, I can do nothing!' (P-26). See Annex 14 for more examples.**

**I CAN'T BE HAPPY ENTIRELY:** Many children also cited 'prayer' as something that made them feel better and less fearful. 'I prayed and that made me feel better. I can't be happy entirely, but it did make me feel better' (P-09).

**I TRIED TO SPEAK SLOWLY:** 'I tried to speak slowly and that helped me to breathe and speak more normally' (SR-06).

#### **4.6.4 Feelings when giving testimony in court**

**Several children said that they were very afraid when anticipating the testimony, but once they began to speak it was easier and 'I began to feel normal'. One girl's description encapsulates this well: 'At first I was afraid; then I began to think I could do this and my fear disappeared' (B-01). Similarly, another girl explained: 'I was afraid (pye). But then I got angry when I began talking and remembering what happened to me so I was not afraid' (B-04).**

**MY FEAR WENT AWAY A LITTLE BIT WHEN I STARTED TALKING:** A 17-year-old girl said, 'I felt better when I was actually talking to the judge – my fear went away a little bit. I was not afraid when I was

*talking; I was able to speak well' (B-07).*

*Some children had the opposite response, as described by a 10-year-old female victim of rape by a man who lived right next door: 'I was afraid before I began my testimony in court; and even more afraid after I started talking to the judge!' (B-06).*

#### 4.6.5 Reactions to perpetrator testimony in court

*Many children expressed anger as the dominant emotion experienced when they heard the perpetrator tell his version of the story. 'Most of his answers were correct. I even felt that at one point he confessed to his crime. But then he began to answer not honestly. Then I felt very angry when he said things that were not true' (B-04).*

**I WAS ANGRY WHEN HE LIED:** *'I was angry when he lied about that he didn't rape me, because he refused to admit any fault. I was thinking that I wanted to cut off his speaking when he was lying like that, but I realized I didn't have the right to speak at that time. I was really shaking with anger and wanted to jump up and tell the judge the truth! I was crying at the same time' (SR-06).*

## 4.7 Experiences in court; courtroom arrangements

### 4.7.1 Exposure to the perpetrator at court

*Nearly every child interviewed had been exposed to their perpetrator on the way to the courthouse or while waiting outside the courtroom. This clearly contravenes the child's right to safety and needs attention. The impact on children was highly distressing and likely to affect their ability to testify.*

**TOO CLOSE FOR COMFORT:** *One child recounted how she had been in the same van as the perpetrator, going to the courthouse together. 'I was so afraid I had to shut my eyes tightly and not look at him.'*

*In the courthouse, as there is not a private waiting area, the child may see the perpetrator enter the courthouse. There is no private toilet for children, and no guards at the toilet facility, so this is another place that the perpetrator and child could (inadvertently) meet.*

### 4.7.2 Exposure to the perpetrator in the courtroom

*In the majority of cases addressed through this research, the child was in close physical proximity to the perpetrator in the courtroom (two to three metres). This was by far the most commonly cited difficulty of all aspects of the justice system for the children. 'He was so*

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**close, just a few meters away in the courtroom. I was afraid he would molest me again!’ (B-05).**

**Nearly every adult respondent that did not work for the police or the court commented on the inappropriateness, and negative impact on children, of keeping child victims in very close physical proximity to the perpetrator at various times during the justice process.<sup>41</sup> Researchers noted that contact was common, for example before entering the courtroom, victims and perpetrators are often in the same hallway waiting to get in, and perpetrators and victims sometimes sit within very close to each other in the courtroom.**

**The RGC’s *Prakas on The Use of Court Screen and Courtroom TV-Linked Testimony from Child/ Vulnerable Victims or Witnesses (2008)* was meant to address this issue. Unfortunately, there appeared to be limited awareness of the benefits of more formalised child-friendly court procedures, or exactly when they should be used. One lawyer reported that partitions (screens) and video conferencing may only be used upon request by the child’s lawyer. However, given the children’s preference for maintaining separation from perpetrators, it is suggested that court officials should automatically place partitions (screens) and use video-conferencing as standard procedures for all minors, and remove or not use these things only when requested by the child.**

**BEING IN THE SAME ROOM IS TOO CLOSE: A 14-year-old girl raped by a 70-year-old man, said ‘Being in the same room is too close. I was afraid immediately when I saw the perpetrator. If I had known that we could ask for a screen in the room, I would have asked for one. I hate him! He makes me feel afraid’ (P-07).**

**It is important to note that almost all respondents for this research were supported in the courtroom by NGO staff, including preparation before going to court. It is likely that the experience for children who do not have NGO support would be even worse.**

**Another common response from children at coming in close range to the person who had committed a violent criminal offence against them was anger. ‘The perpetrator stood about one meter away from me in the court. My mother stood between me and that man. I was afraid to be so close to him. But, I was more angry than afraid!’ (B-06). Another girl explained: ‘I was angry because the perpetrator did not tell the truth. He said that I allowed him to do the rape, that he did not force me. But that is not true! I was not afraid of him anymore when I heard him tell his story. Then I was not shy [any longer] and I even pointed at him during my testimony!’ (P-03).**

**MY BODY WAS TREMBLING WITH ANGER: One child described her experience of listening to the perpetrator give his testimony: ‘I felt angry because he was lying - I didn’t want to listen to his words. He**

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<sup>41</sup> Curiously, not one of the court authorities mentioned this as a problem.

*stared at me and pointed his finger at me. I was also afraid because I was thinking that he might hurt me in the future if he was not sent to jail. I felt very hot and my body was trembling with anger – I wanted to hit him!’ (SR-04).*

*Some children were adamant that they wanted to look the perpetrator in the eye; some children said they wanted to hear the verdict directly and see the perpetrator’s response. However, many children had the opposite view and clearly said they did NOT want to be near the perpetrator at any point in the process. One girl explained: ‘I did not ask for a screen because I did not know we could have a screen. Had I known this, I would have asked for a screen to be put up because I did not want to look at the perpetrator. But I am glad that I could hear directly what he was saying’ (B-06).*

*One legal aid lawyer described the intensity of children’s responses thus: ‘Children are plukpluk [paralysed with fear] when they see the perpetrator.’ An NGO social worker stated: ‘Perpetrators stare the children down in the courtroom and intimidate them that way.’*

**PHYSICAL PROXIMITY OF VICTIMS AND PERPETRATORS:** *One NGO counsellor simply stated: ‘Most [sic] perpetrators have previously threatened the children with death if the child tells; so being in the same room is traumatic [for the child]!’*

*An expatriate NGO manager noted: ‘There has been some use of bamboo screens, but this seems ad hoc, not systematic and it’s not done well. Sometimes they put up the screen after the court has started. And sometimes still the child had to walk past the perpetrator/s to then sit behind the screens.’*

*At the same time, adult caregivers were cognisant of the fact that some children want to see the perpetrator when in the courtroom: ‘The children feel they are too close to the perpetrators, they want to be much farther away. But lots of the children who testify do want to be in the same room so they can see/hear the perpetrator.’<sup>42</sup>*

*These varied responses are an excellent example of why it is imperative to hear from children individually about what they want to happen in their own case, and to not make blanket assumptions about ‘what is good for children’ or ‘what children want’. At the same time it seems clear that children are often made to feel vulnerable by not being sufficiently protected in the courtroom and court environment. The procedures and safeguards outlined by law to prevent this are often not made available to child victims.*

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<sup>42</sup> *It is possible that the children do not want to be near the perpetrator but they do want to hear what is said by the perpetrator and to see how the perpetrator responds to the questions in court. Children should be able to hear/see first-hand without necessarily being physically exposed to the perpetrator.*

### **4.7.3 Use of screens**

*A small minority of children interviewed had a bamboo screen erected in the courtroom to separate them from the accused. Most who did not have a screen did not know they could ask for one. In a couple of cases, children said that there was a screen in the room but that it had holes in it so they could still see the perpetrator (P-08). One girl solved this by closing her eyes: 'I could not see the man if I kept my eyes closed' (P-12).*

*One child victim clearly explained how she felt about the screen.*

***I DON'T WANT THE PERPETRATOR TO THINK THAT I AM WEAK: 'Before I thought there should be a barrier so the perpetrator cannot look accusingly at the child, point at them, or do other things that upset and scare them. But now I would be willing to go to court again without a barrier because I don't want the perpetrator to think I am a weak girl. And actually, I think that other children should not have a [screen] either because they need to be brave enough to face their perpetrator and testify against him' (P-26).***

### **4.7.4 Use of CCTV / separate video room**

*Not one child interviewed for this research had any knowledge of the video-conferencing room or suggested they had any thoughts about the possibility of giving testimony from a separate location (i.e. not in the courtroom).*

*Court authorities in all four courts visited by the research team knew of the existence of the facilities. Phnom Penh authorities said they 'always use' this for children. Battambang authorities said that the room has been turned into much-needed office space for lawyers. Kampong Som officials said the equipment is broken and the technician had recently left. In Siem Reap, one official said, 'We used to use that room in the beginning, but then it broke.' A different court authority explained simply, 'We don't have all the resources we need to run the video room.'*

### **4.7.5 Comments on the court environment**

*With the exception of two children,<sup>43</sup> NGO staff members were the only respondents to comment on the physical conditions that children face in court. One stated: 'The court buildings are different in quality in different provinces. Some of them are in bad condition, with water stains and a leaking roof. The poor quality building makes some children afraid just to see the place! How can they be confident?'*

*Another aspect of the court environment that was noted as causing fear is the placement of judges on an elevated platform and seated behind tables. One counsellor said: 'This makes it*

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<sup>43</sup> One child commented on how dirty the courtroom was and at the bad odour of the room. Another child said, "The courtroom looked and felt like I was in prison."

***so the children (and even counsellors) are [literally] looked down upon. This contributes to the sense of fear for adults and for children.'***

***NGO staff noted the total absence of special equipment for children: 'Even the littlest children must sit in the adult chairs and benches. It is not easy for them.' Further, 'children sit when waiting but are required to stand for the entire time they answer questions. Standing for a long time can be difficult for them.'***

## **4.8 Experiences in court: official's attitudes to children**

### **4.8.1 Support available in the court from adults**

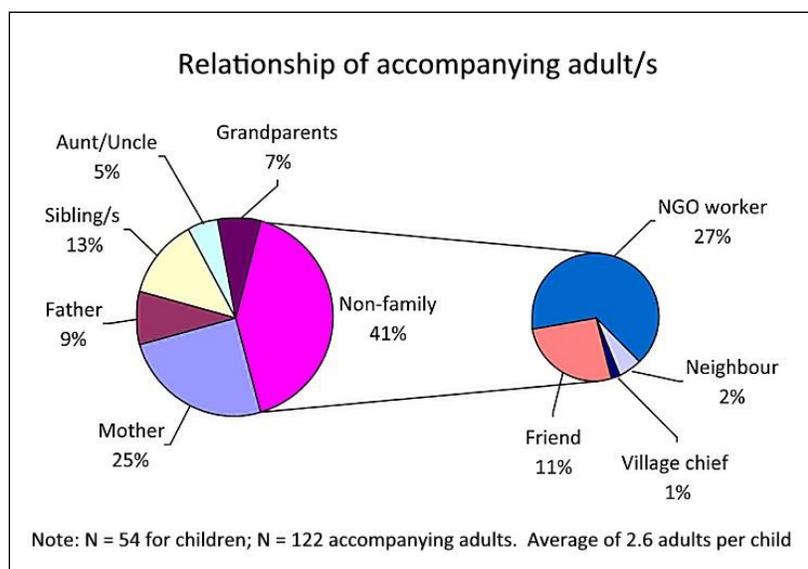
***In a vast majority of cases, children were accompanied in the courtroom by one or more adults of their choosing (see Figure 16 below). In only a very few cases, judges allowed the accompanying adult to actually be physically near to the child when the child was on the stand to testify. In most cases, the accompanying adult had to remain seated.***

***Children reported being very comforted by the presence of parents, relatives, friends and NGO counsellors during court hearings. One child said: 'It is good for children to have a parent or someone they trust to stand with them when they testify. In my case, my mother put herself between me and perpetrator. That was a good thing, and it helped to make me more confident to speak' (P-03).***

***However, some children said their parents could not come to court because they were working on the court date. Courts should be more sensitive to this and accommodate parents' schedules. The fact that official notification of court times is often delayed, and almost never provides families with the requisite 15-days advance notice of scheduled hearings, is another factor which hinders family members from accompanying their own children to court.***

Figure 19: Relationship of accompanying adults

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### 4.8.2 Experiences with lawyers in the courtroom

*Child respondents reported mixed experiences with lawyers in the courtroom. The majority of children said that their own lawyer did not speak to them, or interact with them in any way during the courtroom time. In some cases, children said that their lawyer did not actively defend/protect them in court (e.g. when the defence lawyer was challenging the child).*

**TELL THE TRUTH:** Two children expressed dismay that their lawyer came to them after the trial and questioned the veracity of their story: 'At the end, everyone left the courtroom without saying anything to me. But my lawyer came over to me and said: 'Is everything you told the court true? It must be true!' My lawyer was afraid I was not telling the truth' (H-01).

*In some cases, children reported that their lawyer did take an active advocating role. One girl said that her lawyer challenged the dishonest answers the perpetrator was giving, saying: 'My lawyer corrected the man' (B-04). Another girl (KS-02) said: 'Some of the words the judge used were too hard for me to understand, so my lawyer had to explain what the judge was asking. The judge sitting to the right was not very polite. When that happened my lawyer asked him to stop talking because it made me afraid.' This same child said: '[My lawyer] really understood my story and tried hard to get justice for me.'*

### 4.8.3 Experiences with judges in the courtroom

*Children were asked several detailed questions about the judges in their courtroom: tone of voice, level of language (technical, simple), whether judges allow sufficient time for response, what was the judge's attitude toward the child, and so forth.*

*In a few cases, child respondents said that the judge in their trial spoke '...normal, nothing strange. He did not have a loud voice or yell at me' (B-07). Not one child said they felt rushed*

– all children reported that the judge gave them sufficient time to answer questions. Some children commented that the judge used ‘nice words, ’for example calling them ‘own’ (‘child’) or ‘pa-own’ (‘younger sibling’).

Some children reported that the judge spoke directly and gently to them during the court proceedings to tell them not to be afraid, to speak well, etc. This was the exception not the rule, but when it did happen, the gesture was greatly appreciated by children who experienced it.

**THE JUDGE NOTICED MY FEAR:** ‘At first I was so afraid, but after I had talked a little the judge noticed [my fear] and encouraged and praised me for my courage. And then I was happy and able to speak more confidently’ (P-19).

‘I can’t remember how I was feeling when it was my turn to give testimony, but I must have looked afraid because the [woman] judge said ‘do not be so scared’ in a joking way. Then I felt better.’

‘The judge used a normal tone of voice, like you are talking to me now. I felt like he respected me. After I testified, the judge praised me and said that my speech sounded like I was wiser than my years’ (SR-06).

Many children reported that the judges had ‘stern faces’ (kat) and ‘looked very serious’ and that they found this to be frightening. A couple of children attributed such manner to the serious work of a judge, ‘...they want to get the truth, so they must look serious’. As one girl explained, ‘The judge did not smile; he had a very serious face. He talked loudly, and he yelled. But, before he asked me any questions, he told me that he had to talk in that manner because he was serious about getting justice for everyone involved in the case’(P-03).

Many children said the judge in their trial ‘spoke loudly/strongly’ (klang). This was not necessarily experienced as a negative thing. One girl explained: ‘The judge spoke klang in order to make me hear well. He spoke the same way to others in the room too. For example, he spoke like that to the perpetrator also’ (B-01). And one boy said: ‘He was polite to me...the judge had a big voice but he was not rude to me’ (SR-01).

Several children reported that the judge yelled (samlot) at them. It is difficult to know precisely whether the distinction between speaking strongly (klang) and yelling (samlot) is real or perceived. In at least one case, a victim’s mother contradicted her daughter to explain that the judge was speaking klang and not samlot. Nevertheless, as this research was tasked with deciphering child perceptions of events, the child’s perspective must override what adults perceive.

Some children described situations where the judge interrupted proceedings to make it easier for the child. One child said: ‘I was so afraid [to testify] I was crying. My mother bought me a coke but that did nothing to change my feelings. Then the judge told me I could leave,

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**go out of the room until I felt better and had stopped crying. So they stopped the proceedings until I could return to the courtroom' (B-02).**

**Several children noted that they could not understand everything the judge said during their trial. An 11-year-old girl stated: 'Some I could understand; some I could not understand. They used words that are too big, technical words, high words. I was too shy to ask them to repeat' (P-09).**

**A small number of children told researchers that if the judge said something they did not understand, they asked the judge to repeat the question and judges complied. This did not occur very often. Conversely, several children said that they wanted to ask the judge to clarify or repeat something they did not understand or hear well, but they were too afraid to do so (P-03).**

**I WAS TOO SHY AND TOO AFRAID: 'I did not ask the lawyer or judge to repeat anything [even though I could not understand] because I was too shy and too afraid – I thought the judge would be mad at me if I asked like that' (P-15).**

**One child said she could understand the judge's questions initially, but the more he asked the more confused she got until she could not answer. Her lawyer came to her aid and asked the judge to be more gentle (B-04).**

**In a very few instances, the judges reportedly came to the aid of children against over-zealous defence lawyers. There were many examples cited by children where their own lawyer advocated for the defence lawyer to behave better (e.g. to stop shouting at the child, to stop trying to confuse and intimidate the child).**

**A few children noted that the judge used a gavel, and when it banged on the table this frightened them. They asked that judges not bang the table in that way. One said, 'Fear comes when the judge hits the desk and it interrupts concentration. All gets lost' (P-03). This same child reported that the judge stopped her during her testimony and told her that he did not believe her, told her 'tell the truth!' This confused her and made it difficult for the girl to continue telling her story.**

**NGO staff and legal aid agency staff had mixed reviews of the performance of judges in the courtroom. In the worst cases described, judges humiliated victims, used pejorative language, and shouted at victims. They also sometimes treated the accompanying NGO staff with disdain.**

**INAPPROPRIATE RESPONSE IN THE COURTROOM: One NGO counsellor who specialises in working with Vietnamese children relayed that: 'Sometimes the judge says: "Why do you think a kid needs someone to stand beside them? No one will harm the kid, so let them stand alone!" I asked many times to stand near [my child] but I was not**

*allowed.'*

*An NGO social worker from a different NGO said: 'Sometimes [NGO] asks the judge for a break because the child is afraid or upset. But the judge says, "No break!" The judge doesn't want [NGO] to 'give answers' or 'give information' to the children or tell the child to say something different.'*

*Sometimes judges are inappropriate in their lines of questioning, though not necessarily relating to sexual innuendo. For example, one 16-year-old girl (P-03) who had been the victim of rape said that during her trial the judge asked what amount of compensation the family thought would be fair. The mother gave the figure of \$7,000 and then the judge asked, 'What are you going to do with so much money?' Though the question was inappropriate, the mother felt compelled to answer the judge, telling him they would buy land and build a house, and set up a business.*

*NGO staff observed that boys have a more difficult time than girls, because in addition to experiencing the usual difficulties of being in an imposing court setting, they are more frequently mocked by male authorities. 'One judge laughed aloud in a courtroom and said that the victim was lying because boys can't be abused. Then he said, "Anyway the boy got paid for it, so what harm was done?'"*

*In the best cases, judges made a special effort to make children feel comfortable and more at ease. The most common situation described by staff was where judges projected a stern and serious face, treating children in a rather business-like and somewhat abrupt manner, treating children in the same way they treat adults in the courtroom.*

**TAKING SPECIAL CARE:** *One positive situation described by an expatriate NGO manager was when a judge asked a child whose damaged vocal chords (caused by a particularly brutal rape assault) rendered it impossible for her to speak loudly, to please come up to the bench and talk there so he could hear her clearly. 'This was an unusual demonstration of sensitivity on the part of the judge.'*

*In another case, where the rape and assault had been very violent, the NGO counsellor was permitted to stand behind the girl testifying, and the counsellor placed her hands on the child's shoulders. 'The girl was able to give her testimony bravely.'*

*There are some practical challenges to optimal performance by authorities, as identified by court authorities themselves during the course of this research. For example, a high turn-over of staff means that any training for staff may not accumulate, but rather, may actually be lost when staff move to work elsewhere. Often, it is only higher-level officials that receive training, however it is lower-level officials who spend most time with victims in the criminal justice system. Not all judges receive specialised training such as education about how to work with*

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*children or how to address traumatised victims in the courtroom. Another practical issue, identified by judicial and police respondents, was a lack of specialisation. Courts are not divided into distinct chambers, so judges are expected to handle any type of case (IJM, 2013, p. 92) and sometimes, very different types of cases in the same day (i.e. criminal and civil cases). Both police and judicial officials expressed the need to establish a core of specialists who, after training, would be responsible for focussing only on child-related cases.*

*Despite these challenges, there was widespread consensus among social service providers and legal aid agency staff that judges treat children better than they used to. Specifically, that judges speak in more appropriate and less intimidating tones, that they give victims adequate time to respond to questions, and that they intentionally try to make victims feel more comfortable in telling their story. It was also noted that judges seem more inclined to believe the victim than perpetrators, which is the opposite of the situation just a few years ago.*

*One long-time lawyer at a legal aid agency noted that in previous times, judges did not give children much chance to speak in court. Rather, the judge would ask the child's parents to speak for her/him. 'Judges would only listen to the parents, they did not think that children had ideas as well.' This is not the very often the case now.*

### **4.8.4 Role of other officials in the courtroom**

*Legal aid agencies told the research team that, legally, only a judge or lawyer is authorised to ask questions of a victim, but that it is common practice for court clerks to wield tremendous influence. As one lawyer said, 'It is a bad habit of the court clerks to be asking questions directly to the victim. This happens often.' Another lawyer stated, 'Sometimes the judge is late or does not appear at all in the courtroom, so the clerk does work of the judge.' And NGO staff respondents reported that in some of the more straightforward cases (rape was used as an example), the judge may not even bother to ask questions of the victim, with only the court clerk questioning the victim directly.*

### **4.8.5 Experiences of defence lawyers**

*In several cases, children explained that the defence lawyer intentionally tried to confuse them. As one example: 'At first his questions were simple and easy. But then they got more confusing. He tried to trick and confuse me, make it difficult for me to answer him. I felt so afraid that I could not answer the questions any more' (B-04). One girl said, 'The defence lawyer tried to confuse and trick me. I could understand some but not all. And he talked very loud, he yelled at me (neayeah klang)' (B-07).*

*One child (SR-04) explained in great detail: 'The defence lawyer asked in loud questions using bad words and rude language to me, making me feel angry. He was pushing me to give quick answers to his questions and used language that made me angry and it was difficult to answer all of his questions. Also, he used very loud and accusing language that made me very angry and upset so that it was hard to respond. I felt that out of all of the lawyers that exist, he had to be the worst because he was helping a rapist in order to get money.' [N.B. the*

defence was a private lawyer]. This child indicated that her own lawyer was slow to respond to the aggressive behaviour of the defence lawyer, and that her lawyer did not make sufficient effort to protect her.

**HE TRIED TO CONFUSE ME:** Similarly, a 17-year-old girl (SR-06) described her experience of the defence lawyer in court: 'He yelled at me a little, and pushed me to answer his questions immediately. Sometimes he tried to confuse me, and other times he tried to cut me off so that I couldn't answer him. And he looked at me with a very accusing face. I was scared when he did that.'

This was not always the case. A 12-year-old girl described her experience: '[the male defence lawyer] asked many questions but they were clear and with no threats or intimidation. His face was normal and he called me 'niece' (khmouy). He did not try to confuse or trick me and he left time for me to answer at my own pace. His voice and appearance were normal' (SR-09).

#### 4.8.6 Child's right to information

One glaring omission in officials' understanding of the needs and best interests of child victims and witnesses in Cambodia is that children need information. Lawyers did not give the children (or the guardians of the children) a copy of their own statements or any other related documents.<sup>44</sup> Most of the child victims interviewed for this research said their lawyers did not make any effort to help them understand the outcome of a court session, or to bring closure to the events of the trial and legal proceedings. Further, no children had been apprised of the possibility of their right to appeal a judge's verdict. Lawyers said that they preferred to communicate such details to the NGO staff or guardians responsible for the children 'because adults understand well and they can remember'.

#### 4.8.7 Experiences of hearing the verdict of the case

In several cases, children left the courtroom without clear information on when they would receive the verdict. In a few instances, judges informed the child when (on what date) they could return to court and expect to hear the verdict.

Some of the children who participated in this research were actually in the courtroom when the verdict in their case was announced. Reactions to hearing about sentencing were mixed. One girl said 'Now I feel less fear than I did before the trial. The man is in jail' (B-01). Another girl who went to court in Siem Reap received the verdict on her case at the same time she testified. She said 'While I was waiting I felt both happiness and fear. I thought that I would

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<sup>44</sup> This section addresses lawyers only. However, the same could be said for other authorities. For instance, medical personnel conducting forensic exams never provided victims with a paper copy of the results of their examination, and only seldom relayed results verbally. Judges did not necessarily ensure that children knew the results of trials.

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*be happy if he was convicted for a long time in prison. But I was afraid that if he was sent to prison for just a short time he would be out and hurt me. So, when I heard the sentence I was very, very happy that he would be sent to prison for a long time!’(SR-09).*

*Anger was another common response to hearing the verdict: ‘When I heard, I was angry. I wanted him to be in jail for 20 years longer! I am unhappy with the judge because the time in prison is so short.’ This girl did not want to appeal ‘because the time has been so long already. I am now just trying to forget everything that happened to me’ (B-07). Another girl, 10-years old, who went to court in Phnom Penh, articulated similar feelings on hearing the verdict: ‘I felt mad and angry. I wanted him to get much more time in jail. I want him to get as much pain as I have got! I wish he would experience the same pain that he caused me’ (P-23).*

**WE SHOULD KNOW THE FACTS: A 14-year-old female rape victim had a very forthright response to the question of whether children should be in court to hear the verdict of their case: ‘Yes, because this is our life. We should know and hear for ourselves all the facts’ (SR-05).**

*The majority of child respondents said they wanted to hear the verdict first-hand from the judge. As one girl put it, ‘Yes I want to go and hear it directly for myself. I hope that the judge puts him in jail for a long, long time!’(B-05). Another stated: ‘Yes, I want to hear the judge announce the verdict so I could know clearly how long the man would be sent to prison’ (SR-09).*

*But some children felt differently. One 10-year-old girl said she would rather be studying at school than going to hear the verdict: ‘We have to pay transportation back and forth to the court house and that is expensive’ (B-06). A 13-year-old boy victim who did not go to hear the verdict explained why:*

**I DID NOT WANT TO BE THERE TO HEAR THE VERDICT: ‘The NGO said it was not necessary to go to court to hear. And actually I could not go because my father was working and did not have time to take me.<sup>45</sup> Anyway, I did not want to be there to hear the verdict because I was afraid they would announce that the perpetrator would not be sent to jail’ (SR-01).**

*One 17-year-old girl said that she and her mother went to court on the appointed day to hear the verdict in their case. Her lawyer did not go ‘because he was too busy’. She continued: ‘We could not get into the courtroom because a man prevented me from entering. So we waited outside. Later, I saw a man with a book exiting the court house so I asked him what the sentence was. He told me it was five years in jail. Two weeks later [the legal aid agency] called to tell me what the verdict was’ (B-07).*

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<sup>45</sup> NB: This NGO has a policy that it does not take children to court unless the child is accompanied by a relative.

#### **4.8.8 Expediting cases involving children**

*Globally, it is best practice for authorities in the criminal justice system to expedite cases involving children, whether child victims, witnesses, or offenders. Many of the judges and court authorities interviewed indicated that they strive to do this. However, evidence does not support this assertion. It is extremely difficult to arrive at an 'average time' that cases involving child victims take to run the full course through the justice system. This is because few agencies keep detailed records from start to finish and child victims are often moved among NGOs during the process; and delays occur for many unknown reasons, and inconsistently. See Annex 11 for examples from legal aid and social service NGOs of how long various cases have taken.*

*Example case duration: 2.5 years+ A female victim aged 8, at the Court of First Instance in Kampong Thom: filed her case in November 2010 and received the verdict in May, 2013. The 17-year-old Khmer male perpetrator was sentenced to 10 years in prison and a compensation payment of 10 million riel. He did not appeal.*

*Less than half of the children interviewed (37%) answered definitively that court proceedings had been completed, and a verdict handed down. Just over half (53%) whose cases had not yet been completed, gave the following reasons:*

- *perpetrator had not yet been apprehended*
- *perpetrator had appealed the verdict so the case was moving up to Appeals Court or even to Supreme Court*
- *perpetrator changed lawyers a number of times and each change caused delays*
- *no translator was available for the perpetrator so court time had to be re-scheduled*

*There were 10% of children who said they did not know whether or not their case had been completed. It should never happen that a child leaves the courtroom without being informed of the outcome. If a child is very young, this information may need to be simplified and repeated on different occasions. Regardless of their age, children have the right, and the need, to be clearly informed about matters that directly involve them.*

#### **4.9 Post-trial issues**

*Concern for child well-being must not end when the judge brings down a gavel and formally ends a court hearing. It must extend beyond the court time, to reparation and security, and it should include attention to a child's mental and emotional well-being. For children in NGO residential care, there is an on-going opportunity for counselling if that is required; for children in the community, such services are nearly non-existent and make it imperative that families understand how to support and care for their own children who have been victims of violent crimes.*

#### **4.9.1 Feelings after the trial ended**

*Several children said they felt better once the trial was over and they had received a verdict, even if the verdict was not as harsh as they wanted it to be. One 16-year-old girl summed up her feelings: 'I am happy that I took that man to court. Because he is in jail now, and I am finished [with this business]' (P-25).*

*This was not the case for all children. One girl said: 'Because the perpetrators did not confess, (rather) they refused all blame and guilt, saying they did nothing, I felt disappointed (anchet). And my mother was crying when we left the courtroom' (B-02).*

***I AM AFRAID ALL THE TIME:*** *For more than one child, the verdict did not make any difference to feelings of security, as she knew that the perpetrator was not in jail, having seen him in her community the week before the research team's visit. She explained simply, 'I am afraid all the time; I wish he was in jail' (P-23).*

*For children who had testified but had not yet been awarded a verdict, their lives were compounded by fear. One girl explained, 'I do not know if the perpetrator is in jail or not. I am waiting to hear the verdict. And during this time, I am hesitant and uncomfortable because I do not know what will happen' (B-05).*

#### **4.9.2 Debriefing the experience**

*Children reported that there was little or no intentional debriefing provided by NGO counsellors or lawyers after a court session. Children residing in shelters may continue to have on-going counselling sessions, so perhaps NGO staff consider this to be sufficient and do not see a need to ask specific questions about the time in court. It is also possible that adults do not 'debrief' with children due to the traditional Khmer belief that people should look ahead rather than back, and the notion that 'children should not be reminded of bad events' (L. Carter, personal communication, 3 March, 2013).*

*It is possible that counsellors and lawyers simply need more awareness and training to enable them to see the value of debriefing and to conduct debriefing as a way of helping a child bring closure to the event and to ensure that children know what happened, the verdict, and so forth.*

#### **4.9.3 Possibility of appeals**

*None of the children whose trials had been completed said they wanted to appeal the verdict, though some were unhappy with the sentencing as they did not feel it was sufficiently harsh.*

*Some child respondents told the research team that they were not aware an appeal was possible, while a significant number of children said that when they left the courtroom after testifying, they did not know what the results were, nor had they been informed about the next steps in their case - what might be expected of them in relation to testifying in future, etc.*

#### 4.9.4 (Failure to pay) compensation

Often the penalty for the criminal offences is stated both in terms of prison time and financial compensation for the victim. However, there is no legal way to enforce payment.<sup>46</sup> Just one of the 54 research respondents said that they had received a portion of the officially awarded reparation money from the perpetrator. None of the other victims or families interviewed had received any compensation money.

#### 4.9.5 Limited incarceration

When asked what the most difficult aspect of the criminal justice system is for children, one legal aid agency lawyer answered that it is the sentencing, which tends to be too short.

**PERMANENT PAIN AND SUFFERING:** 'Rape causes long-term or permanent psychological pain for the victim. But the perpetrator gets a very short sentence. The pain and suffering is longer than the prison time, so it does not fit the crime!'

NGO staff members were also quick to point out that there is often a gap between sentencing and what actually happens to the perpetrator. Often the perpetrator spends little time in jail, as he can easily buy his way out. In virtually no cases that NGO staff and staff at legal aid organisations were familiar with, have perpetrators actually paid out any compensation to child victims, though reparation money is commonly part of the sentence levied.

Several research respondents spoke of something called *pchuahtoh*: that is, the real time a convicted perpetrator actually spent in jail against simply having his name on the jail roster and walking free.<sup>47</sup>

#### 4.9.6 Security issues

Post-trial safety appeared to be a major concern for many of the children, even if the perpetrator was convicted, as they worried that they might be hurt after their release. Counsellors / lawyers should address this fear in pre- as well as post-verdict counselling.

**I AM AFRAID HE WILL COME BACK TO HURT ME:** One girl, whose case had gone to the Appeals Court, said: 'I am very afraid right now that the perpetrator will come back and hurt me. I know that he is angry that I put him into jail and I think he will try to hurt me again' (P-03).

Several children and caregivers, especially where a child was living in the community, were not confident that the sentencing would be honoured. They were worried perpetrators would be 'in jail in name only, but actually free outside of jail' (P-22).

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<sup>46</sup> In 2013 an NGO is starting to train people to be debt collectors, but this is not in effect yet.

<sup>47</sup> The law does allow for suspended sentences (Penal Code Chapter 2 – Simple suspended sentences), but it appears that in some cases, convicted perpetrators also find extra-legal means for evading jail time.

*It was interesting that no police officials, nor court authorities, spoke of the issue of the (possible) need for protection for child victims outside of the courtroom. Yet, this was regarded as a very significant factor by children themselves, by NGO staff, and to a lesser extent, by staff at legal aid organisations. Many children expressed fear that the perpetrator would find them and hurt them again, or even kill them. It is of great concern, then, that there is no consistent way that RGC authorities protect child victims and witnesses either during their period of trial, or in the post-trial period.*

## **4.10 Capacity and experience of court authorities**

*Though the focus of this research was listening to and projecting the voices of children speaking about their own experience in the justice system, the research team also provided an opportunity for adult stakeholders to express their related views. In a few cases, the perspectives of children and adults differ markedly, and in a few instances, the behaviour of adults is understood very differently by researchers and/or by children, from how the adults describe it. A good example of this is gender discrimination and the influence of traditional gender stereotypes on the behaviour of judges and clerks in the courtroom.*

### **4.10.1 Views of court authorities**

*Interestingly, adults in positions of formal authority (police and courts) were apparently more conversant with issues relating to children in conflict with the law than with justice issues pertaining to child victims and witnesses. During interviews, these authorities often reverted to focusing on children in conflict with the law, even when the interviewer clarified numerous times that this research focused on victims and witnesses. For example, in responding to a question about how things have changed over time for child victims, one Court President said, ‘Yes things in the system have changed for good for children in the past five years. Some of our procedures have changed, for example we intentionally reduce sentences for child offenders who have committed minor crimes, so that their futures are not affected by being in jail too long.’ When asked about the implications of the Juvenile Justice Law (being absent or present), a different Court President responded, ‘We also will, of course need more resources to implement it effectively nationwide, for instance for detaining child offenders in the proper facilities.’*

### **4.10.2 Understanding the concept of ‘child-friendly’**

*It is noteworthy that officials associated with the criminal justice system almost exclusively characterised their understanding of child-friendly behaviour in terms of the need to ‘speak softly’ or ‘speak well’ (‘use right language’) to children. This demonstrates a rather restricted view of how child rights should/can be applied to children in the justice system.*

**WE MUST USE SIMPLE WORDS:** *‘We must use simple words, simple questions and a soft voice. Judges use the words ‘daughter’ and ‘son’ to make children feel comfortable. We explain to the children ahead of their time to testify that we are like their family, they do not need to be afraid, we are here to help. Sometimes we have to use slang words [for*

*sex] so that the children can understand, not use technical words' (male Deputy Prosecutor).*

*'You must start with easy questions for a child so that they can answer. Once you get the child talking then they talk easily. The difficult part is for them to trust you and to start talking. You let them talk until they are finished. Then we can go back and ask them details about their story. Some children who are 11, 12, 13 years old, we cannot ask questions directly. We have to warm up the children or we won't get a good answer. We must encourage the children a lot' (Assistant to Court President).*

*This simplistic conceptualisation was not restricted to court authorities. For instance, one legal aid lawyer defined child-friendly as: 'It means talking gently and softly to children; it means not yelling at them.' Annex 15 contains additional examples of how various authorities understand 'child-friendly' in relation to the justice system.*

*These views may be harmful in that they prevent court authorities considering wider aspects of child rights and safety. None of the court authorities interviewed expressed concern about the need to ensure that children are informed about the various aspects of the legal process that affect their lives directly. None of the court authorities interviewed expressed concern about the security of child victims of crime, though this was a pronounced issue for children themselves. Several judges said that they were not very familiar with what happened to a child before the child arrived in their courtroom, but once the child arrived there, the child was safe. This demonstrates a truncated view of the legal system, and especially of matters concerning child victims in that system.*

*All judges interviewed stated strongly that they believe they need to hear directly from children and that they have special ability/powers to ascertain the veracity of a child's testimony.<sup>48</sup> Clearly, this perspective does not take into account the child's feelings about having to speak in court. Part of the thinking or rationale behind this may be that Cambodian law does not include much information about 'evidence' and so most cases are based primarily upon one person's word against another.<sup>49</sup>*

#### **4.10.3 Low view of NGO assistance**

*One clear theme running through responses from judges was the idea that (international) NGOs do not simply prepare children for court, rather that NGOs prompt and influence*

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<sup>48</sup> CCTV is perceived to be less reliable than live testimony, though in fact it might be more trustworthy (Biejer & Liefgaard, 2011, p. 94). The presumption underlying the need for judges to directly question a child is that the judge can distinguish between truth and falsehood. However, empirical research shows the ability of an adult to distinguish is not much better than pure chance. Empirical research also demonstrates that legal professionals are not better at detecting lies than untrained individuals (ibid). It is common for "demeanour evidence" to be read incorrectly.

<sup>49</sup> According to a SISHA staff member, "There are literally just two lines in the criminal code book that explain evidence; in England [for example] they have about 150 pages explaining what constitutes evidence."

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*children to tell lies or to manufacture stories about men who raped or hurt them for financial gain. This view is likely to make cooperation with NGOs difficult even where such cooperation would serve the child's best interest.*

*Paradoxically, judges and authorities noted that children who came accompanied by NGO caregivers were much more able to testify, less likely to dissolve into tears or be so frightened they could not speak.*

### **4.10.4 Difficult aspects of working with children**

*When asked to describe the most difficult aspect of working with children, court authorities invariably answered that it was when children did not want to speak and would not answer their questions. One Court President said, 'Many times children are so afraid they cry and cannot respond to questions. Then we do not know what to do.'*

*Several people in positions of authority said that there was nothing particularly difficult about working with children in the court, as they had children of their own and thus could understand children well.*

*In general, authorities considered the age of 14-15 to be a watershed in a child's ability to comprehend what is happening in court, and to understand questions asked of them.*

### **4.10.5 Barriers to implementing child-friendly procedures**

*One of the major reasons given by authorities for why they do not implement child-friendly procedures was 'lack of training in these procedures' (though none suggested that they had insufficient awareness or understanding). People in rural areas and authorities of lower rank are less likely to receive training.*

*Several judges and clerks in various provinces expressed a desire for a specialised court, so that the judge in charge has specific knowledge of procedures, and responsibility for child-cases. They expressed frustration with the fact that judges must be prepared to see any kind of case at any time – whether civil or criminal, ranging from theft to murder, to extortion, to rape. They also said that with such wide responsibility, judges feel ill equipped to know all the related laws in detail.*

*Two judges said that they believe a shortcoming in the system is that there is no place in the national curriculum where children are taught about the justice system and courts in Cambodia. 'This is a handicap for children themselves as they do not know what to expect or to ask for, do not know how the court works; and difficult for authorities because the child can be overwhelmed by the system.'*

*Several different authorities identified the absence of a Juvenile Justice Law as a major impediment to making Cambodia's criminal justice system more child friendly, though when pressed, few could give any specific examples from the draft law that would directly affect victims and witnesses.*

The counsellors, social workers and managers interviewed had a wide range of experience with children in the criminal justice system, and extensive experience taking children to courts around the country. They reported that they had not observed particular patterns by province – but they noted that the way a child is treated in court depends primarily on the personality of the court authorities present on that day, not on the location or on the child's gender.

While NGO workers identified the actual court appearance as the most difficult aspect of the justice system for children, legal aid agency staff (and court officials) identified the police station as the most difficult.

## 4.11 Gender as a key variable

Court authorities – indeed senior-level and decision-making levels of the civil service generally – are, by a very clear majority, male (Mol/RGC–LEAP, 2010). In the Phnom Penh municipal court, for instance, the numbers are shown in Table 8 below:

Table 8: Court positions in Phnom Penh by gender

<b>Male/female court positions in Phnom Penh</b>				
<b>Position</b>	<b>No. males</b>	<b>No. females</b>	<b>Total</b>	<b>% female</b>
<b>Prosecutors &amp; deputy</b>	<b>14</b>	<b>2</b>	<b>16</b>	<b>12.5%</b>
<b>Judges</b>	<b>20</b>	<b>5</b>	<b>25</b>	<b>20%</b>
<b>Clerks</b>	<b>129</b>	<b>34</b>	<b>163</b>	<b>21%</b>
<b>Administrative officers</b>	<b>10</b>	<b>0</b>	<b>10</b>	<b>0</b>

Without exception, the men in power described themselves as 'objective' and told the interview team that their gender neither influenced their views nor bothered the girls who were testifying. However, a recent Ministry of Interior report pointedly contradicts this: 'Negative and discriminatory attitudes and behaviours underlying gender-based violence and exploitation, as well as the stigmatisation of the victims of violence generally still prevail' (Mol/RGC – LEAP, 2010, p. 8). The feelings and experiences reported by (the primarily female) child respondents in this research also contradict the stated objectivity of males in authority.

The traditional perspective of 'boys strong / girls weak' is prevalent among judges and court authorities, regardless of the gender of the respondent. As one female deputy-prosecutor expressed, 'Females are naturally shyer and less courageous. Girls are not experienced to talk in front of people like boys are.' This attitude is not restricted to court authorities, but is pervasive among all stakeholders in the criminal justice system.

**SHE WAS TOO STUPID TO DEFEND HERSELF:** In the case of one 16-year-old girl who had been raped in Banteay Meanchy province, the perpetrator

*defended himself by saying that she was stupid because she didn't attend school and this is why he could 'cheat her'. The man's defence was, essentially, 'She was too stupid to defend herself.' Alarming, the girl's male lawyer used the same argument – he said she was so stupid she could not defend or protect herself and therefore the defendant was in the wrong (B-05).*

*Several adult respondents said they have frequently observed males in positions of authority (police officers, judges) ask inappropriate and titillating questions of (older) female rape (and sex crime) victims, unnecessarily probing for details and insinuating that the girl wanted and enjoyed the experience. There is some evidence of a tendency for judicial authorities to treat older females (13-14 years of age and older) differently than younger females (12 years and younger); to have more pity and a protective instinct for younger girls, but an attitude of blame or condescension for older girls.<sup>50</sup> For example, one 18-year-old who was raped by a foreigner described the way the female head judge spoke: 'The judge spoke sweetly, but with deep meaning [i.e. condescending and disapproving; blaming me for what happened]. The judge used a good tone but her words made me feel like someone had knocked me on the head.' The girl went on to say that the judge did not believe her story, but kept asking her why she waited so long to come forward with her story (P-22).*

**WHY ARE YOU COMPLAINING?** *One legal aid agency lawyer who has been involved in taking child victims to court for more than a decade, observed that, 'Males in positions of authority often ask inappropriate questions, probing for details that are unnecessary, insinuating things like, "You love the perpetrator don't you? So you asked for this [rape] to happen?" Or, "It was good, wasn't it? Why are you complaining?"'*

*This type of inappropriate behaviour is not restricted to female victims. One 13-year-old boy was the victim of sexual and physical assault by a foreign man. He described his experience at the hospital where he had a medical check: 'There were two male doctors. They attended to my case very quickly, and the examination didn't take long. But one of them was a bit rude – he laughed and teased me about being feminine. That didn't bother me too much. It did bother me a lot when they touched me during the physical exam though' (KS-07).*

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<sup>50</sup> *This apparent phenomenon was also noted by Khmer and expatriate social service NGO staff and legal aid agency representatives. One social worker explained: "There seems to be an age-specific dividing line; that it's not ok to rape girls under the age of 10 or so, but getting to age 12 or 13 and upward, there is an idea that the girl must have 'asked for it' or somehow invited that rape." This finding is supported by other research too; see Amnesty, 2010; CCHR, 2010; Klauth, 2012.*

## 5. Analysis and conclusions

*Cambodia's justice system has improved markedly over the past two decades. Still, in addition to systemic challenges of corruption, lack of capacity, lack of integrity and ongoing impunity issues of the rich and powerful, there are multiple procedural irregularities that consistently occur and which hinder or prevent the carriage of justice. The impact of any and all shortcomings in the system will be exacerbated in cases involving minors as children have particular vulnerabilities. What occurs for child victims and witnesses who are proceeding through the Cambodian criminal justice system falls far short of global standards for appropriate treatment. Annex 17 provides an indicative listing of some of the particular difficulties experienced by children in the system. This section identifies four underlying issues which, in addition to practical changes, must be addressed to make the system more child-friendly.*

### 5.1 Underlying issues

*There are four major underlying issues that require serious attention if the system is to improve for children. First, it is necessary to address gaps in the overall justice system – foremost among those gaps is lack of a Juvenile Justice Law.*

*Second, it is vital to ensure compliance with existing protocol and policies affecting children in the system. This can be done without significant financial expenditure, though it will require systematic training and education for relevant authorities, strict monitoring (with consequences for non compliance), and extended vigilance.*

*Third, it is critical to address prevalent socio-cultural norms governing adult/child relationships, as these affect how children are treated at every point in the justice system. Prevalent social norms tend to reduce children to objects rather than active subjects, to overlook children's rights and capacities, and to regard children as less than full participants in their own lives.<sup>51</sup> This is especially true of attitudes toward girls. Government and civil society must find ways to constructively enable children to speak out, and then must take seriously what children say about their own lives and experiences.*

*Finally, it is equally important to acknowledge and conscientiously address attitudes about gender which serve to hinder girls and women from being treated with dignity and compassion, and from accessing justice. Attitudinal change is likely the most difficult to accomplish: it is also the only way to achieve sustainable improvements in the justice system.*

### 5.2 Child voices as a critical variable in justice for children

*During one interview for this research, the child respondent was flanked by her father and by the NGO social worker (P-24). Both adults consistently talked over the child, largely ignoring her presence. At times they answered the question directly before the girl could say anything*

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<sup>51</sup> For more detailed discussion, see S. Gourley's 2010 Middle Way report.

*at all; at other times they corrected the girl's answer. This was a classic example of how children, perhaps especially girls, are regarded in Khmer society: their presence is acknowledged but they are not addressed, they are not expected to be able to contribute to adult conversation, and their ideas are not thought to be important or valid.*

**SEEN BUT NOT HEARD:** *A few children reported that during the investigation interview with the prosecutor at the courthouse, 'The judge spoke only to my lawyer and they were speaking so quietly I could not hear them' (P-09).*

*In more than one case, children reported that the judge spoke directly with their mother in the courtroom. In one instance, the judge directly asked the mother questions about the daughter's story. The mother explained that the judge did this because her daughter did not speak clearly enough. She added, 'The mother knows the story, so she can talk for the girl!' (P-03).*

*As illustrated by this research, children are often literally overlooked even when they are physically present. Their ideas and opinions are considered inferior to those of adults, and are often not even solicited. Adults in authority were noted as sometimes dealing harshly with children, even if those children were victims of violent crime. Children are displeased with the lack of respect generally shown to them by the adults in the justice system and are very able to articulate this.*

### **5.3 Gender sensitivity as a critical variable for justice**

*As highlighted throughout this report, girls are discriminated against in various and particular ways as they make their way through the criminal justice system. Of course this critique is not limited to the justice system, but also applies to many spheres of life for females in Cambodia (Brickell, 2011; GAD-C, 2010; Kasumi, 2006; MoWA, 2008; NGO-CEDAW & CAMBOW, 2011; Walsh, 2007).*

*While in several instances there were female judges presiding at a child respondent's trial, female judges seldom had the position of head judge. Many of the court authorities interviewed and some children indicated a belief that females are more effective in comforting and communicating with children. This carried with it the implicit suggestion that female authorities should take responsibility for female victims. Indeed, the tendency to sideline 'women's issues' in this manner already exists. For instance, in a recent RGC evaluation (MoI/RGC - LEAP, 2010) the report's single reference to 'child friendly' was a goal to train female police officers to interview children in a child-friendly way.<sup>52</sup> The report suggested that the Law Enforcement Advancing Protection of Children and Vulnerable Persons (LEAP) project recruit and train more female law enforces '...in order to conduct interviews with female victims of trafficking, sexual exploitation and abuse' (2010, p. 13).*

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<sup>52</sup> This is also worrying as it demonstrates an incorrect notion of what "child friendly" actually means.

*This line of thinking carries with it the risk of further entrenching sexist attitudes and destructive behaviours toward females. Relegating responsibility for ‘female victims’ to ‘female authorities’ abrogates the responsibility that male perpetrators and male authorities have to stop gender-based violence; and undermines the right that females have to justice regardless of the sex of people in authority. It may be very helpful to recruit more female police officers (and to take active steps to ensure that women are more equitably represented in all positions of formal authority), but this cannot be allowed to stand as the exclusive response to address gender-based violence.*

*Perhaps the most important task is to train and educate people out of the erroneous idea of ‘inherent male superiority’. Otherwise, gender sensitivity will be sidelined or marginalised rather than mainstreamed, to the detriment of justice and at the risk of causing further harm to children in the justice system.*

## 6. Suggestions from children for child-friendly court proceedings

*Children had many suggestions about how to render court proceedings more child-friendly. At the time of the initial questionnaire, the research team found that few children could give practical suggestions in response to a general question about ‘improving the courts for children’ though the vast majority said that changes were needed to make it a more comfortable experience for children. Thus the research team provided suggestions in the form of questions to give respondents something to discuss (see Table 9 below). This proved an effective way to generate conversation about potential changes. More examples of children’s responses are included in Annex 16.*

Table 9: Summary of child recommendations for change

Questions	Suggestions from children
<i>How should police and medical personnel behave to make it easier for children?</i>	<i>‘I would suggest that the doctors and police should act on the case immediately. Their words should be friendly, polite, appropriate and not rude to the child victim. If they act like this, it would help the child focus and participate more fully.’ (SR-02)</i>
<i>How should court authorities behave to make it easier for children?</i>	<i>‘All adults in court should respect children more than they do. Judges should not yell at children; they should listen better to the children. Also, court authorities should wear normal clothes. No need to wear special robes like that.’ (P-21)</i>
<i>Is it okay to pay for justice?</i>	<i>‘We should not have to pay any money to the police for them to do their responsibility.’ (P-07)</i>

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<b>Questions</b>	<b>Suggestions from children</b>
<i>Is it okay to have strangers in the courtroom during your case?</i>	<i>'They should always close the doors to the public and not let strangers in because this could affect the child's reputation.'</i> (SR-01)
<i>Do you think it is useful or good to have a screen in the courtroom between you and the perpetrator?</i>	<i>'Yes a screen is good idea. I was afraid of the perpetrators, afraid of being close to them in court, afraid to be in the same room as them. If they can stay separated that would make me feel safe.'</i> (B-02)  <i>'There was no screen in the courtroom. Anyway, I wanted to see the perpetrator and to look into his face when he was in the court. But, I was disappointed because he looked normal, he was not afraid.'</i> (B-04)
<i>Do you think it would be good for you to be in a separate room for the whole trial and to communicate through tv/video?</i>	<i>'Yes, this would be good so that I would not have to see the perpetrator in person. Also I didn't like it that I had to sit behind the perpetrator in the courtroom. It would be better to be in another room.'</i> (SR-05)
<i>Do you think it would be good for the child to wait in a room outside the courtroom and then enter the courtroom only when it is his/her time to testify?</i>	<i>'I don't want them to do that. At least for me, I wanted to participate in the event for real so I knew what they were saying. If I were outside the room they might even be plotting against me! At least if I saw it through video I would know what they are discussing.'</i> (P-22)
<i>What are your ideas about the duration/strictness of sentencing for perpetrators?</i>	<i>'Short time in jail is not enough. It is good to use jail to deter people from doing bad things – so, give these guys a long jail sentence and then others won't do what they did!'</i> (B-07)
<i>Did you get enough information during your time in the justice system?</i>	<i>'Not enough information. It would be good for the judge to make sure to tell children the outcome at the end of the trial, before we leave the room. To inform us of the next date and time, the process, and like that.'</i> (KS-08)

## 7. Recommendations

*The following recommendations are included as part of the discussion and analysis throughout this report. They draw on and echo other reports which have produced useful recommendations for improving the experience of child victims and witnesses proceeding through the criminal justice system. One of the most relevant documents that pertains specifically to the Cambodian context was produced by LICADHO in 2006 (LICADHO, 2006). It provides multiple practical suggestions for ways to incorporate the best interests of the child into the Cambodian criminal justice system.*

*Based on the study findings, the following recommendations are grouped under five main headings that detail actions to make Cambodia's justice system a more positive experience for child victims and witnesses. The recommendations are divided into those that may be shorter term (and quicker to implement) as well as longer term changes that are needed. It is incumbent upon various actors to analyse their own personal behaviour, as well as the systems and ethos in place about children within their respective organisations, in light of these recommendations. Stakeholders should pro-actively begin to make changes accordingly; changes to attitudes, actions and systems.*

### 1. Improve police and court logistical procedures

#### *Short term*

*There are a number of existing procedures that the research showed are not yet well implemented and these should be an immediate focus of efforts for improvement. These include:*

- *Ensuring children have access to screens in the courtroom if they wish*
- *Increasing the availability and use of video link equipment*
- *Ensuring separation of the victim and perpetrator at all times – in the police station, both while being transported to and at the court; this would be much improved by available child-friendly waiting rooms*

*In addition the following changes would have considerable impact on minimising negative experiences for child victims and witnesses:*

- *Avoiding, wherever possible, frequent re-interviewing of the child regarding the traumatic event.*
- *Ensuring allowances for children in court such as child sized equipment, toys, appropriate refreshments, breaks and so on*
- *Allowing support in the form of a trusted adult who can remain close to the child and encourage/ support them*
- *Encouraging and supporting the engagement of parents/ relatives in the court process*

#### *Longer term*

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**While the following changes would require more resources and time, they would represent considerable improvement to areas that had significant negative impact on children:**

- **Fund and resource the establishment of procedures to interview child victims (particularly those surviving rape or other extreme abuse) only once by a trained interviewer, recording their testimony**
- **Widen the availability of child-specific waiting rooms and equipment at courts**
- **Ensure availability and reliability of free medical testing for children following rape and other types of abuse**
- **Improve capacity of medical staff conducting testing, including their skills in dealing with children. Ensure more female medical staff available for girl victims.**
- **Through training and funding, improve police and court understanding of what constitutes 'evidence' generally; and when medical testing is useful and to what extent it can be used as reliable evidence**

## **2. Increase children's voice and control in legal procedures**

**Children want to be respected and to be taken seriously. This will require a shift in adult attitudes (for court officials, police, NGO staff and others). In many cases children were given few choices and limited information about what was happening in the legal proceedings that they were the centre of. The research suggests that changes in the following areas would be helpful in increasing children's control:**

### **Short term**

- **Encourage lawyers and other supporting NGOs to ensure children are given preparation for what their experience in court will be like. This may mean lawyers in particular finding more time to meet with child clients in advance and after the court appearance**
- **Ensure children are able to exercise choice over use of screens and other appropriate aspects of the courtroom situation**
- **Give children the opportunity to hear first-hand, the verdict on their case if they wish; and ensure that children know clearly what the outcome is of any court appearance**
- **Ensure that the child has the chance to debrief with a qualified professional after each court experience to help them understand what has happened**

### **Longer term**

- **Promote and document the benefits of independent representation in the legal process such as victim-witness advocates, whose sole responsibility is to prioritize the best interests and needs of child victim witnesses and advocate for them. This may be best advanced through the funding of a pilot scheme in some areas, with careful evaluation of impacts on children's experience and the quality of court outcomes.**
- **Resource work with relevant experts and organisations to design a curriculum and guidance for child victim and witness preparation**

- *Institute formal mechanisms for regularly listening to and directly interacting with children; for example, in government ministries, as well as by associated NGOs. An excellent example of this type of initiative is COSECAM's 'Girls Speak Out' campaign.*
- *Provide opportunities for lawyers to improve their understanding of working effectively with children and give some formal recognition or certification to lawyers who have completed such training*
- *Continue to develop and deliver training to police, judges and court officials on the special needs of children, offering formal recognition or certification to those that have completed such training*

*Any training such as described above should take the form of a carefully designed and tailored curriculum to be taught in short but regular periods. The UN Guidelines on Justice in Matters involving child victims and witnesses contains an excellent outline of topics and issues (Article XV) that should form the basis of a standardised curriculum for all judicial authorities, police officials and NGO staff.*

### **3. Build the capacity of justice system personnel to deliver child-friendly processes**

*This research shows both widely recognised improvements in the justice system and a number of areas where further development is necessary, particularly in dealing with children. Many of these areas need sustained input to build the system at all levels.*

#### **Short term**

- *Current procedures are well established in terms of documentation including detailed guidance at Prakas level. However implementation is clearly lacking, even in the better supported courts that the research team visited. Therefore a priority should be reinforcing and monitoring the implementation of current guidance on matters involving children*
- *A particular focus should be to ensure that child victims or witnesses are not criminalized in the legal process and that lines of questioning are appropriate and sensitive*

#### **Longer term**

- *Legal professionals (judges, lawyers, court officials and police) should have opportunity to deepen their understanding on the following topics especially:*
  - *Dealing with children; in particular a more developed understanding of what 'child-friendly' proceedings might involve in terms of attitudes and procedures*
  - *Dealing with those who have experienced trauma, especially those who have survived sexual and other extreme forms of abuse*
  - *Dealing well and equitably with gender issues. A recent report by LSCW on Gender sensitivity in legal proceedings contains excellent detailed recommendations about making the system more equitable (2012, p. 26-29). A recent report by EWMI on GBV (2012) also contains several excellent*

*recommendations for training people in various positions within the criminal justice system, and for strengthening the referral system for victims of GBV.*

- *The above trainings could be well supported by UNICEF by more widely disseminating the bilingual reference materials it has already produced (National and International Laws Pertaining to Children in the Criminal Justice System). It would also be good to translate (and appropriately adapt) into Khmer the English-language child-friendly version of the UN Guidelines on Matters Involving Child Victims and Witnesses of Crime.*
- *While all those involved in the legal system should have a basic understanding of dealing well with issues involving children, over time it is recommended that a system of specialist court professionals is developed, people who have special training and aptitude to deal well with child victims and witnesses. A similar system could be adapted by police. This would also be a more effective way of using resources in terms of focusing training.*

#### **4. Improve efficiency and effectiveness of justice systems**

*Long term changes for children will come through systemic changes as well as individual expertise. Listening to children's experience and ideas through this research suggested the following changes:*

##### **Short term**

- *Expedite cases involving children. Delays in the process do not help children – they increase fear through anticipation of the ‘unknown,’; long duration may influence what children remember of a situation; delays make children lethargic and feel hopeless and unable to ‘move forward’ with their lives.*
- *Implement some of the systematic changes already recommended above such as a single interview process and specialist staff within the legal system*
- *Ensure results of cases are reported promptly and clearly to all participants including involving children in this clear reporting procedure*

##### **Longer term**

- *Ensure cases involving children are not asked for any contribution to the investigation costs*
- *Ensure resources are available to monitor and enforce the sentences (both compensation and prison sentences) imposed on perpetrators and that results of this monitoring are publicly available.*
- *Consider ways of improving security for child victims and witnesses in dangerous situations and under threat from the perpetrator or their relatives*
- *Identify the funding, resources and key agencies to finalize and proceed with the implementation of a juvenile justice law and other laws involving children*
- *Clarify the law regarding custody and guardianship of children (and its implementation) so their interests can be best represented by the State or other parties.*

- **Consider involving other actors in ensuring justice for children, namely:**
  - **The National Council for Children**
  - **MOSVY and MoWA could have a bigger role**
  - **Commune councils, who could have a bigger role to play under the law – as the most localized level of government they could have more involvement in providing protection and services to child victims of crime; in particular, the Commune Committee for Women and Children.**
  - **Simple ‘community watch’ programmes could be put into place by NGOs and by local committees already organized around other sectors (such as clean water or health) at village level.**
- **Develop published case law around rape, commercial sexual exploitation of children and other child rights related issues in order to help judges find consistent interpretation of the laws and to expose dissenting judgments that are not in line with jurisprudence. Currently, cases are not published but case law can be used to develop a generally accepted interpretation of the law and set precedents, making the outcomes of court cases more predictable. At the same time, this could be a monitoring tool to gauge the functioning of the judiciary (see IJM 2013, p. 124).**

## **5. Increase monitoring and research for child victims and witnesses**

**Many of the above recommendations need monitoring as a key strategy for ensuring an effective implementation. This research also highlights the need for further work on understanding the experiences of child victims/ witnesses and tracking improvements (or challenges) over time.**

### **Short term**

- **Audit and report on what facilities for children are available at all the provincial courts in Cambodia as a baseline for further work and monitoring**
- **Research barriers into implementation of current policies and procedures and report on the implementation of these policies on an ongoing basis**
- **Ask courts to monitor and report nationally on the number of child cases heard as opposed to adults, and what crimes and outcomes these cases involve**
- **Monitor the implementation of sentences (both custodial and repayment of fines)**

### **Longer term**

- **Resource the development of a system of monitoring number of cases involving children and the outcomes of such cases to give clear national figures on an ongoing basis, including the time taken to bring such cases to a conclusion**
- **Introduce systems of sanction where current policies and procedures are not being followed**
- **Research the reasons for cases not coming to court or being dealt with by formal legal systems and explore the barriers that prevent formal legal action in such cases**
- **Monitor the number of judges, court officials, lawyers and police with training in dealing with children, abuse cases and gender issues and report on these numbers.**

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- ***Continue to monitor and report on the facilities available for children at all courts and how effectively these are used***
- ***Repeat a similar study of the experience of children in the court system in 2017 and monitor changes and how these are impacting individual experience. Ideally this further study should be published in time to help inform the State Party report to the UN Committee on the Convention on the Rights of the Child in 2018.***

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## **ANNEX SECTION**

### **Annex 1: Description of research team**

*This research was led by Dr. J.K. Reimer (PhD), an independent Consultant with more than ten years experience living and working in Cambodia. She is an expert in qualitative research and programme evaluation. Dr. Reimer has previously conducted two major pieces of research for Hagar; one about urban trends in sex trafficking of girls (At What Price Honour?) and another exploring models of reintegration for girls and women who have experienced sexual exploitation (The Road Home).*

*Other team members included Mr. Steve Gourley, a sociologist with more than fifteen years of experience in children's rights and child protection in Cambodia. He specialises in child-focused project monitoring and evaluation, competency-based training and participatory research. His 2009 study of children's rights and Cambodian culture, The Middle Way, has been utilised by numerous academics and practitioners engaged with children's issues in Cambodia and more widely.*

*Mr. Thav Kimsan worked at LICADHO for 16 years. For 10 years he ran that agency's Child Rights Program which focused on focused on child rights (CR) through: awareness raising and education campaigns, CR violation case monitoring (which included investigation and filing complaints with court), and providing for basic needs of children who were victims of CR violations. Since 2008, Mr. Thav has been an independent consultant, working frequently in CR-related research projects as well as conducting evaluations of CR initiatives. Mr. Thav has a Bachelor's of Law degree and a Master's of Private Law degree from Royal University of Law and Economics (RULE) in Phnom Penh.*

*Ms. Ouk Sreyhouen has a Bachelor's degree in Law from RULE. She has three years of experience as a research assistant, and has developed special skills in interviewing children, as well as facilitating discussion with adult respondents.*

*General oversight and design assistance was provided by Dr. Glenn Miles (PhD), a specialist in conducting research with and about children, Dr. Miles is currently the Asia Director for Love 146 and Research Advisor for Chab Dai Coalition (Phnom Penh). His doctoral research explored Cambodian Children's Experiences and Understandings of Violence & Abuse. In addition Dr. Miles has conducted research on sexual and other forms of child exploitation in several countries including: India, Sri Lanka, and Thailand.*

## Annex 2: List of organisations consulted

No.	NGO name
1	<i>ADHOC</i>
2	<i>AGAPE</i>
3	<i>APLE</i>
4	<i>ARM</i>
5	<i>Cambodia ACTS</i>
6	<i>CDP</i>
7	<i>CWCC</i>
8	<i>Destiny Rescue</i>
9	<i>EWMI</i>
10	<i>First Step</i>
11	<i>Garden of Hope Cambodia</i>
12	<i>Hagar Cambodia</i>
13	<i>IJM</i>
14	<i>LAC</i>
15	<i>LICADHO</i>
16	<i>LSCW</i>
17	<i>Love 146</i>
18	<i>PJJ</i>
19	<i>Rattanak Foundation</i>
20	<i>SISHA</i>
21	<i>Transitions Global</i>
22	<i>UNICEF</i>
23	<i>World Hope International</i>
24	<i>World Vision Cambodia</i>

## **Annex 3: Informed consent agreement**

### **INTRODUCTION & AUTHORISATION FOR PARTICIPATION IN INTERVIEWS**

*Introduce yourself and the purpose of the interview:*

- *My name is \_\_\_\_\_ and I am working with Hagar on research about children who have experienced the court system in Cambodia.*
- *The research team is doing a survey to help us understand your experience, and the experience of other children who have gone through the Cambodian criminal justice system. We want to use this information to help other children in the future who testify in court to have a better experience.*
- *The survey questions should take 20 minutes to complete. Then we will ask you some other questions specifically about your court experience. Those questions will take about 30 minutes. So, altogether, we will talk to you for about one hour. Is that ok?*
- *Your participation in answering these questions is completely voluntary. Please let us know at any time if you do not want to answer a question or if you want to stop the interview. If you want, we can stop immediately.*
- *If you want to have \_\_\_\_\_ (your main caregiver – i.e. mother – or your counsellor or social worker) in the room with you during the interview, that is ok. Would you like to have (that person) sit with you during the interview?*
- *Is it ok if both of us interview you [Depending on what kind of abuse/violence the child suffered, the child may want to ask that the foreign team member not be in the room for the interview; or may ask that the Khmer team member not be in the room for the interview. Please ask in a sensitive way if both members of the research team can be present for the interview.]?*
- *May we have permission to record this interview?*
- *We will not put your name on it so no one can trace the information back to you. By recording this interview, we will be able to have a more accurate understanding of your responses.*

*When beginning the qualitative set of questions, give another brief explanation:*

- *Thank you for answer the survey questions. Now we would like to ask you to remember some details about your experience with going to court. Is that ok?*
- *Your participation is totally voluntary. If there are some questions you do not want to answer, just tell us and we will skip that question. Also, if at any time you want to stop being interviewed, tell us and we will stop immediately.*
- *Remember that no one will be able to connect the information or the recording to you, so you don't have to worry that any bad person will have access to this information.*
- *Can we continue with the additional questions?*

## Annex 4: Questionnaire

*'The experiences of child victims & child witnesses in the Cambodia justice system'*

<b>1. BACKGROUND INFORMATION (complete before interview if possible)</b>			
<b>1.1</b>	<b>QUESTIONNAIRE CODE:</b>	<b>1.2</b>	<b>Location of interview:</b>
<b>1.3</b>	<b>Date of Interview:</b>	<b>1.4</b>	<b>Who was present @ interview:</b>
<b>1.5</b>	<b>Name of interviewer/s:</b>	<b>1.6</b>	<b>Duration of interview:</b>

### 2. DEMOGRAPHIC INFORMATION

#### 2.1 Gender of child:

1. Male

2. Female

#### 2.2 Current age of child (in years): \_\_\_\_\_

Date of Birth: Day \_\_\_\_\_ Month \_\_\_\_\_ Year \_\_\_\_\_

Do not remember / do not know

#### 2.3 Child's place of origin:

Village \_\_\_\_\_ Commune \_\_\_\_\_ District \_\_\_\_\_ Province \_\_\_\_\_

#### 2.4 Preferred language for interview:

1. Khmer

2. Vietnamese

3. Other (specify) \_\_\_\_\_

### 3. REASON FOR GOING TO COURT

#### 3.1 When was your most recent court date/court appearance?

1. Date (write out date): \_\_\_\_\_

2. Do not remember

3. Not yet gone to court

#### 3.2.1 During this most recent court experience, were you involved as a victim or witness, or both?

1. Victim

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- 2. *Witness*
- 3. *Both victim and witness*

**3.3 What was the violence experienced or witnessed (i.e. why did child go to court)?**

- 1. *Rape*
- 2. *Sexual abuse (not rape)*
- 3. *Trafficking*
- 4. *Domestic violence*
- 5. *Assault*
- 6. *Murder*
- 7. *Other (specify):* \_\_\_\_\_

**3.4 What was the nationality of the perpetrator(s)? (check all that apply)**

- 1. *Khmer*
- 2. *Vietnamese*
- 3. *Foreigner (specify country):* \_\_\_\_\_
- 4. *Total number of perpetrator/s (if more than one):* \_\_\_\_\_

**3.5 Why did you decide to testify in court? What did you hope to gain/accomplish?**

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**3.6 Was this your own decision to go to court, or did someone tell you to go to court?**

- 1. *Self only*
- 2. *Other person told child to go to court*
- 3. *Both (self and other)*

**3.7 If someone told you to go, who was it that?**

- 1. *Family*  (specify person) \_\_\_\_\_
- 2. *NGO*
- 3. *Village chief*
- 4. *Other (specify):* \_\_\_\_\_

**4. POLICE STATION EXPERIENCE**

No.	Question – police experience	Response	Comments
4.1	<i>How long of a time was there between experiencing the crime/violation and going to see the police?</i>	1. <b>SAME DAY</b> <input type="checkbox"/> 2. <b>SAME WEEK</b> <input type="checkbox"/> 3. <b>MORE THAN 1 WEEK</b> <input type="checkbox"/>	
4.2	<i>Why did you go to the police station? (What did you hope to gain?)</i>		
4.3	<i>How long did you have to wait before speaking to a police office and ‘giving your statement’?</i>	1. <b>NO WAIT/NOT LONG</b> <input type="checkbox"/> 2. <b>UP TO 1 HOUR</b> <input type="checkbox"/> 3. <b>1-4 HOURS</b> <input type="checkbox"/> 4. <b>MORE THAN HALF-DAY</b> <input type="checkbox"/> 5. <b>DON’T KNOW</b> <input type="checkbox"/>	
4.4	<i>How were you received, generally speaking, at the station (were staff at the police station courteous, patient, respectful; or disdainful, mocking, derogatory, disrespectful, etc.)?</i>	1. <b>ORDINARY OR NORMAL</b> <input type="checkbox"/> 2. <b>DISRESPECTFUL</b> <input type="checkbox"/> 3. <b>MOCKING</b> <input type="checkbox"/> 4. <b>DON’T KNOW</b> <input type="checkbox"/>	
4.5	<i>Did you give your statement in a separate room?</i>	1. <b>YES</b> <input type="checkbox"/> 2. <b>NO</b> <input type="checkbox"/> 3. <b>Don’t know</b> <input type="checkbox"/>	
4.6	<i>Who was present in the room with you (list all)? Were you allowed to have your guardian (friend, mother, etc.) stay with you the whole time in the police station? Who did you talk to (position, gender of the person)?</i>	1. <b>Child + police only</b> <input type="checkbox"/> 2. <b>Child + police + family.</b> <input type="checkbox"/> 3. <b>Child + police + NGO</b> <input type="checkbox"/> 4. <b>Child + police + family + NGO</b> <input type="checkbox"/> 5. <b>Other (explain)</b> <input type="checkbox"/> 6. <b>Did not ask</b> <input type="checkbox"/>	

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<b>4.7</b>	<b><i>Did the police read your statement back to you before asking you to sign/thumbprint?</i></b>	<b>1. YES</b> <input type="checkbox"/> <b>2. NO</b> <input type="checkbox"/> <b>3. Don't know</b> <input type="checkbox"/>	
<b>No.</b>	<b>Question – police experience</b>	<b>Response</b>	<b>Comments</b>
<b>4.8</b>	<b><i>Did the police confiscate any of your belongings? If so, did they return your belongings before you left the station?</i></b>	<b>1. YES</b> <input type="checkbox"/> <b>2. NO</b> <input type="checkbox"/> <b>3. Don't know</b> <input type="checkbox"/>	
<b>4.9</b>	<b><i>Did the police ask for any extra money (i.e. for gas, for photocopies, for outright bribe, etc.)</i></b>	<b>1. YES</b> <input type="checkbox"/> <b>2. NO</b> <input type="checkbox"/> <b>3. Don't know</b> <input type="checkbox"/>	
<b>4.10</b>	<b><i>How long was your time at the police station in total?</i></b>	<b>1. One hour or less</b> <input type="checkbox"/> <b>2. 1-3 hours</b> <input type="checkbox"/> <b>3. Half day</b> <input type="checkbox"/> <b>4. Whole day</b> <input type="checkbox"/> <b>5. More than 1 day</b> <input type="checkbox"/>	
<b>4.11</b>	<b><i>Did the police encourage you to settle out of court / to mediate at the station?</i></b>	<b>1. YES</b> <input type="checkbox"/> <b>2. NO</b> <input type="checkbox"/> <b>3. Don't know</b> <input type="checkbox"/>	
<b>4.12</b>	<b><i>Did anyone at the police station treat you in a bad way physically – i.e. touch you inappropriately or sexually, hit you, strike you, etc.?</i></b>	<b>1. YES</b> <input type="checkbox"/> <b>2. NO</b> <input type="checkbox"/> <b>3. Don't know</b> <input type="checkbox"/>	
<b>4.13</b>	<b><i>Did any of the authorities at the police station ask you to do anything inappropriate (i.e. give them a massage, kiss them, have sex, etc.)? If yes, give brief description.</i></b>	<b>1. YES</b> <input type="checkbox"/> <b>2. NO</b> <input type="checkbox"/> <b>3. Don't know</b> <input type="checkbox"/>	

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<b>4.14</b>	<b>If you stayed a long time (or overnight) at station:</b>	<b>1. Not overnight <input type="checkbox"/></b> <b>2. Overnight <input type="checkbox"/></b> <b>3. Very long time but not overnight <input type="checkbox"/></b>	
<b>No.</b>	<b>Question - Medical Exam</b>	<b>Response</b>	<b>Comments</b>
<b>4.15</b>	<b>Did you go to get a medical exam?</b>	<b>1. YES <input type="checkbox"/></b> <b>2. NO <input type="checkbox"/></b> <b>3. Don't know <input type="checkbox"/></b>	
<b>4.16</b>	<b>If yes, when did you go for the medical exam (in relation to the crime/violation)?</b>	<b>1. Same day <input type="checkbox"/></b> <b>2. Same week <input type="checkbox"/></b> <b>3. More than 1 week <input type="checkbox"/></b>	
<b>4.17</b>	<b>Do you know the outcome of the medical examination?</b>	<b>1. YES <input type="checkbox"/></b> <b>2. NO <input type="checkbox"/></b> <b>3. Don't know <input type="checkbox"/></b>	
<b>4.18</b>	<b>Generally speaking, how were you treated during the time of the medical exam (respectfully, disdainfully, people shouted, it was very painful, Dr. didn't talk to me, etc.)?</b>	<b>1. KIND &amp; GENTLE <input type="checkbox"/></b> <b>2. ORDINARY OR NORMAL <input type="checkbox"/></b> <b>3. DISRESPECTFUL <input type="checkbox"/></b> <b>4. MOCKING <input type="checkbox"/></b> <b>5. DON'T KNOW <input type="checkbox"/></b>	
<b>No.</b>	<b>Question - Assistance from NGO</b>	<b>Response</b>	<b>Comments</b>
<b>4.19</b>	<b>Did any NGOs come to the police station to assist you?</b>	<b>1. YES <input type="checkbox"/></b> <b>2. NO <input type="checkbox"/></b> <b>3. Don't know <input type="checkbox"/></b>	
<b>4.20</b>	<b>Did any legal aid organisations come to the police station to assist you?</b>	<b>1. YES <input type="checkbox"/></b> <b>2. NO <input type="checkbox"/></b> <b>3. Don't know <input type="checkbox"/></b>	

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<b>4.21</b>	<b><i>Did anyone from D/MoSVY assist you? If yes, who from D/MosVY assisted you, and how did they assist you?</i></b>	<b>1. YES</b> <input type="checkbox"/> <b>2. NO</b> <input type="checkbox"/> <b>3. Don't know</b> <input type="checkbox"/>	
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**5. GENERAL COURT EXPERIENCE**

**5.1 Location of Court where recent court proceedings took place:**

Province: \_\_\_\_\_

**5.2 Were/are you accompanied by an adult in the court process?**

- 1. Yes
- 2. No  (If No, go to Q 5.4)
- 3. Don't know:

**5.3 If YES, what is relationship of accompanying adult/s (check all that apply):**

- 1. Mother
- 2. Father
- 3. Other family member (specify): \_\_\_\_\_
- 4. Other family member (specify): \_\_\_\_\_
- 5. Other family member (specify): \_\_\_\_\_
- 6. Friend
- 7. NGO worker
- 8. Legal advocate
- 9. Other (specify): \_\_\_\_\_

No.	Questions – court experience	Response	Comments/ instructions
5.4	Was the head judge at your court time was a man or a woman?	1. MAN <input type="checkbox"/> 2. WOMAN <input type="checkbox"/> 3. Don't know <input type="checkbox"/>	
5.5	Did you have a lawyer to represent you?	1. YES <input type="checkbox"/> 2. NO <input type="checkbox"/> 3. Don't know <input type="checkbox"/>	If NO, go to Q. 5.8

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<b>No.</b>	<b>Questions – court experience</b>	<b>Response</b>	<b>Comments/ instructions</b>
5.6	<i>If YES, was your lawyer a man or a woman?</i>	1. MAN <input type="checkbox"/> 2. WOMAN <input type="checkbox"/> 3. Had both <input type="checkbox"/> 4. Don't know <input type="checkbox"/>	
5.7	<i>Did you have opportunity to choose whether you had a male or female lawyer?</i>	1. YES <input type="checkbox"/> 2. NO <input type="checkbox"/> 3. Don't know <input type="checkbox"/>	
5.8	<i>Do you prefer to have a male lawyer or a female lawyer represent you?</i>	1. MAN <input type="checkbox"/> 2. WOMAN <input type="checkbox"/> 3. Do not care <input type="checkbox"/> 4. Don't know <input type="checkbox"/>	
5.9	<i>When did you first meet your lawyer? How often did you meet with your lawyer before the trial/hearing? What did you talk about in your meeting/s, etc.</i>		
5.10	<i>Have the court hearings been completed?</i>	1. YES <input type="checkbox"/> 2. NO <input type="checkbox"/> 3. Don't know <input type="checkbox"/>	<i>If YES, go to Q. 5.11</i>
5.11	<i>If NO, has a date been set for future court appearance/s?</i>	1. YES <input type="checkbox"/> 2. NO <input type="checkbox"/> 3. Don't know <input type="checkbox"/>	
5.12	<i>Was the perpetrator found guilty (convicted)?</i>	1. YES <input type="checkbox"/> 2. NO <input type="checkbox"/> 3. Don't know <input type="checkbox"/>	<i>If NO, go to Q. 5.14</i>

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No.	Questions – court experience	Response	Comments/ instructions
5.13	<i>If YES, can you tell me what the sentence was for the perpetrator/s?</i>	1. YES <input type="checkbox"/> 2. NO <input type="checkbox"/> 3. Don't know <input type="checkbox"/>	
5.14	<i>Briefly describe what the sentence (time in jail, compensation payment, community service, etc.) that the perpetrator was given.</i>	<i>(go to Section 6 below)</i>	
5.15	<i>If NO conviction, do you know why the perpetrator was not convicted?</i>	1. YES <input type="checkbox"/> 2. NO <input type="checkbox"/> 3. Don't know <input type="checkbox"/>	
5.16	<i>Briefly describe why there was no conviction of the perpetrator.</i>		

**6. ASSISTANCE FROM NGOs**

No.	Assistance from NGOs	Response	Comments/instructions
6.1	<i>Did you receive any NGO assistance for the most recent legal process?</i>	1. YES <input type="checkbox"/> 2. NO <input type="checkbox"/> 3. Don't know <input type="checkbox"/>	<i>If NO, skip to Q. 5.3</i>
6.2	<i>If YES, what is the name of primary organisation providing assistance to you for legal proceedings?</i>	1. Organisation name: _____ 2. Organisation name: _____ 3. Organisation name: _____ 4. Don't know <input type="checkbox"/>	
6.3	<i>Were did you stay during the time you were waiting to go to court?</i>	1. Living at home <input type="checkbox"/> 2. Living in NGO shelter. <input type="checkbox"/> 3. Other (specify): _____ <input type="checkbox"/>	

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No.	Assistance from NGOs	Response	Comments/instructions
6.4	<p><b>Did you receive any preparation before going to court?</b></p>	<p>1. YES <input type="checkbox"/></p> <p>2. NO <input type="checkbox"/></p> <p>3. Don't know <input type="checkbox"/></p>	<p><b>If NO, end interview.</b></p>
6.5	<p><b>If YES, can you describe briefly for me what type of support you received to help prepare you for going to court?</b></p> <p><b>Did you play games, did they draw, did they do a role play, did you use dolls, etc.</b></p> <p><b>Describe who (organisation and/or office and/or position of person/s) gave you this help? When did you meet with them, how often, what did they tell you?</b></p>	<p>1. Encourage / advise (tell truth, tell all, etc.) <input type="checkbox"/></p> <p>2. Role play <input type="checkbox"/></p> <p>3. Use dolls and toys to explain <input type="checkbox"/></p> <p>4. Explain/tell procedures <input type="checkbox"/></p> <p>5. Show photos or drawings of court <input type="checkbox"/></p> <p>6. Watch video <input type="checkbox"/></p> <p>7. Other (explain) <input type="checkbox"/></p>	
6.6	<p><b>Do you think that the preparation by the legal group and NGO staff was beneficial to you and prepared you sufficiently/enough for going to court and testifying at trial? (yes/no; why/why not).</b></p>	<p>1. YES <input type="checkbox"/></p> <p>2. NO <input type="checkbox"/></p> <p>3. Don't know <input type="checkbox"/></p> <p>4. Did not ask <input type="checkbox"/></p>	
6.7	<p><b>After the trial, did you 'debrief' with anyone about that experience? If so, who? (Specifically, did they talk to anyone about their feelings of verdict, post-trial, etc.? Not just did they continue meeting with counselor, etc.).</b></p>	<p>1. YES <input type="checkbox"/></p> <p>2. NO <input type="checkbox"/></p> <p>3. Don't know <input type="checkbox"/></p> <p>4. Did not ask <input type="checkbox"/></p>	

## Annex 5: Semi-structured interview guide/s (adults)

*The research team modified a general interview guide to suit specific stakeholders, so the team developed a total of nine distinct guides addressing court presidents, judges, clerks, Bar Association representatives, police, Ministry of Justice officials, Ministry of Interior officials, lawyers, legal aid representatives, social workers, counsellors, and project administrators. This Annex shows just the question sheet used with judges and with social workers.*

### GENERAL QUESTIONS FOR JUDGES

1. *Have you received any training about working with child victims/witnesses? If so, please explain (when, how long, who conducted the training, what were topics, was it useful, what key points do they remember, etc.).*
2. *(How) are children and adults different (in context of being victims/witnesses, and going to court)?*
3. *What is the most difficult thing for you as a judge, about having child victims in court and presiding over their case?*
4. *Is there a difference between having girls vs. boys giving testimony in your courtroom? How would you compare interaction with girls vs. boys? Please explain.*
5. *What do you know about the term ‘child friendly courts’? what does that term/concept mean, how do you define it, what does it look like?*
6. *Given the various components of the criminal justice system, which do you think are more problematic for children, least ‘victim friendly’ or least ‘child friendly’ and why?*
7. *What do you think can be done to improve the situation / experience for children?*  
*[Ask some probing questions such as:*
  - *In general, how does the judge treat child victim/s?*
  - *In general, how does the defending lawyer / opposing lawyer treat child victim/s?*
  - *In general, what is clerks’ behaviour toward child victims?*
8. *Describe any changes that you’ve seen for children in the criminal system over past five years (positive or negative).*
9. *Many children report that there is insufficient time between receiving a summons to court and then needing to appear for their court date. Can you please describe the procedure / system for scheduling court dates to help us understand this?*
10. *Do you know of any efforts by the MoJ (or others) specifically toward making courts more child friendly, and/or improving juvenile justice system? Please describe (cite documents, etc.).*
11. *Do you have ideas about how to make the situation for children who are in the criminal court system better, more comfortable, and easier for the children?*

**GENERAL QUESTIONS FOR SOCIAL WORKERS**

**BACKGROUND:**

1. *How long have you been a social worker? How long have you been at this NGO?*
2. *What training have you received specifically in relation to working with children in the criminal justice system?*
3. *Have you ever read the CRC in Khmer?*
4. *Have you ever read the book/s produced by UNICEF about the National and International Laws Pertaining to children in the criminal justice system?*
5. *What is the most difficult thing for you as a social worker, when accompanying children to court?*

**PREPARATION FOR KIDS:**

1. *What are the activities that you do to prepare children for court? Please explain all of them. Which do you think are most effective and why?*
2. *What are the 'Key messages' that you give to the children to prepare them for court?*
3. *What are your sources of information for preparing the kids – i.e. do you have a curriculum you go through, who decided on the specific activities, what are the objectives, etc.?*
4. *Is there any difference in what you do to prepare boys vs. preparing girls for court? If so, what and why?*
5. *Timing for going to court – is there sufficient time between summons and actual court date?*
6. *Please tell me about when lawyers meet the children they represent – how is this meeting organised, who attends, what do they talk about, how often does it occur before court date, and so forth.*

**GOING TO COURT WITH CHILD VICTIMS and OBSERVATIONS OF THE COURT TIME**

1. *Have you yourself been to court with any of your clients? If so, how many times?*
2. *Please describe your observations about the following:*
  - a) *Physical environment (proximity, lay-out of the court, etc.)*
  - b) *Interaction of child with judge/s*
  - c) *Interaction of child with her own lawyers (tone of voice, demeanour, etc.)*
  - d) *Interaction of child with the opposing lawyers*
  - e) *Interaction of child with perpetrators (physical proximity, words exchanged, etc.)*
  - f) *How was the child's emotional state after the trial was over?*
3. *Can you give a positive example /negative example of a child's experience in court that you observed first hand?*

**SUGGESTIONS FOR CHANGE**

***Voices of Children in Court***

- 1. Do you have ideas about how to make the situation for children who are in the criminal court system better, more comfortable and easy for the children?***

## Annex 6: Statistical Information Sought

Name of Organisation: \_\_\_\_\_

Name of person completing document: \_\_\_\_\_

Position of person completing document: \_\_\_\_\_

Contact information: \_\_\_\_\_

<b>STATISTICS ON CASES OF CHILD VICTIMS TESTIFYING IN COURT</b>		
<b>Legal Cases (Trials) in which Child Victims Testified</b>	<b>No. Males</b>	<b>No. Females</b>
<b>1. Number of trials in which the children testified (or total cases referred to in these interviews).</b>		
<b>2. Range of dates the trials took place.</b>		
<b>3. Cities in which the trials took place (total number)</b>		
<b>Phnom Penh</b>		
<b>Siem Reap</b>		
<b>Sihanoukville</b>		
<b>Battambang</b>		
<b>4. Number of children who testified.</b>		
<b>5. Range of ages of children who testified (age at time of trial).</b>		
<b>6. Average number of months the trials occurred after rescue.</b>		
<b>7. Shortest number of months between rescue and trial.</b>		
<b>8. Longest number of months between rescue and trial.</b>		
<b>9. Total number of perpetrators tried.</b>		
<b>10. Number of rape cases tried (by gender of perpetrator).</b>		
<b>11. Number of perpetrators convicted of rape.</b>		
<b>12. Number of perpetrators acquitted of rape.</b>		
<b>13. Number of perpetrators of trafficking, pimping and/or debauchery tried (by gender of perpetrator).</b>		
<b>14. Number of perpetrators convicted of trafficking, pimping, and/or debauchery at all the trials.</b>		
<b>15. Number of perpetrators acquitted of trafficking, pimping, and/or debauchery at all the trials.</b>		
<b>16. Number of cases in which the children were granted financial compensation by the court.</b>		
<b>17. Range of compensation granted by court.</b>		
<b>18. Number of cases in which children received the financial compensation granted by the court.</b>		
<b>19. Number of trials in which at least one child-friendly procedure was utilized by the court (could include: the use of screens, asking people not associated with the case to leave the</b>		

<b>STATISTICS ON CASES OF CHILD VICTIMS TESTIFYING IN COURT</b>		
<i>courtroom during the trial, allowing the child to wait in an outside room until her time to testify if she so chose, etc.).</i>		
<b>20. Number of children who experienced child-friendly procedures during their court trial.</b>		
<b>Legal Preparation</b>		
<b>21. Number of children who received legal preparation for testifying at trial from a legal and/or human rights organisation responsible for the child's case.</b>		
<b>22. Percent of total children who received legal preparation for testifying at trial.</b>		
<b>23. Average length of time of children's legal preparation.</b>		
<b>24. Number of children who received certificates from NGO for testifying at court.</b>		
<b>25. Percent of children who received certificates from NGO for testifying at court.</b>		
<b>Psychological Preparation</b>		
<b>26. Number of children who received psychological preparation specifically relating to the court appearance, from a counsellor/social worker.</b>		
<b>27. Percent of total children who received psychological preparation for testifying at trial.</b>		
<b>28. Average length of time of children's psychological preparation for court.</b>		
<b>29. Number of children who were prepared by going through a pre-visit to court or mock-trial.</b>		

## Annex 7: Criteria specified to NGO's for child respondents

<b>Criteria specified for child respondents</b>
<p><i>The following list of criteria was supplied to potential participating agencies. In several instances the children recommended by an NGO didn't actually meet ALL the criteria (for example, some children had not yet been to court; some respondents were older than 18).</i></p> <ul style="list-style-type: none"><li>▪ <i>We want to interview both boys and girls.</i></li><li>▪ <i>We want to interview children who have been victims of crimes, or witnesses to crimes. We do NOT want to interview children-in-conflict-with-the-law because some research has already been done about that particular group.</i></li><li>▪ <i>Age at time of court appearance below 18 years old.</i></li><li>▪ <i>Child's appearance in court having happened within the past 0-12 months.</i></li><li>▪ <i>Different causes for going to court as a victim or witness (human trafficking, rape, sexual abuse, murder, etc.).</i></li><li>▪ <i>Courts: we'd like to focus on children who have had experience going to court in four locations: Battambang, Siem Reap, Kampong Som, or Phnom Penh. It is possible for us to interview children who are currently residing in PNH (perhaps at a shelter?) who have experience with courts in one of the other three locations, because our criteria relates to which court children have experience with (not where the child sits currently).</i></li><li>▪ <i>Total number of children to interview: 10-12 per provincial court.</i></li><li>▪ <i>We expect that each interview would take a maximum of one hour. Thus, we can interview a maximum of 3 children in the morning, and 3 children in an afternoon. If possible, we would like to meet the child in your office or your shelter, as the child is familiar with that environment. Or we can meet the child in her/his home.</i></li><li>▪ <i>If the child wants to have a social worker / counsellor / guardian present, that is fine. We always ask this question at the start of our interviewing.</i></li><li>▪ <i>If a child must travel some distance, we will pay a perdiem/transport fee if that is the policy of your organisation.</i></li></ul>

## Annex 8: Background information requested from NGOs

<i>Background information on clients requested from NGOs</i>
<ol style="list-style-type: none"><li><b>1. Current age of the child</b></li><li><b>2. Sex of the child.</b></li><li><b>3. Nature of the crime (i.e. what crime did the child experience)</b></li><li><b>4. Date of the crime (if known - if not, can you give any details about when it happened?)</b></li><li><b>5. Location of the crime (what Province)</b></li><li><b>6. Number of alleged perpetrator/s; nationality of perpetrator/s</b></li><li><b>7. When did the child go to police station to report the crime (date). Do you have any notes about that experience for the child?</b></li><li><b>8. Organisation that supplied the child's lawyer.</b></li><li><b>9. Date/s and nature of any meetings the child had with a lawyer.</b></li><li><b>10. Date of all appearance/s in court.</b></li><li><b>11. List of court/s the child has appeared in.</b></li><li><b>12. Please state how long the child had between receiving summons and then appearing in court?</b></li><li><b>13. List of the name of any other organisations that you know have assisted the child somewhere in the process of their going through the criminal justice system (we understand that many children receive assistance from many different NGOs).</b></li><li><b>14. Brief description of the preparation that the child received about going to court: please describe activities, number of meetings, who was present in the meetings, and when they occurred.</b></li></ol>

## Annex 9: Respondent portraits

### THE CHILDREN BEHIND THE NUMBERS

**Story 7(P-24):** A 14-year-old girl was raped three years ago in her own home when both her parents were out working. So now they are afraid to leave her at home alone. That is why they pulled her out of school to go to work. She is working six days a week (7 am – 6pm daily) at a garment factory where her mother is a cleaner. The girl's four siblings are still in school.

In 2010 the police came to her home to investigate. In 2011 she had to go for [investigative] interviews at court. Then she was summoned to court on 31 January 2013 but when she went, discovered that only the defence lawyer was present. Her own lawyer did not appear because he knew that the perpetrator had not yet been caught and his whereabouts are unknown. The girl was given this news that the trial could not commence, only after waiting at the court house for nearly an hour.

**Story 8 (P-03):** One 18-year-old girl told a long and complicated tale. She used to be a rubbish-collector. One day (when she was 12-years old) a German man approached her and said that he would help her family, pay for the girls' schooling, give her money for food, and so forth. He made the child leave the public school and begin attending a private school for English-language classes. He bought her a bicycle. He told the girl and her mother that he felt like a father to the girl, had the same feeling like she was his daughter. So, he asked the mother could the girl come to stay with him for a few days and have a dah-layng. The mother relented. The man then raped the girl repeatedly and brutally over a span of several days ('when I went for the medical exam, the doctor told me I was lucky to be alive – as I was so badly injured'). The girl eventually got away, and went to the police station to report what had happened. There an NGO came and she was taken to a shelter where she lived for the next 3-4 years. She returned home two years ago.

At the Court of First Instance, the perpetrator was found guilty and told to pay a fine of \$7,000 and serve a jail term of 15 years. The man appealed this ruling; he was ok to pay the fine but he did not want to serve time in jail. Of course he has so far paid the family no compensation. And the family continues to accumulate expenses as they are sometimes called in to the court to give testimony. The family does not know when they will hear the verdict from the Appeal Court. 'It is very difficult to keep going back and forth about the same case. I must keep remembering what happened to me and I cannot just leave it behind and move forward. This is so difficult for me!'

**Story 9 (P-22):** An 18-year-old girl living in Kampong Cham was raped by an Australian man who managed the restaurant she worked in. 'At first I did not want to tell my mother, I was so ashamed. Also the perpetrator threatened to kill me if I told anyone what he did. Finally I told my mother what happened. We didn't know what to do. So I went to the internet to get information about any organisation that might be able to help me. I found LICADHO there, and contacted them. They wrote a letter and put me in communication with the Mol and

**THE CHILDREN BEHIND THE NUMBERS**

**Anti-human trafficking police.**

**'The Mol requires a lot of money to get something done. They said we need to pay them if they are going to work for us. So I got a lawyer from LICADHO because we don't have money to pay. Already we have spent about \$500 on the process and nothing has happened, the money does not work! During investigative interviews by the police, I feel helpless, like I have lost the case already. They keep asking me – why didn't you report the incident sooner? And they say, he was your boyfriend so it is not rape. Maybe you just angry with him now.**

**'No one believes me. Many different people have discouraged me in my case. The judge does not believe me, the clerk is trying to get me to pay money to him, my own lawyer does not care very much. I am hopeless!'**

**Story 10 (P-12): This girl's story started like so many other Cambodian girls: on a rice farm. As a teenager, she and her brother would go snail hunting to supplement family meals. One one of those normal day a man from their village stopped the siblings mid-hunt and suggested they split up to gather more snails. That's when he attacked. With the brother now far away, the man began raping her in the field. When her brother saw what was happening, he ran to rescue his sister. Quickly, the perpetrator pulled out a knife and slashed the boy's throat. The boy died instantly. The man then returned to the girl and started beating her. He stabbed her in her stomach and all over her body, stopping only when he was sure she was dead. But miraculously, the girl survived. When she regained consciousness, she crawled and stumbled home. Her family, in shock, took her to the hospital and reported the incident to the local chief of police. But the police didn't react in time and the suspect fled.**

**A human rights organisation, referred the girl's case to an NGO shelter for victims of sexual exploitation. The girl's first month with the NGO was spent in hospital. She recovered slowly from her injuries: multiple stab wounds, internal damage to organs including her eyes, scratch marks on her face. It took several months for the girl's physical wounds to heal; her emotional recovery is a much longer journey. When her case went to court and she was called on to testify against the perpetrator (who was finally caught), the emotional trauma was very real as she recounted before the judge and court the story of her brother's murder and her own rape and attempted murder. The perpetrator was eventually convicted of murder, attempted murder, and rape and sentenced to 20 years in prison.**

**While the girl is now doing well in school, and has good relationships with the housemother and the other girls at the shelter, she misses her family. Complicating matters, and adding to the girl's emotional trauma, the perpetrator's family is now blaming her for the rape and murder. It is unclear whether the girl will ever be able to go back to her family and community because of the stigma of being a rape survivor, and the threats and malice spread by the perpetrator's family.**

**Story 11 (B-06): In Battambang, the mother of a 10-year-old child respondent told a fantastic tale of courage and bravado in which she (the mother) apprehended the man who raped her**

**THE CHILDREN BEHIND THE NUMBERS**

*daughter. 'I caught him myself!' she proclaimed, and then explained the story. When this mother's daughter heard the news that her daughter had been raped by one of the men in their village who worked as a motorcycle taxi driver, the mother was so shocked 'I got weak knees.' Because they lived very far from the nearest police station, the mother doubted that justice would be done unless she could get the perpetrator to the police station.*

*So, she went out and hired the perpetrator for a price he could not refuse, to take her and her daughter to the police station 2 hours away. The mother told the man that she had to sign some papers to get a loan to start a small business, and that she required signatures from the police station. As they got closer to the station, the mother said she felt the moto driver getting suspicious; she also realised that he might just drop them off and then ride away. So, she cajoled him into the police station by saying that she required his help with understanding some of the forms. He followed her into the station where he was apprehended by the police.*

## Annex 10: COSECAM – Joint NGO database figures on rape

### **COSECAM – Joint NGO Database figures on rape (2009-2010)**

**2009: 535 suspected rape incidents involving 541 victims (384 or 72% were children). Ages of rape victims ranged from 2 to 84 years. Just 1% of perpetrators were strangers to the victim – 99% were blood relatives, legal relatives, or otherwise known to victim/s.**

**2010: 524 cases of rape involving 539 victims of rape and 596 offenders. Median age of rape victims is 12 years old; it was 14 years old in 2007.**

**2011: 658 cases of Rape were referred to the participating NGOs, involving 671 victims and 770 offenders.**

- **A total of 72% were children (less than 18 years of age) and in total 90% were less than age 25**
  - **49% were in the 13-17 years age group**
  - **35% were in 7-12 age group**
  - **16% were in 1-6 years age group**
- **28 of the victims were murdered.**
- **48.7% of the children who were raped said their lives had been threatened by the perpetrator although in most cases the offender did not have a weapon.**

## Annex 11: Examples of duration of cases for child victims

### *For crimes relating to trafficking and/or sexual exploitation*

**#1 (Duration: 4 years+).** Investigations conducted in January 2008. First trial conducted in August 2008 but remanded (so no verdict, but new trial date was to be determined). A second trial at the First Instance Court was delayed three times. The fourth try, on 20 April 2010, the trial was finally conducted. Perpetrators were convicted that same day. The Appeal trial was conducted more than one year later (23 August 2011). A verdict was announced on 13 September 2011 ordering to remand the trial for further investigation. On 30 March 2012 the new trial at the Appeal Court was held and the verdict was announced on 5 April 2012 (upholding the lower court decision). Filed cassation to the Supreme Court but the legal aid NGO is not following the proceedings anymore.

**#2 (Duration: 3.5 years+).** Operation conducted in October 2009. Trial scheduled but delayed, until it was finally conducted in July 2010. An Appeal was filed and conducted in April 2011. Final judgment has not yet been received.

**#3 (Duration: 2 years, 3 months).** Two 11-year-old female victims filed the same case at the Court in Phnom Penh in January 2011. A verdict was received two months and 20 days later (March 2011). The perpetrator appealed; the Appeals Court handed down a verdict in March 2013 upholding the lower court's decision of 12 years imprisonment and 4 million riel to be paid in compensation to the victims.

**#4 (Duration: 1 year, 2 months).** Investigations and operation conducted in July 2010. Trial conducted in September 2011 and verdict received shortly thereafter. No appeal has been filed; victim is still waiting on the payment of the civil compensation.

**#5 (Duration 2.5 years+):** 13-year-old male victim of a foreign paedophile filed his case in Phnom Penh in November 2011. The verdict from Court of First Instance was received 7.5 months later, in July 2012. The British perpetrator appealed the sentence of 2 years imprisonment and 2 million riel compensation and in March 2013 the lower court's ruling was overturned and the perpetrator found 'not guilty'.

## Annex 12: Best interests of children in Cambodia’s justice system

<i>Suggestions for ways to incorporate the best interests of the child into the Cambodian public justice system (LICADHO, 2006, p. 10-15)</i>	
<i>Domain of change</i>	<i>Detailed suggestions</i>
<i>Emotional &amp; psychological support for child victims and witnesses</i>	<ul style="list-style-type: none"> <li>• <i>Pre and post-trial therapeutic support is fundamental to ensure the child is supported as much as possible. Emotional support for children is critical before, during and after the trial.</i></li> <li>• <i>Appoint a prosecution lawyer with whom the child feels comfortable and who she is able to trust. And, where possible for the prosecutor to meet with the child prior to the trial.</i></li> <li>• <i>The child must be allowed to have their parents/guardian present, unless it is not in the best interests of the child. Whenever possible a social worker that the child knows and trusts should also be allowed to be present during trial proceedings.</i></li> </ul>
<i>Preparation for children who are called to testify</i>	<ul style="list-style-type: none"> <li>• <i>Try to curtail the number of interviews undertaken with the child prior to the trial.</i></li> <li>• <i>[Undertake] court visits to reduce anxiety and stress before court hearings. This should not take place too early so as to avoid causing anxiety and not too late so as to avoid confusion and fear. Include an explanation of the roles of people involved in the court.</i></li> <li>• <i>Ensure that the child is as fully prepared as possible for testifying. This includes detailed information of the scope of their role, timing, and progress of proceedings.</i></li> <li>• <i>Procedures and processes of the court system must be explained to the child in a language they understand, taking into account the age of the child, but also any disability and level of development. The lack of understanding of often complex legal procedures can cause severe anxiety; adapting to the specific needs and best interests of the child, one should pay extra attention to not direct the testimony of the child (before and during the trial) and thereby ensure no additional pressure is placed upon the child.</i></li> </ul>
<i>Courtroom infrastructure</i>	<ul style="list-style-type: none"> <li>• <i>If the child is not permitted to testify outside the courtroom, then courtroom infrastructure needs to be adapted, for example, providing a child-sized chair, allowing the child to sit</i></li> </ul>

## A System Just for Children

<b>Suggestions for ways to incorporate the best interests of the child into the Cambodian public justice system (LICADHO, 2006, p. 10-15)</b>	
<b>Domain of change</b>	<b>Detailed suggestions</b>
	<i>next to a support person, etc.</i>
<b>Attitude/actions by authorities toward children</b>	<ul style="list-style-type: none"> <li>• <i>Unnecessary and prolonged questioning of child victims should not be allowed. Child victims should not be required to be present in court before and after testifying, unless they wish to be.</i></li> <li>• <i>Harsh cross-examination should not be permitted as well as abusive language and language which is threatening and loud.</i></li> <li>• <i>Judges should ensure that any cross-examination is conducted at a level appropriate for the age/ability of the child and should intervene if the child is distressed or confused.</i></li> <li>• <i>Allow the view of the child to be expressed and taken into consideration.</i></li> </ul>
<b>Training for authorities</b>	<ul style="list-style-type: none"> <li>• <i>Training of judges, prosecutors, lawyers and police officers in child friendly techniques.</i></li> </ul>
<b>Confidentiality / protection of privacy for the child</b>	<ul style="list-style-type: none"> <li>• <i>Whilst we stress that testimony in a separate room is the ideal, if a child victim is expected to testify in court then the media, the general public and the perpetrator should be removed from the court during the child's testimony, particularly in the case of child victims of sexual abuse.</i></li> <li>• <i>In this regard, judges should remind the media that under the Press Law they are not permitted to publish the identity of any child involved in a court case. The support person, parent and/or social worker should however remain present.</i></li> </ul>
<b>Keep child and perpetrator separated</b>	<ul style="list-style-type: none"> <li>• <i>Have a separate waiting area for children near the courtroom so that children are not exposed to the possibility of seeing the defendant and/or abuser.</i></li> <li>• <i>Face-to-face contact with the alleged abuser should be minimised as much as possible and this should include not making child victims stand right next to the accused when they are testifying.</i></li> <li>• <i>Do not allow the perpetrator to ask the child victim direct questions.</i></li> </ul>

## Annex 13: Reasons given for wanting representation by female / male lawyer

<b>Children's rationale for wanting to be represented by female lawyer</b>	
<b>Girl, age 17:</b>	<b><i>'It is easier to tell my story to a woman; [because] she is like me. Otherwise I am shy to talk to a man about my story.'</i></b>
<b>Girl, age 18:</b>	<b><i>'It is easier to talk to a woman lawyer – I am not shy or embarrassed.'</i></b>
<b>Girl, age 11:</b>	<b><i>'Because she is female same as me, and is easier to work with and she understands me.'</i></b>
<b>Girl, age 18:</b>	<b><i>'I prefer a female lawyer because we can easily talk together.'</i></b>
<b>Girl, age 17:</b>	<b><i>'I would prefer female lawyer because I can trust her more and feel more comfortable talking with her.'</i></b>
<b>Girl, age 17:</b>	<b><i>'Women are more kind than men.'</i></b>
<b>Girl, age 14:</b>	<b><i>'A woman of course, because it's less embarrassing to talk to a woman about rape.'</i></b>
<b>Girl, age 10:</b>	<b><i>'Women are brave and encouraging. Those are the most important characteristics for a lawyer.'</i></b>
<b>Girl, age 13:</b>	<b><i>'I want a female lawyer because of kindness. A male lawyer would know my story and tell others.'</i></b>
<b>Girl, age 14:</b>	<b><i>'Having a female lawyer makes a girl more brave herself!'</i></b>
<b>Girl, age 15:</b>	<b><i>'I think a female lawyer can get the perpetrator to talk better than a male lawyer can.'</i></b>

<b>Children's rationale for wanting to be represented by male lawyer</b>	
<b>Girl, age 18:</b>	<b><i>'Men are stronger than women in talking; men are more serious.'</i></b>
<b>Girl, age 16:</b>	<b><i>'I want a male lawyer because men are more strong and more strict (sva hop) than women.'</i></b>
<b>Girl, age 12:</b>	<b><i>'I prefer male lawyers because they are strong enough to stand up for me and my case.'</i></b>
<b>Girl, age 16:</b>	<b><i>'Male lawyers can stand up stronger for you than female lawyers.'</i></b>
<b>Boy, age 13:</b>	<b><i>'Because I am male, I would like to have a male lawyer. He would be easy to talk to and I would not be embarrassed to talk to him.'</i></b>
<b>Boy, age 14:</b>	<b><i>'Male lawyers are better because they dare to speak more and they are more able to take the lead in the courtroom. I had both a male and female lawyer and the male lawyer did most of the talking while the female lawyer assisted.'</i></b>

## Annex 14: Child strategies for feeling better in court

### *What children did to make themselves feel better in court*

- *One girl said: My mother was physically close to me the whole time, and that gave me peace.’ (B-03). Another expressed a similar sentiment: ‘The woman judge told me there was no need to fear; the courtroom is a place to help you. Also, my mother was standing nearby and that helped me to calm down a bit.’ (SR-09)*
- *‘I sat in the middle and my mom was sitting by my side, and that made me feel better. I also was praying in my heart and that helped too.’ (SR-04)*
- *‘I did not look people in the eyes when I was talking to them in court – that helped me to have more confidence to speak.’ (P-16)*
- *‘The [NGO] social worker told me not to be afraid. Also, before the trial and my father and mother told me there was nothing to fear. This made me feel better.’ (boy, SR-01).*
- *‘I was afraid (pye) when waiting in the courtroom to testify, and my body was cold all over. My mother gave me some tiger balm and that made me feel better. The judge asked my mother to sit closer to me – that made me feel much better too.’ (P-23)*

## Annex 15: Local understanding/s of 'child friendly' justice

### Examples of how 'child friendly' is understood by authorities

- *'Judges have to be friendly with children so that they feel comfortable enough to participate fully. We have to joke with them a bit and use words so that children can relax and understand our questions.'* (male Court President)
- *'In general, we have to place ourselves at their level to show they have the same value as adults. It is also important to use gentle and polite language with them in order to be truly child friendly.'* (male Prosecutor)
- *'If it is a child's case, we have to be careful in the interview because we are afraid the child will not provide a clear answer. We must try to get their answers carefully. Also, when interviewing children, before you do the interview it is important to know something about the case so that you can get the right answers from the child. You have to look in the eyes and face of the child to see if they are telling the truth. It is important to get children away to a quiet place so that they will answer you truthfully.'* (Anti-human trafficking police officer).
- *We always try to encourage the child before the child has to speak on the stand; we say 'Do not to be afraid because your parents are here and I am the judge and no one will hurt you. We are nearby and you do not have to be afraid. Also, with children, it's important to not ask them directly the questions because as a judge the child might be very afraid of me. So I ask through the lawyer who knows<sup>53</sup> the child better.'* (Court President)
- *'We are older people and we know what it's like to be a child; but the child does not know what it's like to be an adult! So, we know all about how to talk well with children, know what they are afraid of.'* (Court President)

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<sup>53</sup> Of course, this would only be the case if the lawyer is appointed early and actually has time to meet with the child before the first appearance in court. The Court President was, perhaps, not apprised of the actual "normal" situation for child witnesses, vis-à-vis meeting with their lawyer.

## Annex 16: Children suggest ways to make justice system more friendly

### Questions for children about ways to make the justice system more friendly

- *What could court authorities do to make it more comfortable for children?*
- *Are screens to separate accused from the child useful or not?*
- *Should child victims and witnesses be located in a separate room and use video-conferencing?*
- *Should child victims and witnesses wait outside courtroom and enter only to testify or is it good that they sit in the courtroom for the entire trial?*
- *Should strangers be asked to leave the courtroom before a child victim's case is heard?*
- *Should children be inside the courtroom when verdict is announced?*

### HOW SHOULD POLICE AND MEDICAL PERSONNEL BEHAVE TO MAKE IT EASIER FOR CHILDREN?

- *'The police used strong and strict language. That is normal for police, but it scared me. It would be better for them to use more gentle language.'* (KS-01)
- *'The police should do their job better and catch the perpetrator more quickly!'* (P-05)
- *'The police should care more about the situation. They do not care much. And they have bad actions. In my case, they captured the perpetrator and took him to the station but then they just let him go. He is not in prison [even though he was found guilty by the court], he is free and walking in our community.'* (P-23)
- *'Police should allow parents to join the interview.'* (KS-01)
- *'I would suggest that the doctors and police should act on the case immediately. Their words should be friendly, polite, appropriate, and not rude to the child victim. If they act like this, it would help child be able to focus and participate more fully in the process.'* (SR-02)
- *'Doctors should be female to examine girls.'* (KS-01)

## HOW SHOULD COURT AUTHORITIES BEHAVE TO MAKE IT EASIER FOR CHILDREN?

- *One 14-year-old girl was nonchalant about her court experience – ‘I don’t have any suggestions really. It was kind of like being in school. Very formal. They asked questions and I had to answer.’ (SR-05)*
- *‘It is not good to make people cry in court.’ (This girl was referring to another case that she had observed prior to her case, where the judge made someone cry.) (B-01)*
- *‘The judge can be intimidating if talking loudly/strongly (klang). This can make the victim forget her story or forget some of the details so the judge should be [more] careful in how they talk.’*
- *‘All adults in court should respect children more than they do. Judges should not yell at children; they should listen better to the children.’ (P-21)<sup>54</sup>*
- *‘Judges should use simple language so children understand.’ (P-03)*
- *‘I want to say ‘thank you’ to the judge for not yelling at me, and for talking gently to me.’ (B-02)*
- *‘The judge should always use gentle, polite speech.’ (SR-01)*
- *‘Please judge, do not yell at children.’ (P-03)*
- *‘Court authorities should wear normal clothes. No need to wear robes like that.’ (P-21)*
- *Judge should not knock on the table with a gavel – that frightens children!’ (P-03)*
- *‘The time between the crime and then going to court is too long. It should be shorter. It is difficult to live when we don’t know.’ (P-01)*
- *‘The law should hurry more to solve the problems and not wait for so long. They talk too long; they keep the paper and it gets stuck. The rape happened in 2011. We got a summons for court about one year later. And then the verdict one or two months after that. It is too long! It is hard to keep living life when the case is not finished.’ (P-23)*

## THE COST OF JUSTICE

- *‘We should not have to pay any money to the police for them to do their responsibility.’ (P-07)*
- *‘The medical examination fee should be lower because poor people do not have money for that.’ (P-22)*

## CLOSED COURTROOM (NOT OPEN TO THE PUBLIC)

- *One child whose judge had asked all strangers to leave the room before her trial began, said that it was good there was no one else in the courtroom who was not related to the trial. She said – ‘It should always be this way.’<sup>55</sup> (B-01)*

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<sup>54</sup> The most common response on the IJM 2007-2008 survey also related to authorities “speaking calmly, softly, and politely.”

## **A System Just for Children**

- *'They should always close the doors to the public and not let strangers in because this could affect the child's reputation.'* (SR-01)
- *'I think that would be very good because seeing so many strange people in the courtroom can be frightening for most children.'*(P-08)

### **WHAT DO YOU THINK OF USING A SCREEN INSIDE THE COURTROOM TO SEPARATE CHILDREN FROM PERPETRATORS?**

- *'I was afraid of the perpetrators, afraid of being close to them in court, afraid to be in the same room as them. If they can stay separated that would make me feel safe.'* (B-02)
- *'There was no screen in the courtroom. Anyway, I wanted to see the perpetrator and to look into his face when he was in the court. But, I was disappointed because he looked normal, he was not afraid.'* (B-04).
- *'Yes it would be good to have a screen – if I knew I could have had one, I would have asked for it.'*<sup>55</sup> (B-05)
- *'I think there should be a barrier to not allow the child and the perpetrator to see each other because that can make the child afraid.'* (SR-09).

### **DO YOU THINK IT WOULD BE GOOD FOR YOU/THE CHILD TO BE IN A SEPARATE ROOM FOR THE WHOLE TRIAL (I.E. NEVER GO INTO THE COURTROOM) AND TO COMMUNICATE THROUGH TV/VIDEO? WHY/NOT?**

- *One 14-year-old girl has seen in some movies about court that in some places, a victim is in a different room and does not have to enter the courtroom to testify. She said that might be ok for other people, but she herself wanted to go into the courtroom. She was not afraid to go into the courtroom; however, for little children, like 4-5-6 years old, the girl said 'I feel pity when they have to go into the courtroom because it makes them cry because they are so scared. They cry and they say nothing. They see the perpetrator and keep crying because they are so afraid!'*
- *'Yes, this would be good so that I would not have to see the perpetrator in person. Also I didn't like it that I had to sit behind the perpetrator in the courtroom. It would be better to be in another room.'* (SR-05)

### **DO YOU THINK IT WOULD BE BENEFICIAL FOR THE CHILD TO WAIT OUTSIDE OF THE COURTROOM (IN A WAITING ROOM) AND THEN ENTER THE COURTROOM ONLY WHEN IT IS HER TIME TO TESTIFY? WHY/ NOT?**

*Nearly all children said they did not agree with this as an option, stating that they wanted to hear everything that was said about them. This result is similar to the IJM 2007-08 Survey.*

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<sup>55</sup> *The IJM 2007-08 survey found that 100% of children interviewed wanted to ask non-associated people to leave the courtroom before the child's trial began.*

<sup>56</sup> *The IJM 2007-08 survey found that 19/23 children thought a separating screen would be helpful.*

## **Voices of Children in Court**

- *'I don't want them to do that. At least for me, I wanted to participate in the event for real so I knew what they were saying. If I were outside the room they might even be plotting against me! At least if I saw it through video I would know what they are discussing.'*
- *'This would not be good because then children could not hear what the perpetrator and others were saying.'* (SR-01)
- *'This would not be good because then the child cannot hear what is being said about them and about their case.'* (KS-01)
- *'It is not helpful to have someone else speak for you, or to read out a child's statement. The child should be allowed to speak for themselves!'* (boy, P-13)

### **DURATION/STRICTNESS OF SENTENCING:**

- *'It is good to use jail to deter people from doing bad things – so, give these guys a long jail sentence and then others won't do what they did!'*

### **DO YOU FEEL YOU HAD SUFFICIENT INFORMATION TO HELP YOU MAKE GOOD DECISIONS AND TO FEEL COMFORTABLE?**

- *'It would be good for the judge to make sure to tell children the outcome at the end of the trial, before we leave the room. To inform us of the next date and time, the process, and like that.'*
- *'Also it is helpful for the NGO to ensure that it communicates in transparent and timely manner with children.'*

### **COMMENTS ON THE COURT ENVIRONMENT**

- *'It is not a clean room and it smells bad. Someone should make it clean.'*

## Annex 17: Measuring Cambodian practice against international standards

*The UONDC’s Justice in matters involving child victims and witnesses of crimes (2006) provides the most succinct explanation of global standards governing treatment of children in the criminal justice system. The table in this annex provides an indicative, rather than exhaustive, listing of ways in which the reality of the Cambodian criminal justice system falls short of these global standards.*

<b>Theoretical rights of children</b>	<b>Reality for child victims and witnesses in Cambodia’s criminal justice system</b>
<b>Be treated with dignity and compassion</b>	<ul style="list-style-type: none"> <li>▪ <i>Prevalent social norms guiding adult to child relationships tend to reduce children to objects rather than active subjects, to overlook their rights and capacities, and to regard them as less than full participants in their own lives. This is especially true of attitudes to girls.</i></li> <li>▪ <i>One-fifth of respondents (10 in total) were treated disrespectfully, or even mocked, by police.</i></li> <li>▪ <i>About 1/5 of respondents were also treated badly by medical personnel during forensic exams.</i></li> <li>▪ <i>Judges sometimes shout at children.</i></li> <li>▪ <i>Court and other authorities sometimes mock children.</i></li> <li>▪ <i>Defendant lawyers often treated child victims harshly during trial.</i></li> <li>▪ <i>Court officials sometimes are late for scheduled hearings.</i></li> <li>▪ <i>Sometimes hearings are cancelled without prior notice and families only find out once they have made the trip to the courthouse.</i></li> </ul>
<b>Be protected from discrimination.</b>	<ul style="list-style-type: none"> <li>▪ <i>Proceeding through the justice system is financially costly, and could be prohibitive for poor people.</i></li> <li>▪ <i>Police levy fees, forensic medical exam costs money, etc.</i></li> <li>▪ <i>Girls older than ~13 years, and effeminate boys, experience sexual harassment and mocking from police and court authorities.</i></li> <li>▪ <i>Parents who are among Cambodia’s working poor may not be able to attend a trial if they have to work at that time– they risk losing their job if they take time off.</i></li> <li>▪ <i>Translation services for non-Khmer speaking children are very difficult to access.</i></li> </ul>
<b>Be informed.</b>	<ul style="list-style-type: none"> <li>▪ <i>Not all families or children were aware of what steps to take to report the crime; this can result in delay of justice.</i></li> <li>▪ <i>Parents and family members of are seldom included in the preparation of children for their court appearance, and thus do not know what to expect.</i></li> </ul>

<b>Theoretical rights of children</b>	<b>Reality for child victims and witnesses in Cambodia's criminal justice system</b>
	<ul style="list-style-type: none"> <li>▪ <i>Pre-trial preparation is frequently done, but information provided is not standardised and depends upon who is preparing the child.</i></li> <li>▪ <i>Lawyers do not necessarily share the results of a courtroom session with children or with parents (in fact, this seldom happened).</i></li> <li>▪ <i>Lawyers did not consistently inform children of the possibility of having a screen erected to separate them from the perpetrator. Many children told the researchers they did not know it was an option; if they had known, they would have requested it.</i></li> <li>▪ <i>Some children did not know the status of their trial – it is the responsibility of the legal aid person and/or the social service NGO to inform children about this.</i></li> <li>▪ <i>Medical personnel never gave paper copy of forensic examination results to victims, and only sometimes provided a verbal explanation of results to victims and/or their guardian.</i></li> </ul>
<b>Be heard and to express views and concerns.</b>	<ul style="list-style-type: none"> <li>▪ <i>The views and voices of children are not always solicited about matters directly affecting them. For example, often it is adults who decide for children that children will go to court and children are not necessarily consulted.</i></li> <li>▪ <i>Often it is adults rather than children themselves who agree to out-of-court settlement.</i></li> <li>▪ <i>Children are not given a choice in whether they have male or female lawyers.</i></li> <li>▪ <i>Many children said they were too afraid to ask the judge to repeat something, too afraid to ask for a break, etc.</i></li> </ul>
<b>Effective assistance.</b>	<ul style="list-style-type: none"> <li>▪ <i>There are frequent and consistent procedural errors/violations made by various authorities (police, medical examiners, courts).</i></li> <li>▪ <i>Forensic medical exams are often performed long after the violation, and results are therefore not useful as evidence.</i></li> <li>▪ <i>Lawyers do not spend sufficient time with child victims before the trial.</i></li> <li>▪ <i>Victim lawyers often did not intervene on the child's behalf during trials.</i></li> <li>▪ <i>Sometimes clerks over-step the bounds of their authority.</i></li> </ul>
<b>Privacy.</b>	<ul style="list-style-type: none"> <li>▪ <i>Child names are posted in the foyer of provincial courthouses on schedule sheets.</i></li> <li>▪ <i>Strangers are not always dismissed from the courtroom for a</i></li> </ul>

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<b>Theoretical rights of children</b>	<b>Reality for child victims and witnesses in Cambodia's criminal justice system</b>
	<p><i>child's hearing.</i></p> <ul style="list-style-type: none"> <li>▪ <i>Sometimes journalists are allowed into the courtroom (without asking children).</i></li> <li>▪ <i>Lack of specialised waiting facilities for children in courthouses means they are seen by many people as they sit outside the courthouse, or in the hallway.</i></li> </ul>
<b>Be protected from hardship during the justice process.</b>	<ul style="list-style-type: none"> <li>▪ <i>Children are required to give their statement (tell their story) multiple times, each time risking re-traumatisation.</i></li> <li>▪ <i>Frequently the victim and perpetrator are in the same vicinity during trial (waiting room and courtroom).</i></li> <li>▪ <i>There are virtually no special facilities in courthouses for young children – no private waiting rooms, no small chairs or tables, no stools to stand upon to equalise their height with adults in the room, etc.</i></li> <li>▪ <i>Frequently, cases involving child victims are lengthy in duration even if they do not go to Appeals Court. Children report feeling unsettled during this liminal period.</i></li> <li>▪ <i>Though closed-circuit TV and video facilities are said to exist, no child in this study reported being able to use them. All were required to give testimony directly to adults in the courtroom.</i></li> </ul>
<b>Safety.</b>	<ul style="list-style-type: none"> <li>▪ <i>Sometimes a child meets in a room with only one other non-related adult (e.g. police officer).</i></li> <li>▪ <i>Often, perpetrators do not spend much time in jail but rather, return to the community where the child lives.</i></li> <li>▪ <i>Some children remain in NGO shelters even after court cases are completed, because they fear for their personal safety.</i></li> <li>▪ <i>Children are often placed in close physical proximity to the perpetrator during the court sessions.</i></li> </ul>
<b>Reparation.</b>	<ul style="list-style-type: none"> <li>▪ <i>Some children (and/or families) feel forced to settle out of court (as they are cajoled by police or other authorities). Thus they may not receive appropriate reparation.</i></li> <li>▪ <i>Just one respondent had received any compensation though nearly all whose cases had a verdict, were awarded compensation.</i></li> <li>▪ <i>For victims not associated with NGOs, it may be virtually impossible to access the mental health care or medical care necessary to recover.</i></li> </ul>
<b>Preventative measures (right</b>	<ul style="list-style-type: none"> <li>▪ <i>Securing safety is more appropriately the role of police and commune/village officials than NGO shelters: however, virtually no effort is made by RGC authorities to protect child</i></li> </ul>

**Voices of Children in Court**

<b><i>Theoretical rights of children</i></b>	<b><i>Reality for child victims and witnesses in Cambodia's criminal justice system</i></b>
<b><i>to be protected from further harm).</i></b>	<b><i>victims/witnesses, either during or after trial.</i></b> <ul style="list-style-type: none"><li data-bbox="500 306 1370 420">▪ <b><i>Many girls are sexually violated by family members or people they know in their community – clearly more work is needed at all levels on the prevention side of the crime equation.</i></b></li></ul>

## Annex 18: Timeline of related legal framework

The following is a comprehensive though not exhaustive list of legislation applicable in Cambodia, for the protection of vulnerable groups and victims of abuse, violence, and exploitation.<sup>57</sup> It is worth noting that many of these detailed laws and agreements relate specifically to trafficked persons; to children in conflict with the law; and to child labour. This is important to note, given that (perhaps) the majority of child victims of crime in Cambodia have been raped or sexually abused and thus their cases would not be covered by these other legislative initiatives.

<b>TIMELINE/OUTLINE OF RELATED LEGAL FRAMEWORK (INTERNATIONAL, REGIONAL, AND NATIONAL INSTRUMENTS)</b>		
<b>Date</b>	<b>Name of document</b>	<b>Details</b>
<b>INTERNATIONAL INSTRUMENTS</b>		
<b>1985</b>	<b>UN Standard Minimum Rules for the Administration of Juvenile Justice ('The Beijing Rules')</b>	<b>Focus is exclusively juveniles in conflict with the law.</b>
<b>1990</b>	<b>UN Rules for the Protection of Juveniles Deprived of their Liberty</b>	<b>Focus is on appropriate treatment and care of juveniles who are incarcerated.</b>
<b>1990</b>	<b>UN Guidelines for the Prevention of Juvenile Delinquency ('The Riyadh Guidelines')</b>	
<b>Cambodia ratified in 1992.</b>	<b>CEDAW (Convention on the elimination of all forms of discrimination against women)</b>	
<b>Cambodia ratified in 1992.</b>	<b>CRC (UN-Convention on the Rights of the Child)</b>	<b>Defines 'child' as every human being below age 18 years. Sets out civil, political, economic, social, health, and cultural rights of children.</b>
<b>1997</b>	<b>Guidelines for Action on Children in the Criminal Justice System Recommended by the economic and Social council resolution 1997é30 of 21 July 1997</b>	<b>Focus is on promoting appropriate treatment of children-in-conflict with the law (or juvenile justice); this document does not address child victims and witnesses of crimes.</b>
<b>Cambodia ratified in 2002.</b>	<b>CRC Optional protocol on the Sale of children, child prostitution, and child pornography</b>	
<b>2005</b>	<b>UN Guidelines on Justice Matters Involving Child Victims &amp; Witnesses</b>	
<b>Cambodia ratified in 2006.</b>	<b>ILO Convention Number 182 on the Worst Forms of Child Labour</b>	<b>The Convention agrees to eradicate the worst forms of child labour by 2016, including sexual exploitation of children.</b>

<sup>57</sup> For instance, there are at least seven pieces of legislation specifically designed to protect children's labour rights in Cambodia, but just two of those are listed herewith (Cambodian Constitution & the UN-CRC) – See Huang, 2010, p. 4-8 for details on labour-related legislation about minors.

<b>TIMELINE/OUTLINE OF RELATED LEGAL FRAMEWORK (INTERNATIONAL, REGIONAL, AND NATIONAL INSTRUMENTS)</b>		
<b>Date</b>	<b>Name of document</b>	<b>Details</b>
<b>Cambodia ratified in 2007.</b>	<b><i>The Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Particularly Women and Children, Supplementing the UN Convention Against Transnational Organised Crime (2000)</i></b>	<b><i>The first universal instrument that addresses all aspects of human trafficking.</i></b>
<b>2009 / 2012</b>	<b><i>Universal Periodic Review (UPR) of the UN Human Rights Council</i></b>	<b><i>Every 4.5 years, the human rights status of UN member states is reviewed by their peers. All human rights are addressed.</i></b>
	<b><i>Extradition treaties relating to prosecution of child sex perpetrators</i></b>	<b><i>Cambodia has bilateral extradition treaties with Australia, China, Korea, Lao PDR, and Thailand.</i></b>
<b>REGIONAL INSTRUMENTS</b>		
<b>2003</b>	<b><i>MoU with Thailand</i></b>	<b><i>Cambodia signed MoU with Thailand to combat human trafficking.</i></b>
<b>Cambodia signed in 2004.</b>	<b><i>COMMIT – MoU on Cooperation Against Trafficking in Persons in the Greater Mekong Sub-Region</i></b>	<b><i>Also signed by Burma, China, Thailand, and Lao PDR.</i></b>
<b>Cambodia signed in 2004.</b>	<b><i>Treaty on Mutual Legal Assistance in Criminal Matters Among Like-Minded ASEAN Member Countries (MLAT)</i></b>	
<b>2004</b>	<b><i>ASEAN Declaration against Trafficking in Persons Particularly in Women and Children</i></b>	
<b>2004</b>	<b><i>Proposed Guidelines for the Protection of the Rights of Trafficked Children in Southeast Asia.</i></b>	
<b>2005</b>	<b><i>MoU with Vietnam</i></b>	<b><i>Cambodia signed MoU with Vietnam to combat human trafficking.</i></b>
<b>NATIONAL (Domestic) INSTRUMENTS</b>		
<b>1993</b>	<b><i>6<sup>th</sup> Constitution of Cambodia</i></b>	<b><i>Contains various articles intended to protect vulnerable people from abuse and exploitation, and to ensure that basic human rights are honoured.</i></b>
<b>1996</b>	<b><i>(Cambodian) Law on Suppression of Kidnapping, Trafficking and Exploitation of Human Persons</i></b>	
<b>2000</b>	<b><i>Cambodia National Council for Children (CNCC) 5-year plan Against Sexual Exploitation of Children</i></b>	<b><i>Adopted by the Council of Ministers as a follow-up from the First World Congress Against Sexual Exploitation of Children (Stockholm, 1996).</i></b>
<b>2005</b>	<b><i>Law on the Prevention of Domestic</i></b>	<b><i>Designed to protect children from</i></b>

<b>TIMELINE/OUTLINE OF RELATED LEGAL FRAMEWORK (INTERNATIONAL, REGIONAL, AND NATIONAL INSTRUMENTS)</b>		
<b>Date</b>	<b>Name of document</b>	<b>Details</b>
	<i>Violence and the Protection of Victims</i>	<i>homicide, physical &amp; mental abuse, and sexual aggression.</i>
<b>2006</b>	<i>Policy on Alternative Care for Children</i>	
<b>2007</b>	<i>Code of Criminal Procedure</i>	<ul style="list-style-type: none"> <li>- <i>Replaced the outdated UNTAC (1992) Criminal Law &amp; procedure.</i></li> <li>- <i>Provisions relating to minors deal almost exclusively with child offenders and not with child victims/witnesses.</i></li> </ul>
<b>2007</b>	<p><i>The Guideline for the Protection of the Rights of Trafficked Children of the Children of Cambodia (2007)</i></p> <ul style="list-style-type: none"> <li>- <i>The Guideline is applicable to the members of the Cambodian National Council for Children, which include MoSAVY, the Ministries of Interior and Justice. Although it is not binding to the judiciary, international instruments do require compliance with these standards</i></li> </ul>	<p><b>Strengths:</b> <i>The Guideline contains specific instructions on the protection of child victims and witnesses when they are seeking redress. For example:</i></p> <ul style="list-style-type: none"> <li>- <i>It advises that children should not be forced to act as a witness in court proceedings and that their ability to do so should be assessed by a competent authority.</i></li> <li>- <i>When children testify in trafficking trials, protection measures should be in place to ensure their safety and the safety of their family.</i></li> <li>- <i>The judiciary should use protection measures, such as video-taped interviews, TV and other means in order to avoid a direct confrontation with the traffickers.</i></li> <li>- <i>All the child's answers should be kept confidential.</i></li> </ul> <p><b>Weakness:</b></p> <ul style="list-style-type: none"> <li>- <i>It is a non-binding agreement.</i></li> <li>- <i>It only speaks to trafficking and does not supply sufficient protection for child-friendly treatment of victims of other</i></li> </ul>

<b>TIMELINE/OUTLINE OF RELATED LEGAL FRAMEWORK (INTERNATIONAL, REGIONAL, AND NATIONAL INSTRUMENTS)</b>		
<b>Date</b>	<b>Name of document</b>	<b>Details</b>
		<i>crimes, such as rape. Yet, in courtrooms, incidences of rape are much more common than trafficking.</i>
<b>2007/8</b>	<b><i>Instruction 617 (prakas) on the Use of Court Screens at Hearing of Child Victims/Witnesses</i></b>	<b><i>About separation of perpetrators and child victims through use of CCTV (close circuit television) or screens.</i></b>
<b><i>Cambodia adopted in 2008.</i></b>	<b><i>Law on Suppression of Human Trafficking and Sexual Exploitation (LSHTSE).</i></b>	<b><i>Leading piece of legislation dealing with sexual exploitation.</i></b>
<b>2008</b>	<b><i>Commune Committees for Women and Children (CCWC)</i></b>	<b><i>Responsible to prevent and mitigate trafficking and sexual exploitation of women and children.</i></b>
<b>2009</b>	<b><i>National Committee to Lead the Suppression of Human Trafficking, Smuggling, Labor and Sexual Exploitation of Women and Children</i></b>	
<b>2009</b>	<b><i>The Policy and Minimum Standards for Protection of the Rights of Victim of Human Trafficking (Minimum Standards).</i></b>	
<b><i>Cambodia adopted in 2010.</i></b>	<b><i>Penal Code</i></b>	<b><i>Replaced the UNTAC Penal Code – required 10 years to develop. Provisions relevant to children include: Criminal Responsibilities of Minors, Penalties Applicable to Minors, and Infringement on Minors and Family.</i></b>