



## UPR Submission on Cambodia

### Child Rights

(2009 - 2013)

### Contribution to the Universal Periodic Review Mechanism

### 18<sup>th</sup> session of the Working Group of the Universal Periodic Review (UPR)

### A UPR Submission on Child Rights in the Kingdom of Cambodia (Cambodia) by the NGO Coalition on the Rights of the Child

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The NGOCRC and its member organisations working on child rights related issues welcome the opportunity provided by the Office of the High Commissioner on Human Rights to comment on the child rights situation in Cambodia. This submission will provide:

- A. An overview of the general situation and legal framework of **Child Rights** in Cambodia;
- B. A more detailed account of specific aspects of child rights including **education, health, child protection, juvenile justice and alternative care**. This section will look at the implementation thus far of some recommendations made by UN member states during Cambodia's 2009 UPR, in relation to these sub-topics. Information has been gathered from NGOCRC members and partner organizations working on these sub-topics;
- C. **Recommendations** to the Royal Government of Cambodia (the "RGC") on how to improve the situation of child rights in Cambodia.

1. This report was prepared by NGOCRC, an alliance of 45 national and international child rights NGOs working in the Kingdom of Cambodia. The process for preparing the report included a review of relevant domestic laws and regulations, policies, standards, guidelines, national strategies and plans of actions and data from various reports. Three consultations were held between March and May 2013 with NGOCRC's five thematic Working Group members, including six children and youth group representatives. In June 2013, interviews were conducted with the Secretary General of the Cambodia National Council for Children (CNCC) as well as representatives of leading local and international organisations working on child rights in Cambodia including UNICEF and Save the Children. Three training sessions were held in March 2013 and May 2013 on the UPR process with NGOCRC members and additional local and international child rights groups.

## **I. Background and framework:**

### **Institutions and human rights infrastructure:**

2. Cambodia has made great strides since its last UPR of 2009 in legislative and policy development and overall poverty reduction, and significant gains in certain social sectors. The RGC tasks the CNCC, an inter-ministerial institution, with assisting in the monitoring of childrens' rights fulfilment.<sup>1</sup> In 2009, the composition and structures of the CNCC were reformed to establish CNCCs at the municipal/provincial level, and to set up working groups to focus on child rights within each ministry and institution. Various different mechanisms for the implementation of child protection are being instituted at the national and sub-national level such as the formation of ministerial and inter-ministerial working groups on child protection. Despite these structural reforms, the capacity of the CNCC still needs to be strengthened in order to capitalise on recent progress and to ensure efficient coordination between ministries.
3. The RGC has ratified a number of relevant human rights treaties including The UN Convention on the Rights of the Child (CRC) as well as the Optional Protocols on the Involvement of Children in Armed Conflict, and on the Sale of Children, Child Prostitution and Child Pornography. The RGC also ratified the Optional Protocol to the Convention on Elimination of Discrimination against Women (CEDAW) in 2010, and the UN Convention on the Rights of Persons with Disabilities in 2012. The RGC has ratified a number of International Labour Organization Conventions relevant to child rights including C138 (Minimum Age), C182 (Worst Forms of Child Labour), C29 (Forced Labour), and C105 (Abolition of Forced Labour). However, the RGC has not ratified the CRC third Optional Protocol on a Communications Procedure, the Optional Protocol to the UN Convention on the Rights of Persons with Disabilities or ILO Convention number 189 on Decent Work for Domestic Workers. In Article 31 of the Constitution of the Kingdom of Cambodia, the RGC recognizes and respects human rights as enshrined in the United Nations Charter, the Universal Declaration of Human rights and all the treaties and conventions related to human rights, women's rights and child rights.

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<sup>1</sup> CNCC members include 22 ministries and four additional stakeholders. The full list can be found at <http://www.cncc.gov.kh/en/about-cncc/our-member>

4. The Cambodian Human Rights Committee was established in 1998 in order to promote human rights and the rule of law. Its primary function is to investigate and report on complaints relating to human rights; however it is not an independent body and is widely regarded to be under the control of the executive and vulnerable to potential Government influence.<sup>2</sup> There are no clear rules or guidelines to govern how it should function; and as a result, it is impossible to assess whether they are fulfilling their roles. The RGC agreed, in principle, to establish an independent human rights committee to monitor the human rights fulfilment in 2006. However, little progress has been made since then.

## **II: Cooperation with human rights mechanisms:**

5. The RGC is cooperating with numerous human rights mechanisms relevant to child rights. In addition to the UPR process, the RGC issued a combined second and third Periodic Report to the UN Committee on the Rights of Child in 2010, the first State party report since 1998.<sup>3</sup> In 2011, the RGC submitted a combined fourth and fifth State party report to the Committee on the Elimination of Discrimination against Women.<sup>4</sup> An action plan was developed by members of government ministries/institutions at the national and provincial level, with national and international NGOs, members of the National Assembly and Senate, UN agencies and children to implement the Committee on the Rights of Child's Concluding Observations issued in 2011. In its Concluding Observations, the Committee welcomed efforts by the State party to implement the concluding observations from the State party's initial report, but expressed regret that some of its concerns and recommendations had not been sufficiently addressed. The Committee welcomed the Constitutional Council Decision stating that the courts must consider the Convention when interpreting Cambodian law and deciding cases, but expressed concern that in practice, the provisions of the UNCRC are rarely invoked or directly enforced by tribunals, courts and administrative authorities.

## **III. Implementation of international human rights obligations:**

### **1) Education**

6. Providing education opportunities to all children is central to the RGC's poverty reduction and socio-economic plans.<sup>5</sup> The Ministry of Education, Youth and Sport (MOEYS) reported a 96.4% enrollment rate for primary schools with an equitable gender balance in 2010/2011,<sup>6</sup> but only 35% enrolment for lower secondary school.<sup>7</sup> Early childcare and development (ECCD) provisions are scarce; the net enrolment for pre-

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<sup>2</sup> See Volume 3 – National Human Rights Bodies in Cambodia Factsheet. Cambodian Center for Human Rights. March 2012.

<sup>3</sup> CRC/C/KHM/2-3

<sup>4</sup> CEDAW/C/KHM/4-5

<sup>5</sup> National Strategic Development Plan (NSDP) 2009-2013. Royal Government of Cambodia

<sup>6</sup> 2012 Annual Progress Report on The Implementation of the NSDP Update 2009-2013 with an Overview of Economic and Social Progress, Including in Select CMDGs. Ministry of Planning. Royal Government of Cambodia. December 2012.

<sup>7</sup> EMIS Office, Department of Planning (March 2011) Education Statistics and Indicators 2010/2011. MoEYS

<sup>8</sup> UNICEF, Division of Policy and Practice, Statistics and Monitoring Section. May 2008

<sup>9</sup> The Cambodia Socio-Economic Survey (CSES) is a household survey used to monitor the NSDP and progress towards the Millennium Development Goals.

school was only 11% in 2008.<sup>8</sup> A comparison of CSES data<sup>9</sup> and MOEYS data suggests that more children enrol than actually attend school. Completion rates for Grade 9 in 2011 were worryingly low for both boys (42.6%) and girls (41.6%) and had significantly decreased in the past three years from an average of 48.7% in 2009.<sup>10</sup> The RGC is not on course to achieve Cambodian Millennium Development Goal 2.7 which is to increase the completion rate from grade 1 to 9 from 33% in 2001 to 100% in 2015. Upper-secondary school education opportunities remain limited; the net enrolment ratio for upper secondary schools in 2009-2010 was estimated at 19.3%, with a completion rate of just 26.1%.<sup>11</sup>

7. Other indicators highlight a wide variation in education levels contrasted with income, location, ethnicity, disability and family poverty. 46.8% of children in urban areas attend upper secondary school, compared with only 14.9% in rural areas.<sup>12</sup> 2009 UPR Recommendations number 87 and 88 request the RGC to strengthen its educational system and education for all programmes, including for women and persons with disabilities, and that additional measures be taken to support access to education of minority children to help them to maintain and develop their own traditions and languages.<sup>13</sup> MOEYS indicators do not reflect the disparities between different social groups including minorities and the rural poor. It is estimated that as many as 25% of children with a disability never access any form of education.<sup>13</sup>
8. Teacher salaries are low which contributes to the severe shortage of teachers and high class sizes, particularly in rural areas.<sup>14</sup> The problem is particularly acute in primary schools. Based on salary ranges provided by MOEYS' Department of Human Resource Management, the minimum salary rank of a primary teacher starts from just USD41.38 per month,<sup>15</sup> (the minimum wage for a garment worker in Cambodia was raised in 2013 to \$80 per month in comparison).<sup>16</sup> School tuition is free in Cambodia, however unofficial school fees remain a barrier to education, especially for children from the poorest families. It is common practice for teachers to withhold curriculum content during the school day, forcing students to pay for afternoon tutorials where the omitted areas are covered.<sup>17</sup> Furthermore, a preliminary study conducted by Save the Children in 2010 suggested 80% of students surveyed were beaten, verbally abused or both, by their teachers.<sup>18</sup> As many as 39% of the children surveyed did not feel safe and secure in school.<sup>19</sup>
9. In line with the Government's Education Strategic Plan and in accordance with Article 13 of the ICESCR and Article 28 of the CRC, the RGC is largely succeeding in its obligation to secure the right *to* education in terms of improved accessibility and

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<sup>10</sup> 2012 Annual Progress Report on The Implementation of the NSDP Update 2009-2013 with an Overview of Economic and Social Progress, Including in Select CMDGs. Ministry of Planning. Royal Government of Cambodia. December 2012.

<sup>11</sup> Ministry of Education, Youth and Sports. Education Strategic Plan 2009-2013. Pg 3. September 2010

<sup>12</sup> EMIS Office, Department of Planning (March 2011) Education Statistics and Indicators 2010/2011. MoEYS

<sup>13</sup> Cambodian Disabled People Organisation, 2009

<sup>14</sup> UNESCO Institute for Statistics. Available at World Bank World Development Indicators for Cambodia, states that Cambodian primary school class sizes contained an average of 47 pupils in 2011, well above the regional average and the UNESCO target pupil-teacher ratio of 40.

<sup>15</sup> Assessing the Impacts on Teacher Motivation. NGO Education Partnership and Save the Children. June 2012

<sup>16</sup> <http://www.rfa.org/english/news/cambodia/wages-03212013185628.html>

<sup>17</sup> See for example Assessing the Impacts on Teacher Motivation. NGO Education Partnership and Save the Children. June 2012

<sup>18</sup> Education Baseline, Save the Children, Pg 49. February 2010.

<sup>19</sup> Ibid

availability of education, primary education in particular. However, significant challenges remain in keeping children in school ensuring education is of good quality and that children are actually learning in class. The RGC is broadly failing in its obligation to secure rights *in* education to standards of acceptability in terms of quality, and adaptability in terms of appropriate education for vulnerable and minority groups.

### **Recommendations:**

- 10. By 2015, the RGC should increase budget allocation for children's education from 2.4% (2009) of GDP to a minimum of 3.8% of GDP, to match education spending in other developing South East Asian states.<sup>20</sup> The RGC should focus on improved monitoring and evaluation, effective spending and expenditure tracking to ensure that budgets are not under-spent and that investment is in line with the real needs of children. The increased budget should be used to target teacher capacity building, increasing the incentives for teachers and enforcement of relevant policies and laws to ensure a safe learning environment in schools. The RGC should immediately increase ECCD access and recruit and retain more pre-school and primary school teachers. The RGC should make increased investment in higher education and vocational skill training in order to raise the quality of outcomes, so that more youth can compete in employment markets which will become more competitive from 2015 onwards when the ASEAN region allows free movement of skilled labour.**

## **2) Health**

11. Whilst overall RGC spending on health has increased, out-of-pocket spending still places a heavy burden on the poor, making healthcare inaccessible for all.<sup>21</sup> According to civil society experts interviewed as part of the consultation process, health practitioners often don't adhere to the Professional Code of Conduct and charge service-users additional fees. Cambodia has achieved remarkable health gains over the last five years; the maternal mortality ratio in 2010 was 206 deaths per 100,000 live births, down from a rate of 472 in 2005. The Under-five mortality ratio was 54 deaths per 100,000 live births, down from 83 in 2005.<sup>22</sup> Immunization against six vaccine-preventable diseases (tuberculosis, diphtheria, whooping cough, tetanus, polio, and measles) is crucial to reducing infant and child mortality, and data from the 2010 Cambodia Demographic and Health Survey (CDHS) suggests that 74% of children aged 12-23 months were fully vaccinated by 12 months of age, with little wealth-specific difference.<sup>23</sup>
12. However, the CDHS reported that nationally, 40% of children under age 5 are stunted, and 14% are severely stunted. The disparity in stunting prevalence between rural and urban children is substantial: 42 % of rural children are stunted, as compared with 28% of urban children.<sup>24</sup> Stunting is largely the result of malnutrition, food insecurity and poor

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<sup>20</sup> More Efficient Government Spending for Strong and Inclusive Growth. Integrated Fiduciary Assessment and Public Expenditure Review (IFAPER). Poverty Reduction and Economic Management Unit. World Bank. November 2011

<sup>21</sup> Ibid

<sup>22</sup> Cambodia Demographic and Health Survey (CDHS) 2010. Published by the National Institute of Statistics and Ministry of Health. Measure DHS Project. Maryland, US. September 2011

<sup>23</sup> Ibid

<sup>24</sup> Ibid

access to health care, and affects both mental and physical development. Whilst the percentage of children stunted has fallen from 50% in 2000 to 40% in 2010, malnutrition is still wide-spread, is concentrated in rural areas and is inversely related to the wealth of childrens' families. Likewise, childhood mortality rates also varied significantly - infant mortality in urban areas is approximately three times lower than infant mortality in rural areas (22 deaths per 1,000 live births versus 64 deaths per 1,000 live births).<sup>25</sup>

13. Drug and alcohol use by children and young people appears to be escalating, due in part to the lack of awareness raising about the dangers of drinking alcohol for children and the fact that there is no legal age limit for buying and using alcohol in Cambodia.

### **Recommendation**

- 14. The RGC should immediately strengthen monitoring and evaluation in the health system and provide opportunities for citizens to give feedback on public service delivery in order to increased social accountability at district and commune levels. The RGC should develop indicators that better reflect regional and socio-economic variables as part of its efforts to improve health care provision for minority groups and the rural poor. The RGC should develop strategies focused on behavioural change to a) reduce stunting from 40% to 20% by 2018 by raising awareness on the importance of nutrition and complementary feeding, b) reduce alcohol and drug abuse through legislative and policy measures and social campaigns established by 2015, and c) enforce the practice of the Professional Code of Conduct immediately for health staff and investigate and punish all violations.**

## **3) Child Protection**

### **(i) Child Labour**

15. Child labour is still prevalent in Cambodia and is closely linked to and influenced by a number of factors, most notably, poverty, school accessibility and enrolment levels. Using data from the 2010 CSES, UNICEF calculated that 11.38% of the total labour force in Cambodia is below 18 years old, that approximately 18% of children are child workers, with female employment slightly above male employment, and that almost one fifth of children work for a livelihood or contribute to the livelihood of their household.<sup>26</sup> The International Labour Organization (ILO) reported in 2012 that child labour is on the rise across all major categories, including hazardous work,<sup>27</sup> despite the fact that the child population has remained fairly stable since 2007. Many children work in dangerous activities in agriculture such as tobacco and cassava cultivation, rubber and salt production and the seafood industry. The Labor Law (1997) allows children as young as 12 years to work in light and non-hazardous employment which does not interfere with their education. The minimum legal admission age for general employment is 15 years,

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<sup>25</sup> Ibid

<sup>26</sup> An Analysis of Child Deprivation and Inequality in Cambodia. Findings from Three Surveys: CSES 2010, CDHS 2010 and CDB 2010. UNICEF. November 2012.

<sup>27</sup> Decent Work Country Profile. Cambodia. International Labor Organisation. 2012

while for hazardous work (the definition of which is contained in the law), it is 18 years.<sup>28</sup> Resource and capacity constraints continue to undermine practical enforcement of the Labor Law at the formal enterprise level. The RGC reported that in 2010, not a single employer was prosecuted for violations of laws related to child labour.<sup>29</sup> The Labor Law focuses on paid employment in formal enterprises only and does not address informal workplaces where the bulk of child labour is found. Furthermore, the Labor Law does not apply to domestic or household services in which many children are now engaged and where they are particularly vulnerable to labour exploitation. The Labor Law specifies that inspectors from the MOLVT will oversee compliance of the law's provisions, however the MOLVT has limited number of inspectors and inspections are not carried out in informal or unregistered places of employment where child labour exploitation is most acute.

16. The ILO reported that in 2009, the child labour rate was four times higher among 5 to 11 year olds in rural than urban areas (21.3%, compared with 5.4% in urban areas), more than three times higher among 12 to 14 year olds (43.1% versus 13.3%), and more than two times higher among 15 to 17 year olds (18.2% versus 38.5%).<sup>30</sup> This is another reflection of the inequality and equity divide in Cambodian society, particularly in regard to persistent and widespread poverty in rural Cambodia and the lack of opportunities for post-primary schooling in these areas.
17. The RGC has taken a number of steps to better regulate and reduce child labour. The Ministry of Labor and Vocational Training (MOLVT), with Department of Child Labor, developed the National Action Plan on the Elimination of the Worst Forms of Child Labor 2008-2012. The National Poverty Reduction Strategy and the Rectangular Strategy Phase II contains specific child labour reduction targets, and in December 2011, the Government adopted the 2011-2013 National Plan of Action on the Suppression of Human Trafficking, Smuggling, Labor, and Sexual Exploitation which includes a section on child labour. The National Sub-Committees on Child Labour, which preside over strategic actions on child rights and child labour and other forms of commercial exploitation of children at the sub-regional level, have taken major steps to eliminate the worst forms of child labour in Kep, Kampot, Siem Reap, Beanteay Meanchey (Poipet) and Phnom Penh provinces.
18. Despite these efforts, the RGC seemingly lacks the capacity and will to properly enforce the Labour Law. Law enforcement is reportedly still weak and impunity endemic in the labour sector.<sup>31</sup> Neither the falling poverty rates nor rising school enrolment rates since 2009 appear to have been sufficient to reverse the rising trend in child labour. UPR Recommendation number 33 requested that the RGC intensifies its fight to eliminate forced labour and the severest forms of child labour.<sup>32</sup> Although some progress has been made on the regulatory side, the RGC is unlikely to meet the Cambodia Millennium

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<sup>28</sup> Labor Law Article 172-181

<sup>29</sup> Written replies by the Government of Cambodia to the list of issues (CRC/C/KHM/Q/2) related to the consideration of the second periodic report of Cambodia (CRC/C/KHM/2). Committee on the Rights of the Child. May 2012 Fifty seventh session. 30 May – 17 June 2011

<sup>30</sup> Decent Work Country Profile. Cambodia. International Labor Organisation. 2012

<sup>31</sup> Cambodia Country Report on Human Rights Practices. United States Department of State. 2011

<sup>32</sup> Report of the Working Group on the Universal Periodic Review. Cambodia. A/HRC/13/4. Page 16. January 2010

Development Goal (CMDG) target of reducing child labour as a proportion of total children to 8% by 2015.

## **Recommendation**

**19. By 2018, the RGC should adopt national regulations that promote and protect the rights of children. Regulations should address children working in the informal sector and include provisions covering domestic work. The RGC should immediately increase monitoring inspections of informal and regular places of work, prosecute all employers who violate the Labor Law, and impose the maximum available penalties for employers who falsify documents enabling children to qualify for employment abroad and for other purposes. The RGC should also ratify ILO Convention number 189 on Decent Work for Domestic Workers by 2015.**

### **(ii) Trafficking and Sexual Abuse**

20. Cambodia is a source, transit, and destination country for men, women, and children who are subjected to forced labour and sex trafficking. Cambodian children migrate, often with their parents, to countries within the region – primarily Thailand and Malaysia – for work, and many are subsequently subjected to sex trafficking, domestic servitude, debt bondage, or forced labour. Vietnamese women and children, many of whom are victims of debt bondage, are transported to Cambodia and forced into commercial sexual exploitation. Although reliable statistics are scarce, child abuse and domestic violence are believed to be common, and child rape remains a serious problem.

21. In 2010, the NGO Joint Statistics Database Report on Rape, Sexual Trafficking and Sexual Exploitation report identified 39 cases of sexual trafficking involving 61 suspected traffickers.<sup>33</sup> 56.4% of victims were under the age of 18. In 2011, 71 cases were reported, 75% of which involved children. The report findings suggest that the median age of victims has fallen from 18 years old in 2007 to 16 years old in 2011.<sup>34</sup> Of the 33 cases for which data is available in 2011, 17 cases were investigated by the police, and only 3 resulted in a criminal trial.<sup>35</sup> MOSAVY reported receiving and referring 884 trafficking victims to shelters and the local police referred 247 victims of sex trafficking to province-level Departments of MOSAVY in 2011.<sup>36</sup> Whilst the number of cases recorded vary and may not reflect the true number of cases occurring, low investigation and prosecution rates demonstrate alarming weaknesses in the criminal justice system.

22. ECPAT-Cambodia recorded 539 cases of rape in 2010, 76.9% of which involved victims under the age of 18. 19.8% of offenders were under the age of 18.<sup>37</sup> Alternative sources corroborate these findings. In 2011, ADHOC received 476 complaints of rape direct to its

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<sup>33</sup> NGO Joint Statistics Database Report on Rape, Sexual Trafficking and Sexual Exploitation in Cambodia 2010

<sup>34</sup> Ibid

<sup>35</sup> Ibid

<sup>36</sup> United States Department of State, *2012 Trafficking in Persons Report - Cambodia*, 19 June 2012

<sup>37</sup> NGO Joint Statistics Database Report on Rape, Sexual Trafficking and Sexual Exploitation in Cambodia 2010



offices, 72.26% of which involved victims under the age of 18.<sup>38</sup> Out of the 476 cases recorded, only 246 cases, or 51.68% of perpetrators, were detained and convicted. In an additional 120 cases, or 25.21%, the perpetrators escaped.<sup>39</sup> 2009 UPR Recommendation number 30 requested that the RGC undertake due and timely investigations of all reported cases, punish the perpetrators, implement necessary rehabilitation programmes for victims, and intensify Government efforts to raise public awareness against this negative phenomenon to fight persistent traditional stereotypes.<sup>40</sup>

23. The RGC has taken some steps to address trafficking such as enacting a temporary ban on recruiting, training, and sending domestic workers to Malaysia in 2011. However, the prevalence of abuse, trafficking and child rape, and corresponding low conviction rates indicate that implementation of relevant laws including the Law on the Suppression of Human Trafficking and Sexual Exploitation, the Criminal Code, the Civil Code the Sub-decree 190 on the Sending of Migrant Workers Abroad has not been effective. Understanding and interpretation of applicable laws is weak and inconsistent. The US Department of State Trafficking in Persons report for 2013 stated that the RGC failed to make progress in holding trafficking offenders and child sex tourists accountable because of inadequate prosecutions and sentences, and its efforts to protect victims remained inadequate.<sup>41</sup> For example, although several ministries contributed statistics to the trafficking database, the information was inaccurate and incomplete.<sup>42</sup> Systematic procedures for assisting Cambodian trafficking victims abroad are also lacking. Improved protection, rehabilitation and re-integration programmes, particularly in rural areas targeting vulnerable groups, both in and out of schools, are urgently required.

### **Recommendation**

- 24. The RGC should immediately strengthen law enforcement and increase efforts to prosecute perpetrators of trafficking and sexual abuse as well as corrupt officials complicit in the crimes. The RGC should immediately develop and maintain a comprehensive and reliable database on trafficking cases and ensure that information is continually shared with civil society groups, so that the scale of the problem can be properly identified and appropriate protection, rehabilitation and reintegration programmes can be designed.**

#### **(iii) Alternative Care**

25. The RGC made significant progress in developing policies and minimum standards for the care, support and protection of orphans and vulnerable children. This was in response to the proliferation of private orphanages and care homes established in recent years, which are replacing more traditional forms of care. The RGC stated that a total of 10,913 orphan children were cared for in 223 registered centres in 2009.<sup>43</sup> According to

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<sup>38</sup> Women and Children's Rights in Cambodia, Situation Report 2011. ADHOC . Published Feb 2012.

<sup>39</sup> Ibid

<sup>40</sup> Report of the Working Group on the Universal Periodic Review. Cambodia. A/HRC/13/4. Page 16. January 2010

<sup>41</sup> United States Department of State, 2013 Trafficking in Persons Report – Cambodia.

<sup>42</sup> United States Department of State, 2012 Trafficking in Persons Report - Cambodia.

<sup>43</sup> NSDP Update 2009-2013. Royal Government of Cambodia. November 2009

government statistics, only 26% of these children have actually lost both parents.<sup>44</sup> Poverty and lack of access to education are the main reasons why parents send their children to orphanages. NGOs reported that many orphanages are actively recruiting children in poor provinces by convincing, coercing or even paying parents to give their children away. Village chiefs also encourage poor parents to send children to institutions to access education. Through this kind of encouragement and recruiting, many parents believe that their children would be better off in such centres.<sup>45</sup> Children face increased risks of neglect and abuse in residential care, and in cutting ties with their families they are often unable to return to their communities. When youths finally leave orphanages, they are particularly vulnerable as they are often not prepared or adapted to community life and struggle to find their place in society as a result.

26. The 2006 Policy on Alternative Care for Children and the 2008 Minimum Standards on Alternative Care for Children set out initiatives on alternative care. Article 9 of the CRC underlines the right of a child not to be separated from their parents unless absolutely necessary, and the RGC policy on Alternative Care underlines the importance of children growing up in a family environment. The Ministry of Social Affairs, Veterans and Youth Rehabilitation (MoSVY) is responsible for monitoring the situation of residential and alternative care, however, the RGC's budget to monitor alternative care institutions and to care for children without parents or in difficult circumstances is still insufficient. This results in children suffering from unsafe and unhealthy conditions in state-run and private orphanages centres.

### **Recommendation**

- 27. There is an urgent need to develop capacity to support increased monitoring and regulation of public and private alternative care institutions to prevent abuse. Progress in policy development must now be met with proper budgeting of state-run institutions and enforcement of minimum standards. MOSVY referrals to state or private alternative care institutions should be in line with the UN Guidelines for the Alternative Care of Children and respect the basic principles of necessity and appropriateness.**

#### **(iv) Juvenile Justice**

28. There is still no independent mechanism to receive and address complaints from children concerning violations of their rights. Necessary procedures and facilities for dealing with minors in the criminal justice system are still lacking. As a result, children are routinely processed through the criminal justice system and prosecuted as adults. The 2009 Penal Code sets the legal age of criminal responsibility at 18 years of age. Article 39 states that *minors who commit an offence are subject to measures of surveillance, education, protection and assistance. However, the court may pronounce a criminal conviction against a minor of 14 years of age or more, if the circumstances of the offence or the*

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<sup>44</sup> Alternative Care Report, Ministry of Social Affairs, Veterans and Youth Rehabilitation, 2008

<sup>45</sup> Myths and Realities about orphanages in Cambodia. Friends International. [http://www.friends-international.org/french/ourprojects/myth-realities\\_detail.asp](http://www.friends-international.org/french/ourprojects/myth-realities_detail.asp)

*personality of the minor justify in doing so.* In practice, police and prosecutors do not adhere to the provisions and families and local authorities often lack documentation to prove a child's age due to internal migration, forced eviction or because local authorities failed to provide birth registration documents. Estimates from civil society experts during consultations suggest that up to 50% of children charged with a felony are treated as adults in the criminal justice system. Children from poor families face particularly high risks of unlawful deprivation of liberty as they cannot afford legal representation. Legal aid, provided largely by NGO's, is particularly scarce in rural areas. Children face the risk of violence at each stage of the process when they are in contact with the law, at time of arrest, when held in detention and at court.

29. The draft Law on Juveniles in Conflict with the Criminal Code (formerly known as the Juvenile Justice Bill) has been revised a number of times since 2009 in an attempt to ensure adherence to international norms, the Criminal Code and the Criminal Procedures Code. Extensive consultations have been held and inputs have been made by development partners, UNICEF and civil society working groups. Child rights have been integrated into the law and it is seen by civil society members as a progressive piece of legislation. The draft law states that all juveniles under the age of 18 who are in conflict with the criminal code should be assigned specialist staff if deprived of their liberty. The draft also states that separate juvenile courts will be established in every province with specialized police, clerks, judges, and prosecutors assigned to juvenile cases. Provisions are included detailing the roles and responsibilities of social workers specialized in juvenile cases, and privacy shall be guaranteed for juvenile victims giving evidence. One crucial component missing from the current draft is a minimum age for children to be processed through the criminal justice system and in accordance with the draft law.

### **Recommendation**

30. **The RGC should immediately adopt a Law on Juveniles in Conflict with the Criminal Code that adheres to international standards. The RGC should develop a Child Protection Law and Policy focusing on abuse in different settings in consultation with civil society and development partners during the next term of Parliament. The Child Protection Law should be prioritised in the National Strategic Development Plan 2014-2018 and provided sufficient budget allocation for implementation in all relevant ministries by 2018.**