

## PRESENTATION

1. Friends-International (F-I) was created in Phnom Penh, Cambodia in 1994 and since then, it has been running projects aimed at the reintegration of street children in six different countries, namely Cambodia, Indonesia, Thailand, Lao, Myanmar and Egypt. F-I works in accordance to the principles drawn from the Convention on the Rights of the Child and provides services to over 3000 children in Cambodia alone. F-I applies a developmental and sustainable perspective to its work approach, is independent from any State affiliation, and possesses, since February 2009, an Advocacy office in Geneva. This is Friends-International's first submission to a United Nations body.

## EXECUTIVE SUMMARY

2. This individual submission to the UPR process will focus on children rights, namely those rights relating to Liberty, Family Life, Administration of Juvenile Justice and Rule of Law. The main points highlighted in this submission are: Inter-country adoptions and The Hague Convention; the draft Law on Drug Control; arbitrary detention of juveniles in closed centers; conditions of detention for juveniles deprived of their liberty and finally, some positive examples of capacity-building programs F-I has been involved with the Government of Cambodia.

## CONSTITUTIONAL AND LEGISLATIVE FRAMEWORK

### *Proposed Draft Law on Drug Control*

3. A draft Law on Drug Control, prepared with the support of UNODC, was presented to concerned NGOs for consultations in February 2009. Several provisions of Section 2 of Chapter 8 of this draft Law re: "Measures for Drug Treatment" pose human rights concerns: Article 71 §4 confers powers to a *guardian, relative, or authority* to refer, or *arrest and refer* a person who is drug dependent to a *hospital, public drug treatment facility, or any drug treatment facility*. Article 72 provides for the imprisonment and fining to persons evading forced treatment.

4. These provisions confer powers to almost anyone to place an alleged drug user into closed internment, without having any competency to do so. Article 71 fails to safeguard basic judicial guarantees and violates the right to liberty. It is particularly preoccupying that it empowers any "authority" to do so – without any specification as to what categories of "authorities" this may concern, even through the actual *arrest* of the concerned person. The draft Law does not provide for any judicial or medical review of cases under these provisions.

### **Recommendations:**

5. In order to protect the rights to liberty and due process, it is necessary that the Government of Cambodia retract article 71§4 of the draft Law on Drug Control altogether.

6. The Draft Law should also provide for specific protection measures relating to minors.

## **RIGHT TO PRIVACY, MARRIAGE AND FAMILY LIFE**

7. The Kingdom of Cambodia has ratified the Hague Convention on Inter-Country Adoptions in 2008 following severe allegations of widespread trafficking of children destined for adoptions from the country. However, the State has so far failed to effectively comply with core Hague Convention requirements. Private orphanages continue to exist without proper monitoring in the country and so does the commerce of children. In the past few years, all major receiving States have placed a moratorium on adoptions from Cambodia. As a result, since the moratoria have been in place, the number of child “abandonment” has dropped manifold.

### **Recommendations:**

8. The Government of Cambodia should take the necessary steps to effectively combat any wrong doing related to the inter-country adoption process in the country.

9. Moreover, concerned receiving States should continue to refrain from lifting their respective moratorium until Cambodia fully complies with the requirements set forth by the Hague Convention in order to protect family life and to fight child trafficking in the country.

## **RIGHT TO LIFE, LIBERTY AND SECURITY OF THE PERSON**

Administrative custodial facilities (juvenile institutions): without commitment order of a competent public authority.

### *Children living on the streets:*

10. Cambodian law enforcement officials routinely detain vulnerable children living on the streets during “clean-up” operations conducted mostly in the tourist towns of Phnom Penh and Siem Reap. Police pick up children on the streets and detain them in administrative detention facilities without any valid grounds to justify their capture and detention. Children are detained for periods ranging from a few days to several weeks and are not deferred before a competent judge prior to their detention. Moreover, children detained administratively have no access to legal assistance and their detention is not subject to any kind of judicial review. Hence, these already vulnerable children can easily fall victim to all forms of abuse due to this lack of registration.

### *Child and youth drug users:*

11. There are a number of closed drug “rehabilitation” centers for children/youths who allegedly use drugs in Cambodia. Theoretically, a competent State authority should place children/youths there but this is not always done with a proper commitment order. The police and often family members effortlessly place children/youths in such centers when they wish to “re-educate” problematic juveniles. Youths sometimes also go to these centers voluntarily. These “rehabilitation” centers always collect an unofficial fee from family members as well as from the children/youths themselves especially during check-

in/out and in order to receive better food during their internment or to allow for their release.

12. Once in the centers, children/youths receive no treatment whatsoever in relation to their drug status. According to testimonies, children and youth are merely kept in confinement, barely fed, and routinely brutalized. These “rehabilitation” centers are no solution to the juvenile drug addiction problem in the Kingdom, as they do not provide even the most basic of treatments and care necessary for proper child/youth drug dependency rehabilitation. There is no review procedure in place to determine whether the internment is required or whether a prolongation is still necessary, thus interned children/youths remain there until whoever put them there in the first place decide to end their confinement. It has been reported that on average, detention terms last for an average of three months but can go on for much longer.

**Recommendations:**

13. The State must ensure that children and youths held at detention facilities in the Kingdom are properly registered, that care is provided at any with the purposes of “drug rehabilitation”, and that qualified professionals work in these centers. A review process must be instituted to ensure that internment is needed.

**ADMINISTRATION OF JUSTICE, IMPUNITY AND RULE OF LAW**

**Juveniles in conflict with the Law**

*Criminal detention/imprisonment facilities:*

14. Detention/imprisonment facilities in Cambodia do not comply with international Human Rights standards applicable to the administration of juvenile justice. The prison population at these facilities is widely and indiscriminately mixed in breach of international obligations regarding the treatment of juveniles deprived of their liberty: Accused children (often as young as 14) and youths are not segregated from convicted adults, making them particularly vulnerable to abuse. This situation is widespread in detention facilities hosting juveniles across the country and the concerned authorities, although well aware of the problem, and at times willing to act, complain that they can do little to redress the situation due to a grim lack of funding.

15. It is important to note that the Cambodian prison system is being upgraded (with the technical support of CCJAP and Ausaid funding mostly) and that new facilities in both Phnom Penh and Siem Reap will hopefully provide solutions to some of the issues raised in this report. However, other regions of the Kingdom are unlikely to benefit from this prison upgrading in the near future and poor conditions of detention are expected to persist there.

16. Conditions of detention in facilities hosting juveniles do not fulfill the Standard Minimum Rules for the Administration of Juvenile Justice: sleeping quarters lack the most basic of necessities and hygiene standards are close to inexistent - youths sleep directly on concrete flooring in cramped dormitories and benefit from only two light meals a day, which do not provide the minimum necessary daily nutrients. In addition,

**Comment [F11]:** Here need to underline the fact that the prison system is being upgraded (support from CCJAP and Ausaid funding mostly) and that new facilities (PP and SR) will hopefully provide solutions to some of the issues in 2 main urban centers (however lack will probably remain in other parts of the country)

there are no recreational, vocational or psychological programs available to children and youths in detention.

17. Juvenile detention/imprisonment facilities in the country showed every apparent sign of dire neglect and a further deterioration of the conditions of detention for juveniles in the Kingdom could amount to inhuman and degrading treatment as per conditions set by the HRC.

*Due process*

18. Children and youths do not enjoy from international standards of due legal process and fair trial in Cambodia. Children and youths benefit from virtually no access to legal assistance during their process and are constantly being sentenced to very long prison terms even for small offences. Judges pay little attention to the special status children should benefit from in a criminal proceeding. Alternative sanctions to detention are almost unheard of in Cambodia and bribery is common practice in the country's judicial system.

**Recommendations:**

19. It should be recalled to the Government of Cambodia that according to applicable international norms regarding child protection to which the Kingdom is a party, the main objective regarding juvenile justice is their rehabilitation and reintegration into society (Article 40.1 CRC). Therefore, extrajudicial sanctions to juvenile offenders and diversion programs must be made available to them, especially considering the poor conditions of the youth detention facilities in the country. The government of Cambodia should be called to take immediate action in order to comply, at the very least, to articles 10.2.b and 10.3 of the ICCPR providing for the segregation of juvenile offenders from adults held at detention/imprisonment facilities and to actively promote the idea, particularly amongst the Judiciary, that juveniles are to be placed in detention only as a measure of last resort.

20. It is imperative that the prison administration of Cambodia improves the quality and quantities of the food provided to detained youth without delay in order to prevent potential malnutrition amongst juvenile inmates. Government plans to increase the daily food allowance from 1000 to 2500 Cambodian Riels (US\$.50 and US\$1.50 respectively) per inmate per day should be adopted without further delay.

21. Cambodia should take immediate and swift action in order to generally improve living conditions, and effectively plan for the reintegration into society of detained juveniles. Living conditions at detention/imprisonment facilities hosting juveniles should comply with applicable International Standard Minimum Rules and the Government of Cambodia should take appropriate measures in order to provide detained youth with activities aimed at their future reintegration into society.

22. The government of Cambodia should also take immediate action to ensure that no child/youth is detained without prior access to a judge as well as to proper legal assistance at all stages of their trial.

23. The principle of proportionality should be strictly adhered to when sentencing juveniles.

## **CAPACITY BUILDING AND TECHNICAL ASSISTANCE**

24. In general, Friends-International welcomes the improving and increasing collaboration with the Cambodian authorities and sees this as the necessary process for the effective improvement of Rule of Law and the protection of children's rights in the Kingdom.

### *Prison project*

25. Friends-International has held consultations with the Prison Administration of Cambodia in a view to establishing an ambitious project aimed at providing vocational training as well as basic educational life skills to detained juveniles. The first stage of the project will concern juveniles held at the CC2 prison in Phnom Penh and it is planned that it will ultimately spread to 24 detention facilities holding juveniles across the Kingdom.

26. Through this partnership, F-I hopes to assist the Government of the Kingdom of Cambodia to meet its international legal obligations in order to improve conditions of detention for children and youths. This collaboration is a welcome step and highlights the efforts Cambodia is making towards the better protection of its juvenile population. However, although funding has been secured for this project, the MoU is still pending final Government approval and signature.

### *Drug Project*

27. Friends-International has launched since 1998 the first and currently only holistic drug service to children and youth in Cambodia (including Prevention, Harm Reduction, Detoxification and Rehabilitation).

28. F-I has worked in very close collaboration with the Government and its specialized bodies (National Authority for Combating Drugs, Ministry of Health) to establish these projects and to support the Government and other NGOs to develop projects. With the support of the NACD, F-I was able to launch the first harm reduction program in Cambodia and designed the first Standards of Practices for working with drug users which ultimately were adopted as National Policies. This collaboration is very important for the good implementation of services and protection of users' rights and should be further reinforced.