

# THE 2<sup>ND</sup> MEETING OF APCJJ SUBCOMMITTEE FOR ASEAN

## PRESENTATION ON “ SOLVING CHILD-IN- CONFLICT CASES IN CAMBODIA”

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# I- Legal Instruments related with Children with Conflict the Law (CICL)

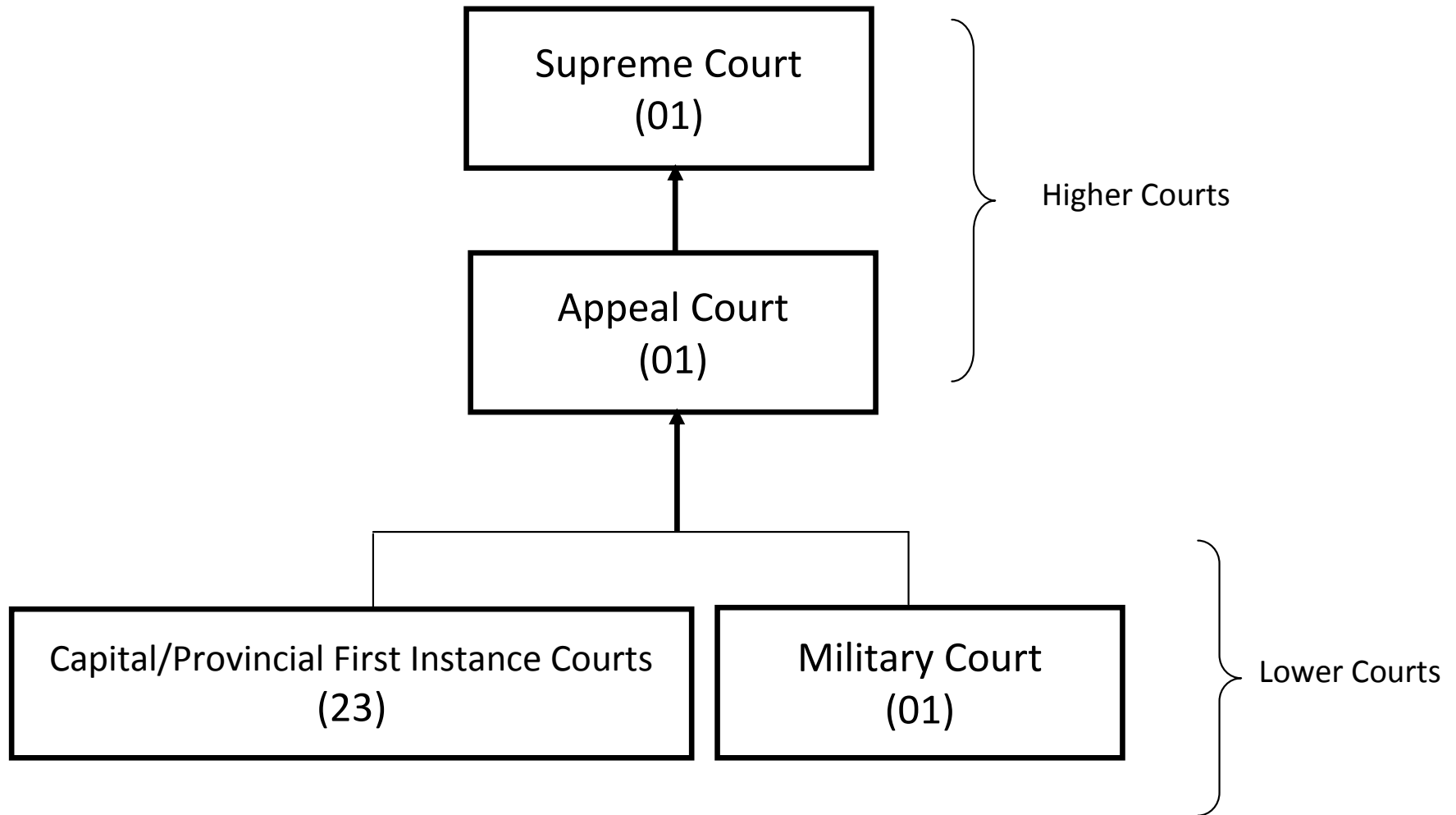
## 1. International Law

- The Convention on the Rights of the Child (CRC): Cambodia signed and ratified this Convention in 1992.  
The CRC is recognized in Article 31 of the Constitution of the Kingdom of Cambodia.
- Beijing Rules 1985
- Riyadh Guidelines 1990
- Havana Rules 1990

## 2. National Law

- The Constitution of the Kingdom of Cambodia 1993;
- The Code of Criminal Procedure 2007;
- The Criminal Code 2009;
- Other Regulatory Framework.

## a/- Structure of Courts



## **b/- Minors and Criminal Responsibility**

### **1-Definition of minor**

Based on the National Laws and CRC Convention minors meaning that the person whose age under 18 years old.

## **c/- Criminal Responsibility of Minors**

In the article 39 of criminal code stipulate the age of criminal responsibility of minors shall be fourteen and over. But minors who commits offences shall be subject to :

- **Supervision**
- **Education**
- **Protection**
- **And assistance**

**d/- Separate prison facilities for minors (article 166 of Cambodia Criminal Code)**

Minor imprisoned shall be housed in special units separate from adults.

They shall be subject to a specific and personalized regime with a large emphasis on education and vocational training.



## II- Procedures dealing with criminal cases of minors

The procedures in dealing with criminal case of minors, there are 5 stages as states in Criminal Procedure Code 2007 :

- 1. Case file in Judicial Police stage**
- 2. Action of Prosecutor .**
- 3. Action of Investigating Judge**
- 4. Hearing**
- 5. Execution of Criminal Judgment**



### III- Draft Law on “ Juvenile justice ”

#### Key Principals of this Draft Law :

- 1-The best interest of CICL is guaranteed;
- 2-Guarantee the treatment with the minors in a way of humanitarian and dignity;
- 3- Guarantee the freedom of expression of the minors;
- 4- Police custody, pre-trial detention and imprisonment is the last resort with the shortest period of time;
- 5- The accused shall have benefit of any reasonable doubt
- 6- Guarantee of the judgment of the diversion within the legal framework;
- 7- Guarantee the functioning of child friendly procedures in minor cases.

In addition, in order to protect foreign children in conflict with the law, the draft of the juvenile justice law states out that:

1. There shall no discrimination against children in conflict with the law;
2. Right to interpretation;
3. Right to communication with embassy or consular;

## IV- Case Study

Khevin was trafficked to Cambodia by a broker to work as a construction worker since he was 13 years old.

One day, he stole a telephone from a telephone shop. He was caught and sent to the police.

When Khevin committed the crime, he was 16 years old and a drug-addicted person for 2 months before the robbery.

His case was brought to the court of first instance.

*How to deal with Khevin's case under Cambodian law procedure?*

The case is solved based on the law (national and international law) in Cambodia

1- Khevin's case is solved by using the law which is the same the law applying to Cambodian children's cases as well :

- The Cambodian Constitution states that there shall no discrimination, race barrier and the states shall protect the rights of children (article 31 and 48)
- Based on the Cambodia Criminal Code, the discrimination shall be a crime (article 265)

2. Besides, Khevin has the rights and receives other services such as:

- Rights to communication with Embassy or consular
- Legal service ( lawyer free of charge)
- Translation
- Health check and treatment
- Temporary safety shelter
- And other necessary services

3. Court consideration:

The court considered to hold the light sentence as below:

- Khevin confessed the crime
- Khevin was a minor
- Khevin was victim of labour exploitation trafficking since he was 13 years
- Khevin has mental problems caused by force to use drugs
- Khevin lacks education from his family

## V- Next Step

- There should be specialist judges to be responsible for dealing with juvenile cases.
- Dissemination the law on “Juvenile Justice”
- Strengthening good cooperation with community
- Forming other legal provisions concerning to children
- Strengthening monitoring mechanism in collecting data of cases of children in conflict with law.

## VI- Challenges

- There is difficulty to seeking evidence related to real ages of minors (child cross-border cases)
- The law on “Juvenile Justice” is a new law for law implementers
- There are limitations related to knowledge, skills in dealing with child cases, especially knowledge about diversion.
- Yet, the number of special judges dealing the cases of children in conflict with the law has not had.



## VII- Joint Recommendations

- In order to easily deal with the cases of children in conflict with laws, there shall be a joint guideline which is suitable to the situation in each country in ASEAN;
- There should be a specific plan among ASEAN countries (e.g meetings, cooperation between the countries, identifying a specific goal to be implemented. etc.);
- There shall be a joint mechanism maintaining contact details in ASEAN countries regarding solving cases of children in conflict with the law.

