



# LEGAL AID of CAMBODIA QUARTERLY

June 2004

Issue 7

## The Role of Women in Legal Aid of Cambodia

In the past, women were segregated and were discriminated in doing their job, playing their traditional roles in society. They have played an important role. We can see the real example of their crucial role by glancing at the article of the Gender Empowerment Measure (GEM). Women are now encouraged to raise their ideas, express their capacity, and know about their rights in community as well as society. However, there are many challenges preventing women from fully realizing their skills and abilities in the society. Nevertheless, women everywhere, as well as in Legal Aid of

Cambodia (LAC) are striking to show the world that they are fully capable of fulfilling many similar tasks as men. Therefore, women in LAC occupy many positions and are outstanding leaders, good assistants, and working to eliminate gender inequalities. Not only men can be leaders but women can also be leaders. In this case, women in LAC can be a good example. In the Land Unit, Mrs. Peung Yokhiep has just been assigned to be the head of unit, which is based on her experience in leadership.

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## Obstacles of Legal Aid of Cambodia

Legal Aid of Cambodia was founded in December 1995 by a group of lawyers and legal defenders in order to provide free legal services to those who cannot afford private lawyers. Since the beginning, LAC has had its Head Office in Phnom Penh and eight branch-offices in the Provinces of Battambang, Siem Reap, Kratie, Kampong Cam, Svay Rieng, Kandal, Sihanouk Ville and Koh Kong. The general lawyer group in the Head Office and the branch offices provide legal representation in both civil and criminal cases before the courts.

Based on increasing demand,

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and a need to become more specialized, LAC established a Juvenile Unit in 1997. The Unit aims to improve law enforcement officers' responsibility so that

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## Obstacles of Legal Aid .....

*From Page 1*

they can implement existing Cambodian Law and International Laws properly and consistently with children's best interests, as stipulated in the International Convention on the Rights of the Child. In 1999 LAC established a Land Law Unit to provide legal representation for those involved in land disputes, both within the court and outside it. In 2000 LAC established another specialized unit, the Juvenile Litigation Project. This provides children in conflict with the law or victim children with competent lawyers to represent them. Most recently, in 2001, LAC established a Labor Unit, which helps to solve labor disputes, both in and out of court, helps with the establishment of trade unions and works to improve labor conditions in Cambodia.

In all the above ways, LAC plays a key role in providing legal services free of charge to the poor and vulnerable people in criminal and civil cases, in all levels of courts. In representing clients, LAC lawyers would like to see fair trials and respect for due process by court officials. LAC also provides legal education to its clients, to law enforcement officers, relevant NGO staff members and to the general public, through legal consultation and dissemination of legal information. In addition, LAC actively participates in legislative developments, provides recommendations on draft laws and also helps with the re-drafting or making amendments to existing laws, with the aim at achieving the body of law that properly serves the public interest.

However, the organization still faces many obstacles, as follows:

- Disrespect of legal due process by the courts: courts are required to follow procedures smoothly from the beginning to the end of the cases. Disrespect of procedures by the courts results in violation of citizens' civil rights and victimization of innocent people. There have been instances where courts have failed to conduct any proper investigation and rely upon the minutes made by police as grounds for charging the accused. Worse, the police's minutes may well have been made by forced confessions, threats and tortures.
- Lack of independence in the judicial system: Article 128 of the Constitution of the Kingdom of Cambodia states, "judicial power shall be an independent power". But the reality is that there is no such degree of independence in the judiciary. This is the main obstacle to LAC's work in seeking justice and fair trials for their clients. An alarming culture of impunity results from this lack of independence.
- Courts are corrupt: LAC has innumerable records of unfair trials. LAC's lawyers usually report that their clients can receive fair trials when the other party is also poor, but in case where the other party is rich or powerful their clients rarely receive fair trials.
- Some laws do not serve public interest: For example, the

adoption of the Law on Aggravating Circumstances of Felony seemed to be a sign that the government was working to combat and suppress serious offences, but it is bad legislation for some people. Some people have abused the provisions as means of self-defense or children, who commit crimes under the act, can be liable for between 10 and 20 years imprisonment.

- Inactivity and powerlessness of the Supreme Council of Magistracy: The Supreme Council of Magistracy is an institution that is supposed to help the King ensure genuine independence of the judiciary. Its official role is imposing disciplinary measures upon judges or prosecutors when they have committed wrongdoing. However, complaints lodged by LAC for such measures to be imposed have never been fruitfully dealt with by the Supreme Council of Magistracy.
- Lack of competence in court administration: Good management skills for allocating cases and managing case data in courts means good case processing which serves the best interests of all court-users. However, LAC observes that the court administration lacks competent case management. This results in unnecessary complication, delays, often a long period of time, and this does not serve the people's interests.
- Irresponsibility of expert

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officials or local authorities: Local authorities play key roles in safeguarding security and public order but sometimes local authorities extent their roles far beyond what the law allows. For example, local authorities try to force parties to settle rape case or divorce cases. Similarly, expert officials often cause disputes between two parties by irresponsibly issuing two overlapping receipts or land titles to one piece of immoveable property.

As to combat these obstacles LAC would like to appeal to relevant NGOs, ourselves and active members of the Human Rights Action Committee and particularly the third mandated government to take concrete steps to assist in reducing the major obstacles facing the development of rule of law in Cambodia. In doing so, they would be participating in a project to bring justice to the nation and to alleviate poverty in Cambodia. In addition, LAC would like to strongly urge the royal government to include a legal aid program in its political agendas.

### **The Role of Women in .....** *From Pagel*

She used to be the administrative vice director of LAC, where she played a very good role as a woman leader such as demanding to educate women in LAC, being a good advisor to all the staff, working for LAC benefits and not just for hers. Meanwhile, LAC also has Mrs. Poeung Thyda working for the General Lawyer Unit as the head of unit. She is also one of LAC's valuable

woman assets. Her leader position is striking her to be a very active lawyer in LAC. She has earned trust from her clients, lawyers and courts in dealing with cases in a flexible and dynamic manner. She is such a responsible and sociable person that her subordinators do respect her.

Mrs. Lean Chinda was also a good leader in Labor Unit. Like Mrs. Poeung Thyda, Mrs. Lean Chinda earned much trust from her clients and donors. She was a very active activist for claiming justice for labor union. She worked so smoothly that her cases could be closed with an outstanding result. Her communication skill and flexibility are the bridge between her and donors as well as clients. Mrs. Lean Chinda shared her experience in leading and said that in order to be successful, you should be patient in your work. Facilitating and communicating are the way to take you to your goal. Without wondering, we can see that women can sometimes act very well as leaders as we can see from LAC's women example.

In addition, some women in LAC have another role, which is to assist all the work of lawyers. Those women can be seen in LAC's provincial offices. They perform very well in both assisting lawyers in doing their cases and doing an accounting role. They have to be quick - preparing lawyer documents when lawyers leave for a hearing. They have to be ready at the end of every month for a Financial Statement, which is required to be sent to Head Office in Phnom Penh. Although they work in a

double position, they are happy and joyful with their work. They always meet the organizational requirements, which is a proof of their good assistance.

One more outstanding task that women in LAC try their best to work to eliminate gender inequalities. Recently, LAC organized a workshop on Women and Law, which educated all staff about the benefits that women can get if divorce cases occur. Moreover, there was a chance for employees to express their opinion, raise question to the speaker related to women and their rights as well as the law, which is stated for protecting women from an oppressing society. LAC's Gender Committee, of which Mrs. Peoung Yokhiep is chair, takes some time to communicate with staff in order to find some more ideas, and report their activities to the staff. In brief, LAC's staff are now learning much about Gender and trying to comply what they have learned with the real situation. LAC's women and men are now striking for Gender equality by cooperating with LAC's Gender committee. In summary, women have been segregated and discriminated in the past. The world has changed; now modernization brings modern ideas and aims to combat gender discrimination. Like women in the world, LAC's women are step by step recognized for their capacity and skills.

## Children and Society

Due to poverty and carelessness from parents who sometimes leave the children to themselves and guardians, some children start to use drugs, amphetamines and sniffing glue and under influence they can commit an offence. Drug addiction urges children to commit some offences, such as thievery or pick pocketing, after which they are arrested, brought to court and sentenced to jail. Moreover, some children have been renounced or disinherited by parents or guardians because they had committed crimes repeatedly and have been in conflict with the law again and again.

In one case, a 17 year old boy, Y M C H, lives in Andoung Pring Village, Omal Commune, Battambang District, Battambang Province and was arrested on September 1, 2003 and charged with the illegal use of drug in Narea village near his house. On November 17, 2003, the Battambang provincial court opened a plenary trial and sentenced him to 1 month in prison. When he left the prison, his parents did not allow him to enter the house and they decided to renounce him based on the fact that he was not an obedient child and because this was not his first mistake, he had also faced imprisonments twice already with the charges of stealing bicycles.

Observing the child in this situation, the Juvenile Unit of LAC contacted his parents and the local authorities and tried to seek NGOs where he would be able to stay safely. On December 14, 2003, the juvenile unit took him to the Cambodian Association Against Poverty and Violence in

Phnom Penh, where he has been receiving a rehabilitation program, good care, safety and vocational training.

The question is whether a child is liable to punishment when he commits a petty crime, such as stealing a bicycle or using drugs.

Article 7 of the law on criminal procedure states “Public action can not be settled by any arrangement.” Even if the law says so, it does not mean that judicial police has no authority to educate or correct children who commit petty crimes because the judicial police can only arrest perpetrators who commit flagrant-delicto felony or misdemeanor. However, the law does not state whether the judicial police has the authority to arrest a petty crime offender either. Although the law does not provide settlement by any arrangement, the police should not arrest petty crime perpetrators.

Article 47 of the law says “The officers of the judicial police have the right to arrest offenders only in the case of crimes or misdemeanor red caught-handed in the act”.

If a child commits a petty crime, such as stealing a chicken, a duck or a bicycle and he or she is caught in the act, will the child be arrested? Even though the law states that “thievery is a misdemeanor”, the damage or threat arising from that will not likely cause a serious problem to the society. The judicial police has the duty to take good care of the child, and should ask the child to make a solemn promise not to commit the crime again. For the best interest of the child, educating the child so that he or she will not show bad or unacceptable behavior again is far much better than bringing him/ her to prison.

For those who use drugs or sniff glues, although it is



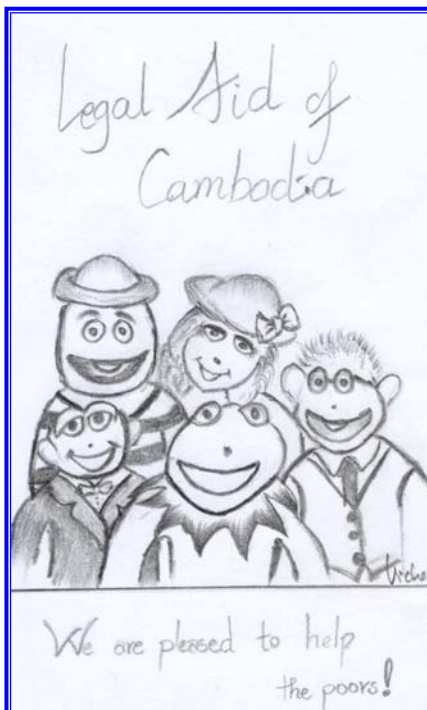
**International Children's Day** *Continue Page 5*

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stipulated in the law as offences, we must wonder whether it is in the nature of the child or his / her intention to commit such illegal offences. If we look at the general situation in society, we have never seen any children trafficking drugs or being arrested. Only adults are the brains behind the trafficking of drugs and were arrested. Children are usually involved insofar as using drugs (including smoking YABA) and sniffing glue, joining a group of gangsters (big brother), pick pocketing or stealing only so that they will have money to buy more drugs to relieve their situation for a short interval. Often the children are victims.

Is this the children's mistake?

As in the above example, firstly, Y N CH stole a bicycle and was then arrested and brought to the court for punishment; secondly, he threatened someone to obtain a bicycle and at that time he was also arrested and punished.



Finally, he used drugs and he was arrested, brought to court and punished for the third time.

Actions to impose legal punishment for children who commit petty crimes are not good corrective measures for children; competent authorities should actively participate and closely collaborate with local authorities and relevant NGOs so as to prevent children from plunging into any further criminal offenses. Additionally, the community, the parents and the guardians should recognize themselves as the first people who educate and correct children. They have to find a proper method to deter children from committing crimes and becoming vulnerable persons in the society.

In order for all children to receive the best interest as stipulated in the International Convention on the Rights of the Child that Cambodia officially recognizes and includes in its Constitution, we, as adults who live around children, must have a role to protect children because we know that children are persons who always want to learn or try new things and they do not know some likely bad consequences that may follow their actions.

Therefore, in order for children to become good citizens in the society and for them to be the bamboo shoot of society, we all have to take good care of children, eliminate discrimination, both within the families and outside the families. Otherwise, all children run the risk of becoming children in conflict with the law; they will spoil their future and we then can no longer

use the motivating saying "Children are bamboo shoot of society".

### **Children and the Law on Aggravating Circumstances of Felony**

From the past until now, children are often considered as small human beings with mental and physical weaknesses. However, children have rights and special needs and should be treated accordingly. In 1990 the United Nations adopted the Convention on the Rights of the Child. Cambodia ratified this convention in 1992. This implies that Cambodians are obligated to respect the spirit of the Convention and abide by all provisions set forth in it. Subsequent law adoptions should be consistent with the Convention, which is, in other words, regarded as a supreme law.

In September 1992, UNTAC-governed Cambodia adopted the transitional penal law consisting of 75 Articles. Article 68 defined the mitigating circumstances and expulsion on minors. This article completely conforms to the convention. Unfortunately, in late 2001 the Law on Aggravating Circumstances of Felony was adopted and promulgated on January 7, 2002. Article 8 of this new law prohibits mitigation circumstances and sentence suspension and it implies that if a judge decides on a criminal case by using the argument of mitigating circumstances, this

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decision can be considered as illegal or inappropriate.

If it is a juvenile case what will the judge do? In practice, some judges decide aggravate the penalty on juveniles by regarding them as adults. For example, a 15 year old child named CH.S.V.N.R, who was living in Chhoe Phloeung Village, Kompong Trach Commune, Romeashek District, Svay Rieng Province, was charged with raping a girl. The boy was arrested and brought to the court and on October 21, 2003 the Svay Rieng Provincial Court opened hearing on the child case and decided to sentence him to 12 years in prison.

Some lawyers and judges have argued that judges do not have the right to interpret the law. Due to this understanding the judge in the previous case decided to sentence the child offender regardless of attenuating circumstances, reasoning that if he had decided the sentence by using mitigating circumstances his decision would have been contrary to Article 8 of the 2002 Law.

In the principle of the law, judges have the right to interpret the law in comparison with offenses.

On the other hand, the Constitutional Council has the right to interpret the law whether or not it is constitutional. The judges also have the right to interpret the law when the law is inadequately defined or written.

Some judges decide to reduce the penalty for child offenders to **below the minimum of the**

punishment. For example, a 15 year old V.V living at Prus Village, Andong Heik Commune, Rattanak Mondul District, Battambang Province was accused of raping a girl. He was arrested, brought to court. On March 3, 2004 the trial took place and he was sentenced to 5 years in prison. In his case, the judge reduced the punishment to below the minimum of the penalty. With this penalty reduction, the judge took into account the age and living circumstances of the child and judged in conformity with the UN Convention on the Rights of the Child. The decision is contrary to Article 8, which can lead to illegality, but the decision of penalty reduction with children is absolutely just, fair and consistent with the social situation.

Contradictorily, the judge could have applied Article 8 and treat the child offender in the same way as adults for just saying that Article 68 of the UNTAC Law is now not applicable. So we wonder, in case an insane or mentally disordered person commits a serious crime, such as manslaughter, how will the judge interpret the offense and the law? Due to the fact that presently, no law has been defined for attenuating circumstances, the perpetrator shall be liable to serious punishment.

Finally, sentences on child offenders without attenuating circumstances should be reconsidered or alternatively reversed. When asked whether it is consistent with the spirit of the International Convention on the **Rights of the Child (CRC) and the**

Constitution of the Kingdom of Cambodia, the answer is that we do not want to compare the law with the constitution, but we just would like to provide the idea as an incentive to continue to treat children fairly and in accordance with the problems they face in their environment. We strive that Cambodia will actively participate in the International Community to advocate the rights of the child.

### **LAC Staff in new positions February – May 2004:**

#### **Name of staff**

Mrs. Peung Yok Hiep, Head Land Unit	HP: 012 823 745
Miss Sieng Boravy, Head Labor Unit	HP: 012 762 053
Mr. So Nymul, Legal Assistant Labor Unit	HP: 012 637 505
Mr. Man Pheareak, Investigator Labor Unit	HP: 012 932 798
Mr. Khou Long, Head of Juvenile Litigation Unit	HP: 012 666 034
Mr. An Sokkhoeurn, legal assistant JLP	HP 016 859 689

### **New Dutch consultant arrived at LAC**

*Since 15<sup>th</sup> February, LAC staff have a new colleague, an expatriate junior consultant called Marlou Pijnappel, who will work mostly with the management team over the coming two years*

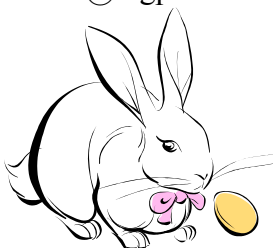
Marlou has a background in Business Communication, Development Studies and Action Research and has worked in the private sector in The Netherlands. However, her

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**Marlou Pijnappel**

passion to transfer knowledge to people in developing countries brought her to Cambodia, where she feels very much at ease. Of course, it takes some time to get accustomed to the temperature and the city-life of Phnom Penh, but she is enthusiastic about her work at LAC. Over the next two years, she will look into LAC’s monitoring methods, the strategic planning skills of the MT members and help strengthen the leadership in all levels of the organization. Gender issues and action-based learning are also highlights of her contract. Her position is supported by ICCO, a Dutch development organization and the Terms of Reference for her position imply that she will be working closely with a senior consultant from VBNK, a Phnom Penh based, ngo. The coming issues of this newsletter will explain her work. If you have any questions, you can always call her at (+855) 012 362 390 or send an email to [lacconsultant@bigpond.com.kh](mailto:lacconsultant@bigpond.com.kh)



### **New code of conduct**

If ignorant, you must learn skill,  
Follow the example of another still.  
Without waiting for anyone to tell you,  
Learn how to listen, see and speak too.

Human born, as woman and man,  
By oneself, no one knows all they can  
Though you may own nothing, you still have thought;  
Don’t stay poor and without comfort.

Oh children, take care to protect your reputation;  
Expand your mind for great breadth of vision.  
Born as Khmer, don’t change your feeling,  
Generally, pleasure may result in suffering.

### **Kram Ngoy Code of Conduct**

#### **ច្បាប់លើកថី**

បើល្ងង់អោយចេះ រត់រកតម្រិះ វិនិត្តតម្រាប់  
ឥន្ទ្រិយ៍ឆ្លែងស្តាំ កុំចាំគេប្រាប់ រៀនស្តីរៀនស្តាប់  
រៀនមើលអោយស្តែង ។  
កើតមកជាមនុស្ស ទាំងស្រីទាំងប្រុស មិនដែលចេះឯង  
បើក្រអោយមាន វិញ្ញាណចេះក្រែង គិតគ្រប់កន្លែង  
កុំដេកតែក្រ ។  
កូនប្រុងប្រព្រឹត្ត ការកើរអោយជិត គំនិតអោយឆ្ងាយ  
កើតមកជាខ្មែរ កុំប្រែក្លែងក្លាយ ធម្មតាសប្បាយ  
វាតែងអោយទុក ។

#### **ច្បាប់គ្រូម ខ្ញុំយ**

## **ORGANIZED BY**

### **LEGAL AID of CAMBODIA**

- Mr. Kao Dyna, Mr. Ken Bunchann, Miss. Marlou Pijnappel**
- Miss. Se Vicheka, Mr. Seng Rethy, Mrs. Sim Souyeang**
- Mr. Sry Srive, Miss. Vann Theany**





### LAC'S CONTACTS HERE

Legal Aid of Cambodia is a non-governmental Khmer-administered organization of lawyers dedicated to serving the legal needs of Cambodia's poor. Legal Aid of Cambodia is currently funded by: Novib, the Netherlands Embassy, European Union (through DanChurchAid), Oxfam Great Britain, Finnish Embassy, Save the Children Norway, American Center for International Labor Solidarity, the Soros Foundation and Lawyers for Lawyers Foundation.

***Phnom Penh Office Address: #43, St. 306, P.O. Box: 1197, Sangkat Boeung Kengkang I, Chamkarmon, Phnom Penh, Cambodia.***

***Tel: (855-23) 215 274 / 216 896 / 214 824***

***Fax: (855-23) 212 206***

***E-Mail: [lac@online.com.kh](mailto:lac@online.com.kh)***

***Website: [www.lac.org.kh](http://www.lac.org.kh)***

