

**KINGDOM OF CAMBODIA
NATION RELIGION KING**

Ministry of Justice

N0: 62/08

Phnom Penh, 06 Oct 2008

Prakas
on
the Use of Court Screen and Courtroom TV-Linked Testimony from
Child/Vulnerable Victims or Witnesses

Minister of Justice,

- Having seen the Constitution of the Kingdom of Cambodia;
- Having seen Convention on the Rights of the Child, which the Kingdom of Cambodia acceded to on 15 October 1992;
- Having seen the Royal Degree No. NS/RKT/0704/124, dated 15 July 2004, on the Nomination of the Royal Government of Cambodia;
- Having seen UNTAC Law, which was adopted by the Supreme National Council on 10 September 1992;
- Having seen the Royal Kram N0 NS/RKM/0807/024 of 10 August 2007, promulgating the Criminal Procedure Code;
- Having seen the Royal Kram No NS/RKM/0196/04 of 24 January 1996, promulgating the Law on the Establishment of the Ministry of Justice;
- Having seen the Decision N0: 092/003/2007 of 10 July 2007, regarding article 8 of the Law on Aggravating Circumstances of Felony;
- Having seen Sub-decree No. 19, dated 07 April 2000, on the Organization and Functioning of the Ministry of Justice;
- Having seen Instruction No. 03/2005 of 09 June 2005 of the Ministry of Justice on the Implementation of the Principles of National and International Laws in force relating to Victims of Criminal Offenses;
- Having seen letter N0: 617 kyrb/07 of 03 May 2007 of the Ministry of Justice on the Use of Court Screen at Hearing of Child Victims/Witnesses;
- Upon necessity

HEREBY DECIDE:

CHAPTER I
General Provisions

Item 1:

The purpose of a court screen and a courtroom TV-linked testimony for children and vulnerable victims is to provide a safe, supportive environment in which a child/vulnerable victim or witness can share information regarding his/her experience; to elicit accurate information in a non-leading manner

but appropriate to the developmental level of the child; to obtain as much information as possible regarding the offence; to facilitate the trial process in the court, to reduce the trauma to the child/vulnerable victim or witness by minimizing the number of interviews and interviewers, and to mitigate threats to the child/vulnerable victim's or witness' personal safety by reducing exposure to the offender.

Item 2:

1- In principle, court screens should be used as a primary protective measure in all cases involving a child/vulnerable victim or witness.

2- In case the child/vulnerable victim or witness needs special protection that a court screen cannot serve, a TV-linked testimony may be used.

3- A court screen and TV-linked testimony should be used:

a- in a criminal case **when** taking testimony from a child/vulnerable victim or witness;

b- **and** the alleged perpetrator is present in court;

c- **and** where testifying in the presence of the accused in the courtroom would cause undue stress or trauma to the child/vulnerable victim or witness.

unless the child/vulnerable victim or witness does not want to use the court screen and TV-link and such is deemed by the judge to be in the best interests of the child/vulnerable victim or witness after consultation with the child/vulnerable victim or witness, his/her lawyer, and/or social worker.

CHAPTER II

Court Screen

Item 3:

Before the trial, the judge shall explain to the child/vulnerable victim or witness and/or his/her lawyer the purpose of the use of the screen.

Item 4:

1- The screen shall be set up before the child/vulnerable victim or witness enters the court room.

2- The screens shall be placed so that the child/vulnerable victim or witness, judge, prosecutor and lawyers can see and hear each other.

3- To preserve the rights of the accused, the defence lawyer in particular should be able to observe the demeanour of the child/vulnerable victim or witness.

Item 5:

1- The child/vulnerable victim or witness shall stay in a separate waiting area and only enter the court room when it is his/her turn to testify.

2- The child/vulnerable victim or witness should be accompanied by appropriate adults such as a parent, social worker, clerk of court, police officer or other appropriate person when entering and leaving the court room.

3- The child/vulnerable victim or witness should enter and leave the court room in a manner where he/she avoids contact with or seeing the accused, which includes, but not limited to:

a- The child/vulnerable victim or witness is seated behind the screen before the accused enters the court and the accused leaves before the child/vulnerable victim or witness leaves;

- b- The accused shall be seated behind the screen before the child, vulnerable victim or witness enters the court room.
- c- The accused shall stay on the opposite side of the screen at all times when the child/vulnerable victim or witness is in the court room
- d- If in-court identification is needed from the child/vulnerable victim or witness, the screen should be moved, but should be replaced after the identification procedure.

Item 6:

1. The testimony of a child or vulnerable victim shall be held in camera.
2. To protect and create a more comfortable environment for the child/vulnerable victim or witness, the court may also direct the location and movement of all the persons allowed inside the courtroom, including the parties, prosecutor, lawyers, court staff, witnesses and support persons, provided that the child/vulnerable victim or witness, judge, prosecutor and lawyers can see and hear each other and that the defence lawyer can observe the demeanour of the child/vulnerable victim or witness.

Item 7:

- 1- A court-approved support person such as parent, guardian, social worker, or other responsible adult chosen by the child shall be allowed to sit next to the child before the screen, if needed.
- 2- The judge should instruct the support person to not coach the child.

Item 8:

- 1- The child/vulnerable victim or witness should be allowed to leave the court room as soon as he/she finishes testifying.
- 2- The screen shall be removed only after the child/vulnerable victim or witness has left the court room.

CHAPTER III

Application for courtroom TV-linked testimony from child/vulnerable victims

Item 9:

An application for an order that testimony of the child/vulnerable victim or witness be taken in a room outside the courtroom and be televised to the courtroom by live-link television may be made by the prosecutor or lawyer, at the beginning of the trial.

Item 10:

- 1- When considering the application as stated in the item 9 of this Prakas, a judge shall question the child/vulnerable victim or witness in the absence of the accused, to determine the feelings of the child/vulnerable victim or witness about testifying in the courtroom.
- 2- The judge shall seek to determine the level of fear or discomfort a child/vulnerable victim or witness feels in the presence of the accused; the level of safety the child/vulnerable victim or witness

feels by the presence of other adults in the Courtroom; feelings about being seen by the accused, and concerns about future safety if testifying in the presence of the accused.

Item 11:

The judge shall issue an order granting or denying the use of live-link TV testimony and stating the reasons thereof, taking into account the following factors:

- a- The age and level of development of the child/vulnerable victim or witness, and his/her physical, mental and emotional health, including mental or physical disability;
- b- The nature of the offence, the relationship of the child/vulnerable victim or witness to the accused, any threat made or potential for threat to be made against the child/vulnerable victim or witness by the accused or other persons;
- c- Any physical, emotional or psychological injury experienced by him/her;
- d- His/her reaction to any prior encounters with the accused in court or elsewhere;
- e- His/her reaction prior to trial when the topic of testifying was discussed with him/her;
- f- Specific symptoms of stress exhibited by the child/vulnerable victims or witnesses and attitudes of family members regarding the events about which he/she will testify; and
- g- Other relevant factors such as court environment and formalities of court procedure.

CHAPTER IV

Roles and Responsibilities of Support Person and Court Staff during TV-Linked Testimony

Item 12:

1- In case the court grants an order for a child/vulnerable victim or witness to testify through live-link TV, a support person shall be present during the entire testimony of the child/vulnerable victim or witness. Support person shall remain with the child/vulnerable victim or witness at all times.

2- In cases of sexual assault on a female child, the support person should be, where possible, a female.

3- A person who may be designated as a support person shall include a social worker, the child's parent or close relative, guardian, police officer, or other person properly trained on social work or child protection.

Item 13:

An accompanying court staff should also be present during the entire testimony of the child/vulnerable victim or witness. The role of the accompanying court staff is primarily to ensure that the live-link equipment is functioning correctly. An accompanying court staff, if properly trained, can also serve as a support person.

Item 14:

Before the child/vulnerable victim or witness gives evidence,

- a- court staff shall ensure the witness room is ready for the child/vulnerable victim or witness.
- b- court staff shall escort the child/vulnerable victim or witness and support person to the waiting room.
- c- support person stay with the child/vulnerable victim or witness throughout the time
- d- court staff shall escort the child/vulnerable victim or witness and support person to the TV- link room.

Item 15:

In the TV-link room, court staff and/or support person will:

- a- Sit the child/vulnerable victim or witness in the chair and fix the microphone to his/her clothing;
- b- Place a warning notice in the corridor and close the door;

- c- Sit beside the child/vulnerable victim or witness and in view of the camera;
- d- As directed by the judge, swear in the child/vulnerable victim or witness by enabling him/her to repeat oath or promise, as appropriate;
- e- Communicate relevant concerns to the court;
- f- Be present throughout the time the child/vulnerable victim or witness is in the room;
- g- Ensure that the child/vulnerable victim or witness can clearly see and hear the transmission;
- h- Ensure that the child/vulnerable victim or witness can be clearly seen and heard by the courtroom through the live-link TV at all times;
- i- Remain visible to counsel and accused during evidence-taking;
- j- Where an exhibit is shown to the child/vulnerable victim or witness upon order of the court, hand exhibits to the child/vulnerable victim or witness without comment;
- k- Prevent any unauthorized person from entering the room;
- l- Ensure that there is no attempt to interrupt, intervene or intimidate the child/vulnerable victim or witness by any other person present in the TV-link room;

Item 16:

The support person or any technical person in the TV-link room should not:

- a- Speak to the child/vulnerable victim or witness about the case or about his/her evidence, before or during the proceedings or in any interruption to the proceedings;
- b- Interrupt or intervene while the court proceedings are taking place unless it is to alert the judge due to a problem;
- c- Prompt or seek to influence the child/vulnerable victims or witness in any way.

CHAPTER V
Protection of Child/Vulnerable Victim or Witness

Item 17:

1- A TV-linked testimony shall be held in camera.

2- If it is necessary for the child/vulnerable victim or witness to identify the accused at trial, the court may allow the child/vulnerable victim or witness to enter the courtroom for the limited purpose of identifying the accused, or the court may allow the child/vulnerable victim or witness to identify the accused by observing his/her image on a TV monitor.

CHAPTER VI
Recording

Item 18:

The testimony of the child/vulnerable victim or witness may be preserved on videotape or digital disc which shall be made a part of the court record. The videotape or digital disc shall be deemed and marked confidential.

CHAPTER VII
Final Provisions

Item 19:

This Prakas is in effect as of the date of signature.

Minister of Justice

C.C:

- Office of the Council of Ministers
- The Supreme Council of Magistracy
- Ministry of Interior

- Ministry of Social Affairs, Veterans and Youth Rehabilitation
“for information “
- Courts and Prosecution Departments of all levels
(for implementation)
- Documentation-chronicles.

Ang Vongvathana