I. Introduction

The Common Law System is comprised of statute law and case law based on precedent. The Civil Law System is fully based on Laws passed by the National Assembly or Parliament.

The Australian Legal System comes from the Common Law while the Cambodian Legal System comes from Civil Law. The ACT Magistrates Court is one of the Australian Legal Institutions that administer the Common Law. The Cambodian Courts use the Civil Law. In my eight-weeks internship in the ACT Magistrates Court, I studied differences between the ACT Magistrates Court System and the Cambodian Municipal or Provincial Court System, see below:

II. Court Rooms

- The ACT, Supreme Court and Magistrates Court have been equipped with modern equipment like computers, tables, chairs, cameras, televisions and high-technology recording systems to assist the Justices, Magistrates and Court Staff to fulfil their jobs rapidly and effectively thus building people’s confidence in the Judicial System. Courtrooms and offices have wide spaces, sufficient materials and resources. They have the necessary law books and other requirements are met. The offices of Justices and Magistrates are separated from their Associates.

Another important point is that all proceedings conducted in the Magistrates and the Supreme Courts have been recorded by a Sound Recording System. The Transcripts of the proceeding are kept as evidence and filed correctly. It is then available to either party or their representatives (if they need it) for appeals to the higher courts for review.

- Cambodian Municipal or Provincial Courts have limited court rooms, narrow office spaces, poor resources, lack of legal documents and no privacy sometimes between Judges and Court Clerks (judge’s associates) who have to sit working together in the same room. Additionally, the Courts have many cases to hear so that it is difficult for judges to settle the cases on time due to the insufficient resources. In most of the cases, the parties to the dispute have to wait many years for Courts’ decisions. This shows the weakness and the inability of Legal System in Cambodia, and leads to poor confidence among the Public.
Cambodia does not have a Recording System like ACT Courts. The Transcript of the proceeding is a poor transcript (only handwriting by court clerks). When parties want to appeal to the Higher Courts, the complete transcript cannot be found for submission before the Appellate Court.

III. Court Functions and Compositions

- The Australian Capital Territory has two levels of Court; The Magistrates Court and the Supreme Court. The Magistrates Court’s Jurisdiction extents over the ACT territory. The Court handles criminal offences that may be dealt with summarily. The Court has jurisdiction in relation to indictable offences and conducts committal hearing. The Magistrates Court also has jurisdiction to hear and determine any personal actions where the claim at issue does not exceed $50,000, personal actions include tort or contractual disputes. The Court has power to impose fines. The Magistrates also acts as coroners in a “Coroner’s Court” to inquire in case of suspicious death of the person and the cause and origin of e.g. a fire that has destroyed and damages property. The Jurisdiction can hear the cases involving minors in “Children’s Court” and also sit in the small claims Court dealing with claims of up to $5,000. This Court has the advantage of being less formal. Decisions of the Court are legally binding and enforceable. As the Small Court is part of Magistrates Court, it cannot hear claims relating to title to land. The Proceedings in this Court are conducted by a single Magistrate.

The Supreme Court has appellate and some original jurisdiction, both civil and criminal. It also has power to remit the matters to the Magistrates Court. The Court usually hears the cases with a single judge, however, in special cases a full bench of three judges may be called. The Supreme Court is also responsible for admitting barristers and solicitors, and hears the matter relating to the cancellation of practicing certificates. Some matters are only indictable and cannot be dealt with in the Magistrates Court-e.g. Murder, rape, serious assault which are punishable with imprisonment for more than 2 years or life etc. But all the small matters must begin in the Magistrates Court. They are dealt with either summarily or by the way of administrative hearing known as the committal for either sentence or hearing in the Supreme Court.

- The Cambodian Courts System is divided into two levels of Courts below the Supreme Court. The first level is the Municipal or Provincial, and only one Military Court (only for military offences). The Municipal or Provincial Courts has jurisdiction extending over its territory and the Judge usually hears cases sitting alone. The Court handles all civil, criminal, administrative, labour, commercial matters and so on, however, the Military Court has jurisdiction to hear the Military cases all over the country.

The second level is the Appellate Court that has jurisdiction over the country to hear all matters appealed by the parties from the first level of Courts.

The Supreme Court is the Highest Court of the nation, which comprises of five judges or nine judges (plenary session). It has nationwide jurisdiction to review appeals from the Appellate Court.

Initially five Judges of the Supreme Court review the law to see whether it was correctly applied. If it was, the appeal is dismissed. If it wasn’t, the matter is sent back for rehearing (new composition) with direction to apply the law correctly. If the matter following the rehearing is brought on appeal to the Supreme Court again it will once again see if its direction has been correctly applied and if it has, the appeal is dismissed. If it has not, nine Judges of the Supreme Court rehear the matters, taking the evidence and applying the law, this is called the third level of the hearing and ultimate procedure.
- The ACT Children’s Court has been separated from adult. It has two jurisdictions:
  A. Criminal Jurisdiction-deals with criminal and traffic charges and summonses against persons who are under the age of 18 years.
  B. Care Jurisdiction-deals with applications involving children that have been subject to abuse or neglect.
All hearing conducted before the Children Court are closed. There is a prohibition on the application of details of Children Court cases to ensure that the young person who is appearing before the Court cannot be identified. This Court Proceeding is conducted by single Magistrates.

- In Cambodia, the children and adult hearings are publicly conducted by a single judge and in the same courtrooms except the requests by the victims for the disclosed hearing.

IV. Criminal Proceeding

1. Investigation of offences

- In the ACT, the adversarial system is used; the police can only hold a person for four hours for investigation following his or her arrest. (2 hours for children or aboriginals). That means that if they execute a search warrant and the defendant is not allowed to leave the house he is under arrest and the time during which the warrant is being executed is counted towards the four hours. If the police want to conduct a record of interview with the defendant and he wishes to participate in it there may be no time left. The police can approach a magistrate either by telephone or in Court and seek an extension of time for the investigation period. The police have to tell the magistrate why they want an extension, what they have been doing and the Magistrate must speak with the defendant to see whether he wishes to take part in the record of interview. In Australia, a defendant has the right to remain silent and he needs not answer any questions if he doesn’t wish to. The Magistrate may then extend the investigation period for any time he thinks appropriate.

The Australian Federal Police has a Forensic Investigation Service to be used for the investigation of serious crimes such as terrorism, murders, rapes, robbery, serious assaults and so on by using scientific data and procedures that pathologist, laboratory technician and other scientists help the police to effectively crack down the crime.

In Cambodia where inquisitorial system is used, in the limitation of jurisdiction of the capital, cities or provinces, if police have suspicion about someone, in case of non-flagrant offence, they can start their investigation, If they find some evidence to show that the offence was committed then the police can ask for a search warrant from prosecutor and/or the arrest warrant from the Court.

But if it is flagrant offence the Police can immediately arrest a person without the warrant and bring him/them to the Court. After the arrest, Police have forty-eight hours of working days to keep the defendant in custody for further investigation. When forty-eight is over, the police have to send the arrested person and evidence to Prosecutor.

The Police and the Prosecutor have no right to release the defendant on bail. However, after looking at the police’s evidence, the Prosecutor can refuse to press charges and let the defendant free if he believes that the offence was not be committed or the evidence is not enough. Or if he believes there is a case that the offence was committed he will bring the allegation against the defendant to the Investigating Judge. At the same time the Prosecutor can request the Judge to keep the defendant in custody. Then the Judge will decide whether to release on bail or to keep him in custody. When the
Judge decides to release on bail and the Prosecutor does not satisfy with the decision, he can appeal to the Higher Court.

Cambodia has few Prisons and has no separated Remand Centre as in Australia, but many non-convicted and convicted are arrested or punished so that it is inevitable to keep them in the same Prisons. The Prisons and Temporary Remand Centres are always at same place (only separate room).

Cambodia also has no Forensic Investigation Service, well equipped with staff such as there is in Canberra. We have only a small Crime Investigation Department under the Ministry of Interior, with less efficiency to find evidence of crimes. To have such a service would require much money and much training of experts so that most of the crimes cannot be solved by the police. This results in the increase in numbers of offences and the criticism by the public on the functioning of the Court System in Cambodia.

2. Commencing prosecution

- In the ACT, proceedings commence with the laying or swearing of information and a summons issues. Proceedings can also commence by way of arrest. Police can only arrest in the ACT if a summons “would not be effective” – i.e. if the person is continuing to offend such as fighting another, in the act of robbing a bank. A person is arrested and taken to the nearest police station and the Watch House Sergeant can either bail him or keep him in custody until the next time the Court is sitting. The person is then brought to the Court and the Magistrate then considers bail and adjourns the matter or deals with it the same as when a person attends on a summons.

When a summons issues the Registrar or Deputy Registrar of the Magistrates Court sets a date for the matter to come to Court. This date is in the Summons that is served on the defendant. The defendant comes to court on that date (return date) with his solicitor and the matter is called on before the Magistrate. The defendant can then seek an adjournment for a short while (3 weeks) to get legal advice or will plead guilty when the matter will be dealt with immediately or he will plead not guilty when the magistrate will adjourn the matter to another date for a case management hearing. The Registrar or Deputy Registrar does not adjourn matters in the ACT.

In Cambodia, the prosecution starts by the file being brought by the Police after the evidence is found and/or the offender is arrested. Subsequently the Police will send him and the file to the Prosecutor. Meanwhile, before asking questions the Prosecutor must explain to the defendant about his rights and ask him whether he needs lawyer or not. If he does, the Prosecutor has to immediately stop asking any questions and finds a lawyer for him or tells him to find the lawyer by himself. When his lawyer appears before him, the Prosecutor can go on his questions relating to evidence and offence shown by the Police to investigate whether the defendant commits the offence or not. If the Prosecutor believes that the offence is committed he will then charge and send the defendant to the Investigating Judge.

3. Plea of Not Guilty

- The Magistrate will adjourn a matter for about six weeks when a plea of not guilty is entered. It is adjourned to a case management list. The prosecution and the police prepare the brief of evidence – all the statements from the witnesses, copies of any documents or photographs to be used and any other evidence that is to be used on the hearing. This brief of evidence is then supplied to the defence solicitor.
In Cambodia, the procedure of Plea of Guilty does not exist. Decisions are based on the results of the Investigating Judge. After receiving the charge or charges from the Prosecutor, the Investigating Judge has the right to start his investigations (only on the offences and the defendants indicated by the Prosecutor’s charge or charges) within the period of four months. The Judge can ask police and experts (if any) to do the jobs for him if he wishes to. If the evidence cannot be found during four months, according to Cambodia Criminal Procedure, the Judge still has another two more months to investigate. If six months is over without enough evidence, the Judge shall release the defendant. Meanwhile, the Representatives of both sides can operate their independent investigations to find other evidence for the benefit of their respective clients.

When the file and the defendant appear before the Judge, he can tell the defendant about his rights and ask the defendant certain questions concerning the background of the defendant such as name or middle name, age, marital status, occupation, address, nationality, previous conviction so on and so forth. After asking the question and looking at the evidence submitted by the Prosecutor, if he thinks that the offence was not committed, he acquits the person. But if it was, he will make the decision on detention of the defendant by looking at the background of the defendant or if he thinks that the defendant will run away or make any trouble during the investigating process when being released on bail or it is a serious crime, the Judge will refuse bail. However the Judge shall release on bail if it’s a minor offence with small penalty, the defendant has house, jobs, or he thinks that the defendant will come before court when he is released. While the investigations are complete, the case will be sent back to the Prosecutor for verification. If the Prosecutor agrees to the evidence brought by the Judge, The prosecutor will send the file back to him for making final conclusion. After that the file will be sent by the Investigating Judge to the President of the Municipal or Provincial Courts for appointment of a new Trial Judge.

4. Case Management

- On the day of the case management hearing the solicitor for the defendant will tell the Court if the matter is still to proceed as a plea of not guilty. If there is to be a hearing the Magistrate will set a date for the hearing after estimating how long the hearing will last, whether it is to be dealt with summarily or by way of committal, whether all the witnesses need to be called or whether their statements can be tendered (i.e. just put to the Court without the witness being present or being cross examined). The defendant also tells the Court whether he is going to object to the tender of any evidence – i.e. whether he alleges that the record of interview with the police was conducted unfairly (i.e. whether the police beat him up or tricked him into confessing to the crime).

- In Cambodian Criminal Procedure, we do not have case management as in the ACT. After the appointment by the President of the Municipal or Provincial Courts, the date of proceeding shall be set by new Trial Judge at least 15 days before the trial starts in order that both sides have time to discuss with their counsel and to arrange the file and find some other evidence to present before the Trial Judge. During that time, the Counsel of the Parties can ask the Judge for an adjournment if they think that the arrangement is not ready or some important evidence is not be found yet. At the same time, they can also ask the Judge for one copy of the whole file (police reports, victim’s answer, accused answer, witness’ answer, expert’s reports, prosecutor’s reports etc) to verify it and to find the key issues for the interests of their clients in the upcoming hearing.

5. Hearing

- In the ACT on the date set for the hearing the defendant and his solicitor appear the Magistrate listens to the evidence brought by the Director of Public Prosecutions through the police and other witnesses for the prosecution. He then listens to the evidence brought by the defendant if and any
witnesses he may bring and he then makes a decision based only on the evidence presented before him.

The Magistrate has no role to play in the collection and presentation of evidence. The Magistrate rarely asks questions to the witnesses or the defendant. The prosecutor and the defence counsels present the evidence and cross-examine the witnesses. The Magistrate is the person who decides on the evidence presented whether there is sufficient evidence to convict the defendant. The prosecution brings the allegation against the defendant and so it has to prove its case. The defendant does not have to prove or disprove anything. The prosecution has to prove its case beyond reasonable doubt. This does not mean beyond all doubt but it means more than the civil standard of proof, i.e. on the balance of probabilities. If the defendant does not appear on the date set for the hearing and he has been granted bail to appear on that date the Magistrate may issue a warrant for his arrest for him to be brought to the court.

- In Cambodia, Investigating Judge is the one who searches for the facts of the case in relation to both the victim and the defendant, namely, not only finding the aggravation circumstances but also the mitigation circumstances. In the Inquisitorial System, it is the role of police and prosecutor to find aggravation circumstances to clarify that the defendant is guilty before the Court. In spite of this, the defendant and his counsel have to find other evidence to challenge prosecutor’s evidence in order to affirm that he is innocent. During the trial in process, the Trial Judge always asks the defendant many questions as well as victims, witnesses, police, experts and also makes cross-examination on evidence presented by both parties to find out the culpability of the defendant charged by the Prosecutor. If he finds that the defendant committed the offence, he than punishes the defendant, but if he finds that the defendant did not commit the offence, the defendant will be released.

6. Sentence

- In Canberra, a Magistrate has only the power to deal with a matter that is summary in nature – where the period of imprisonment provided in the statute setting out the offence is imprisonment for a period not exceeding one year or where the penalty provided is a fine only. A Magistrate can also deal with some indictable matters where the defendant elects for him to so deal with it – where in the statute setting out the offence the period of imprisonment doesn’t exceed 10 years or 14 years for property offences. If the Magistrate deals with the offence summarily he can only impose a penalty of 2 years imprisonment for each offence.

- In Cambodia, generally the defendant is not entitled to choose the jurisdiction for their trials because the competent jurisdictions are already stated by law (the jurisdiction where crime is committed or place where offenders are arrested, or domicile of offenders). Even if, The Law says like that, but in the real practice, the place where the crime is committed is the priority jurisdiction because it is favourable to undertake the investigation. If there is a conflict of jurisdiction, the Minister of Justice will decide.

7. Punishment

- In the ACT, for the punishment of some small offences, magistrates can use periodic detention, home detention or community work under supervision of the Corrective Service Officers. This is the way that gives a lot of benefits to both the convicted and the society because actually, the court does not necessarily want to punish any person but may instead encourage people to go back to society and not to commit further offences. At times, the punishment is to show the public that if they commit crimes like that person does, the Law will punish them.
In Cambodia, periodic detention, home detention or community work cannot be used because it is not yet prescribed by law, but we expect that we will be able to use these options soon following the new Draft of Criminal Code to be approved by the National Assembly. Nowadays we are using Temporary Penal Code approved by the United Nations Transitional Authority In Cambodia and Cambodian Criminal Procedure, which does not mention these sorts of punishments. The System of Punishment currently available prescribes period of imprisonment that ranges between minimum to maximum term for each offence. Some of the offences cannot be sanctioned because the provision is not clear enough; it depends on the interpretation of the law by Judges in making the decision.

V. Civil Proceeding

- In the Magistrates Court, Civil Claim and Criminal Charge cannot simultaneously proceed with one Magistrate. The case will be done separately.

In most of Civil Cases, the parties to the dispute are invited by the Registrar or Deputy Registrars for conciliation or mediation before going to the court. This will help to alleviate the burden of cases to be dealt with by Magistrates.

- According to Cambodian judicial system, if the civil claim and criminal charge are submitted together, the court may proceed with both at the same time. But in the case where there may be prejudice to the civil claim during the trial, the Judge will adjourn the Civil Claim to another day continue the preceding of the criminal case until the end of the trial.

For the conciliation or mediation, only a judge who has the right to conciliate, will attempt to do so one or two times before the case is submitted for the trial, if the agreement is not reached, the judge will ask parties to send him all evidence concerning to the case. If the date of the submitting of the evidence is over, the investigating judge will submit the file to the President of the Court for appointment of the trial judge.

- The ACT Magistrates Court, in civil matters is divided into two claims
  A. Ordinary Claim: for unliquidated amount of money
  B. Special Claim: for liquidated amount of money.

The Jurisdiction is also responsible for the determination of the following type of matters under relevant legislation such as Workers Compensation, Auctioneers Licences, Mutual Recognition, Victims of Crime Matters, and Applications that include such things the return of motor vehicles, Domestic Relationship, Infant settlement and Commercial Lease Disputes and Tenancy Tribunal.

- In Cambodia, we do not divide cases of civil claims as in the ACT, whereas Cambodian Courts can proceed with any matters and any amount of money in the Cities or Provinces where the Courts are located.

VI. Conclusion

Australia uses parts of Common Law that came from the English system and ACT Magistrates Court is located in the Australian Capital Territory. During my internship in the Australia Capital Territory, I found that the procedure of cases’ settlement of the ACT Magistrates Court seemed more complicated than in Cambodia, but it works much better than in Cambodian.

In the ACT Magistrates Court matters are divided into certain different sections such as:
  A. Criminal Section (to settle any cases concerning to criminal matters)
  B. Civil Section (to settle any cases concerning to civil matters)
C. Tribunal Section (to settle cases concerning to mental health, credit, guardianship, residential, discrimination and administrative appeals)
D. Protection Unit
E. Domestic Violence
F. Family Matters

This enables Magistrates to become “specialists” in certain areas, which means that matters are dealt with more efficiently and effectively. It is also favourable to Magistrates to give the fair, impartial and proper decisions to the people. The system is also recognised by the other countries as one of the Most Advanced Judicial Systems in the world. Though Cambodia and Australian have different Judicial System, certain major principles used by the Australian Legal System can be used by Cambodia as well:

- Classification of the files or cases
- Alternative Dispute Resolution
- Case Management
- Options for punishment
- Reasons for the judgements
- Disciplines or Conducts of Justices or Magistrates
- The Respect of the People’s rights by the Court
- Practices of the Justices or Magistrates

Therefore, Cambodia should leave out some useless principals and turn to use the up-date System that gives advantages to the people and society like certain Principals used by Australia.

In Australia Judicial System, modern and sophisticated instruments are equipped in almost every court throughout the nation. All information is used by database network, with this network; they can quickly access all information and can properly keep it as records. The ACT Magistrates Court have many courtrooms and four separated hearing rooms so it very easy for Magistrates to conduct trials or hearings with different matters at the same time in order to avoid build up of case load. Furthermore, there is no corruption among Judges and Magistrates in the ACT because they are paid enough.

In Criminal Matters, when the defendant is charged with a serious crime, he has the right to choose his proceeding, which can be conducted by a single Judge of the Supreme Court with Jury or without Jury, which is selected from the community. This shows that their rights and freedoms are not violated by the Court.

We have also visited Belconnen Remand Centre, which is a temporary detention place for unconvicted person waiting for decisions of the Magistrates. It has 6 different sections and it can accommodate about 50 people. Beside this, in the ACT, there is the Quamby Youth Detention Centre (children remand centre), which is separated from the Adults. Such separation is able to protect children rights as required by the international convention. Moreover, the ACT Remand Centres have enough modern equipment to facilitate the defendants who are waiting for the Magistrates’ decisions. They are provided enough food and other entertainment materials.

In the Remand Centres, the entrance to the cells are monitored by Monitoring Cameras to keep watch over the activities of the defendants, to prevent any incident committed by the defendants, especially those that are mentally ill. The 24 hours surveillance is also to ensure the rights and freedom of the defendants and as well as to prevent police from being accused by the defendant that police violates their rights. This shows that, not only in the ACT but also throughout the Australian Territory, the existence of legal punishment is not only to sanction someone but also to prevent crimes and to rehabilitate the wrongdoers back into the society as normal law-abiding citizens.

By Meas Chanpyseth
Student Judge from Cambodia
I take this opportunity to tell you that in Cambodia, it doesn’t have modern Remand Centres or Prison like the ACT, one of the Prisons in the Capital, up to 35 Adult prisoners have been placed together in one room and 19 Children have been put in one room. There is no Surveillance Cameras to monitor them like the ACT so that the rights of the defendant and the convicted can be violated at any time or there can be fighting, assault or suicide in the goals. On the other hand they do not have enough food to eat, each convicted is given about Aus0.5 cent per day for meals. The rooms are not clean, narrow and the environmental condition in the prison is bad that cannot ensure the health of the defendants and prisoners. Some of them get sick in the prison without medical care. Some of the women give birth in the Jail and their children stay with them until the age of six or seven months without enough food, clothe, education etc.

Looking at the Judicial System in Cambodia, it is still far behind the Australian Judicial System because of more than two decades of civil war, poverty, poor human resources, slow economic growth, low payment, corruption and so on. At the same time the System is criticized not only by the local people but also by foreigners, however, we expect that it will be changed, but it takes much time.

Last but not least, I would like to express my deep thanks to the Australian Government, the Australian National University, and the Centre for Democratic Institutions for your assistance to support our internship in the ACT Magistrates Court. Though we could not understand the whole procedure of the ACT Court System but we will bear in mind what we have seen and what we have learned from the ACT Justices and Magistrates. We will bring along with this knowledge and new ideas back home in the contribution in the reform of the Judicial System, the rehabilitation and the development of Cambodia.

Finally I would like to take this opportunity to thank CDI staff, Mr Roland Rich, Director, Ms Felicity Donnelly (Executive Officer) and Ms Sally Thompson (Project Officer); Chief Magistrates staff, Mr R.J. Cahill (Chief Magistrate), Ms Melita Bozan (Research Officer), Mr Grant Lalor (Magistrate) and Magistrates of the ACT Magistrates Court as well as the Justices and staff of the Supreme Court for their warm welcome and kind support.