

**Is "Good Enough Governance" Good Enough for the Full  
Respect of Article 4 of the Convention on the Rights of the  
Child? Evidence from Cambodia**

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# Abstract

In a rapidly interconnecting world, the question of the specific patterns and the quality of the implementation of the rights of the child becomes more and more entwined with the current general theory and specific practice of development on both international and national levels. Yet, the main difficulty lies in matching a specific development trend with specific patterns of implementation of the rights of the child within a country context.

It is for this reason that this paper proposes both a general critical outlook on the theories and practice of development and children's rights that are trending today, as well as a preliminary analysis of a very specific country context, namely the Cambodian case, where a very minimalist approach to governance, called "good enough governance", seems to have emerged. The impact of the study could, in a way, create a paradigm shift in relation to the way in which we analyse development with regard to children's rights.

In order to further break down this complex issue, the present paper analyzes one general and one specific issue, namely: the place of children's rights within Cambodia's overall development agenda, and the priority that this agenda would particularly give to either its education or juvenile justice system reforms, respectively. Methodologically, this critical research uses the model of the Deweyan "working hypothesis" through a process of purposeful sampling. It posits that within a minimalistic good enough governance model of development, children's rights will not be prioritized, and that education will be prioritized over juvenile justice, on a marginal level.

The findings, that use many relevant official documents, studies, reports, observations and reviews further exemplify the patterns of "good enough governance" within the Cambodian context, and lend credence to the two working hypotheses. These results, in a way, open up new channels for future, more empirical critical analysis.

The implications of the paradigm shift that this paper might encourage, would translate into a vision that any sustainable solution to Cambodia's problems in the implementation of children's rights would entail a global re-thinking of development and governance and their influence on the realization of children's rights. A vision that would, as the paper argues, more closely resemble the reality of the situation.

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During this period, my family and friends have shown boundless patience, firm support and keen interest in the elaboration of this work. And for this I am deeply indebted to them. In many important ways, their presence in this work can be felt.

## Abbreviations

ADB	Asian Development Bank
CESCR	Committee on Economic, Social and Cultural Rights
CNCC	Cambodian National Council for Children
CICL	Children In Conflict with the Law
CSO	Civil Society Organization
CSR	Corporate Social Responsibility
DFID	Department For International Development
GDP	Gross Domestic Product
HKS	Harvard Kennedy School
IHEID	Institut de Hautes Etudes Internationales Genève
IFI	International Financial Institutions
IMF	International Monetary Fund
KR	Khmer Riel
LDC	Least Developed Countries
MDG	Millennium Development Goals
MoEYS	Ministry of Education, Youth and Sport
NEG	Neoliberal Economic Globalization
NER	Net Enrolment Rates
PPP	Purchasing Power Parity
RGC	Royal Government of Cambodia
SVR	grade-to-grade Survival Rate
UNDP	United Nations Development Program
UNESCO	United Nations Educational Scientific and Cultural Organization
UNICEF	United Nations Children's Fund
USA	United States of America
USD	United States Dollar

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## Chapter 1 ♦ Introduction

### 1.1 Motivation and objective

It was during the five months that I spent working with UNICEF (from August 2013 till January 2014) that I became interested in both Cambodia and the concept of *good enough governance* in relation to children's rights.

During that period, I was part of a team within the Private Fundraising and Partnerships Division whose specific task was the creation and promotion of a child-centered corporate social responsibility (or CSR) agenda<sup>1</sup>. And within this team I quickly learnt that grappling with the concept of governance would soon grow into a daily routine. After all, since both of these concepts – social responsibility and governance – have evolved into their present-day nebula of meaning through a journey of application in the private sector (*corporate social responsibility and corporate governance*)<sup>2</sup> and have only relatively recently been incorporated into the official UN discourse<sup>3</sup>, it should come as no surprise that they frequently “‘appeal’ to one another, making the discourse predictable” (Rist, 2002)<sup>4</sup>, but also diffuse and frequently short-circuited – all at the same time. So much so that even Francis Fukuyama – one of today's leading political scientists studying public management –

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<sup>1</sup> UNICEF defines (child focused) CSR as follows: “CSR is the responsibility of an organisation for the impacts of its decisions and activities on society and the environment. Corporate Social Responsibility (CSR) goes beyond philanthropy. Child focused CSR contributes to sustainable development, including health and the welfare of children. It also takes into account the expectations of children and their family as stake-holders.” Retrieved from UNICEF CSR website: <http://www.unicef.org/csr/4.htm>

<sup>2</sup> For a brief history of the contemporary concept of corporate governance see, for example: Cheffins, B. R. (2012). *The History of Corporate Governance* [Working Paper № 184/2012]. Retrieved from Social Science Research Network website: <http://ssrn.com/abstract=1975404>; For a brief history of the contemporary concept of corporate social responsibility see, for example: Katsoulakos, P., Koutsodimou, M., Matraga A. & Williams, L. (2004). *A Historic Perspective on the CSR Movement* [White Paper SFA1D]. Retrieved from CSRQuest website: <http://www.csrquest.net/uploadfiles/1D.pdf>

<sup>3</sup> With regard to CSR and human rights, the real convergence could be said to have started most notably, with the launch of the “Global Compact” – an agreement between the UN and the “world business community” – by former UN Secretary-General Kofi Annan at the World Economic Forum on 31 January 1999 at Davos; and reached its peak in 2011 with the institution of the “Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework” developed by the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie. Concerning governance and human rights, the *official* convergent point could be said to have been the Commission on Human Rights’ Resolution 2000/64 entitled “The role of good governance in the promotion of human rights”. However, it is precisely through the “development” re-conceptualizations happening in the 1980s that governance was incorporated in the human rights discourse.

<sup>4</sup> Original French version: “...« s'appellent » les uns les autres, entraînant ainsi la prévisibilité du discours.”

has recently been surprised at how rapidly the concept of governance is becoming more diffuse and less useful, saying, half in jest (Fukuyama, & Grindle, 2013, October 23):

"I thought that governance was actually just a euphemism for old-fashioned public administration; if you say the words public administration in any large audience you immediately cause people to fall asleep, and if you say the word governance it has a [more appealing] sound and seems more acceptable to people."<sup>5</sup>

Thus, "good governance" is now seen as the central part of the "enabling environment" which is another buzzword that serves to both incorporate and instrumentalize such notions as state, government, culture and administration, which is in turn supposed to simultaneously promote business, civil society organizations (CSOs) and the respect of human rights. This should stimulate more CSR that is seen as a set of variable principles through which business establishments are recognized as essential global actors within the international community and thus as a potential force that should drive towards better respect of human rights and improved governance! This insistence to make public administration processes more marketable to an increasingly trendy international audience could, in part, be explained by the large-scale breakthrough of business on the international human rights scene. In other words, what has until recently been known as a search for better "managerial accountability, board structure and shareholder rights" (Cheffins, 2012) or *corporate governance*, has, since the beginning of the new millennium, been grafted onto the global human rights agenda and has developed into a demand for more *government accountability, administrative restructuring and stakeholder rights* or "good governance". And in this globalized context, "good governance" has quickly become the most rapidly expanding concept within the international community, effectively occupying the central position in this new "formulaic style" (Rist, 2002)<sup>6</sup> which is gradually replacing many aspects of the previous one – equally problematic – generated around the concept of

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<sup>5</sup> Spoken during a panel discussion at Harvard Kennedy School (2013, October 23), alongside Merilee Grindle, available online at: <https://www.youtube.com/watch?v=SkKdKmWxvAo>

<sup>6</sup> Original French version: "style formulaire"

“development”.<sup>7</sup> As such, it is of tremendous importance for the meaning, implementation, and translation of international norms of children's rights into local, regional and national realities.

On the other hand, my interest in Cambodia arises from the fact that my special task within this UNICEF CSR Team consisted of analyzing the CSR initiatives already in place in Cambodia with regard to children's rights. As a country that, for most of the second part of the 20<sup>th</sup> century was torn by civil war, brutal regimes and swift and often contradictory socioeconomic transitions, Cambodia is today one of many “least developed countries” (or LDCs) struggling to keep afloat in a rapidly expanding sea of “development goals” and “good governance” agendas, (while) trying to rebuild its society, improve living conditions, respect basic human rights. And not surprisingly, rights, standards and society float precariously in this “sea of hope” and are often driven in unpredictable directions by different currents or “development” trends.

And so, in line with the global “development” trends of the time, after riding on a global current of neoclassical economic “development” thinking, triumphantly dominant in the 1990s and characterized by an uncompromising economicism and an unwavering belief in the power of the free market to spontaneously right any social or political wrong and bring about democracy, for the last 10 years or so the Cambodian “development” seems to be carried by a seemingly different set of principles, best described as *good enough governance*. This is basically a reduced and refocused version of the “good governance” agenda in that it recognizes the limited capacity of LDCs to successfully see through massive amounts of measures for societal change and at the same time rehabilitates the political field as one of the most important stages wherein the sustainability of reforms is predominantly determined.

Yet, whether there is a general change in the direction itself in which the country is headed is a difficult question. And once again, it is obvious that this problematic

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<sup>7</sup> This research paper adopts a critical stance (explained in section 1 of chapter 2) towards contemporary mainstream “development” thinking inasmuch as this concept is no longer clearly defined, nor its definition meaningfully updated since the beginning of XX century, and might be considered as a euphemism for other processes (also discussed in said section). Hence, throughout this text it will always be used in quotation marks.



reveals crucial challenges for the realization of children's rights, especially on the level of their implementation.

And although there is a great amount of literature and initiatives focusing on the relationship between “good governance” (taken in its abstract, essentialist<sup>8</sup> form) and children's rights in Cambodia in general<sup>9</sup> or between children's rights in rural parts of the country and “local governance” in particular<sup>10</sup> there seems to be a rather conspicuous dearth of research that explicitly focuses on the impact of the specific strand of “good governance” that, as a matter of fact, has developed within Cambodia (that I here contend to be in fact closest to the *good enough governance* concept) and its impact on the measures taken in order to implement the Convention on the Rights of the Child (or CRC).

It is precisely for these reasons that this research tries to explore the effects of the Cambodian *good enough governance* agenda on the measures that are given priority for the implementation of children's rights, in the light of Article 4 of the CRC.

## 1.2 Working hypotheses

Before tackling the main issue of this section, three points – one brief remark, one related observation, and one final clarification – must first be addressed.

Firstly, concepts often lose their sharpness, become vague and vacuous, when they are repeated and superficially applied in a ritualistic fashion, from a position of authority. This becomes especially salient when analyzing the official discourse of UN bodies, “development” organizations, indeed the international community. As Rist (2002) points out, while analyzing the dominant international discourse:

“[N]ous sommes plusieurs à nous sentir comme emportés, voire noyés, dans des torrents des mots au milieu desquels il est impossible de reprendre pied.

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<sup>8</sup> Here, and throughout this text, the adjective essentialist will be taken to mean “that the numerous changes implied by the good governance agenda are [seen as] essential (preconditions) for economic and political development to take place” (Grindle, 2005, p.22), unless otherwise specified.

<sup>9</sup> As, for example: Save the Children's “Child rights governance” work in Cambodia. Here we have another example of a “development” concept taken in its abstract form, adapted and centered on the child – much like UNICEF's “child focused CSR”.

<sup>10</sup> As, for example: UNICEF Cambodia's “Local governance for children's rights” program

L'étrangeté du phénomène tient au fait qu'aucun de ces mots n'est inconnu, qu'ils font tous partie de notre vocabulaire quotidien ; pris séparément, ils ont un sens bien précis, mais leur accumulation, leur concrétion en syntagmes inamovibles, leur obsédante récurrence semblent soudain les priver de tout sens."

This simply implies that identifying a certain sub-category of the "good governance" concept within the reality of a certain country is necessarily rendered more difficult by the constant, and almost liturgical, over-use of all things developmental. And of course, no government would actually call their own governance efforts *good enough*, especially if that government's budget, to a large extent, depends on international donors and development partners, as is the case of Cambodia.

This brings us to the second point. Namely, in ascertaining the prevalence of *good enough governance* principles within the "development" rhetoric and practice in Cambodia we are somewhat aided by the fact that the author that coined the term herself, did so in an effort to streamline and refocus the concept of "good governance". In fact, during the last decade, Merilee S. Grindle, through several of her articles, tries to strip the essentialist, additive and ahistorical nature from the "good governance" concept, and uses the syntagm *good enough governance* precisely in order to express a more minimalist, historically informed and context-sensitive approach. What follows is perhaps the most succinct explanation of what this new concept stands for, in her own words (Grindle, 2004, p. 525):

*"Working toward good enough governance means accepting a more nuanced understanding of the evolution of institutions and government capabilities; being explicit about trade-offs and priorities in a world in which all good things cannot be pursued at once; learning about what's working rather than focusing solely on governance gaps; taking the role of government in poverty alleviation seriously; and grounding action in the contextual realities of each country."*

Thus, the task of linking *good enough governance* to the way in which the "development" agenda in Cambodia seems to be organized can be undertaken (for we are not simply searching for its actual utterance in practitioners' and academic circles, but are instead trying to reveal the historical and social causes

and consequences of its practice), and as a matter of fact, this link has already been explored in Ear (2009).<sup>11</sup> Therefore, on the basis of this precedent, this paper shall adopt *good enough governance* as a framework for its research.

Finally, it is only fair to state from the outset that this research adopts a critical stance towards mainstream “development”. And in relation to this, it is very important to stress the fact that *good enough governance* does not seem to directly challenge the mainstream “development” principles. It simply establishes the fact that “good governance is deeply problematic as a guide to development” (Grindle, 2004, p.525) and that therefore its agenda needs to be reduced and put into context. What’s at stake then, is only the fact that, by the mid-2000s, the “good governance” agenda has simply expanded so much that it has now become overwhelming. Yet within the framework of *good enough governance* all those problematic concepts constantly over-used within the mainstream “development” world, such as “democratic government, sustainable development, empowerment of the poor, free trade, participatory development” are never defined more clearly than “desirable condition[s]” (Grindle, 2004, p.526) in and of themselves. In fact, pursuing this argument to its logical end, and using historical evidence from now-“developed countries”, Grindle concludes “that all good things are not necessarily prerequisites to laudable goals such as growth and poverty reduction.” (Grindle, 2004, p.533) The realization that “the underlying [good governance] agenda is actually a search for a cure to underdevelopment” (Grindle, 2004, p. 527) is not explored any further and is not explicitly linked to the brilliantly unnerving observation that “countries in need of good governance must undertake a great deal to get it—and the longer they wait, the more things they will need to do to get it.” (Grindle, 2004 p.527) However, the *good enough governance* concept does seem to implicitly attack the periphery of the mainstream representation of “development” in that it bares some of the contradictions it contains for everyone to see, and for that it deserves a lot of credit.

As a result, it needs to be clear that the aim of this research is not to promote *good enough governance*, but rather to ascertain its actual practice in the “development” patterns of Cambodia and to provoke critical thinking as to what this

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<sup>11</sup> In this working paper, Cambodian political economist Sophal Ear uses the *good enough governance* framework in order to explain the different “development” patterns of Cambodia’s rice export and garment sectors of economic activities.

means for the full implementation of the CRC, specifically in terms of measures taken, resources allocated and international cooperation/assistance offered.

With this in mind, we can now move on to the intriguing issue that is central for this research paper: the relationship between the Cambodian case of *good enough governance* and the implementation of the CRC as stipulated in Article 4 of the Convention. And this is a relationship that immediately raises many interesting questions.

First of all, in a minimalist governance reform agenda what level of priority will be given to children's rights? If the *good enough governance* process recognizes that hard choices between several "good things" must be made, does that effectively mean that some rights within the CRC will be prioritized over others? If this prioritization is necessarily a political process, is it realistic to expect that all the stakeholders within the Cambodian society and, in terms of international cooperation, all the stakeholders within the international community will agree upon the urgent need to implement every aspect of the CRC? Will a minimalist approach such as *good enough governance* stimulate Cambodia to implement the CRC "to the maximum extent of their available resources and, where needed, within the framework of international co-operation"<sup>12</sup>?

Several offshoots from this central nucleus of questions might, as a result, be asked as well, such as: How is the relationship between the fulfillment of children's rights and "poverty reduction" perceived from the angle of *good enough governance*? Since, under the agenda of *good enough governance* priority is given to "diminishing the most development-averse forms of corruption" (Grindle, 2004) are these forms of corruption the same as the "children's rights-averse forms of corruption"? Is it possible that some historical and country contexts, such as the ones in Cambodia for example, actually reduce the priority for the implementation of children's rights? What does this tell us about children's rights themselves? And so on.

Finally, two philosophical questions: Even if we hypothetically admit as defensible a position that, at the conceptual level, views the current set of human rights developed within the current structure of the international community as

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<sup>12</sup> Article 4 of the CRC

unproblematically universal<sup>13</sup>, can the same argument be reasonably made at the practical, or better yet – “developmental” level? Or is the analysis of *good enough governance* in the light of the implementation of children’s rights not just the latest in a series of contemporary problems that clearly highlight both the complementary and contradictory nature of the current human rights’ notions of “universality” and “development”?

As can be seen, this relationship deserves to be the subject of multiple research efforts. Bearing all the preceding points in mind, and leaving the philosophical questions in their conspicuously rhetorical form, there is one final limitation that this work, for brevity’s sake, must abide by.

Namely, in order to elucidate the effects of the *good enough governance* agenda on the implementation of children’s rights in Cambodia, this paper will limit its research on two “development” reforms associated with children’s rights – one prominent, the other implied, and both found within the Royal Government of Cambodia (or RGC)’s comprehensive “development” plan – the *Rectangular Strategy for Growth, Employment, Equity and Efficiency - Phase III*:

- The Education Reform (under *Growth Rectangle 4 “Capacity Building and Human Resource Development”*, side (1) “*enhanced quality in education*”); and
- The Juvenile Justice Reform (within the *Core of the Rectangular Strategy “Good Governance”*, reform area (ii) “*legal and judicial reform*”).

The choice of these two reforms was motivated by the following considerations: On the one hand, while the first reform (education) is explicitly mentioned in the *Growth Rectangle 4*, the second one (juvenile justice) is vaguely implied within the core “good governance” rectangle. In this respect, we can explore the differential

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<sup>13</sup> Such as the position defended by Jack Donnelly (2007), who views human rights as “(relatively) universal at the level of the concept” and treats their divergent conceptualizations and actual practice within different contexts as “deviations” that are, under certain conditions, and “all things considered, not il(legitimate).” In this view – which through such paradigms as “relative” or “consensus universality of human rights” tries to partially appeal to “cultural non-essentialist” concerns (as defined, for example, in Holiday (2000)) – some benign, non-threatening “second-order deviations” could be granted a “sympathetic hearing”. Not surprisingly, when Donnelly considers the “developing countries” he argues that “[d]efensible categorical differences between “developed” and “developing” countries [...] involve, at most, differing short-term priorities among particular internationally recognized human rights, not major differences in the list of rights appropriate for individuals in such countries.” My intention here is simply to show that such a stance, as evaluative, and even condescending as it can sound, has been voiced, and has its advocates.

treatment of the two reforms in regard to the *good enough governance* agenda since, according to its minimalist approach, even though (quality) education is situated on the periphery of the traditional understanding of “good governance” reforms, as a basic service, it is to be given priority over equality and fairness in justice, at least in the short term, in the context of countries with governance characteristics and capacities similar to those found in Cambodia.<sup>14</sup> This differential treatment is, in the last instance, further reinforced by the fact that the improvement of Cambodian education is considered as one of the factors contributing to economic growth.<sup>15</sup> Conversely, the juvenile justice system, in socioeconomic terms, is seen as one of economic growth's consequences,<sup>16</sup> while its potential benefits for society, from a purely economic point of view remain difficult to measure.<sup>17</sup> In addition, in the Cambodian context as much as anywhere else, children in contact with the law are viewed as the consequence of a combination of poverty and lack of schooling opportunities (Travers, 2011; Elrod & Ryder, 2011). And so, in terms of the *good enough governance* agenda, the education reform seems to offer a more parsimonious path towards economic growth, which in turn could directly reduce juvenile delinquency and indirectly enable better prospects for juvenile justice, and therefore should be prioritized over the juvenile justice reform. On the other hand, from a purely political point of view, a much wider consensus within the Cambodian

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<sup>14</sup> Two indications for the possibility of this prioritization can be found within Grindle's work. In Grindle (2004, p.539): “Discussions about priorities also highlight again the need to consider tradeoffs in the commitment of resources, energy, and political capital—governance reforms are important, but are they as important to reducing poverty as investing in rural development, infrastructure, better quality education, expanded health care for particularly vulnerable groups, more employment opportunities, and so on?” This dilemma is especially relevant for Cambodia since almost all of the tradeoffs mentioned in the text are incorporated within some of the *Growth Rectangles* of RGC's *Rectangular Strategy* situated around its core, which is “good governance”. And in Grindle (2005, p.17/2007, p.565) in Table 3 that proposes, “for illustrative purposes only”, “a hierarchy of governance priorities” the author suggests that the government should be “able to ensure basic services to most of the population” from the moment that the state is considered “minimally institutionalized” whereas it should be “able to ensure equality/fairness in justice and access to services” only from the moment that the state is considered “institutionalized non-competitive” which in this typically “developmental” view comes after the “minimally institutionalized” and before “institutionalized competitive” states.

<sup>15</sup> In the words of Sovachana (2012): “If Cambodia is to achieve the lofty goals [of progress], it is imperative that the country establishes a high quality and sustainable education system with equal access to learning for all citizens. Choosing and implementing the proper strategy of the developmental path to produce graduates with the virtue, knowledge, skills and qualifications needed it today's market and technology-driven environment will be the key to this noble endeavor.”

<sup>16</sup> For example, Elrod and Ryder (2011) explain that “[d]evelopment, management, and distribution of political and economic resources not only has an impact on the behavior of young people in our society, but also influences the operation of important social institutions, including those institutions that comprise the so-called juvenile justice system”

<sup>17</sup> For example, Roman & Butts (2005) argue that “[s]ince there are no private markets for the exchange of goods and services in relation to crime or the prevention of crime, researchers cannot easily attach monetary values to most of the costs of crime or the benefits of crime prevention.”

society can be reached for improvements within the education system than for the introduction of a judicial reform which would provide for alternative treatment of children in conflict with the law. As Vijghen (2013) reports, "the [judicial] officials perceived the [Cambodian] society as not receptive of young delinquents."

This paper will therefore explore the relative position of children's rights within the *good enough governance* hierarchy. Additionally, through the carefully selected education and juvenile justice reforms, it will be able to analyze a prioritization pattern between two "development" reforms associated with children's rights in a *good enough governance* environment.

Therefore, taking into consideration all of the aforementioned issues, we can formulate the following two hypotheses:

- A) *In general, consistent with the good enough governance agenda, the implementation of children's rights is not prioritized over measures that are more directly conducive to economic growth and "poverty reduction";*
- B) *In particular, consistent with the good enough governance agenda, the education reform is marginally prioritized over the juvenile justice reform.*

These two statements of expectations should of course be regarded as "working hypotheses" in the Deweyan sense of the term in that their primary objective is not so much to prove or test an underlying definitive proposition as to promote what in my view is a propitious field for future informed critical research, and to "direct inquiry into channels in which new material, factual and conceptual, is disclosed, material which is more relevant, more weighted and confirmed, more fruitful, than were the initial facts and conceptions which served as the point of departure." (Dewey, 1938) This paper, therefore, should be regarded as one such possible point of departure.

### **1.3 Interdisciplinarity**

As the very name of this paper suggests, the complex issue of interdisciplinarity is at the core of its research topic. An investigation into the dynamic interplay between a political-economic strategy for "development" and a branch of human rights law,

situated in a local reality – this surely must represent an exercise in interdisciplinarity! Yet, what exactly does this term mean? And which conception of it would be most suited for the purposes of this work?

As Julie Thompson Klein (2010) perspicaciously remarks, “[i]nterdisciplinarity has become a mantra for change in the twenty-first century.” And given that its working definition – as she discusses in another book – includes such laudable feats as can be achieved through collaborations between different disciplines and professions on the exploration and resolution of broad or complex issues beyond the scope of any single discipline in order to achieve greater unity of knowledge “it is hardly surprising that interdisciplinarity as a concept has a wide appeal.” (Klein, 1991)

Yet, as is the case with any other appealing concept, some interesting criticisms have come to nourish the debate that was triggered as a result of interdisciplinarity's quick rise to prominence in the academic and professional segments of Western society during the last 25 years.

For instance, Raasch, Lee, Spaeth & Herstatt (2013) find that, within the field of open source innovation, “inquiry shifts from interdisciplinary to multidisciplinary research, and from joint puzzle solving to parallel problem solving, within a very few years after the inception of the field. ‘High-involvement’ forms of interdisciplinary exchange decline faster than ‘low-involvement’ forms.”<sup>18</sup>

Furthermore, from a historical perspective, in a lecture given at the University of London, Simon Schaffer (2014, February 5) claims that, even in classical terms, discipline (what disciples get) and doctrine (what teachers deliver) have rarely been the same (i.e. they share an asymmetric and mutual relation – almost never a relation of identity), and that the rigid disciplinarity – against which interdisciplinarity rallies – is actually based on a transvaluated<sup>19</sup> and pernicious history of nostalgia (about a monolithic, abstract, homogeneous disciplinary past that simply never existed) and amnesia (about the real genealogy of academic institutions which reveals oft-forgotten insights into the hybrid, exotic and cross-disciplinary origins of

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<sup>18</sup> According to the authors “high-involvement forms of interdisciplinary research” are illustrated by “interdisciplinary co-authorships and publications in journals outside the authors’ home disciplines” while “low-involvement forms of interdisciplinary research” are illustrated by “publications that are relevant for scholars from several disciplines and cross-disciplinary co-citations”.

<sup>19</sup> In the context of this lecture, if a historical artifact or narrative is “transvaluated” It means that it is taken from the originally polemical and merely assertative context that characterized it in its own day and imagined or “developed” as historical evidence for a general truth of those times.



disciplines). The demand for more interdisciplinarity is therefore considered to be a misplaced one since “all disciplines come from inter-disciplines” anyway.<sup>20</sup> Ergo, the very reason for the current disciplinary order is interdisciplinary in its nature. In a similar vein, in an article analyzing the recent interdisciplinarity promotion trends across US research universities, Jacobs and Frickel (2009) conclude thus:

“We do not believe that the case has been fully made, theoretically or empirically, for the general superiority of interdisciplinary over disciplinary knowledge. The established disciplines are not as static or as isolated as advocates of interdisciplinarity sometimes suggest. Although there are certainly successful examples of interdisciplinarity, established academic disciplines remain dynamic centers of knowledge production that are open to external developments even while insisting on internal standards.”

Klein (1991) already addressed this issue by attributing its problematic to “a pervasive tendency to associate interdisciplinarity with particular ranges of experience.” And incidentally or not, one of the examples with which she tries to illustrate this problem is very relevant for the present research. Namely: “An economist may condemn all interdisciplinarians as dilettantes because of suspicions about a particular curriculum, yet overlook interdisciplinary investigations of development in the Third World.”

Interestingly, both interdisciplinarity and its above-quoted critics, at least, seem to value cross-disciplinary problem solving and strong hybridization of different systems of thought. Where they differ is rather the historical claim on the level of compartmentalization of the production of knowledge and technology, especially during the late 18<sup>th</sup> and early 19<sup>th</sup> century. And perhaps the most innocuous remarks made by Raasch et al. (2013) that “prevalence of interdisciplinary research tends to decline as research fields mature” and that “this fragmentation into disciplinary clusters is particularly likely to befall phenomenon-based research fields” since they often have “no single ‘natural’ disciplinary home base” can, for the purposes of this paper at least, aid us to reconcile both positions.

Indeed, in the quest to produce a more coherent – really a more democratic – corpus of knowledge through sustainable cross-disciplinary hybridization of different

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<sup>20</sup> Interestingly, in this lecture Simon Schaffer suggests that the interdisciplinary enterprise that constituted the disciplinary order was frequently linked with colonial projects of knowledge and power.

fields of study, is it not possible to agree that instead of proceeding directly to *carnavalesque*, seemingly random (possibly in line with current market demands), and in the end inherently unstable and invariably collapsing excursions into interdisciplinarity<sup>21</sup>, we should start by forming clusters that are comprised of disciplines that share a *material* (inter)disciplinary "home base"? And within the social sciences, this approach is not at all new. For example, the following statement, made more than 40 years ago by the famous heterodox economist Samir Amin<sup>22</sup>, has particular resonance with regard to economics, political science, sociology, and "development" studies – all of which are central for the study of *good enough governance*:

"The only possible science is the science of society, for social reality is one: it is never 'economic' or 'political' or 'ideological,' etc., even though social reality can be approached, up to a certain point, from a particular angle—that of any one of the traditional university disciplines (economics, sociology, political science). But this particularized approach can remain scientific only if it is aware of its limits and prepares the ground for universal social science."

Consequently, in the exploration of the Cambodian *good enough governance* and its effect on the implementation of children's rights, the present research will try to bring together – albeit within a modest framework of "low-involvement" interdisciplinarity – the academic disciplines of political economy, "development" studies, economics and sociology.

Additionally, it will also try to fully incorporate points taken from linguistic (discourse) analysis, which has for far too long a time been treated, from the viewpoints of some colorfully disparate attempts at the "science of society", in a rather "parallel

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<sup>21</sup> The *carnavalesque* concept is, for example, frequently instrumentalized by "corporate communicators" as a tool used to better "manage" dominance issues within the workplace through "ritualized sales meetings, annual employee picnics, retirement roasts and similar corporate events [that] fit the category of carnival." (Steele, 1994) This is infallibly reminiscent of a wonderful observation of the inherent fragility contained in the concept of *marivaudage* written by Jean-François Patricola (2006) in a preface to Marivaux's "Le Jeu de l'amour et du hasard": "Le carnaval durant lequel on inverse les valeurs est remis au placard jusqu'à l'année suivante : la transgression est ponctuelle." Which makes us wonder: Is there an alternative way of conceptualizing interdisciplinarity? Perhaps one that does not function as a *corporate* "management of (dominance issues amongst) scientific disciplines"?

<sup>22</sup> This English-language quotation was taken from Amin, S. (1974). *Accumulation on a World Scale: A Critique of the Theory of Underdevelopment (Volume 1 and Volume 2 Combined)*. New York: Monthly Review Press. The original version was published 4 years earlier, in French.

problem solving" manner.<sup>23</sup> In other words, for the purposes of this text, linguistics will neither be regarded as the "awkward second cousin" to economics, sociology or political science, nor as the single most important analytical tool in the kit of the social sciences, but as an equally relevant (inter)disciplinary source of information. Its historically material connection to the other social sciences is recognized, thereby restoring its importance *and at the same time* eliminating the possibility of materially dissociated overstatements of its pre-eminence, typically present in post-modernist thought.<sup>24</sup>

And as previously mentioned, one of the loftier objectives of this exploratory, "low-involvement" interdisciplinary research paper is to contribute in opening the way towards more empirical, "high-involvement" interdisciplinary endeavors, based on the critical approach, findings and interest it will have produced.

Finally, legal texts will be used in order to explore the two working hypotheses from an interdisciplinary social sciences perspective.

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<sup>23</sup> In point of fact, it was interestingly both Stalinist and post-modernist thinking, for example, that in one way or another further alienated the study of language and subsequently discourse from its material cousins within the social sciences. While the former diminished the impact of language on society because it could not be considered as part of either the base or the superstructure and because it differs from the instruments of production in that it does not produce material wealth and thus granted its study an "academic independence" that distanced it from the project of a general science of society, the latter superimposed the discourse analysis upon every other aspect of social reality thereby cutting it from its material foundations (Roos, 2011, December 1) and thus leading social sciences towards "the absurd idea that social practice is nothing but free construction of meaning" (Callewaert, 2006).

<sup>24</sup> This comes close to Ives's (2004) description of Gramsci's position on language through the concept of *vernacular materialism*. In an interview published in Boulou Ebanda de B'béri (2008), Peter Ives further defines this concept as follows:

"[In] much [of the] social theory that focuses on language or the vernacular, the material power relationships especially as framed by global capitalism are often ignored... On the other hand, those focusing on the so-called "material" and economic inequalities often conceptualize these issues as separate from (and more real than) issues of language and culture. 'Vernacular materialism' is a concept that tries to bring these areas together, a focus on language from the perspective of people who use it daily (and face discrimination and oppression through linguistic power relations) and a focus on an analysis of society from a historical materialist perspective."

## 1.4 Methodology

Several methods are used in order make the research presented here both as objective and as reproducible (and therefore as refutable) as is possible within a general social science exploratory framework.<sup>25</sup>

Firstly, in order to produce an in-depth and thick understanding of the subject, this paper focused on qualitative and quantitative data from quotations of relevant studies and observations as well as three public expenditure reviews, excerpts from documents, careful review of policy directions.

Secondly, as the main goal of our working hypotheses is to create an exploratory framework that would allow for evidence supporting certain patterns within the *good enough governance* agenda to emerge, purposeful sampling was used as a design strategy. In this way, two information-rich “development” reforms associated with children’s rights were selected in order to provide for an in-depth analysis and, in doing so, offer much needed insight into one particular aspect of an otherwise vaguely defined, ideologically distended phenomenon. Only then – this research argues – would empirical generalizations, *channeled through previously illuminated openings into fields of critical research*, be able to make any practical sense in a whole section of the social sciences that is rife with, as Grindle (2007) puts it, “methodological and empirical ambiguities that continue to challenge researchers.”

Of course, given the relatively less well-trodden path of looking at children’s rights implementation in the context of the *good enough governance* agenda that seems to prevail in Cambodia while channeling the investigation through a substantially critical theoretical framework constructed around the demystification of the “development” concept, the consulted literature was primarily used for reconstructive purposes. This approach is beautifully captured in Rist (2013: p. 29):

“[P]our utiliser une métaphore, chacun de ces textes peut être considéré comme un élément de la « mosaïque du développement » : la variété des

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<sup>25</sup> The methodological framework for this research paper is inspired chiefly by three influential works: (1) Dewey, J. (1938). *Logic: The Theory of Inquiry*. New York: Henry Holt and Company (2) Shields, P. M. (1998). *Pragmatism as a Philosophy of Science: A Tool for Public Administration*. *Research in Public Administration*, 4, 195-225 (3) Patton, M. Q. (2002). *Qualitative Research & Method Evaluation*. Thousand Oaks: Sage Publications

formes et des coloris y est d'autant plus appropriée qu'elle fait mieux ressortir le dessin (ou le dessein) d'ensemble. Que certains fragments aient été oubliés n'empêche donc nullement d'en apercevoir la forme générale."

It follows then, that the primary literature was mostly used in order to chronologically trace the evolution of the use of the concept of "good governance" and its relative position towards children's rights in Cambodia, while the secondary literature was both critically examined itself and used in order to construct a specific critical perspective on "development" and human rights' "universality".<sup>26</sup>

Finally, all the review and analysis of the primary and secondary literature used in this research is necessarily shaped and influenced by my personal experience and engagement "in the field" in Cambodia where I have conducted a couple of dozens of interviews with many public and private "stakeholders" for a UNICEF CSR-mapping exercise. Although the contents of this mapping will not be directly exploited for the purposes of the present research, the experience and knowledge gained through this exercise have enlightened my mindset and my view on the Cambodian reality, and helped direct my literature research.

With regard to research tools and sources of information, the primary literature was collected from official websites of RGC bodies (for Cambodian national policy and legal documents), UN bodies (for relevant UN resolutions or international conventions) and international financial institutions (for relevant public communications of the IMF or the World Bank). The secondary literature was collected either in an electronic format from public specialized internet search tools (most notably, Google Scholar<sup>27</sup>) or by using the Rero search engine (which enables the user to search through an online catalogue of a vast library network of Western Switzerland)<sup>28</sup> in order to obtain the material version of books or articles (most notably from the IHEID library of the Geneva Graduate Institute). Specialized reports used throughout this paper were electronically consulted mainly on the websites of the organizations that published them. Video conferences and audio recordings of

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<sup>26</sup> Rather than negating the existence of those two concepts altogether, they are instead viewed through a different light, so to speak, that is capable of illuminating their inner contradictions.

<sup>27</sup> <http://scholar.google.ch/>

<sup>28</sup> <http://opac.rero.ch/>

lectures were accessed online using Youtube<sup>29</sup> or audio podcasts such as Back Door Broadcasting Company<sup>30</sup>, respectively.

## 1.5 Theoretical framework and general structure of the paper

As previously discussed, in order to explore the implementation of children's rights in Cambodia's *good enough governance* context through the two working hypotheses' perspective, this paper will construct a specific critical stance towards "development" in general and *good enough governance* in particular; or, towards children's rights in general and education and juvenile justice issues in particular. And for that it will use the work of several influential authors from different disciplines or inter-disciplines. In this way, all the used work, observations, findings, theory, literature, provide the indispensable backbone of this research paper.

For example, in Chapter 2, we will first present a brief history of the contemporary concept of "development" by analyzing Andrew Sumner & Michael Tribe's overview. We will then examine the concept of "development" through the critical lenses of Gilbert Rist, and counterbalance his views on post-development theory with the views of another critical thinker of "culture" and "development" – Immanuel Wallerstein. We will also consider some aspects of the "development as freedom" perspective formulated by Amartya Kumar Sen and point out its limitations through the critiques of Denis O'Hearn and Thomas L. Myhrvold-Hanssen. At the end of the chapter, several concepts of Bourdieu's sociology will be used in order to propose this research paper's working definition of "development".

In Chapter 3, dedicated to the examination of children's rights, the Article 4 of the CRC, and the meanings of education and juvenile justice, we will first present Andressa Gadda's Foucauldian<sup>31</sup> and Jennifer C. Davidson's NEG-focused<sup>32</sup> critical analysis of the CRC and address some of the limitations of their conclusions using some of Bourdieu's concepts and observations. Then after a succinct overview of the

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<sup>29</sup> <http://www.youtube.com/>

<sup>30</sup> <http://backdoorbroadcasting.net/>

<sup>31</sup> Inspired by and using the discourse analysis developed by Michel Foucault (1926-1984).

<sup>32</sup> i.e. focused on the neoliberal economic globalization process and its effects on the rights-based approach to children and childhood.

elaboration and meaning of Article 4 of the CRC, mainly using Mervat Rishmawi's commentary, we shall explore the critical perspectives on education and juvenile justice, by Jens Qvortrup, Pierre Bourdieu and Janet E. Ainsworth.

Chapter 4 shall then focus on the Cambodian context, using the works of Ben Kiernan, Simon Springe, Sophal Ear and Peter Utting, and analyzing the good enough governance patterns in the country on the one hand, and the UN Committee on the Rights of the Child (or the Committee) recommendations, on the other.

Chapter 5 and the Conclusion will use all the aforementioned sources and will introduce findings from relevant researches in the fields of education and juvenile justice.

## Chapter 2 ♦ Development & Governance

### 2.1 A critical look at development

If we are to aptly articulate the specific critical look at "development" that this research paper aims to adopt, we must first present a general overview of the diverse attempts made to define this concept, i.e. the different conceptualizations of "development".

As Pieterse (2010) points out, the concept behind the term "development" was elaborated before the word itself was associated with it; so much so that, in hindsight, classical political economists such as Ricardo or Marx could be regarded as "development thinkers", while the immediate predecessor of modern "development economics" is colonial economics.<sup>33</sup> According to this expert in global studies, the present day meaning of the word "dates from the postwar era of modern development thinking" during which several trends superseded each other: economic growth through industrialization in the 1940's, economic, political and social modernization in the 1950's, auto-centric accumulation as outlined by the dependency theory in the 1960's, and human flourishing as the goal of alternative development in the 1970's. At this point, the mild opposition between a recessive human development through enlargement of people's choices or capacitation and a dominant neoliberal "development" model refocusing on economic growth through structural reforms, liberalizations, deregulations and privatizations in the 1980, gave birth to the "post-development" school in the 1990's which interpreted "development" as a concept that is necessarily authoritarian in its means, futile in its goals and destructive in its results, and the "Millennium Development Goals" (MDGs) in the 2000's centering on structural reforms.<sup>34</sup> Interestingly, Pieterse further classifies

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<sup>33</sup> As Pieterse expounds:

"In [its] later phase, colonialism took on the form of trusteeship: the management of colonial economies not merely with a view to their exploitation for metropolitan benefit but allegedly also with a view to the interest of the native population. Development, if the term was used at all, in effect referred mainly to colonial resource management, first to make the colonies cost-effective and later to build economic resources with a view to national independence. Industrialization was not part of colonial economics because the comparative advantage of the colonies was held to be the export of raw materials for the industries in the metropolitan countries."

<sup>34</sup> In a way, the MDGs represent a resigned managerial standardization of the unresolved quasi-struggle between neoliberalism and "post-development" setting unattainable goals which at the same time display neoliberal optimism and post-modern self-trivialization. Wisor (2014, September 30), for example, defines the MDGs' flaws as due to: (1) non-existent data for many of the goals; (2) suspect indicators (such as the World Bank's International Poverty Line of USD \$1.25 2005 purchasing power



the neoliberal and "post-development" thoughts as being "anti-development" in that the former admits no "special cases" for "developing countries", while the latter undermines the usefulness of the concept as a whole.

Reyes (2001), for instance, also delineates the contemporary "development" conceptualizations in the aftermath of the Second World War.<sup>35</sup> Furthermore, he condenses the postwar approaches to "development" into four distinct theories: (1) the modernization theory that views "development" as an irreversible, unstoppable, phased, homogenizing, europeanizing or americanizing process that transforms traditional into modern societies and, if not initially, is ultimately beneficial for the concerned population; (2) the dependency theory<sup>36</sup> that holds that "in contrast to the development of the core nations which is self-contained, the development of nations in the Third World necessitates subordination to the core" and proposes an alternative path combining neo-Marxist and Keynesian economic tendencies that emphasize the role of the state and its national priorities; (3) the theory of world systems<sup>37</sup> which abandons the nation-state level of analysis, views the capitalist system as profoundly transformed through the emergence of transnational corporations and international financial institutions, and permits "the possibility for upward and downward mobility in the world economy"; (4) the theory of globalization which argues that "the main modern elements for development interpretation are the cultural links among nations" and that with the progress and standardization in communication technologies, "more and more social sectors will be able to connect themselves with other groups around the world" thus also involving (and ultimately globally standardizing) "the dominant and non-dominant

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parity or PPP); (3) selection of targets regardless of a country's starting point, resources available, or capacity for change, thus making it hardest for the worst off countries to be successful; (4) lack of clarity and transparency in the goal selection process; (5) frequent revisions of indicators that subsequently drastically alter the degree to which it appears that global progress is being made; (6) no discussion on the mechanisms by which these goals are to be achieved or how states and international organizations would be held to account for their failure to deliver on established promises. He also observes that these flaws are "perhaps understandable given the haste with which the goals were created", whereas "[t]he folks putting together the successor to the MDGs, the Sustainable Development Goals, have no such excuse".

<sup>35</sup> He uses Alvin So's three main factors that brought about the modernization theory after the war (So, 1991): 1) the rise of the USA and the weakening of Western European nations; 2) the spread of a united world communist movement; 3) the disintegration of the European colonial empires that gave birth to newly formed states in search of a development model that would benefit them economically and promote their independence.

<sup>36</sup> One of its proponents is the Marxian economist Samir Amin, quoted in section 3 of chapter 1.

<sup>37</sup> One of its proponents is Immanuel Wallerstein, mentioned further below.

groups from each nation". As with the modernization theory, globalization is seen as unidirectional and conforming towards the Western societal models.

These two classifications already render palpable the main patterns in postwar "development" thinking. In order to clearly map out these different conceptualizations, an exceptionally plastic and pedagogic model proposing three major currents that have shaped much of the "development" initiatives throughout the last 7 decades, outlined by Sumner & Tribe (2008), will be presented and critically analyzed.<sup>38</sup>

Namely, after establishing the basis for their framework upon the "general agreement on the view that 'development' encompasses continuous 'change' in a variety of aspects of human society", the authors proceed to define three relatively distinct conceptualizations that can also be said to roughly correspond to three distinct, subsequent "development" eras:

1. "Development" as a long-term process of structural societal transformation;
2. "Development" as a short- to medium-term outcome of desirable targets; and
3. "Development" as a dominant discourse of Western modernity.

The first conceptualization of "development" defines it as a process of structural transformation of society that "involves changes to socio-economic structures – including ownership, the organization of production, technology, the institutional structure and laws." Therefore, it is necessarily perceived as a process that is both long-term and historical.

At this point however, the authors go on and suggest that this conception is *also* non-prescriptive and non-normative. In fact, even though this "development" current is said by the authors to have exerted its strongest influence on Western academic and international relations discourse during the peak of the Cold War,<sup>39</sup> they still see it as

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<sup>38</sup> All the quotations in this section, if not otherwise stated are from Sumner & Tribe (2008).

<sup>39</sup> Although the word "development" itself has been in use in philosophy, mathematics, biology – to name but a few fields – since the beginnings of Western Civilization, many authors regard the *Point IV* of US President Harry Truman's Inaugural Address given on 20 January 1949 as the launch of the "development" era, wherein "development" is conceptualized as a process of structural transformation of the recently liberated "underdeveloped" societies, and having as a primary objective the creation of an attractive alternative to the development model proposed by the socialist camp. The tone of *Point IV* is set outright, in the first sentence announcing it:

"Fourth, we must embark on a bold new program for making the benefits of our scientific advances and industrial progress available for the improvement and growth of underdeveloped areas."

"arguably relatively value free", not relating to "any particular set of objectives" effectively making it "non-prescriptive" and "not necessarily related to intentional or 'good' change". Yet this line of argument is not held all the way through, and by the end of the description, Sumner & Tribe (2008) remark that this conception of "development", albeit generally non-prescriptive, was still dominated by two competing "meta-narratives": one centered on the theme of "modernization", the other one on the theme of "emancipation from underdevelopment".<sup>40</sup> Here we can see how dissociating the "development" discourse from its historically material reasons and analyzing it as "*meta-narratives*"<sup>41</sup> only obscures the specific issue that is being investigated. This is all the more evident, since the uncertainty over the (non-)prescriptive nature of "development" in the 1950s and 1960s can perhaps be best resolved by the simple observation that the "developed world" entertained a somewhat ambiguous relationship with the "developing world", for purely geopolitical reasons. As Georges Corm (1993) explains:

"[L]es systèmes socialistes progressivement mis en place, tant qu'ils gardaient leurs distances vis-à-vis de la puissance soviétique, étaient vus avec une certaine bienveillance par les pays développés. Certes, les nationalisations d'intérêts occidentaux faisaient grincer des dents, en particulier l'annulation des concessions minières ou pétrolières ; des crises politiques graves en ont résulté, dont la plus célèbre restera la nationalisation du canal de Suez par l'Egypte. Mais ces pays à orientation socialiste payaient de substantielles indemnités, puis devenaient d'excellents clients des grandes industries et des bureaux d'études des pays développés."

Therefore the prescriptive, normative nature of "development" in the "developed world" was always latently present, and when the geopolitical situation changed, in an exemplary controversial dialectic style, the whole debate between differing perspectives on structural change and "development" was suddenly proclaimed

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In addition, as Rist (2013) observes, *Point IV* introduces the concept of "underdevelopment" thus repositioning the industrialized world and the former colonies in a new non-oppositional (or optionally oppositional) nexus which implicitly *directed, enticed or predisposed* the "underdeveloped areas" towards the "developed world".

<sup>40</sup> Pieterse (2010) sees in this period a "rivalry between capitalism and communism, the two competing development strategies [being] western development economics and central planning." Here, the word "rivalry" clearly announces an ideological background to the "development" models of the time.

<sup>41</sup> There is nothing "meta" about open, ideologically framed rhetoric. The fact that their practical implementation differed was the result of a very material, very real, and historically informed struggle for world dominance.

irrelevant due to “unsatisfactory explanatory power” (Sumner & Tribe, 2008). In one fell swoop, a whole segment of the definitional debate on “development”, due to the dubiously concluded insufficient explanatory power based on only two obstinately opposed “development” perspectives – *both* products of a very specific, confrontational moment in history –, apparently became not worth investigating!<sup>42</sup> Indeed, starting from the 1980s, the “development” concept – still as controversial as ever – turned a new, more instrumental page in its history, at the same time shifting away from regarding “development” as “coterminous with structural change” yet strangely enough seeming to promote “structural adjustment”, *eagerly*.

We thus continue to the second great “development” era, characterized by its managerial approach, claiming to be performance-oriented, instrumental, evaluative and technocratic, yet clearly promoting one of the two “development currents” described above—namely, the perspective focusing on modernization vs. tradition with a strong neoliberal tendency<sup>43</sup>, albeit couched in a different, tendentially ahistorical and depoliticized language. This time, Sumner & Tribe (2008) appositely discern its “meta-narrative” and suspect this conception of “development” as one “based on value judgements,” and having “short- to medium-term time horizons” best described by the Millennium Development Goals (or MDGs) or the Poverty Reduction Strategy Papers (or PRSPs). Here they are able to do so precisely because this “development” current tries to express itself in post-modernist terms. Inasmuch as the very normative, narrow-minded and highly prescriptive character of these “development” efforts is *hidden* behind a depoliticized, technocratic and ahistorical official discourse, we can this time indubitably talk about “meta-narratives”. And once again, this observation releases

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<sup>42</sup> In one of his philosophical essays, Arthur Schopenhauer develops the term *Controversial or Eristical Dialectic* as “the art of disputing, and of disputing in such a way as to hold one’s own, whether one is in the right or the wrong—*per fas et nefas*. A man may be objectively in the right, and nevertheless in the eyes of bystanders, and sometimes in his own, he may come off worst.” He then produces a catalogue of 38 disputation “stratagems” that can be employed in order to win a debate. I contend that the change in “development” thinking in the 1980s was partly brought on by using an argumentative style closely resembling a combination of several of the abovementioned stratagems in a clearly controversial dialectic manner - most notably stratagems XI, XIV, XV, XVIII and XX, all of which present different methods of making the opponent *and the audience* implicitly accept a conclusion as proven, regardless of the veracity or the even relevance of its premisses.

<sup>43</sup> Neoliberal tendency in “development” can be taken to mean a tendency to implement radical market-oriented “structural adjustments” set to reduce the importance of the state and increase that of private actors based on the neoclassical economic belief that society is built and regulated by the *invisible hand of the market*. In regard to “good governance”, Cynthia Hewitt de Alcántara (1998) describes this “development” tendency using a somewhat more elaborate phrasing: “the dead end of economic thinking (while still managing to discuss social and political issues in relatively technical terms).”

all its investigative power *only* when we realize the ultimate rootedness of this “meta-narrative” in the historical moment defined by the final stages of the Cold War. This second-era “development” *langue de bois* illustrates perfectly that the linguistics of power, or the power discourse if one prefers, is not an ethereal all-permeating idea, but a *legitimization or justification tool*, a kind of a “hegemonic strategy” (Roos, 2011, December 1) in the hands of the – in the last analysis, *historically and materially* – dominant social actors.<sup>44</sup> This conception of “development” was therefore most prominent in the 1980s and 1990s, and is still very much dominant today, especially within the “development” practitioners’ community, as can be observed from Bill Gates’ special contribution to the 2014 edition of the United Nations Development Program (UNDP)’s Human Development Report:

“With the MDGs set to expire in 2015, the development community is starting to consider the next set of global goals and how to build on the current progress. The Secretary-General of the United Nations convened a High Level Panel on the subject, and one of the priorities it highlighted is a ‘data revolution’. According to the panel, to accelerate the pace of improvements, development organizations and developing-country governments need access to more and better data. Few people believe in the power of data as much as I do. In fact, I wrote the Bill & Melinda Gates Foundation’s annual letter in 2012 about the importance of measurement. In my experience, the management slogan “What gets measured gets done” holds true. The mere act of tracking key indicators makes it much more likely that changes in those indicators will be positive.”

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<sup>44</sup> It is perhaps Pierre Bourdieu that best describes this process when he recognizes that all the different forms of capital, are in the last analysis, *specific conversions of economic capital*, and thus realizes the *need for complementarity between semiologism and economics*. Or as he points out in Bourdieu (1986b):

“So it has to be posited simultaneously that economic capital is at the root of all the other types of capital and that these transformed, disguised forms of economic capital, never entirely reducible to that definition, produce their most specific effects only to the extent that they conceal (not least from their possessors) the fact that economic capital is at their root, in other words – but only in the last analysis – at the root of their effects. The real logic of the functioning of capital, the conversions from one type to another, and the law of conservation which governs them cannot be understood unless two opposing but equally partial views are superseded: on the one hand, economism, which, on the grounds that every type of capital is reducible in the last analysis to economic capital, ignores what makes the specific efficacy of the other types of capital, and on the other hand, semiologism (nowadays represented by structuralism, symbolic interactionism, or ethnomethodology), which reduces social exchanges to phenomena of communication and ignores the brutal fact of universal reducibility to economics.”

Finally, it is perhaps one particular trait – a kind of inherent fragility that Sumner & Tribe (2008) describe as propensity towards nihilism and “celebration of severe deprivation” viewed as an emancipatory process – that makes the third, post-modernist conception of “development”, although very interesting and important, still ultimately unable to impose itself within the international community or the “Third World” and produce a meaningful change to the general trend in which “development” is defined and used throughout the world.

Taking a singularly – and I in fact contend, *unintentionally* – post-modernist stance in defining the third and latest conceptualization of “development” as a dominant discourse of Western modernity, the authors see this approach as so “radically different [...] that direct comparison with the other two outlined in this chapter is difficult”, and so they are satisfied by defining it simply as “not so much a conceptualization of development as a frontal onslaught onto the ‘development industry’ (including researchers, practitioners and aid institutions).” A frontal attack that *persistently seems to miss its target and unintentionally reinvigorates the very industry it purportedly tries to dismantle* – I might add. As Gare (2001) argues “the corresponding rise of post-modernism and the triumph of neo-liberalism are not only not accidental, the triumph of neo-liberalism has been facilitated by post-modernism.”<sup>45</sup> Once again, analyzing the imposition of Western ethnocentricity upon the “Third world”, denouncing the cultural imperialism distilled through the notion of “development”, or for example through Said’s concept of “Orientalism” (Said, 1995)

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<sup>45</sup> In his article, Gare (2001) explains how post-modernism – loosely defined elsewhere as a rejection of the core principles of modernity – “has been primarily directed not against mainstream modernism, the modernism of Hobbes, Smith, Darwin and social Darwinism, but against the radical modernist quest for justice and emancipation with its roots in German thought.” By comparing its advent with the decadent period of the Roman Empire, the author draws two lessons from post-modernist thought: (1) “a social order which does not involve all people as active participants in policy formation and implementation, that is, a social order which is not genuinely democratic, will tend to stagnate, breed decadence and lose all that had been gained” (hence a revival of social democracy can only come through a struggle for direct democracy); (2) “the rejection of all institutional and traditional constraints should not be confused with the struggle for freedom” (hence the need for transcendence of egocentricism and the creation of rational, democratic, participatory institutions). In this philosophical sense, the perspective of the present research paper comes, up to a certain point, in the general vicinity of Gare’s description of the *reconstructive post-modern theorists*:

“Reconstructive post-modern theorists by contrast consist of a group of scientists, philosophers and theologians associated with the tradition of process philosophy (for example, David Ray Griffin) and a group of neo-Marxists and radical feminists (for example, Steven Best, Douglas Kellner and Donna Haraway) who have augmented their radical modernist critiques of society with ideas taken from the ‘poststructuralists’. They tend to see the differentiation of post-modern culture as a stage on the way from modernity to a radically new culture and, particularly in the case of process philosophers, are striving to create this new culture. As such they can be construed as proponents of an even more radical form of modernism. This differentiates them from and sets them at odds with the deconstructive post-modernists. Here my focus is on postmodern culture and the way deconstructive post-modern theory has supported it.”

whilst defining all social realities as “social constructs that do not exist in an objective sense outside of the discourse (a body of ideas, concepts and theory)” (Sumner & Tribe, 2008) basically invariably results in simple acts of self-abnegation, manifest inability to act and understand, and therefore change any social situation that is thus being criticized.

## **2.2 Development as freedom, set of beliefs or habitus?**

In this critical light, two very interesting and relatively recent conceptions of development will be first briefly presented, then critically examined, and finally combined within the framework of Pierre Bourdieu's concept of *habitus* in order to define the concept of “development” for the purposes of this paper.

First, let us concentrate on “development as freedom”, the eponymous conception of Amartya Kumar Sen's book, written in 1999. Exactly at a moment in time when the second-era technocratic “development” both experienced its peak – that only highlighted its contradictions – and produced its loudest academic and popular contestations, the international community, in search for a new, less contentious definition of “development” received Sen's “development as freedom” approach with enthusiasm and hailed it as a felicitous way out of the “development” impasse of the 1990s. This concept addressed some of the issues raised by the critics of development while at the same time managing to appeal to and thus partially redeem the principles of the current dominant economic/societal/world order.

If we are to summarize Sen's “development” approach we could say that its principal proposition is that the only real goal of “development” should be the expansion of freedom, as the “only acceptable measure of human progress,” as opposed to the narrower indicators of “development” such as Gross Domestic Product (GDP), level of industrialization or social modernization. Freedom, according to this approach, should be viewed “both as the primary end and as the principal means of development”. Sen then proposes five “crucial instrumental freedoms,” namely: economic opportunities, political freedoms, social facilities, transparency guarantees, and protective security. Thus “development consists in the removal of various types of unfreedoms that leave people with little choice and little opportunity

of exercising their reasoned agency" and naturally highlights "the need for an integrated analysis of economic, social and political activities, involving a variety of institutions and many interactive agencies." Another very important detail of this approach is that Sen's concept of freedom is mainly individualist in that it depends on the "capability set" of individuals that can be used by them in order to enjoy "real freedoms", i.e. lead the lives they want, or "have reason" to live, while taking into consideration the available resources, the individual differences in the capacity to make use of those resources, the individual's physical and social environment, the individual's happiness, and so on. Therefore, the definition of such "unfreedoms" as poverty, hunger or unemployment is more individualized and is based partly on social forces yet centrally on the person's agency. This leads Sen to declare that "[i]t is important to give simultaneous recognition to the centrality of individual freedom and to the force of social influences on the extent and reach of individual freedom. To counter the problems that we face, we have to see individual freedom as a social commitment." (Sen, 1999)

Therefore, from the critical perspective expounded in the previous section, "development as freedom" introduces a moderate increase in the scope of its conceptualization, including several sociological, psychological and health-related considerations, *for the price of their economization and individualization (or microeconomization)*. The "development" notion is further instrumentalized, while its discourse re-moralizes the "development" debate (i.e. it is a bit hard to argue against such a lofty goal as *freedom*).

Two critics of Sen's approach best summarize its shortcomings. O'Hearn (2009) argues that "development as freedom" is methodologically individualistic, and too reliant on microeconomics to the degree of "adding problems of access to non-market-related entitlements." Consequently, according to the previous section's critical perspective, Sen's concept, in the last analysis, is compatible with the "structural adjustment" trend of liberalization, deregulation and transferring power from the state to private actors as a way of "promoting democracy". In addition to this, its capabilities perspective makes this concept appealing to the post-modernist critics, who tend to view many of the world problems which "development" purportedly tackles, as socially constructed (hence necessarily intricate and relative), contained within narratives and therefore freed through contextualization and



agency. Furthermore, O'Hearn (2009) declares Sen's concept of "development" as "profoundly neutral with respect both to underlying social relations and the historical specificity of unequal entitlements" in that it employs a Eurocentric view on equality as "equal insecurity and equal subordination to the market." This point aptly stresses the fact that keeping a technical or neutral stance on certain ideologically-laden social practices legitimized by certain dominant "development" discourses does not mean that a "development" concept is not normative. In Sen's case this is accentuated by the conspicuous absence of a unified theory of global capitalism, unequal trade, neoliberal trends in global divisions of labor, global hegemony or the role of International Financial Institutions (IFIs). Finally, O'Hearn (2009) concludes that:

"It is not surprising that Amartya Sen's work has received such universal acclaim, even by mainstream economists. Clearly his vision is a humane one. Yet because he remains on the safe ground of Western individualism and avoids critical analysis of major western states and institutions, his work is hardly threatening. It provides plenty of wiggle room for states and institutions that want to show 'improvement' in freedom, equality, life expectancy, education and capacity, and so on, without really questioning or much less changing their status quo. There is a whole other part of the world that is not touched by Sen's analysis of development and it is now going through one of its deepest crises."

The very last remark, as we shall see, is very important in the case of Cambodia.

The second critic, Myhrvold-Hanssen (2003) addresses Sen's position on famine and analyses his proposition that multi-party democracy and the free press represent sufficient conditions for the prevention of famine (with India's successful prevention of famine, after its independence, as proof for this). By investigating the Bihar Famine of 1966-67, different episodes of famines in Sudan, Nigeria and China, as well as the State of Kerala's leftist government's education and land reforms, he concludes that pluralist democracies are not the only ones that have incentives to establish a free press given that its goal is to create an atmosphere where "the people may feel they are less oppressed, since they are allowed to express critical views" and more importantly that – and here the author uses Sen's vocabulary – "the capacity to use a press, whether it is free or restricted, is very much limited to the various functionings a person holds" amongst which the most important seems to be literacy. Finally, reminding us that "pluralism is scarce these days, especially when it comes to

covering different class interests", Myhrvold-Hanssen concludes by pointing out that even though a free press is a laudable goal in itself, investigations into economic relations and analyses of relative prices (two measures whose eventual readership is far too small to present a marketable enterprise for a free press especially in those pluralist democracies which are at high risk for a famine) seem to present a more successful measure in famine-prevention "than the superficial view of the news media". Finally, if non-instrumental social measures with a hunger-prevention effect are successfully implemented (land redistribution, education, public health services, etc.), this seems to be sufficient to avert famines.

This critique is important in terms of "development" because it stresses the fact that individual freedom (civil or political), whether understood as a social commitment or not, in itself, is often not enough to ensure the basic needs (food, literacy, quality information, etc.) in the context of poor or discriminated segments of society.<sup>46</sup> And this in fact, is just another way of saying that the market economy, whether expanded on other non-market-related social relations or not<sup>47</sup>, is not a sufficient condition in order to achieve equitable social change.

In a similar fashion, and during the same time, the United Nations Development Program (or UNDP) developed the concept of "human development index" which, since the beginning of the 1990s has been used to report yearly measures of "development" for all the world's nations through a mixed list of economic, education, health, and psychological indicators. Even though it is a laudable attempt to enlarge and "humanize" the concept of "development", it is still ahistorical and prescriptive in that it treats most of its non-economic concepts from a

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<sup>46</sup> Or in the words of O'Hearn (2009):

"Increasingly, observers of global capitalism and privatization conclude that we now require concepts of development that recognize and emphasize the collective rights of communities, women, and the poor to find alternative routes to 'development as freedom'. In many places today, particularly in Latin America, there is a struggle not so much between Washington and the global South, but between emerging movements and progressive governments of different shades about whether and to what degree a livable world is really possible under the old rules of global liberalization."

<sup>47</sup> Sen (1999) exhibits this economicistic stance especially when claiming that:

"The freedom to exchange words, or goods, or gifts does not need defensive justification in terms of their favorable but distant effects; they are part of the way human beings in society live and interact with each other (unless stopped by regulation or fiat). The contribution of the market mechanism to economic growth is, of course, important, but this comes only after the direct significance of the freedom to interchange words, goods, gifts-has been acknowledged."

This explains the international community's warm welcome of Sen's approach to "development". As Bowman (2010) explains: "Sen has been influential, in part, because he engages with and extends, rather than seeks to challenge, the dominant economic discourse."

very specific psychological standpoint<sup>48</sup>, and even presents paradoxical aspects since, as Rist (2013) asks: “Est-ce à dire que, jusqu’ici le « développement » avait été « inhumain » ?”

As some of Gilbert Rist's views have already been scattered in the previous pages, here we will present and examine more closely his tracing back, or historical analysis of “development” thinking throughout Western history, his critical definition of “development” and the subsequent conclusions he makes from his findings.

Right from the outset of his seminal work “Le développement : Histoire d'une croyance occidentale”, first published in 1996, with its last 4<sup>th</sup> edition published in 2013, Rist conducts a brief overview of the 25 centuries of Western philosophy in order to investigate the successive interpretations of the growth-development conceptual nexus (la notion de « croissance-développement ») with a view to identifying the general trends in the ways this notion has been used and thought of. He makes five points:

1. There is continuity insofar as “development” is considered as natural and necessary, natural laws are used as applicable to history and to social institutions, while myth and science end up reinforcing each other's expectations in the form of a “croyance partagée” that mixes facts with beliefs. The major breach in continuity happens when the notion of decline (and therefore of cyclical development) is discarded and replaced by a linear reading of history, most notably with the clash of modernity vs. tradition;
2. “Development” in Western society has acquired prophetic characteristics in that it considers the values of its society that are rapidly expanding throughout all the cultures of the world as the only way to improve the conditions of existence. As Rist explains, “Paradoxalement, le « développement » s'universalise mais il n'est pas transculturel”;
3. The objective of “development” is based on the assumption that economic growth is necessarily infinite and is therefore unattainable because for one, the physical and social environment cannot sustain unlimited levels of consumption. This leads to a tendency to *make as if* this objective is within reach through the exhibition of economic “miracles” and technological “marvels”;

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<sup>48</sup> A psychological perspective that is invariably compatible with the dominant economic paradigm.

4. The simultaneous evolutionist vision of history and asymptotic representation of growth, both held as principles of "development", make for an exemplary *contradictio in adjecto*. Namely, if every country naturally undergoes the same transformations measured in linear progress over time, and if economic growth is both unlimited and exponential, then the gap between the most "developed" and least "developed" countries can only grow, which is in fact what is happening and what is observed;<sup>49</sup>
5. The implicit or underlying presuppositions of growth (i.e. the motor of "development") are finally more important than growth itself, and it is actually through a shared *tacit* belief in those presuppositions that the notion of "development" is reproduced. In other words, the reasons why the "Third World" is constantly "underdeveloped" despite increased efforts, is paradoxically enough, because the efforts need to be increased. Thus, the failures of "development" only nourish the "developed" world's belief in it.<sup>50</sup>

This leads Rist to define "development" in a rather critical light:

*"Le « développement » est constitué d'un ensemble de pratiques parfois contradictoires en apparence, qui pour assurer la reproduction sociale, obligent à transformer et à détruire, de façon généralisée, le milieu naturel et les rapports sociaux en vue d'une production croissante de marchandises (biens et services) destinées, à travers l'échange, à la demande solvable."*

Hence, Rist finally opts for a general rethinking of "development", the construction of a "post-development" era and shows a preference for a "degrowth" (décroissance) or "post-growth" framework for finding alternatives to consumerism and "development".

When analyzing Rist's positions on "development" from the critical perspective adopted by this paper, it must be noted that Rist's approach presents an interesting

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<sup>49</sup> We thus get a more critical insight into the motivations behind increased interest of big corporate "stakeholders" in "development" instrumentalization, such as Bill Gates' special contribution to the UNDP's last Human Development Report that stresses the importance of new systems of measurements.

<sup>50</sup> In this respect, the effort for "sustainable development" for example, is defined by Rist (2006) as an oxymoron and as an excuse "to rescue 'the true (meaning of ) development'" and can be resumed as follows:

"Since 'development' is nothing but an increase in production with its corresponding increase in destruction (of matter and energy), its 'sustainability' is a purely rhetorical one. More often than not, 'sustainable development' can be summarised by the formula: 'Pollute less in order to pollute longer'."

balance of historical examination, deconstruction, and an anthropological analysis of “development” as a form of an intricate set of beliefs, a kind of a myth-science self-reproducing complex. While clearly post-modern in design, Rist frequently informs his analysis of “development” with links to the immediate reality of social relations. As Boscardin (2011) notes, Rist sets a definitional framework in which “development” is both “philosophical concept and historic reality”. Rather than directly relativizing the material, objective basis for world hegemony, iniquity in the global division of labor or the implicit inequalities that make free trade one of the most effective weapons for the maintenance of the global status quo, he sees them as an inevitable product of modernity and tries to show that, as once the notion of “development” was thought of as cyclical, so now it is the *belief* in linear growth-style “development” that has short-circuited and created a destructive loop. The rectilinear highway towards “development”, best represented by the neoclassical economic theory, is both a material choice with philosophical consequences and a philosophical choice with material consequences. Only, its religious nature masks the possibility to make choices. And all historically radical views and social actions aimed at opposing this neoclassical economic *religion* could not escape, or in some cases gladly accepted the role that this set of beliefs granted them. Namely, that of unfortunate exceptions, visions of doom, heart-rending delusions of martyrdom, i.e. the unsolvable problems which only reinforce the perceived *necessity* for the next great leap of faith. Therefore, Rist argues, much of modernity's principles should be abandoned altogether in a search for a more equitable society that will necessarily be *simpler*.

While extremely important for understanding the historic and philosophical rootedness of “development” and perceiving it as a part of the *legitimizing* mechanism of the prevalent world order<sup>51</sup> Rist inevitably falls into the “post-modernist trap” of suggesting a complete abandonment of all modernist debates as the only possible solution to the problems created by “development” and proposing a romantic and highly unrealistic scenario as an alternative. This implicitly pessimistic

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<sup>51</sup> One need only compare the chilling resemblance between the *economic* (the colonizing and colonized countries will benefit materially), *philanthropic* (the colonizing country, as superior, has a duty to enlighten, civilize, modernize the rest of the world) and *political* (if the colonizing country fails to act, another less noble country with less noble motivations will take its place and prestige) principles on which the XIX century project of colonization was built (Rist, 2013) with US President Barack Obama's remarks during the West Point Military Academy's Commencement Ceremony on 28 May 2014 in which he describes his country as *indispensable* to the rest of the world, *exceptional* for the world's progress and therefore *must lead* the rest of the world because “if we don't no one else will.” (The White House, 2014, May 28)

perspective can perhaps be best described using Rist's own words. Indeed, just as he suggests in Rist (2002) that the dominant "development" discourse is constructed on the model of heroic fables, where right from the start the audience knows that the challenge will be overcome and that "development" will prevail, so too Rist's post-development degrowth solution's fate is predictable. Or in his words, just as

"[I]a lecture d'un rapport introduit ainsi dans l'univers à la fois enchanté et familier des récits fantastiques, émaillés de combats et de luttes, d'obstacles imprévus, de génies malveillants, mais dont l'issue ne fait aucun doute puisque l'on sait d'avance que le bien triomphera du mal."

so too the reading of Rist's solution to the persistent "development" predicament, introduces within the familiar "development" discourse new and unfamiliar – and I would contend, tremendously laudable and important – insights that will bring new conceptual combats and battles, but whose outcome is already decided, for the *realistic* (no matter how much it is a product of a false consciousness) always prevails over the *romantic* (no matter how enlightened it really might be).

Yet another time, we see that even admitting a complex interdependence between history and discourse simply does not suffice if we are to produce a robust conceptual launching platform for radical changes in "development" thinking.

In his framework of overlapping universalities and particularities, Wallerstein (2004) mentions one distinct kind of particularity to explain the behavior of the "effete snobs" who, in their search for originality, constantly move away from "vulgarized" cultural practices in a quest to find new and rarer ones. And oftentimes they find them "in the protesting, antisystemic practices of the persistently bottom groups."

Bearing in mind that Rist's idyllic degrowth proposition which is aiming at de-commercialization of human interaction, or less goods in exchange for a more meaningful contact, cannot possibly position itself any further from effete snobs and in fact, in many ways, strives to introduce a behavioral model quite opposite to an effete snob's one – *it is precisely for this reason that it is at a heightened risk of being usurped and transformed into this type of particularity.*

Therefore, for the purposes of this report, "development" will be considered as – to use a Bourdieu term – the *habitus* of a hegemonic "conscience", or in other words a

*resilient complex of socio-economic and political practices (that constitute social life) which was generated at a specific historical moment in order to expand globally and either transform or instrumentalize all other such complexes differing from itself. By seeking economic growth through various degrees of freedom of economic enterprise and technological modernization, it transforms (to various degrees), legitimizes (completely), and helps reproduce and strengthen the modes of (cultural, political, symbolical, but in the last analysis always economic) production and the social relations from which it was generated, both between and within countries. It can only be as individualist, as pluralist or as liberating as it is systemically expedient<sup>52</sup>, and its resilience lies in the fact that it only allows to be challenged from either overly neutral (human rights-based, technical, managerial, etc.) or overly romantic (post-modernist, "post-development") positions, both of which – as Bourdieu would say – only “conceal by revealing”. This ultimately creates an illusion that all modernization is destructive and all emancipation is elusive together with an insurmountable fatigue of rethinking modernity in socially emancipatory terms, thus perpetuating a negative feedback in critical thought.<sup>53</sup> Another one of Bourdieu's concepts – that of the collective intellectual, can perhaps present a way of successfully challenging the dominant notion of “development” and that is, in part, one of the objectives of this work – to contribute in opening a new critical perspective that can be used to collectively and interdisciplinarily produce a new paradigm on the relationship between good enough governance and children's rights.*

## **2.3 A critical Look at Governance: from good to good enough**

One of the ways in which the technical, managerial conception of “development” exercised its influence on the dominant “development” vernacular is clearly visible in the introduction and re-conceptualization of the term “governance”. While the notion of governance boasts several hundred years of history in such diverse fields as

<sup>52</sup> i.e. expedient for the system from which it derives, meaning, in particular, that in different parts of the world, the beneficial aspects of this order will vary according to the economic importance and “development” status of the region.

<sup>53</sup> Starting from a neutral position, one embraces the dominant notion of “development”, posing various reservations that never radically undermine its basis, and through practice becomes increasingly convinced that it cannot be changed. Starting from a romantic position, one completely rejects modernity, challenging not only the NEG but also every emancipatory movement that has ever revolted against it, and through practice becomes increasingly skeptic about change.

private companies or universities, meaning efficient management of authority in the given field, it entered into worldwide “development” usage relatively recently: during the 1980s. And the reasons for this are obvious. As De Alcántara (1998) remarks, the possibility of using the term in many different areas while always implying a political process – a characteristic which I would call *versatility of political authority through management* – together with the term’s “lack of necessary relation to the state” – indeed its technical and managerial aspects conveying such notions as efficiency, legitimacy and consensus-building through a path of least resistance, made it an extensively applicable concept for the then recently “liberated” model of “development”. And this greatly assisted its growing corpus of advocates in openly imposing extreme neoclassical economic doctrines under the veil of technocratic language. In short, “governance” was, and still is, a powerful legitimizing tool for the practices of the management-style, second-era conception of “development”.

Apart from being managerial<sup>54</sup>, highly prescriptive<sup>55</sup>, and capable of relativizing the importance of the state<sup>56</sup>, in an unprecedented manifestation of open and universal normativity, its agenda became increasingly schematized as “good governance”. De Alcántara (1998) adds that “[w]ithin neoliberal development circles, this kind of institutional reform came eventually to be identified not only with ‘good

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<sup>54</sup> For example, Mulderrig (2011) proposes a sociosemantic analysis of the New Labour governance as featured in UK education policy discourse and concludes that:

“Despite the discursive emphasis on empowerment and enabling, [...] governance involves not so much the reduction of (governmental) power as its reinvention in a more subtle, affective, ‘soft’, but no less coercive form. In particular Facilitator actions construct a subtly hegemonic form of soft power by semantically *assuming* volition on the part of the manipulee. These are most frequently textured with the desirable new, unexplored, unknowable spaces that are to be created through the government’s proposals. These policy ‘imaginaries’ are strongly inflected with the logic of market competitiveness, which throughout the data sits in tension with a discourse of inclusion and collaboration. I propose that the hegemonic potential of Managing Actions lies partly in their capacity to elide such contradictions in policy by assuming a consensus on the desirability of the specified outcomes.”

<sup>55</sup> Rigidly promoting radical free-market economic solutions for all the ailments of “developing countries” (trade liberalization, decentralization, managerialization, containing the state to regulatory functions through privatization of its social services and promotion of civil society, etc.)

<sup>56</sup> By connecting anarchy, limited statehood and market economy Börzel & Risse (2010) assert that “governance with(out) government can work even in the absence of a strong shadow of hierarchy” in a way that might be appealing from post-modernist, managerial and neoliberal points of view, at the same time. Namely:

“If states are not capable of adopting and enforcing collectively binding decisions, actors face the danger of entirely absent governance. Such risks of anarchy provide a powerful alternative to the shadow of hierarchy in areas of limited statehood. We observe externally generated shadows of hierarchies by international organizations or other states as well as market pressures or community norms that induce non-state actors to participate in governance and the provision of common goods.”



governance', but, more ambitiously, with the promotion of democracy." It should come as no surprise then, that by the end of the 1990s the concept became highly evaluative, judgmental, *contentious*.

And it is against this backdrop and at this specific historical moment that the concept of *good enough governance* was created, its necessity being widely recognized especially after the 2008 "economic crisis"<sup>57</sup>. As Moore (2012, October 25) suggests in one specialized online article, "[i]f governance concerns do disappear from the development agenda, it will mainly be because of their roots in the Western countries that are now so conspicuously unable themselves to practice what they used to preach to others."

As previously mentioned, the concept of *good enough governance* was introduced by Merilee S. Grindle, probably for the first time in an article analyzing PRSPs' governance perspectives published in 2002 (Grindle, 2002) . The concept was subsequently adapted for academic purposes in 2004 (Grindle, 2004) and was then revisited in an effort to make its conclusions more useful to "development" agencies such as the UK Department for International Development (DFID) in 2005 (Grindle, 2005), and it was once again, thus revisited, adapted to be published for a more academic audience in 2007 (Grindle, 2007). Finally, in 2010 Grindle analyzed the concept of "good governance" as an "inflation of an idea" (Grindle, 2010). Yet even before the invention of the concept, Grindle was interested in the conceptualization of alternative models of politics (i.e. different from the ones developed by neoclassical economists), that treat it not as a negative factor, but as a complex interplay of "efforts at problem solving through bargaining and the use of political resources in the context of great uncertainty" in order to better "predict the content of change, and maintain a role for those who seek both politically and economically viable solutions" to the problems that "development" faces (Grindle, 1989) and tried to "find room to maneuver" within context, circumstance, policy characteristics, available resources and options in order to create a fresh political economy perspective on reform in "developing countries" (Grindle & Thomas, 1991). Perhaps

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<sup>57</sup> In a conference entitled "La crise de la « science » économique : conséquences écologiques et sociales" organized by the association "Le présent du futur" and the foundation "Diagonale" in Geneva (Charlotte Olivier auditorium, CHUV), Gilbert Rist suggests that the function of the word "crisis" in such phrases as "financial crisis", "energy crisis", "employment crisis", "housing crisis", etc. is to euphemize those social realities in order to render them banal, reassuring even, by linking and likening them to situations such as "adolescent crises", which, although unpleasant, are regularly overcome and make the person that goes through them *better* and *more mature*.

the following statements, made in Grindle (1997) can help us best understand how Grindle's views on "development" and "good governance" evolved:

"An almost universal focus on state minimalism – on cutting down on the size, expense, and responsibilities of public sectors – was a clear response to decades of too much state. The response to "too little state" took much longer to emerge. [...] By the end of the mid-1990s good government has been added to the development agenda precisely because of greater awareness that neither markets nor democracies could function well – or perhaps function at all – unless governments were able to design and implement appropriate public policies, administer resources equitably, transparently, and efficiently, and respond efficaciously to the social welfare and economic claims of citizens."

Finally, four years later, Grindle (2001) starts developing a "minimalist approach" to "attacking governance deficits", suggesting that the most helpful action "may not be to remind governments of what they have not taken into consideration or what they have failed to mention in their papers, but to address a much more difficult question: Can the dilemma of an extensive agenda and limited capacity to respond to it be resolved?" The following year - she coined the *good enough governance* concept.

Two main observations can be made: (1) the neoclassical minimalist approach to government has since shifted towards a minimalist approach to government *reform* (in order to achieve the same neoclassical goals, i.e. liberal *enough* democracy); (2) "getting good government" has since become "getting good *enough governance*" (i.e. there is a shift towards a more flexible definition of who the drivers of change can and should be, in line with the tendency to put more emphasis on different private and civil "stakeholders" within the dominant "development" agenda). *Good enough governance*, therefore, is simply a version of "good governance" whose toned down rhetoric (good vs. *good enough*) reflects a more realistic, heuristic, hierarchical and time-bound approach of what is nonetheless a euphemism, or a less antagonizing way of asking for "state reforms" or "social and political change" (Hardt, 2012).<sup>58</sup>

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<sup>58</sup> Hardt (2012) views the *good enough governance* agenda as a result of three "parallel processes": (1) the 1980's consensus that financial aid must be accompanied with regulatory reforms; (2) the collapse of the socialist camp; (3) the emergence of the current of new institutional economics or (NIE) whose

The main reason why this new concept emerged within “development” literature is not so that it can call into question the “good governance” principles themselves. At the beginning of all of the abovementioned articles, “good governance” is invariably portrayed as an idealistic agenda whose goal is to make institutions “fair, judicious, transparent, accountable, participatory, responsive, well-managed, and efficient” (Grindle, 2010). The author, however, recognizes that historically, the sequences of changes that brought about growth and “development” often did not pursue such a “noble” agenda. Choices between important reforms were made and prioritizations of one “development” sector over another were common. Furthermore, the complex and idiosyncratic cultural context played a decisive role in the success or failure of these “development” tradeoffs. If oftentimes the economic considerations for growth prevailed, what the *good enough governance* concept tries to reconstruct is the idea that, most of the times, in order to reach the “next stage” of economic and political progress, not all “good things” need to be pursued at once. A rather large part of those “good things” are not causes of growth or “development”, but rather their consequences. And thus, skepticism, relativism, and studies of context, history and pragmatic sequencing, as well as analyzing how a change occurs within a specific environment, are promoted instead.<sup>59</sup>

Inasmuch as a shift is proposed from universalism, essentialism, normativity and prescriptiveness towards relativism, the importance of context and history, the pursuit of “islands of excellence” and the search for “reform leaders” that could drive change and therefore a clear preference for a minimalist/heuristic approach to reforms is introduced, we can situate the *good enough governance* concept loosely within post-modern thought, as a notion inspired by, and appealing to the post-modernist critics of “development”. And as we analyze two subsequent statements made by Grindle (2013, October 23) during a panel discussion at Harvard Kennedy

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basic premise is that institutions are the key to long-term economic growth. Thus *quality* of institutions becomes at least as important as their size.

<sup>59</sup> In this regard, we find an echo in what Reyes (2001) perceived as being the difference between the classical and new studies of the modernization school. Namely,

“[I]n the classical approach, tradition is an obstacle to development; in the new approach, tradition is an additive factor of development. With regard to methodology, the classical approach applies a theoretical construction with a high-level of abstraction; the new approach applies concrete case studies given in an historical context. Regarding the direction of development, the classical perspective uses an unidirectional path which tends toward the United States and European model, the new perspective prefers a multidirectional path of development. And finally, concerning external factors and conflict, the classical demonstrate a relative neglect of external factors and conflict, in contrast to the greater attention to external factors and conflicts practiced by the new approach.”

School (HKS) that (1) “most of [her] work is about telling stories and what [one] can generate from telling stories” yet on the other hand that (2) “it’s important to have metrics for international competition; it’s important for [the “development” community] to continue these debates about what you measure, and why you measure and how you know you’re measuring something that’s important” we can clearly observe a generic version of the two main traits of the post-modernist critique on “development”: (1) the analysis is predominantly situated on the different narratives of reality, or in our case on “good governance” discourse; and (2) an inherent fragility exists (expressed in *good enough governance* through the relativism, skepticism, and the reversible nature of governance changes or reforms) that, in the last analysis, aligns its perspective with the dominant one (no country will openly aim at a *good enough* performance of its institutions).<sup>60</sup>

This is corroborated by the use of dominant economic jargon – already well “parked” within the international “development” community – to describe key *good enough governance* components, such as the difficult *tradeoffs* between reforms, the necessary assessment of the *payoff* of those reforms for poverty reduction or the need for strengthened local *ownership* of the “development” programs. Finally, the depiction of the overbearing, encumbering and ultimately counter-productive characteristics of the “good governance” agenda is presented as the *inflation* of an idea since, as Grindle (2002) puts it “while the *supply* of good governance is important, so too is *demand* for it” (emphasized by myself).

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<sup>60</sup> Much in the same way, we could observe the collapsible nature of any alternative reading within the complex of human rights today, through the gradual convergence of the Committee on Economic, Social and Cultural Rights (CESCR)’s position on globalization. Namely, during a day of general discussion on globalization, the Chairman of the CESCR unapologetically argued that “globalization was not value-neutral” and that “[i]t affected the right to work and to favourable conditions of work, as well as the rights to health and education” linking the phenomenon to neoliberal tendencies of reduction of the role of the state, and liberalization through privatization or deregulation, and concluded that “[t]he results of existing policies demonstrated their inadequacy in relation to economic and social rights” (E/C.12/1998/26 paras. Chap. V, sect. A, para. 436-461). Already in the subsequent statement of the CESCR on the subject a concession was made specifying that “none of these developments in itself is necessarily incompatible with the principles of the Covenant or with the obligations of governments thereunder” (E/C.12/1998/26 paras. Chap. VI, sect. A, para. 515). And finally, a year later, when the CESCR issued a statement at the Third Ministerial Conference of the World Trade Organization (WTO), it completely appeased its rhetoric and realigned itself with the dominant discourse by mentioning that, in the CESCR view, “WTO contributes significantly to and is part of the process of global governance reform”, and by “recogniz[ing] the wealth-generating potential of trade-liberalization”, while friendly reminding that “trade liberalization must be understood as a means, not an end” and, almost ironically, that the global governance reform “must be driven by a concern for the individual and not by purely macroeconomic considerations alone.” (E/C.12/1999/9)

Another interesting concrete example of these quasi-alternative characteristics of *good enough governance* is the conspicuous absence of examples for the complexity of governance reforms in the Bolivian context ever since an alternative model of governance, sometimes called *egalitarian governance* (Durana, 2012) has emerged on the Bolivian scene as a result of Evo Morales' rise to the presidency. Namely, Grindle has a particular focus on the governance issues among Latin American states and especially on Bolivia.<sup>61</sup> And while insightful examples concerning the difficult tradeoffs that the previous Bolivian governments (from 1985 to 2006) had to make together with an observation that "the price of widespread policy reform was to allow the old politics of patronage to continue in the public sector" appear in Grindle (2002) and Grindle (2004), the changes in the governance perspective of Bolivia since the Bolivian gas conflict and Evo Morales' presidency are not "revisited"<sup>62</sup> in the subsequent 2005, 2007 and 2010 articles. We are left to assume that the reversibility of governance reforms as evidenced through the Bolivian perspective seems to have suddenly lost its "explanatory power". Or maybe when a reformer such as Evo Morales comes to power all "room to maneuver" in order to promote "development" is suddenly exhausted?

Whatever the case may be, *good enough governance*, with the minimalist perspective it adopts, performs an excellent role in *highlighting* the contradictions of "good governance" and of "development" in general, or as Grindle (2010) points out herself:

"Development—whether economic or political—is a long term and complex process; research is far from understanding the timing and the complexity of "getting developed.""

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<sup>61</sup> For example, see: Grindle, M. S. & Domingo, P. (2003). *Proclaiming Revolution: Bolivia in Comparative Perspective*. London: Institute of Latin American Studies. As Kenneth Maxwell mentions in his short book review (Maxwell, 2004) "overall, the book's authors seem blissfully unprepared for the earthquake that shook the system just as their book was released: they conclude that Bolivia established a modicum of political order after its return to democratic rule in 1982."

<sup>62</sup> As the titles of Grindle (2005) and Grindle (2007) suggest.

## Chapter 3 ♦ Article 4 of the CRC

### 3.1 A critical look at children's rights

Any contemporary perspective on children's rights that intends to be both critical and relevant must take into consideration the UN Convention on the Rights of the Child (or CRC) that, after a lengthy process of elaboration (from 1979 to 1989), was adopted by the UN General Assembly on 20 November 1989. Since then it has been ratified by almost all the countries of the world (with the notable exception of the United States of America) and has thus ushered in a new general platform for conceptualizing childhood and children – that of the rights-based approach to children as subjects of (international) law.

In an attempt to overcome the international divide across the UN Covenant on Civil and Political Rights on the one side, and the UN Covenant on Economic, Social and Cultural Rights on the other (both adopted by the UN General Assembly on 16 December 1966 – more than a decade before Poland's initial proposition for a children's rights convention) the CRC has become one of the first international conventions to adopt a unified and further specialized approach to human rights by combining and additionally clarifying both civil (and political), and economic, social and cultural rights, as well as adding some unique considerations.<sup>63</sup>

However, in light of the previous chapter's critical perspective on "development" and its different schools of thought in recent history, one cannot but observe some corresponding features between the current trend in the field of international law (in our case, children's rights) and the technocratic "development" trend – both generated during the 1980s. Namely, as the "development" specialists tried to overcome or circumvent the modernization/progress vs. emancipation debate, at the same time the international human rights specialists themselves tried to move away from the somewhat overlapping yet generally binary debate on civil and political vs. economic, social and cultural rights. In this effort, the French jurist and

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<sup>63</sup> As Rishmawi (2006) points out:

"The uniqueness of the CRC, therefore, is that not only does it combine both sets of rights in one instrument but adds new ones. Further, many of the rights in the CRC cannot be identified simply as only civil, political, economic, social or cultural, but instead encapsulate different aspects of both sets of rights thereby reflecting their indivisibility."

UNESCO official Karel Vasak famously explicated the concept of the “third generation of rights”, “solidarity rights” or as some would later name them, the “collective-development rights” (Globalization101, 2014), in an article for the 1977 November edition of the UNESCO Courier:

“Because of the changing patterns of society in recent years, it has become imperative to formulate what the Director General of Unesco has termed “the third generation of human rights”. [...]

“Such rights include the right to development, the right to a healthy and ecologically balanced environment, the right to peace, and the right to ownership of the common heritage of mankind. Since these rights reflect a certain conception of community life, they can only be implemented by the combined efforts of everyone: individuals, states and other bodies, as well as public and private institutions.”

As we can see, the very first right on the list is “the right to development” whereas, in hindsight, one could argue that the last part of the proposition (individuals, states, private and public sectors working together) already prepared the ground for such concepts as human rights CSR and “good governance”. And this is done precisely at a moment when a geopolitical opportunity<sup>64</sup> to relativize the “struggle” between the “first” and “second” generation of rights, presented itself. Thus, instead of being “resolved”, this largely ideological debate could finally be abandoned much in the same way that the mainstream post-modernists abandoned “the systemic critique of capitalism [for] the discursive critique of civilization” (Roos, 2011) – two processes which, incidentally or not, happened at the same time and brought about similar results: depoliticized, technical and managerial international discourse with an implicit, “expert” and therefore legitimizing preference for individualism, short- to middle-term goal-setting in a managerial fashion and the market economy.<sup>65</sup> It should then come as no surprise that, when describing human rights four decades

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<sup>64</sup> See, for example Grant, T. (2010, September 12). *Russia: From Revolution to Counter-revolution*. [E-book]. Retrieved from <http://www.marxist.com/russia-book/> (2014, August, 17) (Especially Chapter 6: The Period of Stagnation), or Stagnation of the Soviet Union. *Russiapedia*. [Online encyclopedia article]. Retrieved from <http://russiapedia.rt.com/of-russian-origin/zastoy/> (2014, August 17).

<sup>65</sup> It is very important to mention here that these changes in “development” and human rights perspectives were of course preceded by an economic one: the definitive end of the international convertibility of the US dollar to gold at the beginning of the 1970's and the consequent dismantling of the Bretton Woods arrangement (for more on this, see for example Pilling (1986)), thereby ushering in the era of speculative, credit or financial capitalism.

later, questions such as “Should second [i.e. economic, social and cultural] and third generation [i.e. collective-development] rights even be considered rights, or are they something fundamentally different?” (Globalization101, 2014) increasingly shape the views on human rights.<sup>66</sup> And simply introducing “fourth” (sustainable development/environment) and “fifth” (internet or spirituality?) generations of human rights will not solve this problem – it will only, as Grindle puts it, “inflate” it.

This is clearly reflected in the CRC in that it incorporates a certain kind of managerial, performance-oriented network of rights further defined by the authoritative interpretations of the UN Committee on the Rights of the Child (or the Committee), particularly in two instances:

1. The introduction of “general/guiding principles” of the CRC (arts. 2, 3, 6 and 12)<sup>67</sup> which are conspicuous by their omission of arts. 1, 4 and 5 and their inclusion of art. 12<sup>68</sup>;
2. The specific way in which the rights enshrined in the CRC are classified by the Committee<sup>69</sup> which is further complicated by the very popular unofficial “3 P’s” (provision, protection and participation) classification of children’s rights<sup>70</sup>.

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<sup>66</sup> In the same vein, Dowell-Jones (2004) argues that “although the mantra of the ‘universal, indivisible and interdependent’ nature of all human rights has been frequently repeated, the socio-economic human rights are still not taken seriously as fundamental human rights,” and shares with us the constataion of the former chairman of the CESCR:

“We sometimes had the impression that the International Covenant on Economic, Social and Cultural Rights served merely to give the illusion that the United Nations system covered economic rights.”

<sup>67</sup> These “general”, or sometimes called “guiding principles” were introduced by the UN CRC on 30 November 1991 in the *General guidelines regarding the form and content of initial reports to be submitted by States Parties*.

<sup>68</sup> As Karl Hanson suggests, this choice is peculiar since most of the other UN Treaty bodies have either not specified any guiding principles at all, or have decided to use the opening ones (noted during a lecture that was held as part of the course “Enfants et droits humains”, MIDE, 1<sup>st</sup> semester (2012-13)).

<sup>69</sup> In its *General Comment No 5* (CRC/GC/2003/5) the Committee specifies that “There is no simple or authoritative division of human rights in general or of Convention rights into the two categories.” And in its latest *General Guidelines regarding the Form and Content of Periodic Reports to Be Submitted by States Parties* (CRC/C/58/Rev.2) the Committee groups the articles in the CRC into several “clusters”: (I) General measures of implementation (arts. 4, 42 and 44, para. 6, of the Convention); (II) Definition of the child (art. 1); (III) General principles (arts. 2, 3, 6 and 12); (IV) Civil rights and freedoms (arts. 7, 8, 13-17, 37 (a) and 39); (V) Family, environment and alternative care (arts. 5, 9-11, 18 (paras. 1 and 2), 19-21, 25, 27 (para. 4) and 39); (VI) Disability, basic health and welfare (arts. 6, 18 (para. 3), 23, 24, 26, 27 (paras. 1-3) and 33); (VII) Education, leisure and cultural activities (arts. 28, 29, 30 and 31); (VIII) Special protection measures (arts. 22, 30, 32-36, 37 (b)-(d), 38, 39 and 40). It should be noted that in the last two decades, several revisions have been made to these reporting guidelines (1991 [initial reports], 1996 [periodic reports], 2005 [Rev.1], 2010 [Rev.2]), with changes to “cluster” names as well as contents.

<sup>70</sup> Ann Quennerstedt (2010), for example, argues that the “3 P’s” model was introduced primarily as a pedagogic tool. Namely, due to the lack of theoretical foundation this model presents a problematic platform for analyzing children’s rights. Furthermore, the “3 P’s” classify children’s rights away from the



In order to further detail this paper's specific critical look at children's rights we shall outline two critical perspectives and try to build upon them.

The first one, written by Adressa Gadda (2008) presents a Foucauldian analysis of the unintended consequences, rather than the expected outcomes, of the CRC discourse. While recognizing that "CRC and the children's rights discourse try to distance themselves from old approaches to children and development" she still situates them as instruments that produce knowledge, on a global scale, firmly reinforcing and legitimizing the dominant discourse that regards children through Western notions of ideal childhood "constructed in accordance with, and as a consequence of, the development of liberal theory during the eighteenth and nineteenth centuries". Furthermore, since the UN organization itself re-organizes the world by constructing a power hierarchy in regard to and between its country members and since all UN members always have the choice of accepting or not a UN convention, this system as a whole could be viewed as a "discipline" which produces "docile subjects" using the soft, "constructive" power of control through consent and surveillance (countries that consistently reject UN documents move farther away from the "international community", are being proportionately more and more criticized, and in extreme cases, could be excommunicated, sanctioned or, in recent years, militarily attacked from the air<sup>71</sup>). The findings of, most notably, Pupavac (2001), and Stephens (1995) are presented in order to underline the CRC's lack of consideration for cultural differences, its preoccupation for deviancy that echoes the 19<sup>th</sup> century child-saving movement (this time through the discipline of "psychological functionalism" and the technique of "psycho-social rehabilitation"), its moral undertones that either westernize or marginalize children from other cultures, the paternalistic remnants in children's rights advocates that judge many populations as inherently incapable of cultural self-determination, etc. Gadda (2008) therefore concludes by arguing that:

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rest of the human rights corpus additionally complicating the status of children. Therefore, "constructing what children's rights are about from a general human rights language of civil, political and social rights will form a better base for research."

<sup>71</sup> Air strikes which are increasingly used as a substitution for ground invasions (and especially the development of stealthy military aircraft) strangely echo Foucault's guillotine description and his general observation that the new form of power that emerged in the 18<sup>th</sup> and 19<sup>th</sup> centuries increasingly promotes ways in which the "punishment" and the "executioners" could be made invisible, almost immaterial, and systemic (Foucault, 1975).

"Because of the almost unanimous acceptance of the CRC, the issue of children's rights risks a premature death, and so future analyses should look at possible new directions for children's rights discourses and for means of shifting the emphasis of the CRC from salvation to true participation."

The second one, written by Jennifer C. Davidson (2010) examines the contemporary influences on children and children's rights by analyzing the neoliberal economic globalization (or NEG) and the rights-based approach as two opposing movements along a multifaceted *Property-Welfare-Rights* continuum/spectrum. In order to do so, she uses Baxi's "logics of exclusion and inclusion" (Baxi, 2005a/2005b) as framework for the dynamic of the struggle to constitute children as "fully human". While highlighting the heightened vulnerability of children due to their evolving capacities and dependence on parents, Davidson (2010) analyzes the position of the NEG on the view of the individual and the role of the state and argues that NEG, by atomizing the wider community networks into small units<sup>72</sup> and localizing the responsibility for the "success" or "failure" of a child's upbringing almost exclusively on parents (in the same way in which it attributes the causes of poverty on the individual "agent" level), while diminishing the capacity of the state to deliver social services for the purposes of profitability, limits children's rights and the rights of their caregivers. On the other hand, she sees the rights-based approach as fundamentally anti-hegemonic and therefore opposed to NEG in that it "point[s] to [the] structurally embedded denials of human rights" and "views the state as central to the realisation of rights, without which rights would have no locus or influence." She furthermore does recognize the NEG's influence on human rights discourses<sup>73</sup> through the hegemonic and "commonsensical" portrayal of the Western view of childhood (facilitating yet another cultural "NEG-led colonialism") and through a certain usurpation of the human rights movements (creating a human rights *ideology* that justifies the NEG approach by couching it in international law language and banalizes the voices of the suffering) and argues that:

"if becoming 'fully human' is not predicated on a revision or evolution of the exclusionary criteria but rather it relies on the subject of the exclusion to be

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<sup>72</sup> i.e. nuclear families composed of "free" agents with "individual" interests: parents that want to protect and educate their children, and children that want to indulge in carefree, playful behavior, secured by their parents.

<sup>73</sup> Or in Davidson's (2010) words: "Rights discourse cannot expect to be entirely impervious to this NEG hegemonic, common sense-based legitimacy."

raised to 'equally mature' status with those doing the excluding, this poses particular problems for children, given their evolving development."

However, Davidson (2010) recognizes the rights-based approach as the best tool for children's ascendance from the status of property, through objects of law and finally towards subjects of law and mainly focuses on the need to curb the negative effects of NEG that complicate this approach, and concludes that "[s]uccessfully achieving and maintaining the recognition of children's rights necessitates an understanding of the exclusionary criteria imposed by NEG, and requires systemic changes to compensate for children's unique and disproportionate vulnerabilities."

What stands out the most when we make a comparison between these two perspectives is how Gadda (2008) overplays the importance of the symbolic violence of the CRC while neglecting the historical, social and material processes that generate this specific discourse and is therefore failing to fully appreciate the objective level of vulnerability and dependence in the wider societal context, not only of children, but of humans in general (she suggests that "true participation", without the prerequisite systemic, material changes is possible with a shift in discourse emphasis)<sup>74</sup>. And on the other hand Davidson (2010) puts an emphasis on the NEG as the root of all diversion and distortion of children's rights while neglecting the importance and relative specificity of the legitimizing power of the ideological segment of the human rights discourse (she only admits that the rights discourse is "not impervious", but the NEG influence on it is seen as foreign and therefore controllable) and is thus effectively disregarding the objective level of agency of, in the first row, large economic entities, but also of all human beings and of children, which, although in the last analysis is severely limited by economic factors, if it is not fully appreciated in its own right for its formidable reproductive, and its potentially creative force, will continue to be instrumentalized<sup>75</sup>, thus effectively reducing the

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<sup>74</sup> For example, when analyzing the post-modern assertion that childhood, much like anything else, is a social construction, Qvortrup (1999) is understandably concerned that:

"The proper understanding of it seems to be that childhood is constructed in discourse; something which is negotiated or constituted while we are talking about it. Within this discourse children are partly admitted the role of contributors. I fully agree that this view is relevant, but again - it is not enough. My own understanding of childhood as a social construction is much more straightforward and simple, namely that childhood is constructed by a number of social forces, economic interests, technological determinants, cultural phenomena, etc., inclusive of course the discourse about it."

<sup>75</sup> One prime example is the way in which the culture of childhood is being profoundly reshaped and partly brought back from (or torn between) paternalistic notions of irrational innocence to neoliberal

chances for a substantial change in the real appreciation of children's rights or children's "true participation"<sup>76</sup> in society on the level of a wish on a piece of paper.

And it is in dilemmas such as these that we can fully appreciate Bourdieu's capital contribution to this problematic: the suggestion that economism and semiologism must be incorporated fully into one field of study in order to understand and hope to actually improve any aspect of how society functions. In our case, this means that in order to be able to conceive "true participation" of children in society and the full respect of their rights, both the recognition and critical analysis of the NEG and the child rights discourse that at the same time *derives from and helps legitimize and reproduce it* are necessary and indissociable.

### 3.2 The elaboration and meaning of Article 4

Given all the previous observations concerning children's rights and the CRC, it quickly becomes evident that Article 4 (see annex 2) contains some of the most crucial components of the Convention. Its elaboration process and subsequent meaning is therefore very important for the extent to which the CRC can be

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notions of savvy economic behavior through consumerism that comes with a veneer of "emancipation" through a controlled freedom of choice in the way in which "needs" created through targeted marketing are satisfied. In the words of Jennifer Ann Hill (2011), who – it has to be said – views this phenomenon from a pronounced paternalistic vantage point:

The depiction of the child consumer has been fashioned in a way that makes marketing and advertising toward children appear as a benign, even liberating undertaking. [...] Indeed the language of choice resonates with everyday notions of freedom, and citizenship in the free world. The child consumer has been reconfigured to stand for individual autonomy rather than corporate exploitation. Corporations have thus successfully co-opted children's empowerment by equating 'choice' with the consumption of heavily sponsored products.

While some report a consumerist boom in Cambodia (Thul, 2014, September 28), perhaps a more prevalent case of instrumentalization is the one within the Cambodian education system, discussed in detail in Chapter 5.

<sup>76</sup> As Quennerstedt (2010) argues, the term "participation" is in itself problematic as a kind of a "light-weight version" of civil and political rights:

"Re-packaging human rights claims for children in a 'nicer' language with less theoretical baggage to support certain rights claims might have been regarded as a way of avoiding any provocation of those who appear hesitant to the idea of children having rights."

However,

"the term participation is vague and 'nice', and it lacks a theoretical foundation that endorses specified rights claims. In contrast, the human rights terminology accentuates that children are entitled to civil and political rights. These are high status rights types, with distinct sub-categories that have been thoroughly discussed and debated over a long period of time from philosophical, political and social theory perspectives. Approaching children's rights with human rights concepts augments the autonomy/self determination part of children's rights."

considered emancipatory, modern or simply a reproduction tool for the pre-existing social order.

As Rishmawi (2006) explains, this article is composed of three main elements:

1. The obligation of States Parties to undertake 'all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the [...] Convention';
2. The progressive nature of the implementation of economic, social, and cultural rights, for whose observance the States Parties 'shall undertake such measures to the maximum extent of their available resources';
3. The specification that, in the case of economic, social and cultural rights, where needed, the implementation measures should be undertaken "within the framework of international co-operation."

The drafting history of Article 4 of the CRC is interesting because it reveals the main concerns raised by UN member states and UN organizations with regard to the implementation measures and the distinction between different types of rights concerning resource allocation and international cooperation.

The initial Polish draft did not contain a single article comparable to the present Article 4 of the CRC. After observations and proposals by several states, the working group formulated an article (Article 5 at the time) that introduced the notion that *all* the children's rights recognized in the Convention could be implemented using "all appropriate administrative and legislative measures, in accordance with [the States'] available resources and, where needed, within the framework of international co-operation" (OHCHR, 2007) *without* any distinction between civil and political, and economic, social and cultural rights, *for the price* of introducing a resource availability clause. After the UN Secretary-General requested a technical review of the draft, it was UNICEF's comment that had the deepest impact. Two of the body's observations were especially important:

1. In order to insure that the article is inclusive of any kind of necessary reforms needed for the implementation of children's rights, UNICEF suggested to amend the text of the article to adequately reflect this position – the

formulation “all appropriate administrative, legislative, *and other* measures’ was proposed;

2. With the intention to remove the possibility for a “radical diminution of the standards contained in existing instruments [that] would run counter to all the assumptions that have hitherto governed the recognition of civil and political rights”<sup>77</sup>, UNICEF suggested the deletion of the phrase “in accordance with their available recourses” altogether, pointing out that all the articles in the draft Convention that could be treated as economic, social and cultural already include a resource availability clause.

The first observation, which was eventually adopted in the final version of Article 4, effectively reflects the growing preoccupation of the international community to introduce increasingly pervasive measures that are at the same time deemed technical. This, as we already saw, is perfectly in line with the managerial shift within international relations that happened during the 1980s. And this is further exemplified by the Article 4’s conspicuous absence from the group of “general/guiding principles” of the CRC and its classification as a “general measure of implementation” by the Committee, whereby it becomes a technical article, and the implementation of the CRC – a technicality.

The second observation sparked a debate among states and ultimately resulted in the specification that it was in fact economic, social and cultural rights that were subject to both resource availability and international cooperation. This reflects the weakened position of the “second generation” of human rights. Namely, as UNICEF had very discernibly pointed out in its abovementioned comment, in the Convention on the Elimination of All Forms of Racial Discrimination (adopted by the UN General Assembly on 4 January 1969) both sets of rights (i.e. civil and political, and economic, social and cultural) are treated as equally enforceable *without* being subject to a resource availability clause. Ten years later, the consensus on the practical equality of these two sets of rights is tremendously lowered: since the 1980s, the only way that the international community could conceive equivalent implementation measures for the “first” and “second generation” of human rights, was if it relativized and

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<sup>77</sup> UNICEF’s comment can be found in UN Doc. E/CN.4/1989/WG.1/CRP.1. This quotation also figures in OHCHR (2007, p.354) and in Rishmawi (2006, p.20).

subjected both of them to the availability of resources and international cooperation.

Finally, the “maximum extent” of the available resources at the disposal of the States Parties to the CRC which in many cases (such as Cambodia) is very limited, instead of being further extended “within the framework of international co-operation” is additionally complicated by the “development” programs of the IFIs such as the IMF and the World Bank since, as Rishmawi (2006) argues, “the Committee has failed to urge Member States of these institutions to ensure that the CRC is at the centre of their activities.”

### **3.3 A critical look at education and juvenile justice**

The right to education and the right to a specialized juvenile justice system are both currently classified by the Committee within specific clusters: “Education, leisure and cultural activities” (arts. 28, 29, 30 and 31), and “Special protection measures” (arts. 22, 30, 32-36, 37 (b)-(d), 38, 39 and 40), respectively. While both of these clusters adequately reflect the Committee’s concern to assort the rights enshrined in the CRC according to a model that divides them for technical reasons whilst promoting their interconnectedness, they still provide us with a specific CRC perspective on the types of rights the Convention is composed of. The first cluster may be considered as part of the economic, social and cultural rights wing of the CRC, and the second as part of the special rights wing, with a civil rights component. Or, seen through the widely used “3 P’s” perspective, the first cluster would fit into the toned down “provision” dimension, while the second could be regarded as part of the pronounced “protection” dimension.<sup>78</sup> Interestingly, the one article that is featured in

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<sup>78</sup> As Quennerstedt (2010) argues, “provision” in comparison with “social rights” indicates passivity and non-agency, while “protection” is hardly distinguishable within the human rights terminology. An alternative classification, specifically concerning the “education, leisure and cultural activities” cluster and further exemplifying the trend to show the interconnectedness between different sets of rights even within individual articles, would be to regard the education rights as composed of three different sub-categories: (1) right to education; (2) rights *in* education; (3) right *through* education. Verheyde (2006) defines them as follows:

“The right TO education entails the provisions regarding the practical organisation of education (Article 28(1)) and the organisation as to its content (Article 29(1)). The rights IN education are the protection rights entrenched in the CRC (including Article 28(2)) as well as the several participation rights of the child. Both should be respected in school settings. The notion ‘rights THROUGH education’ refers to the indirect implementation of the CRC and other human rights standards by means of human rights education (Article 29(1)(b)).”

both of the clusters – Article 30 on the “linguistic and cultural rights of children belonging to minority groups” – could be considered as an exemplary “third generation/solidarity” right, defined, for example by Fortin (2009) as “the right of normally vulnerable groups to protection, as a *group*, rather than as individuals.”

Two of the Committee's General Comments are especially relevant for the reconstruction of an adequate critical look at education and juvenile justice as they are enshrined in the CRC.

The first one, General Comment №1, is entitled “Article 29 (1): The Aims of Education” and as its title suggests, it offers an authoritative interpretation of said Article thus making it the central one within the “education, leisure and cultural activities” cluster of children's rights. First of all, the Committee defines the goals of education as follows:

1. holistic development of the full potential of the child (29 (1) (a));
2. development of respect for human rights (29 (1) (b));
3. enhanced sense of identity and affiliation (29 (1) (c));
4. socialization and interaction with others, respect for other cultures (29 (1) (d));
5. awareness for the environment (29 (1) (e)).

Then, the Committee specifies that in the context of the CRC education goes beyond formal schooling and beyond the quantitative approach (mainly contained in Article 28) to encompass a “broad range of life experiences and learning processes which enable children, individually and collectively, to develop their personalities, talents and abilities and to live a full and satisfying life within society” (paragraph 2). The Committee admits the possibility of conflict between the 3<sup>rd</sup> and the 4<sup>th</sup> goals of education and therefore stresses the need for a “balanced approach to education and one which succeeds in reconciling diverse values through dialogue and respect for difference” (paragraph 4). Furthermore, it locates children's rights contained in Article 29 (1) within a wider ethical framework and thus suggests that “far from being externally imposed, [they] are embedded within the values of local communities” (paragraph 3) and while the Committee admits that

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In other words, the rights *to* education roughly cover the notion of “provision” or passive “social rights”, the rights *in* education emphasize the “participation” or “light-weight civil rights” (Quennerstedt, 2010), while the rights *through* education share some points with Vasak's definition of “third generation rights”, such as “the right to peace”, etc.



the aims, values and principles contained within this article are wide ranging and general it still urges all States Parties “to formally incorporate these principles into their education policies and legislation at all levels” (paragraph 17) including “the fundamental reworking of curricula” and “the systematic revision of textbooks and other teaching materials and technologies” (paragraph 18). In order to promote and realize the aims of education the Committee advises the development of a “comprehensive national plan” that necessarily views all the issues “from a child-rights perspective” (paragraph 23). Finally, in relation to Article 4, the Committee sees the implementation of Article 29 (1) as “part of the standard response by Governments to almost all situations in which patterns of human rights violations have occurred” (paragraph 24) and it “considers that resource constraints cannot provide a justification for a State party’s failure to take any, or enough, of the measures that are required” reminding the States parties on their engagement to make the maximum use of their resources and undertake further steps through international cooperation as stipulated in Arts. 4 and 45 generally and 28 (3) specifically regarding education, especially in developing countries (paragraph 28). It is also interesting that the Committee uses the word *enough* when referring to the minimum acceptable level of appropriate education measures in light of the requirements laid down in Article 4.

The second relevant General Comment – №10, is entitled “Children’s rights in juvenile justice” and offers an authoritative interpretation of Arts. 37 and 40 of the CRC, with the triple objective of proposing a comprehensive juvenile justice system in compliance with the CRC, offering guidance on its implementation, and promoting the integration of other international standards relating to juvenile justice<sup>79</sup> (paragraph 4). The Comment details the core elements of a comprehensive policy, starting from the prevention of juvenile delinquency, and then focusing on the importance of diversionary interventions and the specification of a minimum age for criminal responsibility that should not be below the age of 12 (paragraph 32). The Committee then interprets the guarantees for a fair trial (reflecting the civil or “participation” rights enshrined in the CRC, mainly contained, in the context of

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<sup>79</sup> In particular: the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the “Beijing Rules”), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the “Havana Rules”), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the “Riyadh Guidelines”) as well as the Guidelines for Action on Children in the Criminal Justice System Recommended by the Economic and Social Council resolution 1997/30.

juvenile justice, in Article 40) and of the measures necessary for a child rights-centered juvenile justice system (mainly contained in Article 37). It further states the basic principles for the deprivation of liberty (either pre-trial detention or post-trial incarceration) including the general rules that this should only be used as a last-resort measure and strictly within the confines of the laws and procedures, followed by the procedural rights, such as, for example, the examination of the “legality of (the continuation of) [the] deprivation of liberty” within 24 hours of the initial arrest and the obligation to formally charge the juvenile after no more than 30 days of pre-trial detention (paragraph 83), as well as the appropriate treatment and conditions, such as, for example, the separation from adult prisoners (paragraph 85) or the maintenance of contacts with parents, caregivers or relatives (paragraph 87), and so on.

The spirit of this Comment could be resumed to indicate the necessity: (1) to take the best interests of the child (Article 3) in all decisions and measures within administration of juvenile justice (paragraph 10); (2) to offer the child in conflict with the law a “treatment that reinforces the child's respect for the human rights and freedoms of others (paragraph 13) and to observe all the guarantees for a fair trial contained in the CRC; (3) to establish as many diversions and alternatives to formal judicial proceedings and deprivation of liberty as possible; (4) to incorporate adequate attention to public safety and, in the context of severe offenses, administer measures appropriate with the circumstances of the offender and the gravity of the offence while at all times remembering that “such considerations must always be outweighed by the need to safeguard the well-being and the best interests of the child and to promote his/her reintegration” (paragraph 71). Finally, it is left to the discretion of the States parties to organize the introduction of all the necessary reforms either through specific laws and procedures (for example, a juvenile justice law) or within a broader context (for example, a penal code that implements all the aspects of children's rights in juvenile justice).

While the previous part of this section provides us, *grosso modo*, with the current international legal framework, the critical stance on these two important areas through which the actual children and the notion of childhood are formed is of particular importance.

With regard to education, the findings of two authors are especially relevant in the case of Cambodia. The first one is Jens Qvortrup's analysis of the transition of childhood during the transformation of a pre-industrial society into an industrial society (Qvortrup, 2009). His main argument is that in the pre-industrial stage, producers (in the economic sense) and reproducers (in the biological sense) were basically the same persons within one locality and therefore operated under and had a stronger notion of shared responsibility for children. But with the advent of industrialization, the economic unit in terms of sufficiency has shifted from the family/household, local community (or traditional *oikos*) to the more abstract national economy, "societal household" (or modern *oikos*)<sup>80</sup>, thus dissociating the places of production and reproduction, while the new mode of production increasingly required a better skilled workforce. And for children this meant that their manual work was – rather than discontinued – accordingly transformed into mental school work, or as Qvortrup (2009) puts it:

"Mental labour in current society corresponds to manual labour in pre-industrial society. In terms of indispensability there are hardly differences between the two forms, but while the visibility of manual work is obvious (and therefore also its being credited child workers), the usefulness of school work is opaque and abstract. In a sense one might argue that manual child work in pre-industrial society is producing use value within a scheme of simple production, whereas schooling is producing long-term exchange value within a system of extended production."

Thus the severance of the places of production and reproduction together with the more opaque nature of school work's economic usefulness creates the children's *apparent* exclusion from the modern national economy and legitimizes a structural indifference towards children, from a macro-economic point of view<sup>81</sup>.

Without delving deeper into whether this reconfigured status of children made them the winners or losers of industrial societal transformation historically, presently, in

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<sup>80</sup> Qvortrup uses the Greek term *oikos* as "the prevailing and dominant economic organisation" which "means house and economy at the same time, because the household was the economic unit at the time" (Qvortrup, 1999). "In principle, all necessary economic processes take place in any *oikos*: production, reproduction, consumption, circulation and division of labour and everywhere one must 'economise' to maintain sustainability. Although, thus, in principle nothing has changed in terms of vital processes to accomplish – because all forms are indispensable forms for human survival – dramatic changes have taken place in the way the various *oikos* are organised." (Qvortrup, 2009)

<sup>81</sup> This is compounded by the micro-economic targeting of children as consumers (discussed in 3.1).

Cambodia this is doubly important since a large majority of the population still functions within a traditional Khmer household, i.e. lives in the rural areas of the country and practices traditional agriculture, while at the same time, some economic fields of activity (primarily the garment sector), spreading geographically from the capital, Phnom Penh, are moving closer to what Qvortrup describes as a "global oikos", i.e. are functioning well within the global economy. This creates tensions in the notion of childhood, as well as numerous disparities within the Cambodian education system both within urban centers and between urban and rural areas, which brings us to the second analysis of the educational system.

Namely, according to Pierre Bourdieu, the modern educational system, instead of providing equal opportunities indiscriminately and to all the students in the spirit of the Enlightenment, ultimately "contributes to reproducing the structure of the distribution of cultural capital and, through it, the social structure." (Bourdieu, 1990). The educational system is therefore a legitimizing tool that transforms privileges into merits through the naturalization of social inequalities, i.e. the attribution of natural causes to social disparities, and thus explains success and failure in school in terms of "natural" inequalities in intelligence, culture, etc. while obscuring the social rootedness of scholastic achievement (Bourdieu & Passeron, 1977).

It is particularly important in Cambodia, as it reveals the potential symbolic violence<sup>82</sup> that can emanate from the educational system, especially since, by accommodating relatively recently to market forces in a country where several economic organizations co-exist in a precarious balance, there is a heightened risk of reducing the opportunities of children that come from rural areas, whose economic organization is still centered around the family/local community (traditional oikos).

With regard to juvenile justice, it is more complicated to form a constructive critical approach. On the one hand, proponents of a unified court for both adults and children are even more problematic than the post-modern critics of "development".

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<sup>82</sup> Speaking about law, but this is applicable to the educational institution as well, Bourdieu (1986a) defines symbolic violence as :

"une violence qui s'exerce, si l'on peut dire, dans les formes, en mettant des formes. [...] La force de la forme, cette vis formae dont parlaient les anciens, est cette force proprement symbolique qui permet à la force de s'exercer pleinement en se faisant méconnaître en tant que force et en se faisant reconnaître, approuver, accepter, par le fait de se présenter sous les apparences de l'universalité - celle de la raison ou de la morale."

As an example, when Ainsworth (1995) regards the child and the adult as pure "social constructs" she does not mean it in the way that Qvortrup explains the construction of childhood (through macro-economic, historical changes in modes of production and economic organization), but rather in the post-structuralist materially detached way.<sup>83</sup> This detachment ultimately leads to romantic theoretical propositions, such as her description of the "dilemma of difference" (Minow, 1990) in Ainsworth (1995):

"[T]he "special treatment" of trying juvenile offenders as "children" results in giving them the second-class justice that their status as "children" logically entails, but the "similar treatment" of trying them as "adults" is equally disastrous, given our assumptions about the full criminal responsibility of "adults." Minow wisely suggests that the law should place less emphasis on the differences said to exist between children and adults, and instead consider broadening the concepts embedded in our legal norms to better accommodate the actual characteristics of everyone, be they under or over the age of majority."

Yet Ainsworth (1995) has a point when she warns against the promotion of the "essential otherness" of the child through the separate juvenile justice administration. We can link this with Qvortrup's argument that children are increasingly relegated to the private sphere.

On the other hand, other critical approaches, such as the radical criminology one, have become increasingly marginalized and perceived as quixotic (and therefore reduced to Wallerstein's "effete snob" particularity in search of rare anti-systemic practices). And these approaches do touch upon very important issues. Sinclair (1983), for example, makes a valid point when she says that:

"It becomes increasingly clear that there is no one great solution to the problems of delinquent misconduct. Instead, there is a need to reassess our views of youthful 'problems.'"

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<sup>83</sup> When explaining what deconstruction of binary opposition (such as child-adult, woman-man or juvenile court-criminal court) entails Ainsworth (1995) immediately falls in what I previously called the "post-modernist trap" of extreme relativization:

"This reversal of the polarity of binary oppositions is the central intellectual move of deconstruction. Of course, the new hierarchical relationship resulting from the deconstructed binary opposition can itself be deconstructed, and so forth, ad infinitum. Thus, the structuralist attempt to provide a foundation for meaning is shown through deconstruction to be chimerical, as meaning so generated is inherently indeterminate."

And given the current state of affairs in Cambodia and globally, it might seem like a very useful exercise, to regard the provisions of the CRC through this 1983 "radical" perspective. Because "changing the social environment which engenders crime [should indeed be] the first priority. Changing the juvenile institutions which support oppression of lower class children [should] likewise [be] a high priority [not only] for the radicals" (Sinclair, 1983).

## Chapter 4 ♦ The Cambodian reality

### 4.1 Historical, political, socioeconomic, cultural realities

Historically speaking, the fierceness of Cambodia's recent sociopolitical swings was exceeded perhaps only by the magnitude of the Khmer Empire. Spanning from 802 when king Jayavarman II founded it to the fall of its capital Angkor in 1431, the Khmer Empire grew into the most powerful kingdom in Southeast Asia at the time. It developed a distinct civilization epitomized by the magnificent temple complex Angkor Wat. Its symbolic significance in Khmer culture and statehood<sup>84</sup> is indicative of the importance of the Khmer Empire in the formation of the modern Cambodian nationality. Unfortunately, this period was followed by a three and a half centuries long decline of Khmer civilization on account of its rising neighbors (Siam to the west and Vietnam to the east). By the time Norodom I requested (or was invited by) the French to establish a protectorate over his kingdom, Cambodia was already a vassal state to Siam or modern day Thailand. This long and constant decline has created a distinct sentiment among the Khmer population that Kiernan (2004) describes as a "sense of omnipresent threat and precarious national survival" - a fear that one day the Khmer will vanish. And Kiernan further argues that this is part of the reason why "the territorial diminution became the nationalist nightmare" of the Khmer elite, and even why "[t]he communist path to power [in Cambodia] took a nationalist route." (Kiernan, 2004).

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<sup>84</sup> Diverse depictions of Angkor Wat were placed as the centerpiece on most of the flags of the country, as is the case with the current flag of Cambodia.

In its recent past, Cambodia intimately experienced all the major geopolitical and socioeconomic vicissitudes of the 20th century, each of them leaving an indelible mark on the country. Or as Richer (2009) eloquently puts it:

"Le Cambodge n'a échappé à aucune des convulsions de notre temps, le temps de l'après-guerre : celui du triomphe et de l'échec du communisme, de la décolonisation, de la naissance et du déclin du tiers-mondisme, de la guerre froide et de la fin de la confrontation Est-Ouest, de la rivalité entre les deux Grands du camp « socialiste », Chine et URSS, et des deux guerres d'Indochine, la française (1946-1954) et l'américaine (1961-1973)."

Namely, after being a French protectorate from 1863 until 1953<sup>85</sup> Cambodia used the rapidly deteriorating situation in French Indochina to wriggle out of French authority and obtain independence through political means - celebrated on 9 November 1953. The mastermind behind this maneuver was King Norodom Sihanouk whose patriotism, political tact and vibrant personality had earned him a legendary status among the Cambodian people.<sup>86</sup> Present at the conferences in Bandung (1955) and Belgrade (1960), Sihanouk led Cambodia into the non-aligned movement while maintaining good economic and military ties with USA, up until the escalation of the battles in South Vietnam (Richer, 2009). At this moment (July 1969 - March 1970), as Sihanouk distanced Cambodia completely from the USA while at the same time being challenged at home by the Khmer communists and the Vietcong, he was outmaneuvered and deposed through a military coup by general Lon Nol. What ensued was the creation of a USA-backed right-wing military-led Khmer Republic, which by the end of 1971 proclaimed a State of Emergency, suspended its National Assembly and saw Lon Nol dub himself a "Marshal", famously declaring that he would no longer "play the game of democracy and freedom" (Dommen, 2002). At the same time, USA dramatically intensified their air strikes in Cambodia as part of their

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<sup>85</sup> During the Second World War, Japanese troops had occupied the country (1941-1945). During the final months of the war this situation culminated with the proclamation of a brief collaborationist Kingdom of Cambodia (1945, March 8 - 1945, August 15). This period is important because it was this government that discontinued the romanization of the Khmer language and officially reinstated the Khmer script.

<sup>86</sup> Richer (2009) gives us a brief exposé of the all the "avatars" of Norodom Sihanouk:

"Roi à 18 ans, par la bonne grâce des Français qui l'ont choisi, en 1941, parmi les prétendants, comme celui qui semble le plus docile, Sihanouk a connu successivement les rôles de : roi, prince chef d'Etat, roi élu, roi déchu, président d'un gouvernement en exil, avocat... et prisonnier des Khmer rouges, exilé, président d'un gouvernement de coalition, rétabli dans ses fonctions royales, enfin Roi-Père retraité. Une vie qui est un épitomé du Cambodge contemporain."

Vietnam campaign with "total disregard for civilian life" (Morris, 2015, April 27).<sup>87</sup> During this time of turmoil, the Khmer Rouge and its leader Pol Pot were rapidly gaining territory and popular support.<sup>88</sup> The Khmer Rouge came to power on 17 April 1975, with the fall of Phnom Penh, and reestablished Cambodia as Democratic Kampuchea - a "supposedly self-sufficient, entirely agrarian society" (Morris, 2015, April 27). In reality, during the 4 years they were in power, Khmer Rouge expelled the urban population from the cities, implemented policies aiming at the disintegration of the family, and conducted a genocidal purge of intellectuals and minority groups, slaughtering some 1.7 million people (21 percent of the population).<sup>89</sup> This dystopian nightmare was led by a small clique headed by Pol Pot, Ieng Sary and Khieu Samphan - all three of whom spent their formative years in Paris where they were prominent members of different radical leftist student groups and movements<sup>90</sup>. The Khmer Rouge also maintained a fierce nationalist, anti-Vietnamese line in an unpredictable pattern of military altercations of diverse magnitude against its bigger eastern neighbor.<sup>91</sup> In this regard, it maintained amicable ties with China in order to counterbalance the perceived threat coming from Vietnam. The regime was overthrown on 8 January 1979, when Vietnamese troops invaded the country and established the pro-Vietnamese People's Republic of Kampuchea that lasted for the next 10 years. Thus, from a China-supported Maoist agrarian dystopia, Cambodia became a pro-Vietnam, USSR-supported socialist state still engaged in sporadic skirmishes with the remaining forces loyal to the overthrown Khmer Rouge regime - and became a vivid depiction of the Sino-Soviet split. With the end of the Cold War,

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<sup>87</sup> In terms of sheer brutality, Morris (2015, April 27) informs us that:

"The US began bombing Cambodia in 1965. From that year until 1973, the US Air Force dropped bombs from more than 230,000 sorties on over 113,000 sites. The exact tonnage of bombs dropped is in dispute, but a conservative estimate of 500,000 tons (almost equal to what the United States dropped in the entire Pacific theater of World War II) is unquestionable."

According to Kiernan (2004) the likely number of Cambodian casualties from the airstrikes is somewhere between 150,000 and 200,000.

<sup>88</sup> Apart from the brutal US airstrikes, it was Sihanouk's overthrow that gave wind to the Khmer Rouge insurgency. As Morris (2015, April 27) explains:

"Up until this point, there had been limited contact between the communist forces of Vietnam and Cambodia, as the Vietnamese accepted Sihanouk as the rightful government of Cambodia. But after the coup, Sihanouk allied himself with Pol Pot and the KR against those who had overthrown him, and Vietnamese communists offered their full support to the KR in their fight against the US-backed government."

<sup>89</sup> Information taken from the Cambodian Genocide Program of Yale University. Available at: <http://www.yale.edu/cgp/>

<sup>90</sup> Interestingly, Khieu Samphan's doctoral thesis at the University of Montpellier is in line with the dependency "development" theory and advocates the "necessity of autonomous development" of Cambodia.

<sup>91</sup> Kiernan (2004) describes the Khmer Rouge's idiosyncratic nationalist model as a hybrid that "grafted the worldview of a prenationalist, traditional hierarchy onto the Khmer Rouge variant of international communism."



Cambodia gradually transitioned from a socialist into a capitalist state - a process which started with the withdrawal of the Vietnamese troops in 1989, continued with the United Nations Transitional Authority in Cambodia (UNTAC, February 1992 - September 1993) and ended with the promulgation of a new constitution on 24 September 1993 and the establishment of the Kingdom of Cambodia.

In spite of the urgency of their task and the constant undermining by intransigent local politics, UNTAC, and many other international organizations and bilateral donors did end the country's international isolation, made foreign aid accessible and stimulated trade and investment in the private sector. But as Utting (1994) explains:

"The way in which such actors went about their business in Cambodia certainly contributed to many serious problems. What is particularly disturbing is that this pattern of intervention may have served to transform the Cambodian economy and society in such a way as to distort or undermine the development process for many years to come."

He further notes that while some progress was made during the Vietnamese-backed regime of Hun Sen<sup>92</sup> in terms of the re-establishment of basic health and education services, the transition period witnessed a sharp increase in lawlessness, prostitution and AIDS/HIV infection incidence, a rise in the number of children in street situations as well as a deterioration in public services and in the situation of vulnerable groups (Utting, 1994). Ear (2013) on the other hand, points out to the official authority gap during the transition period by contrasting the fact that UNTAC was "at the time the UN's largest and most expensive mission ever" that held "an incredibly broad mandate spanning civil administration and military functions, elections and human rights", yet that this "power was largely theoretical" as evidenced by its failure to disarm the Khmer Rouge<sup>93</sup> and to control the pre-existing civil administration which remained loyal to Hun Sen and his Cambodian People's Party (CPP).

This last observation about the CPP's control of the civil administration gives us part of the explanation of the political developments after the end of the UNTAC mission

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<sup>92</sup> In power as Prime Minister intermittently between 1985 and 1998, and uninterruptedly ever since then, Hun Sen has been the dominant political figure in Cambodia in the past 30 years. He was a former Khmer Rouge cadre until 1977 when he fled to Vietnam during the internal purges of the Khmer Rouge regime.

<sup>93</sup> Khmer Rouge was completely dissolved and surrendered a short time after the death of its leader, Pol Pot, who died on 15 April 1998 without ever facing justice for the crimes perpetrated during the Khmer Rouge reign.

and the organization of the UN monitored elections. Namely, despite CPP's defeat, Hun Sen was able to secure a co-premiership position that he shared with the leader of electoral winners, Prince Norodom Ranariddh of FUNCINPEC<sup>94</sup>. When his position was threatened by FUNCINPEC in 1997, Hun Sen was able to stage a coup and replace Ranariddh with a different co-prime minister. Since then, he has consecutively won the elections of 1998, 2003, 2008 and 2013 amidst controversy, irregularities and contestations.<sup>95</sup>

But even more notoriously, the questionable transition period has created a rift between the expectations of the Khmer political elite and the international community - so far, they have only met at the face value of a pluralist democracy.

On a cultural level, in juxtaposition with the Khmer Empire legacy, and the legendary nation-building status of Norodom Sihanouk, a more sinister memory informs the contemporary Khmer mindset - the fear that the Khmer nation might disappear and the dark episode of the Khmer Rouge. More broadly, the combined effect of the last third of the 20th century has entailed - in parallel to all the human suffering and infrastructural collapse - "the disintegration of much of the country's social fabric." (Utting, 1994)<sup>96</sup> This situation was further distilled through the dubious transitional period to produce new re-compositions of old hierarchical networks. One colorful example is the figure of *Oknha*: Once a historical Khmer peerage title, the contemporary image of *Oknha* symbolizes a kind of a free pass primarily "aimed at major businessmen and businesswomen who have connections with those ruling the country" (Sokha, 2008) that provides them with a "traveling on first class" social experience in exchange for them backing government officials.

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<sup>94</sup> FUNCINPEC is a French acronym for Front uni national pour un Cambodge indépendant, neutre, pacifique, et coopératif, which translates into "National United Front for an Independent, Neutral, Peaceful, and Cooperative Cambodia"

<sup>95</sup> For the 2008 elections, see for example: <http://www.economist.com/node/11849531>

For the 2013 elections, see for example: <http://www.theguardian.com/world/2013/sep/16/cambodia-election-protests-phnom-penh>

<sup>96</sup> Perhaps the preamble of the 1993 Constitution most eloquently captures both the strengths and the weaknesses, the fear and the pride of the contemporary Khmer citizen:

"Accustomed to having been an outstanding civilization, a prosperous, large, flourishing and glorious nation, with high prestige radiating like a diamond,  
Having declined grievously during the past two decades, having gone through suffering and destruction, and having been weakened terribly,  
Having awakened and resolutely rallied and determined to unite for the consolidation of national unity, the preservation and defense of Cambodia's territory and precious sovereignty and the fine Angkor civilization, and the restoration of Cambodia into an "Island of Peace" based on multi-party liberal democratic responsibility for the nation's future destiny of moving toward perpetual progress, development, prosperity, and glory..."

Yet as Springer (2010) explains, answers can be found for "[the current] government's authoritarian behavior in systems that do not imply there is something inherently 'wrong' with the Cambodian people."

Therefore, when, for example Downie (1998) explains that the Cambodian 1998 elections were not "a miracle on the Mekong" because of immature political development of the ruling party in terms of the separation of state and party, the independence of the judiciary, the non-acceptance of a political opposition, the lack of rule of law and respect for human rights, we get a feeling as if Cambodia's transition was intended to be a singular one. But as Springer (2010) reminds us:

"[A]longside a transition to democracy, the goals of the UNTAC were to transform Cambodia from a state of war to conditions of peace, and from a command economy to a free-market economic system. It is the third facet of this "triple transition" that I have singled out as being the most deleterious to the prospect of democracy consolidating in post-war Cambodia."

Utter (1994) echoes this when he tackles the Cambodian case of rebuilding after years of conflict:

"Neither democracy nor peace is a panacea. The construction of peace is often associated with patterns of international assistance, economic growth, stabilization, liberalization, demilitarization and acculturation that can result in increasing levels of vulnerability and undermine local institutions and capacities which could play a key role in rehabilitation ... '[p]eace' is often accompanied by the dispersion of violence which ... may affect a larger portion of the population."

In this sense, what Utting (1994) calls the "distortionary effects of foreign aid"<sup>97</sup>, have probably caused Cambodia to become aid-dependent. Analyzing this phenomenon, Ear (2013) is led to suggest that, apart from the government's "lack of political will" it is also "the donors [that] bear some of the responsibility for this outcome, given their deep commitments ... to Cambodian institutions." Noting also that Cambodia may in fact be further from progress now than it was a decade ago,

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<sup>97</sup> One such effect is of a political nature. As Utting (1994) puts it:

"Politics, too, can play its part when donors opt for forms of aid that are highly visible, good for domestic or international image, but not necessarily the most appropriate for the rehabilitation of the recipient country."

he concludes that "official development assistance has made it more feasible, through fungibility, to divert resources and to enable corruption."

In an interview, longtime Cambodian resident, catholic priest and development worker Ponchaud (Lam & Leron, 2015, March 23) sums up the situation by describing Cambodia as a country where almost all the officials are former Khmer Rouge cadres who continue to use the same ideology when it comes to managing the population whereas when it comes to the economy, they have adopted "le capitalisme le plus sauvage". But he forgets to mention that apart from frequently reminding the political parties of the principles of "good governance," the donor community seems to have adopted "an unspoken policy of looking the other way whenever democracy is flouted in the country" (Springer, 2010). As Hendrickson (2001) suggests, external actors are equally responsible for the country's apparent inability to consolidate democracy by systematically underestimating the way global economic forces affect institutional reforms. Finally, authoritarian responses to socioeconomic problems - such as opening deadly fire on garment industry protesters demanding higher wages<sup>98</sup> - signalize a "weak state" that is "constrained by a market fundamentalism it willingly embraced" (Springer, 2010).

The combination of a Khmer Rouge past and a neoliberal present<sup>99</sup>, led to diverse phenomena, one of which is the land-grabbing problem. Namely, during the rule of Khmer Rouge, all individual property was abolished, all land was collectivized and land records destroyed, including cadastral maps and titles. As late as 2011, only 10 percent of Cambodia's land has been registered, which translates into enormous land insecurity. And in fact, due to a land-grabbing dispute in which the government was involved<sup>100</sup> a multi-donor project primarily funded by the World Bank whose goal had been to strengthen land tenure security was terminated in 2009. And as the things stand now, it might be very long before this process is complete (Westeröd, 2011).

Another phenomenon, is the sweatshop economics that is at play in the sub-contracting segment of the garment industry. Namely, during seasonal peaks, while

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<sup>98</sup> See, for example, BBC's report from 3 January 2014 on the clashes of garment workers with the police that resulted in 4 protesters being shot to death (Retrieved from <http://www.bbc.com/news/world-asia-25585054> on 09/08/2015)

<sup>99</sup> For an in-depth analysis of the Cambodian neoliberal order, see Springer (2010).

<sup>100</sup> See for example: Inclusive Development International Cambodia: Boeung Kak Lake Evictions (Retrieved from <http://www.inclusivedevelopment.net/bkl/> on 23/01/2014)

the big brands continue their CSR campaigns, they also sub-contract much of their production to other non-disclosed factories where the worst abuses of workers rights occur.<sup>101</sup>

Socioeconomically, as a result of the rough transition to capitalism after decades of wars, a genocidal regime, and international isolation which had revaged the infrastructure of the country, the GDP Annual Growth Rate in Cambodia averaging at 7.68 percent from 1994 until 2014<sup>102</sup> has not been matched by an equally significant reduction of poverty for the majority of the population. As the Asian Development Bank specifies (ADB, 2014), if we use the international poverty line of \$1.25 per person per day, expressed in 2005 purchasing power parity (PPP) dollars, we can observe a sharp reduction in extreme poverty between 2007 and 2011 (10 and 31 percent, respectively). Over the same period, the number of people living between the \$1.25 and \$2.00 per day poverty lines, increased from 28.5 percent in 2007 to 41.2 percent in 2011. While according to a recent global report by the Pew Research Center (Kochhar, 2015) the percentage of middle income population<sup>103</sup> in Cambodia has increased from 2.2 percent 2001 to 4.9 percent in 2011.<sup>104</sup> Or in other words (ADB, 2014):

"The rate of poverty reduction is tapering off because the various poverty-reducing factors (e.g., increased production, increased rice prices, higher wages, etc.) benefited the poor who were relatively easy to reach—those people just below the poverty line who have now moved just above it."

Yet, income poverty incidence may sometimes be an unreliable measure in that it is highly sensitive to the placement of the poverty line.<sup>105</sup> Thus, when the previously

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<sup>101</sup> See, for example; Human Rights Watch: Cambodia: Garment Factories Thwarting Unions (Retrieve from <https://www.hrw.org/news/2014/02/02/cambodia-garment-factories-thwarting-unions> or: The Phnom Penh Post: Cambodia must find new path to protect garment workers (Retrieved from <http://www.phnompenhpost.com/analysis-and-op-ed/cambodia-must-find-new-path-protect-garment-workers> or: Bloomberg Business: Cambodia Garment Workers Face Routine Rights Abuse, Report Says (Retrieved from <http://www.bloomberg.com/news/articles/2015-03-12/cambodia-garment-workers-face-routine-rights-abuse-report-says>)

<sup>102</sup> Information taken from the Trading Economics (<http://www.tradingeconomics.com/cambodia/gdp-growth-annual>).

<sup>103</sup> In this research, the middle income population is comprised of people who earn between \$10 and \$20 daily for a family of four.

<sup>104</sup> In connection with this finding, Adler & Woolcock (2009) argue that: "[M]iddle-class interests ... vital to the strengthening of a range of rights and rule of law agendas in other contexts, are yet to emerge in Cambodia as a significant bloc."

<sup>105</sup> As an example, in ADB (2014) it is explained that:

mentioned ADB's report compares the income poverty to the OPHI multidimensional poverty index<sup>106</sup>, we see a much higher incidence of poverty reducing at a slower pace (from 59.1 percent in 2005 to 45.9 percent in 2010). Adler & Woolcock (2009) argue that the reason behind this underperformance in poverty reduction in Cambodia - despite its current levels of annual growth - might lie in the accompanying rapid increase in inequality coupled with the demographic growth of the country "as development has disproportionately favored the wealthy."<sup>107</sup> This leads them to suggest that "Cambodia's wealth is being channeled to benefit local elites and their associates, while existing systems of patronage and political structures remain both dynamic and (at a fundamental level) durable."

## 4.2 Cambodia's good enough governance agenda

As mentioned in section 2 of chapter 1, the link between Cambodia's "good governance" agenda and Grindle's concept of *good enough governance* has been already made by Khmer-American researcher Sophal Ear in an effort to explain the country's double digit economic growth pattern in spite of its bad governance track record. In order to do this, he conducted a comparative analysis of the political economy of two important economic sectors of Cambodia: the rice sector and garments sector (Ear, 2009). In his conclusion he argues that the garment sector is an example of *good enough governance* because of several factors: (1) lack of local *Oknha* figures (see previous section) in the industry, necessary so that a new network

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"A difference of just 1,021 riels (about \$0.25) nearly triples the poverty rate for Phnom Penh, from 4.3% to 12.8%, or about 123,000 people. Even more striking is the difference of 79 riels (\$.02) in the poverty line for other urban areas, which changes poverty incidence for other urban areas by 6.6% and strongly supports the case for looking beyond income poverty to more qualitative indicators."

<sup>106</sup> This indicator has the following 10 dimensions: (1) no household member has completed 5 years of schooling; (2) at least one school-aged child is not enrolled; (3) at least one household member is malnourished; (4) one or more children has died; (5) no electricity; (6) no access to clean water; (7) no access to sanitation; (8) dirt floor; (9) "dirty" cooking fuel (e.g., dung, firewood, or charcoal); (10) no car and at most one of the following: bicycle, motorbike, radio, refrigerator, telephone, or television.

<sup>107</sup> Adler & Woolcock (2013) further add that:

"Cambodia's growth has been driven by a few key industries, particularly tourism and garment manufacture, that have primarily created jobs in and around the urban centers. These industries have distinct international connections that, while crucial to advancing labor rights, do not exist to the same extent in other industries. However, the vast majority of Cambodia's population, particularly the poor, live in rural areas and are dependent on agricultural production and the exploitation of common-pool resources for their livelihoods. The pessimist would point out that the past decade has seen the widespread depletion or privatization of many of these resources in a process that impacted especially heavily the poor."

of patronage between local and global actors may be formed in a way that would not stifle the economic activity; (2) strategic vision jointly developed by the RGC, and a the government of a powerful country (USA), necessary in order to align expectations for investors<sup>108</sup>; (3) surveillance by an international organization (the ILO), necessary to establish the credibility of these higher expectations; (4) clear cooperation between a powerful ministry (the Ministry of Commerce) and a powerful employers association (GMAC - Garment Manufacturers Association in Cambodia) - necessary to sustain support to the industry and create a sense of security.<sup>109</sup>

The country-specific, reversible, dynamic, high-stakes (and high-risk) nature of this process is exactly the reason why it is reversible. Within the very same study, Ear (2009) carefully suggests that a similar process might take place in the rice sector, given its importance for Cambodia, and given that at the moment of the study the the European Union's "Everything But Arms" initiative (EBA)<sup>110</sup> was about to take full effect. But as the economic incentive was not strong enough,<sup>111</sup> the European Union had no economic interest in actively improving the governance in the Cambodian rice sector. Therefore, it did not consider including a human rights clause to its EBA agreement with Cambodia (like USA did with the garment sector in Cambodia), which indirectly resulted in further land-grabbing incidents<sup>112</sup> and significantly worsened the governance of the rice sector in Cambodia.

As can be seen, apart from being reversible, the good enough governance path is also in a large proportion conditioned by external economic factors that are out of reach for the state and for most of the other actors involved.

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<sup>108</sup> As Ear (2009) explains: "The garment sector emerged in response to US trade preferences. In 1998-99, the Clinton administration developed the US-Cambodian Trade Agreement on Textiles and Apparel (1999-2004) which linked market access (increasing quota) to labor standards."

<sup>109</sup> As Ear (2009) specifies: "This is for instance evidenced in capacity of this hand-in-hand relationship to reduce trade costs, at a time when these costs were still increasing for other industries."

<sup>110</sup> "Tailor made to the specific needs of least developed countries, the EU's "Everything But Arms" arrangement (EBA) was born in 2001 to give all LDCs full duty free and quota-free access to the EU for all their exports with the exception of arms and armaments." (European Commission, 2013)

<sup>111</sup> As Ear (2009) notes: "[W]hile EBA makes Europe more attractive, it is less likely to be a key market given that demand for long-grain rice is not strong there." Additionally, in 2014 Italian rice farmers threatened to block grain exchanges in the country, due to what they saw as "the European Union's failure to keep Italian rice competitive against that of cheaper Asian rivals including Cambodia". Cambodia Daily : Italy Steps Up Fight Against Cambodian Rice (Retrieved from <https://www.cambodiadaily.com/business/italy-steps-up-fight-against-cambodian-rice-63945/> on 10/08/2015)

<sup>112</sup> See, for example: Thomson Reuters Foundation: EU Under Fire for Policy Linked to Land Grabbing in Cambodia (Retrieved from <http://www.trust.org/item/20130917055110-wdiuy/> on 10/08/2015).

And apart from the private sector, the *good enough governance* pattern is also observed in RGC's reconfigurations. For example, Hendrickson's (2001) analysis of Cambodia's post-war administrative reconstruction suggests that a more nuanced approach to governance has developed in the country during the transitional years:

" Donors' emphasis on down-sizing the civil service ran counter to the key factor underpinning the stability of the first post-war coalition government. This was the agreement to integrate large numbers of functionaries from the two incoming parties into the national administrative and security apparatus. "

And the current "culture of dialogue" phase promoted by the Prime Minister Hun Sen and the main opposition party leader Sam Rainsy - happening amidst unabated crackdown on the opposition's base, without a response from its leader<sup>113</sup> - seems to suggest that the preservation of a veneer of stability has been established as the most useful disposition in the Cambodian political field, since it brings benefits to both of the agents: Hun Sen tries to regain his popularity after the highly problematic 2013 elections<sup>114</sup> and Sam Rainsy legitimizes the 2013 election results by moving closer to Hun Sen while remaining both relatively safe and relatively oppositional.

This stability façade, covering a society rife with dispersed violence (Utter, 1994) of political or economic nature, creates an atmosphere where "islands of excellence" and reversible policies are the most logical *modus operandi*.

#### **4.3 Article 4 in the examination of Cambodia's reports on the CRC**

The Committee on the Rights of the Child has thus far examined two reports submitted by Cambodia: the country's initial report considered by the Committee on 24 May 2000 (CRC/C/11/Add.16) and its combined second and third report considered on 3 June 2011 (CRC/C/KHM/2-3).

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<sup>113</sup> See, for example: The Diplomat: New Jailings Expose the Farce of Cambodia's 'Culture of Dialogue' (Retrieved from <http://thediplomat.com/2015/07/new-jailings-expose-the-farce-of-cambodias-culture-of-dialogue/> on 10/08/2015)

<sup>114</sup> As Chandler puts it: "I think he feels like he's lost a couple of chess pieces ... He's a bit more cautious." In The New York Times: Cambodian Prime Minister Extends Reign Amid Opposition Boycott of Parliament (Retrieved from <http://www.nytimes.com/2013/09/24/world/asia/cambodian-opposition-citing-disputed-election-boycotts-opening-of-parliament.html> on 10/08/2015)



In its concluding observations to the initial report (CRC/C/15/Add.128), the Committee treated Article 4 of the CRC in paragraphs 17 and 18 of the text, under "Budgetary allocations":

"17. While the Committee is aware that most of the State party's infrastructure and social services were destroyed as a result of decades of war, it expresses its concern at the insufficient attention paid to the provisions of 4 of the Convention concerning budgetary allocations to the "maximum extent of ... available resources".

"18. The Committee recommends that the State party give priority to ensuring that the maximum available resources are allocated to health, education and social services for children belonging to vulnerable and marginalized groups. In this regard, the Committee encourages the State party to continue and foster open cooperation with the international community, in particular within the coordinated framework of the Donors Consultative Group on Cambodia."

In its concluding observations to the combined second and third report (CRC/C/KHM/CO/2), the Committee treated Article 4 of the CRC in paragraphs 16 and 17, under "Allocations of resources":

"16. The Committee notes that although the National Strategic Development Plan 2009-2013 contains key priorities for children, limited human, technical and financial resources are devoted to child protection and social welfare, with most of the current services being financed by development partners. The Committee is also concerned that in spite of significant economic growth in the State party the budget devoted to social sectors has only increased half as much as in other areas since 2007 and that the budget dedicated to education is only 1.9% of the GDP. The Committee further notes with serious concern that in spite of the adoption of the Anti-Corruption Law in March 2010, corruption remains pervasive in the State party and continues to divert resources that could enhance the implementation of the rights on the child."

Paragraph 17 details several recommendations that Cambodia should undertake in order to improve the respect of Article 4: (a) to allocate budgetary resources "in

accordance with Article 4" and to specifically increase the social sectors' budget "including, but not exclusively to education"; (b) to implement a child rights approach in the elaboration of the budget by improving the visibility to the investment on children through a tracking system for the allocation and use of resources for children in any given sector "ensuring that the differential impact of such investment on girls and boys is measured"; (c) to start budgeting-by-results in order to assess its effectiveness and, should the need arise, "seek international cooperation to this effect"; (d) to comprehensively assess the budget needs in order to better "address the disparities in indicators related to children's rights"; (e) to ensure a transparent and participatory budgeting "through public dialogue, especially with children" defining "proper accountability by local authorities"; (f) to define "strategic budgetary lines for children in disadvantaged or vulnerable situations" that would be protected during economic crises or other emergencies; (g) to take immediate steps to combat corruption; (h) to take into account the recommendations of the Committee's Day of General Discussion entitled "Resources for the Rights of the Child - Responsibility of States" from 2007.

At the very beginning, the change of the titles with which these recommendations are introduced is indicative of a slight change in the Committee's narrative: while back in 2000 the title read "budgetary allocations" thus clearly presupposing the sovereignty or at least primary importance of the State party in the area of the "general measures of implementation" of the CRC, the 2011 wording, "allocation of resources" clearly presupposes the plurality or network of actors that are competent in this field. While this is a general remark - not specific to Cambodia - in a small way, it does set the tone for the constructive dialogue between the State party and the Committee.

The next remark - still not necessarily specific to Cambodia - is the much more deployed formulation of the recommendation in 2011. Back in 2000 the Committee was content to advise the State party to prioritize resources in health and education, to provide social services to vulnerable groups of children and to foster open cooperation with the international community (i.e. the donor States aiding Cambodia). In contrast, in 2011, the Committee divided its recommendation paragraph into 8 sub-paragraphs advising, this time in much greater detail, once again, to prioritize resources in education and social services to children in

disadvantaged or vulnerable situations, and combat corruption. Yet in those subparagraphs the Committee also went into many detailed technical recommendations concerning the budgeting process, such as: child rights approach in budgeting, budgeting-by-results, budget assessments in order to address disparities in child rights indicators and a reference to the Committee's 2007 general day of discussion which further expounds on the abovementioned budgetary processes.

Now this is indicative of the general trend towards overproduction of human rights documents in both length and number that adequately mirrors the situation in the "development" field that Grindle describes as the inflation of the "good governance" idea (Grindle, 2010).

And in another sense, together with the change in the title from "budget allocation" to "allocation of resources", this turn towards increased prescriptiveness might also be interpreted as one that is moving away from the state and incorporating a more nuanced approach to public administration, once again - as advocated by the original "good governance". And since the Committee's direct interactive interlocutor is still the State party to the CRC, such language as contained in the 2011 concluding observations might be construed as "reaching out across the table" to invite other actors (donor states, development agencies, international NGOs, corporations) to the conversation through its dialogue with the State.

An example for this inflation of "good governance" ideas within children's rights on the global UN level is in fact the last child rights thematic UN resolution, negotiated at length at the 28th session of the Human Rights Council. Namely, during the informal consultations on the adoption of the resolution, many State delegations objected to the document's length (12 pages) and its intrusiveness into budgeting decisions which were viewed as a sovereign right of their government. The resolution treats precisely the budgeting issue and is entitled "Rights of the child: towards better investment in the rights of the child" (A/HRC/28/L.28). And while it contains many beneficial recommendations, such as the encouragement to mobilize the necessary resources through taxation or the necessity of the principles of transparency, (child) participation and precise accountability in resource allocation and public spending, it does convey a managerial, economic tone (for example, paragraph 22 (b) which: "Emphasizes the duty of all States [t]o make children a priority in budgetary allocations and spending as a means to ensure the highest return on the limited

resources available"). And it does go into details - from a "good governance" perspective - on a highly sensitive subject that most states lay sovereign claim to.

The same could be said about the Committee's 2011 recommendations regarding "allocation of resources": while it raises extremely pertinent discussion points, it delivers them from a "good governance" perspective in an economistic, managerial style.

## Chapter 5 ♦ Findings

### 5.1 Children's rights place in the good enough scheme of things

As a matter of fact, the 1993 Constitution, in its 31 article - or the first one under "Chapter III: The Rights and Obligations Of Khmer Citizens" recognizes and declares that it shall respect the Convention on the Rights of the Child,<sup>115</sup> and the Cambodian reports to the Committee never fail to mention that aspect of the Constitution.

And perhaps the most immediate way, on the level of intra-governmental organization and coordination, in which we can gauge to which extent this constitutional article has so far been translated into a meaningful implementation of the CRC in practice, may be to inspect the functioning of the Cambodian National Council for Children (CNCC).

CNCC is a permanent inter-ministerial body acting as a focal point for the rights of children. It was established by Government Sub-degree №83 dated 20th November 1995 and its mandate covers coordination of advocacy, monitoring and implementation of the Convention on the Rights of the Child.

It's composition was described to the Committee in Cambodia's initial report on the implementation of the CRC (CRC/C/11/Add.16):

"The Council is presided by the Secretary of State for Social Affairs, Labour and Ex-Servicemen and is composed of representatives of 11 ministries, the Council of Ministers and the Cambodian Red Cross (art.2). Representatives of United Nations agencies and of international or local non-governmental organizations

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<sup>115</sup> The exact wording of the article declares the recognition and respect of "... conventions related to human rights, women's and children's rights."

can act as observer members and can take part in meetings at the Council's invitation ... CNCE, which is provided with a secretariat-general (art.6), was officially inaugurated on 20 November 1995 under the high patronage of the two Prime Ministers, who are also its Honorary Presidents."

In 2000, in the concluding observations to Cambodia's initial report on the CRC(CRC/C/15/Add.128), the Committee welcomed the establishment of CNCC and expressed concerns about its ability to fully carry out its mandate due to lack of human and financial resources. The Committee recommended "that the State party take effective measures, including through international cooperation" to strengthen the role of CNCC through a more substantial human and financial resources and cooperation with child rights NGOs.

Eleven years later, the Committee welcomed the strengthened status of CNCC through the creation of subnational structures as well as its own budget, and expressed concerns over CNCC's lack of human, technical and financial resources. It further noted that "there is no obligation for any government department to refer or defer to the CNCC on issues related to child rights."

From the Committee's observation we can see that the Cambodian National Council for Children constantly struggles with lack of resources, while it is gradually expanding. Combined with its lack of authority over other parts of RGC laterally concerning children's rights, CNCC risks to establish itself as a body low in the hierarchy of RGC.

As Huang (2009) observes:

"[T]here are several Ministries within the Cambodian government, and they compete for power and resources when they should be working cooperatively for the good of the nation. The Cambodian National Council for Children (CNCC) was created specifically to protect the interests of children and wrote the first Five Year Plan Against Sexual Exploitation of Children (2000-2005). Unfortunately, the CNCC was not a strong organization within the Cambodian government, and international entities and donors started working with the Ministry of Women's Affairs because both women and children were victims of sexual exploitation. Partially because of this jurisdictional issue and the fact that

the CNCC was not receiving support, the 2000-2005 Five Year Plan was not very successful."

An interesting study comparing two CSR models that have developed in Cambodia, also, in a way, highlights the position of children's rights in comparison, in this example with worker's rights. Namely, Schlömerich (2013) compared the ChildSafe program<sup>116</sup> (led by the international NGO Friends-International in collaboration with small and smallest businesses, mainly in the tourism sector) and the BetterFactories Cambodia program<sup>117</sup> (led by BetterFactories Cambodia - which is a program of the ILO - together with international buyers and Cambodian garment factories) in terms of their poverty reduction capability. Schlömerich (2013) concluded that, BetterFactories Cambodia which uses a model of CSR which is built-in the core activities of the business actors, outperforms ChildSafe which uses a *bolt-on* CSR model (SMEs helped the children in order to please their customers, not out of the production/business logic itself) on a multidimensional poverty scale inspired by Amartya Sen. Schlömerich (2013) did however note in the end that "although, it is widely claimed that bolt-on CSR is not as effective as built-in CSR, it did have quite large effects in the ... ChildSafe case", explaining that "wide range of context-dependent factors influence the impact of CSR" which in the case of ChildSafe might have been the fact that the businesses cooperated with a renowned organization.

Context-dependent factors might be the most important segment of any corporate social responsibility program. Yet it is telling that while all the actors in the garment industry in Cambodia united in order to look for profitable ways in which their workers welfare could become part of their core business activities, the actors in the Cambodian tourism sector are as of yet not able to do the same for the children in vulnerable situations (this also reinforces the pertinence of Qvortrup's analysis of the general position of children within modern society, briefly explained in section 3 of chapter 3).

Neither the government, nor the private sector actors, nor the international community could not agree to seek ways in which children's welfare might become

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<sup>116</sup> For more on ChildSafe, visit their page: <http://thinkchildsafe.org>

<sup>117</sup> For more on BetterFactories Cambodia, visit their page: <http://betterfactories.org>

part of their "core business activities". And this is perhaps because, at least in the Cambodian context, they operate within a *good enough governance* paradigm.

## **5.2 Education reform and good enough governance**

According to the World Bank's Public Expenditure Reviews from 1999, 2003 and 2011, we can establish the evolution of the sources of funding for the education sector in the budget of Cambodia.

The 1999 review establishes that in 1996, 46 percent of all educational expenditure was funded by international donors and NGOs, while the Ministry of Education, Youth, and Sports (MoEYS) and the private household sector each contributed 27 percent of the total educational spending.

The 2003 review establishes that in 2002 about 50 percent of all educational expenditure was funded by the Government while 35 percent is sourced from parental contributions, and the remaining 15 percent from external project financing. This shift is attributed to the RGC's commitment increase domestic recurrent education expenditure, and particularly the non-wage share.

On the other hand, according to Cambodia's initial report on the implementation of the CRC (CRC/C/11/Add.16):

"The education budget for 1994 is only one-twelfth of the national budget. The lack of funds is seriously affecting the quality of teaching. This budget is intended for the payment of salaries of 80 000 teachers. Expenditure on the construction of school buildings is derisory."

While according to Cambodia's combined second and third report on the implementation of the CRC (CRC/C/KHM/2-3), the Royal Cambodian Government informed the Committee that within the framework of its priority policy for social and economic expenditure, the annual budgets of MoEYS from 2002 to 2006 have increased from 13.6 percent to 18.8 percent of the National Budget package.

Additionally, the World Bank's 2011 public expenditure review establishes that "together with large household spending on education, overall education outlays in

Cambodia declined from about 6 percent of GDP in 2004 to about 5 percent in 2009 (see below for a discussion of household education spending)." The review then reveals that the wage has risen four-fold in nominal terms from the start of the decade and it now takes up three-fourths of education spending. It is also mentioned that "the average monthly teacher salary of about \$115 is broadly equal to what a recent study termed 'the living wage for garment workers.'"

This means that the while in 1996 the donor community was funding nearly half of the educational expenditure, six years later, it was the government that was funding about 50 percent of the education sector. During the same six years, the burden on the private household sector was more than halved: from 27 percent in 1996 to 12 percent in 2002). If we add to this the World Bank's observation that the teachers' wages have quadrupled or quintupled from 2004 to 2009 and have become comparable to the garment sector living wage, then we are led to conclude that RGC truly prioritizes the education sector.

	Indicator	Actual		Target		Actual	
		SY2005-2006		SY2009-2010		SY2009-2010	
		Total	Female	Total	Female	Total	Female
<b>1</b>	Longest distance between village centre and school (km):						
	Primary	n.a		n.a		11.1	
	Lower secondary	n.a		n.a		10.5	
<b>2</b>	ECE enrolment of five year olds in either a formal or informal setting	27.3%	27.9%	50.0%	50.0%	39.8%	40.5%
<b>3</b>	Net Admission rate	82.6%	81.8%	92.8%	94.0%	92.4%	92.7%
<b>4</b>	Net enrolment rates:						
	Nationwide	91.3%	89.7%	96%	96%	94.8%	94.6%
	Primary: urban area	91.2%	89.7%	97%	98%	92.2%	92.2%
	Primary: rural area	91.7%	90.1%	94%	95%	95.3%	95.0%
	Primary: remote area	83.7%	80.1%	94%	93%	n.a	n.a
	Lower secondary: nationwide	31.3%	30.4%	43%	45%	32.6%	34.6%
	Lower secondary: urban	50.1%	50.3%	69%	71%	49.1%	50.5%
	Lower secondary: rural area	28.6%	27.4%	40%	41%	29.4%	31.5%
	Lower secondary: remote area	6.0%	6.0%	15%	15%	n.a	n.a
	Upper secondary: nationwide	11.3%	9.9%	18%	17%	19.4%	19.4%
<b>5</b>	Number of students in public/private higher education institutions	90,607	29,000	162,000	57,700	145,265	51,596
<b>6</b>	% of student attendance in the poorest quintile at*:						
	Primary	n.a		n.a		77.2%	
	Lower secondary	n.a		n.a		16.9%	
	Upper secondary	n.a		n.a		7.3%	

Table 1. Actual achievement against targets for equitable access to education (MoEYS, 2010, p. 5).



Sovachana (2012) on the other hand, sees Cambodia at a crossroads. While progress has been made in terms of school buildings<sup>118</sup>, and in terms of net enrolment rates (NER) (see table 1), several problems are clearly visible, such as the "serious urban-rural quality gap" - in a country that is predominantly rural (see table 2), the major gender-gap on all levels of education. This leads him to conclude that the Cambodian education system seems to emphasize quantity over quality - a situation that is bound to have an adverse impact in terms of the country's future workforce.

Area	Lower Secondary			Upper Secondary		
	Grade 7	Grade 8	Grade 9	Grade 10	Grade 11	Grade 12
Urban	14.8%	7.6%	14.3%	8.6%	3.0%	14.9%
Rural	23.1%	23.1%	26.3%	19.2%	15.0%	27.4%
Remote	21.4%	19.4%	22.7%	17.9%	15.7%	22.2%
Total	21.3%	19.3%	22.7%	14.6%	9.1%	20.9%

Table 2. Percentage of dropouts by grade 7-12 and geographical area 2006-2007 (Chansopheak, 2009).

Moreover, unofficial fees to supplement the teachers' salary create a vicious circle of corruption and poor governance. Chansopheak (2009) sees in this the reason behind the unsuccessful education policies in the country:

"Obviously, policy interventions of the current reform, to a large degree, have failed to address the real problems behind the low education outcomes. The most important factor that has been overlooked is the role of teachers. The policy reform expected teachers to carry out the reform without addressing the many obstacles they face in their work. Teachers' work norms and working conditions were not addressed and teachers' professionalism, attitudes, and behaviors were not the concern of the policy agenda."

<sup>118</sup> 6,277 primary school buildings, 911 lower secondary school buildings, and 252 upper secondary school buildings in 2005/06 versus 6,665 primary school buildings, 1,172 secondary school buildings, and 383 upper secondary school buildings in 2009/10 - figures from MoEYS, as presented by Sovachana (2012).

	Province	Enrollment			Grade 5 SVR		
		1999/2000	2006/07	Change in GER	1999/2000	2006/07	Change in SVR
1	Banteay Meanchey	102.4	132.0	29.6	43.1	58.1	15.0
2	Battambang	103.0	125.7	22.7	47.6	54.1	6.5
3	Kampong Cham	97.9	117.2	19.3	45.0	55.1	10.1
4	Kampong Chhnang	94.4	124.7	30.3	48.6	67.4	18.8
5	Kampong Speu	98.6	135.4	36.8	42.3	48.2	5.9
6	Kampong Thom	91.2	126.5	35.3	38.9	53.7	14.8
7	Kampot	108.5	120.2	11.7	55.1	61.1	6.0
8	Kandal	109.8	122.1	12.3	61.5	69.9	8.4
9	Kep	93.1	133.0	39.9	62.7	69.9	7.2
10	Koh Kong	65.7	107.4	41.7	38.0	52.4	14.4
11	Kratie	95.5	117.6	22.1	37.1	56.1	19.0
12	Mondulkiri	66.1	121.2	55.1	6.6	37.9	31.3
13	Udormeanchey	96.9	138.8	41.9	27.1	50.0	22.9
14	Pailin	90.9	130.5	39.5	38.4	45.7	7.3
15	Phnom Penh	111.6	115.8	4.2	70.0	64.8	-5.2
16	Preah Vihear	86.0	134.3	48.4	21.6	42.7	21.1
17	Prey Veng	101.8	120.6	18.7	45.3	55.5	10.2
18	Pursat	90.1	127.4	37.3	40.1	49.9	9.8
19	Ratanakiri	45.8	94.3	48.5	13.7	35.8	22.1
20	Siem Reap	86.3	137.9	51.6	37.0	51.4	14.4
21	Sihanoukville	92.0	141.2	49.2	47.0	46.5	-0.5
22	Steung Treng	84.6	109.3	24.6	23.8	45.3	21.5
23	Svay Rieng	109.3	113.1	3.9	51.5	61.1	9.6
24	Takeo	113.8	114.5	0.7	62.8	74.0	11.2
	Whole Kingdom	100.3	122.7	22.5	48.3	57.0	8.7
	– Urban Area	108.3	122.4	14.1	61.2	62.0	0.8
	– Rural Area	99.7	122.8	23.2	46.4	56.9	10.5
	– Remote Area	65.9	121.9	55.9	14.1	40.9	26.8

Table 3. Changes in gross enrolment rates and grade 5 grade-to-grade survival rate (SVR) by province between 1999/2000 and 2006/07 (Chansopheak, 2009)

On the other hand, for Sovachana (2012) "the elephant in the room" is the society's mindset towards the value of education: "Many students falsely view education as a necessary obstacle to overcome to obtain greater economic rewards."

Interestingly, a Center for Economic and Social Rights factsheet (CESC, n.d.), sheds light on the governance of education in Cambodia from a different angle:

"While Cambodia has made progress with the steady increase in primary enrolment rates since 2000, it is troubling that Cambodia's expenditure has not risen to match the increase in the number of students. Since 2001, Cambodia's expenditure per student has fallen from almost seven percent of GdP per capita to 5.6 percent in 2004 ... This decrease in expenditure per student raises concerns about the quality of education in Cambodia"

In combination with the fact that over approximately the same period the teachers' wages became three-fourths of education spending this analysis gives us an insight into the reversibility of reforms in the field of education in Cambodia. The quantitative and infrastructural "development" effort had brought to light the lack of motivated or qualified teachers. With the increase of students, and the vicious circle of unofficial fees, the increase of teachers' wages became a convenient tool for the government - primarily for political stability and secondarily for education.

### **5.3 Juvenile justice and good enough governance**

The Committee's concluding observations from 2000 regarding juvenile justice (CRC/C/15/Add.128) are succinct and global. The Committee is concerned about the lack of special legislation, about reports of children in prisons with adults, about extended pre-trial detention cases, about lack of access to legal aid or to a court and about allegations of ill-treatment against detained children. It therefore issues a general recommendation that the State party should establish a juvenile justice system taking into account all the relevant international norms and standards (mentioning them by name) and seeking technical assistance from relevant international agencies and organisations.

In Cambodia's combined second and third report on the implementation of the CRC (CRC/C/KHM/2-3) the RGC clarifies that:

"The draft law on Juvenile Justice has been finalized in September 2006 by the Working Group on Law Review of the CNCC and seeks ... further recommendations from the ministry's representative, national and international stakeholders [through a] consultative meeting in May 2007. This draft law focuses on children in conflict with the law (CICL); sets out the rules require[d] to designate specialists to work for and CICL; requires ... mandated roles [for] social workers in the criminal justice system; creates child-friendly procedures, minimum age of criminal responsibility, mitigated liability, alternatives to detention and imprisonment, diversion at various stages, family group conferencing and revocation of criminal record."

As of 10 August 2015, Cambodia's Juvenile Justice Law is still in its draft stage. Yet in its "good governance" fervor, the Committee's 2011 concluding observations are much

more detailed. The Committee begins by welcoming the newly established limits imposed on the detention of children in police custody and during pre-trial and the

	Age	Custody
<b>Felony</b>	14<16	36 hours
	16<18	48 hours
<b>Misdemeanour</b>	14<16	24 hours
	16<18	36 hours

  

	Age	Pre-Trial Detention Period
<b>Felony</b>	14<16	4 months
	16<18	6 months
<b>Misdemeanour</b>	14<16	2 months
	16<18	4 months

Table 4. Custody and pre-trial detention periods by age and felony/misdemeanor according to CPC 2007 (Teeuwen, 2014).

newly set minimum age of criminal responsibility at 14 years. The Committee is concerned about the lack of children's courts and judges or prosecutors specialized in children's rights, about the sentencing of children as adults and holding them in adult prisons. Furthermore, the Committee expresses concerns over a law that, under certain circumstances of theft, makes no distinction between children and adults, over the fact that children rarely meet their lawyer before the trial has started, over the alarming rate of children being detained in recent years while seldom using the legally provided for alternatives to detention, over the fact that many of the children in pre-trial detention are held there beyond the legal time frame, over the deteriorating living conditions in the detention centers, over the lack of access to education, and other social services, over the fact that monitoring of children in prisons is seriously restricted and over the lack of rehabilitation programs and limited number of trained professionals specialized in dealing with children in contact with the law. The Committee also makes much more detailed recommendations. It starts by inviting the State party to fully bring its "system of juvenile justice" in line with the CRC and all other relevant international norms and standards, mentioning all of them. And the Committee goes on to recommend parts of the norms contained in the mentioned international instruments in detail and in 6 sub-paragraphs.

If indeed RGC does follow a *good enough governance* pattern, it might be contended that, in particular, the detailed sub-paragraphs might be regarded as

cumbersome or misconstrued as overly intrusive - despite the best intentions. However, the Committee's mention of the specific law that, in some cases of aggravated felony, does not distinguish between children and adults, as well as the fact that the monitoring of children in prisons is far from rendered readily accessible, are especially informative - the first because of its concrete nature and the second because it cautions us not to take the numbers of children in contact/conflict with the law, completely unreservedly.

On the other hand, according to one study by the Cambodian Center for Human Rights (2014) not only are on average 87 percent of the juveniles put in pre-trial detention, but also:

"the prevalence of pre-trial detention for juveniles has exceeded that for adults in the most recent monitored periods: between July and December 2011, 95% of juveniles involved in case monitored were put on pre-trial detention against 70% of adults; and between January and June 2012, 91.5% of juveniles, as opposed to 71% of adults."

Travers (2010) notes that according to an official annual prison report dated 15 December 2010 "[t]here are over 700 juveniles in Cambodian prisons, almost 30 percent of which comprise children being held in pre-trial detention."

Teeuwen (2014), on the other hand, notes that "in 2013 a total number of 342 juveniles, including 15 girls, were held in prison. Out of this number 188 were pre-trial detainees and 154 were convicted juveniles." She concludes that while "the overall number of children in prison has been steadily decreasing in recent years"<sup>119</sup> and reportedly, more and more legal professionals have improved their understanding and awareness of children's rights", the main challenge continues to be the lack of

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<sup>119</sup> Vijghen (2013) and, on the other hand, who is a Child Rights Advisor with Cambodia's Ministry of Justice, reports a slightly different picture:

"The data displays the gradual increase of total detainees from 2005 to 2010. Child detainees also gradually increased both in number and in percentage against total detainees from 2005 (403 child detainees; 4.5% of total detainees) to 2009 (867 child detainees; 6.5% of total detainees), but slightly decreased in 2010 (772 child detainees; 5.5% of total detainees). Although female child detainees were always in the minority in comparison to male child detainees, the data shows a gradual increase both in number and in percentage against total child detainees from years 2005 (seven female child detainees; 1.7% of total child detainees) to 2010 (28 female child detainees; 3.6% of total child detainees). Remarkably, children being held in pre-trial detention made up to 85% and 76% of the total child detainees in years 2005 and 2006. The percentage considerably went down in year 2007 (24%), and stayed at approximately the same level from 2008 to 2010 (percentages ranging between 30% and 35%)."

institutional reform in the Cambodian justice system, and the fact that as soon as children come in contact with the justice system, they are treated like adults.

Furthermore, in terms of juvenile privacy, between August 2009 and June 2012 only in 3 out of 219 monitored cases measures were taken to protect the privacy of the juveniles in contact or conflict with the law; there is also a "near-universal prevalence of custodial sentences for juveniles found guilty" with only one monitored exception. (CCHR, 2014).

In line with the *good enough governance* paradigm, "islands of success" do exist in the field of juvenile justice. One type of several such "islets", is the coordination organization called the Protection of Juvenile Justice (PJJ) and other NGOs reaching out to the children in need which offers legal protection of children in conflict with the law (*pro bono*), legal training to law enforcement officers, encouraging rehabilitation of juvenile offenders, etc. For example, Travers (2010) informs us that:

"In 2010 PJJ provided *pro bono* legal services to 121 children in conflict with the law in 92 cases in Phnom Penh, Kandal, Prey Veng, Kampong Chhnang, Kampong Cham, Battambang, Pursat, and Banteay Meanchey. Following referrals of cases from other NGOs or direct requests from clients who have come across PJJ's posters / legal texts, PJJ's staff travelled to remote districts to investigate cases, collect information and evidence, interview relevant parties, liaise with local police and other relevant authorities, and cover the travel of poor clients to its offices and the court where necessary."

Teeuwen (2014) mentions several other similar projects or programs:

"There are a number of organizations in Cambodia providing free legal representation to children in conflict with the law. The organizations Legal Aid of Cambodia (LAC), Protection of Juvenile Justice (PJJ), International Bridges to Justice (IBJ), and the Bar Association of the Kingdom of Cambodia (BAKC) have in recent years all worked to provide legal representation to juvenile offenders."

The fact that there are several such initiatives, might trigger a slight cultural shift among certain institutional and class segments of the Khmer society, which is why they qualify, if not so much as an island, then an "archipelago of success".

Another one is the Battambang Provincial Court case, where several specialized NGOs, such as Legal Aid Cambodia (LAC) and Child Rights International (CRIN), are working together with the Ministry of Justice to establish a child-friendly chamber as part of the provincial institution. While this might trigger the sort of institutional push forward that Grindle (2007) is looking for, it goes without saying that there are juveniles in need of a friendlier justice system in all of Cambodia's provinces. And as the *good enough governance* paradigm predicts, if an "island of success" does not, ultimately... succeed, its institutional reconfiguration might sooner or later be reversed.

Finally, both of these cases - especially the first one - seem to be NGO-driven, and therefore not a permanent replacement for a more child-friendly justice system. And in the end, even if some "system of juvenile justice" has already been compiled with the assistance of agencies such as UNICEF<sup>120</sup>, only a single, higher-in-the-legal-hierarchy, robust law, may start to be the reference point of a major shift in the perception of youth problems.

## Conclusion

There are at least two ways of looking at the problem of whether or not article 4 of the CRC is, or even can be, satisfactorily (i.e. progressively), if not fully, respected by Cambodia with a good enough governance system: (1) in terms of its own meaning; (2) in terms of its current use by the Committee, during the interactive dialogue with the country.

In terms of its own meaning, as it was demonstrated in section 2 of chapter 3 of this paper, the article in question is composed of three elements: (a) its extensive nature ("all appropriate legislative, administrative and other measures"); (b) its intensiveness

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<sup>120</sup> As Teeuwen (2014) explains:

"For a large number of years the Government of Cambodia have been cooperated on a project with UNICEF for the establishment of a comprehensive child-friendly justice system in Cambodia (Child Justice Project). The project was part of the broader Legal Protection Project of the Royal Government with UNICEF, which had the objective of strengthening the legal protection of children especially children in conflict with the law... The project included key strategies such as law and regulatory framework development, capacity-building, advocacy and awareness-raising, direct service delivery and monitoring and evaluation. As it stands, the individual components of UNICEF's Child Justice projects have been finalized and child justice has been mainstreamed into a comprehensive child protection program."

("to the maximum extent of available resources"); which, in the case of economic, social and cultural rights, becomes progressive and (c) implies international cooperation and assistance.

In terms of its current use by the Committee in their dialogue with Cambodia, the article 4 focuses more on the "allocation of resources" and the manner in which the budgeting exercise is performed (participatory, transparent and entailing accountability). Hidden behind this current use of the article, is a "good governance" model of development, which, as has been shown in section 2 of chapter 2, apart from technical, detailed and managerial, can also be prescriptive and intrusive. The fact that we are concentrating here solely on the budget, already clearly makes it economic.

In this sense, the inflation of some ideas behind the CRC is probably reaching a crucial point, that was already reached in most of the other UN Conventions Treaty Bodies and resulted in drastic streamlining in their working methods. I expect this to happen in the near future for the CRC and its Committee and believe this could be a fruitful area for research.

Turning now to the general hypothesis, we can contend that CNCC or the governing body of the country, whose mandate is, as mentioned in section 1 of chapter 5, coordination of advocacy, monitoring and implementation of the Convention on the Rights of the Child represents reasonably well RGC's overall commitment to children's rights. As it was shown in the same section of the same chapter, CNCC is on the one hand, struggling with financial and human resources and is organizationally "underdeveloped" on the sub-national levels of the country. On the other hand, since 1995 it has been established as the coordination focal point of Cambodia as regards children's rights, and has recently been accorded its own, although unsatisfactory, budget line. It also produces National Plans of Action for Children, which are, as mentioned by Huang (2009), questionably followed through. In terms of article 4's own meaning then, it would follow that CNCC superficially respects the (a) extensiveness; due to lack of resources, cannot work (b) intensively on its own and therefore (c) internationally cooperates with various rates of success - because, as Huang (2009) further specifies, due to its lack of resources international organizations sometimes prefer cooperating with different segments of the government (especially if it is more leverage with RGC that is sought after). Finally,



we can say that the children's rights activities within the private sector seem to have similar level of extensiveness, intensiveness and international cooperation as in the government/public sector through CNCC.

With regard to the education in Cambodia, and in terms of article 4's own meaning, we can note that, RGC is acting both (a) extensively and (b) intensively, but only within a narrow material segment of educational means and figures - the CRC's article 29's "goals of education" are not at all prioritized; the (c) international cooperation is present, but in terms of funding it is diminishing, as MoEYS increases its budget. This situation is further complicated by changing trends in the "allocation of resources" which could have as much to do with education as with politics of stability and power. Since education could be qualified as part of the economic, social and cultural rights, the progressive character of the implementation of, in particular, articles 28 and 29 of the CRC, dealing with the right to education and its goals, is jeopardized by the governance pattern observed by RGC.

With regard to the "system of juvenile justice" in Cambodia, and again in terms of article 4's own meaning, we can note that RGC does not seem to act very (b) intensively nor (a) extensively since it has been prolonging the passing of the draft Juvenile Justice Law for more than a decade despite having been able to pass other major laws on time; its reluctance to allow monitoring of the prisons speaks of a complex relationship with (c) international partners, which after all, is not surprising as this is one of the most sensitive sectors of any state. The number of children in prison or pre-trial detention is mentioned to be dropping over the years, which is more a result of the security or economic dynamic of the country than it is of a qualitative change in the "system of juvenile justice" or in the "perception of youth 'problems'".

Finally, we can conclude that enough evidence has been shown to support the prevalence of the *good enough governance* pattern in terms of children's rights in Cambodia and that to a reasonable extent, the same can be said for this paper's general and specific hypotheses. This means that under Cambodia's *good enough governance* agenda, the implementation of the CRC - through extensive measures and intensive use of resources, while progressively improving the social, economic and cultural aspects of children's rights, if need be, with international cooperation - will maintain a superficial level while some children's rights gains may be reversed.

While Ear (2013) suggests that a transformative effect may be obtained by "fundamentally [altering] the relation" between the people of Cambodia and their government "through taxation, which will bring accountability", Springer (2010) believes that it is through contestation of public space that the Cambodian people will become more empowered which will enable them to "carve out and establish new kinds of 'stability' and 'order,' built not on the fears of the rich, but on the needs of the poorest and most marginalized residents". But as can be shown in chapter 2, the governance patterns in individual countries are dependent upon the dominant development model of the world as a whole, i.e. only a synchronized, organized and world-wide contestation of development models might change the implementation schemes of children's rights in Cambodia and elsewhere. Nevertheless, should such a scenario start to materialize, children's rights themselves will equally necessarily evolve to become more resistant to neoliberal practices.

As a result, we could answer the title's question both in the affirmative and in the negative, and both answers would give light to different parts of this global problem. By concluding that the Cambodian case suggests that "good enough governance" is probably not good enough for the full respect of Article 4 of the CRC, we are highlighting the relatively lower hierarchical rang of children's rights within Cambodia's minimalist governance and development goals, as evidenced by the patterns exhibited in this paper. However, we could also conclude that "good enough governance" is in fact good enough for the full respect of an interpretation of Article 4 of the CRC which is getting increasingly accepted within the international community. And if the Committee on the Rights of the Child follows the same inflationary model as development agencies have in recent decades, the risk becomes real that children's rights too might very soon retract to a "good enough", minimalist core.

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