

[Research Notes]

## **Development of Legal Norms on Marriage and Divorce in Cambodia – The Civil Code Between Foreign Inputs and Local Growth (I)\***

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### Abstract

This research examines the development of Cambodian legislation on marriage and divorce from the early 20th century to the latest codification of the family law under the 2007 Civil Code. The development is examined in three different legislative periods, namely the codification of the early 20th century, the legislation in the late 1980s and most recently the 2007 codification. The analyses are mainly based on literal comparisons of the relevant legal provisions and some contextual readings of these provisions taking into account the social, cultural and political backgrounds against which these provisions were enacted. The research will also seek to make distinctions between new standards introduced by foreign inputs and local practices sustained by conservative efforts, during these legislative phases in the history of developing a modern legal regime on family relations in Cambodia.

The research points to the nature of this one-century old revolution as a process which started with limited introduction of western values in the early 20th century into the substantive parts of the traditional marriage system, resulting in the insertion of a new concept of legal legitimacy in addition to the traditional respects for social legitimacy of the institution of marriage. More radical changes emerged only in the late 1980s with the promulgation of the Law on Marriage and Family, which rebutted male domination and polygamy in defining the family relationship in a socialist ideological context. Cambodia further incorporated international norms with regard to decisions on child custody based on the principles of “gender equality” and “the best interests of the child” into the new Civil Code of 2007, thus inviting broader local reception of these new concepts and values as the emerging roots of Cambodia’s family legal thoughts in the 21st century.

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\* Part II of this research is scheduled to appear in the next volume of the ALB.

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## **Introduction**

Codification of the civil law in Cambodia started during the French colonial period and has since gone through changes for almost one century. Throughout these changes, there has been obvious reception of foreign legal thoughts and normative standards, the latest being through the drafting of the new Civil Code in 2007 with technical assistance from Japan. It is generally argued that the joint working group methodology and continuous technical dialogues between Japanese and Cambodian working group members involved in the drafting work helped secure the necessary local inputs into the draft Code.<sup>1</sup> However, this statement only tells us the process in which local inputs could be implanted into the drafting work despite its being technically led by foreign experts. It does not tell us anything about the substance of these inputs. What parts of the codification are derived from foreign knowledge and what represents the local inputs? Neither does it tell us much about the origins of these local inputs. How are these changes local in nature? How did they come about? Is there any legal basis for their claim of being local as opposed to being just a different form of foreign transplants funneled through local experts at the latest drafting of the 2007 Civil Code?

This research explores possible answers to these questions. It looks into some provisions of the 2007 Code and compares them to the previous related laws to identify the pre-2007 Cambodian norms and practices that finally found their way back to the new Civil Code, with or without readjustments. The comparison will suggest how the old elements have developed, or grown mature over time, to be accepted as locally rooted concepts and practices in the civil law of the country in this 21<sup>st</sup> century. However, the research is limited to provisions related to marriage and divorce of the Civil Code. This choice of topic is indeed both the weakness and the strength of the

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<sup>1</sup> Homma Yoshiko & Teilee Kuong, "Chapter 3 - Drafting the Civil and Civil Procedure Codes in Cambodia: History, Achievements and Challenges", Junseo Lee, et. al., *Reforming the Private and Property Laws and Setting up the Securities Market in Cambodia*, KLRI, Seoul, Korea, pp.43-60.

research. The narrow focus limits the representativeness of the research and does not enable it to claim a generalization of the trends in the development of civil law in Cambodia. But it does enable a more straightforward answer to the questions of local inputs posed above for two reasons. First, family matters remain more domestic than other issues covered by the Civil Code. Drafters are therefore presumed to have stronger incentive to incorporate long-standing social and historical practices in family legal relations than they would otherwise wish to do with provisions related to property or contracts which might have been difficult areas to refuse external inputs, particularly in the context of Cambodia, where market transformation and the take of globalization had already taken place for more than one decades before the 2007 Civil Code was promulgated. It is natural to presume that discontinuity of the past socialist or Cambodian national economic system was inevitable as the best way to move the marketization process forward. Local experiences of the past had to give in to foreign knowledge and guidance in market related legal technicalities. But the incentive to do so might have been less in designing legal provisions regulating family relations. Any termination of long-standing social norms and practices in these relations might better testify to the strong commitment of the local experts to discontinue local values or practices that were considered no longer desirable. Second, the area of family law is not completely isolated from global standard either. The development of international human rights norms on women's rights and the rights of the child in the second half of the last century has been pushing many traditional legal norms and practices to change. A focused review on the topic of woman's legal position in the family and the society and the topic of the best interests of the child, as they developed through different historical phases, will clarify with vivid illustrations the ultimate level of interaction between the conservative desire to preserve local custom and practices and the more progressive willingness to accept global normative and legal challenges to some time-honored family legal traditions.

For reasons mentioned above, this research will therefore mainly focus on the situation of legal development in Cambodia regarding the regulation of marriage and divorce, since the promulgation of the old Civil Code up till that of the 2007 Civil Code. The paper will be divided into two parts – first on marriage and second on divorce. General concluding remarks will appear at the end of the second part. With regard to the

referential materials, the old Civil Code in particular is not available in English, whereas the subsequent laws have been translated and published in unofficial English versions. This research uses the Khmer version of the old Civil Code, as it was reproduced and published by the Cambodian Ministry of Justice in 1967. The English translation of selected provisions in the footnotes is made by the author for this research. However, provisions in English of the 1989 Law on Marriage and Family are taken from the work prepared by the Community Legal Education Center in Cambodia;<sup>2</sup> and those of the 2007 Civil Code are taken from the unofficial translation by JICA, with a few modifications or revisions being included as the author thinks necessary.

The first part will mainly be about the law of marriage. It will be organized into three sections, starting with a brief introduction of the 2007 Civil Code chapter on marriage and its current status of implementation. The second section will examine some essential features of the new Code as they have been transformed historically from the earlier laws. It consists of four themes: voluntariness, marriageable age, the principle of monogamy and conditions for remarriage; and, registration of marriage. The last section is the conclusion of this part.

## **Part 1 – Marriage**

### **I. Overview of the Contemporary Law on Marriage in Cambodia**

The new Civil Code has a whole Chapter 3 in its Book 7 dealing with the issue of marriage. It is divided into sections on formation of marriage, validity of marriage, the matrimonial property system and divorce. They contain rather liberal provisions in the Cambodian social context, paying much attention to the principle of private autonomy of the parties in a marriage and the constitutional principle of equality before the law and the principle of monogamy. Some of these features are new in the history of Cambodian law in comparison with the old Civil Code and the 1989 Law on Family and Marriage, and are products of gradual efforts to move towards more liberal standards in defining family and social relationships. This part of the research will review these

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<sup>2</sup> Lindsay Harris & Phyllis Cox, *Cambodian Marriage and Family Law*, Cambodian Legal Textbook Series, Community Legal Education Center, University of San Francisco School of Law, Cambodian Law and Democracy Project, September 1996, pp-129-146.

provisions, by comparing them with the previous laws to identify the extent to which changes have taken place at the latest codification process in the early 2000s. However, it is necessary to emphasize here that although the new Code has been enforced since 2011 by the promulgation of the Law on Implementation of the Civil Code, no data is available yet to evaluate the actual situation of its application and enforcement.<sup>3</sup> The analyses are mainly based on the promulgated provisions, its innovative features in the actual social context in which the current Civil Code has been drafted and is expected to be applied.

To understand the previous laws, it is necessary to have a general view of the historical and legal contexts related to formation of marriage in Cambodia. Although the historical context can be traced back to many years or centuries before colonization of the country by France in the second half of the 19<sup>th</sup> century, the review here will be limited to the different legislative periods after a modern legal regime on marriage and divorce had started with the promulgation of the old Civil Code. Codified under the French colonial rule in 1920,<sup>4</sup> the old Civil Code reflected a certain aspects of Cambodian society under the monarchical regimes up until the early 20<sup>th</sup> century.<sup>5</sup> Marriage was not a matter to be all decided by the potential couples. Parents or guardians had a very dominant role to play in determining the marriage of their children or persons under their guardianship. The following section will sum up the historical evolution of the concepts of voluntariness, legal age for marriage and the principle of monopoly and the institution of a marriage registrar in three stages, namely the law under the 20<sup>th</sup> century monarchical regime, the socialist law which was technically in force during the late 1980s, 1990s and 2000s, and the current system pursuant to the entry into force of the new Civil Code.

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<sup>3</sup> At the time of publishing this research, court cases in Cambodia have not been systematically compiled or used as precedents in any recognizable form.

<sup>4</sup> The old Civil Code was promulgated in different stages. The first Book related to “Person” was promulgated in 1912 by a Royal Decree signed on November 20, 1911, whereas the remaining parts were promulgated in 1915 but did not come into force until the issuance of a Royal Decree to that effect on February 25, 1920. For some details, see Jean Imbert “Histoire des Institutions Khmeres”, *Annales de la Faculte de Droit de Phnom-Penh*, vol.2, Phnom-Penh, 1961, p.173.

<sup>5</sup> It is generally argued that evidence of social and legal practices in pre-modern Cambodian society is weak and under-documented. This research does not intend to argue otherwise but will mainly be based on findings reported by French and other researchers since the 1960s. See Jean Imbert, “Histoire des Institutions Khmeres”, p.26; Jean Morice, “Le Mariage et le statut familial de la femme au Cambodge”, *Annales de la Faculte de Droit et des Sciences Economiques de Phnom-Penh*, vol.4, 1962, pp.137-138.

## II. Some Essential Features of the Civil Code in the Legal Historical Context

### 1. Voluntariness

Although the old Civil Code stated that “marriage is a solemn contract between a man and a woman...which they cannot arbitrarily dissolve”,<sup>6</sup> consents by the parents of the man and the woman were required.<sup>7</sup> At the objections of the parents, the man and the woman had to ask for the intervention of the head of the local commune to mediate for a compromise.<sup>8</sup> If the parents retained their objections three months after the intervention by the head of the local commune, the marriage could proceed even without the consent of the parents.<sup>9</sup>

The provision that “marriage is a solemn contract between a man and a woman... which they cannot arbitrarily dissolve” found its way into the 1989 Law on Marriage and the Family. However, the requisite consent by the parents was not repeated in this latter law. The autonomy of the potential couple to enter into a marital relationship was therefore assured further in practice under this law,<sup>10</sup> but the prohibition of arbitrariness in dissolving the relationship as a matter of “contract” reflected a certain level of restriction in terms of private autonomy in a normal “contractual relationship”.

The new Civil Code removes this legal implication, by not reintroducing this provision into the chapter on marriage.<sup>11</sup> The relevant section only defines the conditions under which a “marriage” can be lawfully established.<sup>12</sup> Parental consent is not included in these conditions. A normal contractual relationship between the potential couple governs the provision on engagement. Article 944 of the new Code provides that “engagement is established by the promise between a man and a woman of a future

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<sup>6</sup> Article 114 of the old Civil Code. English translation by author.

<sup>7</sup> Article 133 of the old Civil Code.

<sup>8</sup> Article 134 of the old Civil Code.

<sup>9</sup> Article 135 of the old Civil Code.

<sup>10</sup> Article 4 provided for the right of a man and woman reaching legal age to self-determine the marriage. No compulsion or prevention was permitted as long as the marriage is in compliance with standards provided by the Law, which provided for complaints against a marriage to be filed to the local authorities on certain grounds, such as a same sex marriage, lack of legal age, insanity or marriage between relatives by blood, etc. See Articles 15-20 under Section II of the 1989 Law.

<sup>11</sup> However, as will be further analyzed in (II) below, this does not mean that the new Civil Code does not consider a legally registered marriage a form of contractual relationship between a man and a woman. It is a special contractual relationship which requires lawful conditions and State recognition, and cannot be concluded in the same way as the normal contractual relationship which is based on personal will and consented rights and obligations of the parties.

<sup>12</sup> Articles 948-957 of the new Civil Code.

marriage and performance of the engagement ceremony”.<sup>13</sup> Dissolution of the engagement may be at will of the party but the other party may claim for loss or damage within one year after the dissolution.

## 2. Marriageable Age

Definition of marriageable age has also changed along the three historical periods under review here. The old Civil Code separated age of majority from marriageable age, the former being set at 21<sup>14</sup> whereas the latter was set at 17 for man and 14 for woman.<sup>15</sup>

The 1989 Law did not have an explicit provision on the age of majority but set the legal age for marriage at 20 for man and 18 for woman.<sup>16</sup> It is not clear why man and woman remained to have different marriageable age under the 1989 Law. It was probably an attempt to follow the practice established by the old Civil Code, but with a redefinition of higher marriageable ages.<sup>17</sup>

The new Civil Code gets rid of this difference between man and woman in reaching ages of majority and marriage. A minor is defined as anybody under the age of 18, thereby setting the age of majority at 18 for all individuals.<sup>18</sup> Then Article 948 of the Code prohibits a man and a woman to get married before reaching the age of majority, except for the case of a marriage in which one of the couple is a minor. When one of the potential couple is a minor, the minor shall not be less than 16 years old and the consent by at least one of his/her parents or guardian(s) is required.<sup>19</sup> If none of the parents or the guardians consents to the marriage without justifiable ground, the minor may request the court to issue a decision as an alternative.<sup>20</sup> This is a clear deviation from the old Civil Code, which gave recognition to the father’s dominant position in

<sup>13</sup> Article 944 of the new Civil Code. English translation by author. Provision on engagement existed in the old Civil Code (Articles 106-113) but not in the 1989 Law.

<sup>14</sup> Article 358 of the old Civil Code.

<sup>15</sup> Article 116 of the old Civil Code.

<sup>16</sup> Articles 4 and 5 of the 1989 Law on Marriage and the Family.

<sup>17</sup> Article 144 of the French Civil Code, before the 2006 amendment, defined the marriageable age for man at 18 and for woman at 15. The Old Civil Code of Cambodia seemed to have simply adopted the same definitional approach as the French Code in the early 20<sup>th</sup> century. However, its choice to confer Cambodian man and woman a one-year earlier marriageable age than their French counterparts might have reflected the Cambodian choice of the time.

<sup>18</sup> Article 17 of the new Civil Code. Article 144 of the French Civil Code was also amended to adopt the same single marriageable age by Law # 2006-399 of 4 April 2006.

<sup>19</sup> Articles 948 and 953(1)(2) of the new Civil Code.

<sup>20</sup> Article 953(3) of the new Civil Code.

authorizing marriage of a minor, not under 15 in the case of man and not under 12 in the case of woman,<sup>21</sup> if no consent could be reached between the father and the mother.<sup>22</sup> No state institution had the right to authorize minor marriage under the old Civil Code without the consent of the parent(s) or the guardian. The 1989 Law contained no provision on the intervention by the state institutions either, regarding the parent's prohibition of children's marriage. However, a complaint against minor couple's marriage could be sent to the local People's Committee and further appealed to the local People's Court, which would also have the right to review the protests by potential minor couples against such complaints.<sup>23</sup> The implication here was that a minor had the right to challenge any official complaints against their marriage at the local People's Committee or the local court. It opened up a window for state institution to intervene. The 2007 Code moves one step further in this direction.

### 3. The Principle of Monogamy and Conditions for Remarriage

The old Civil Code adopted the practice of polygamy wherein woman was allowed to have only one husband<sup>24</sup> but man was allowed to have several wives.<sup>25</sup> This apparently was local resistance to the normative provision on monogamy of the French Civil Code during that time. Although it is not clear whether polygamy was the norm governing the ancient Khmer society in general, it has been found that the monarchs were polygamous partly for the purpose of uniting different powerful families and different parts of the kingdom, "thereby binding together outlying parts of the empire".<sup>26</sup>

Polygamy was then denounced by the 1989 Law, which prohibited a person (man or woman) who was bound by a not-yet-dissolved prior marriage from entering into

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<sup>21</sup> Article 125-126 of the old Civil Code.

<sup>22</sup> This provision was also similar to Article 148 of the French Code at that time, before the latter was amended in 1933 to provide for presumed consent in case of disagreement between the father and the mother. See *Le Code civil français – Evolution des textes depuis 1804*, Dalloz, Paris, 2000, p.68. The amendment was arguably to ensure that consent by either the father or the mother would suffice for the minor to get married. See F.H. Lawson, A.E. Anton, L.Neville Brown, *Amos and Walton's Introduction to French Law*, 3<sup>rd</sup> edition, Oxford, 1967 (reprinted 1969), p.60, also at footnote # 4.

<sup>23</sup> Articles 16-18 of the 1989 Law.

<sup>24</sup> Article 140 of the old Civil Code.

<sup>25</sup> Article 141 of the old Civil Code.

<sup>26</sup> Judy L. Ledgerwood, "Khmer Kinship: The Matriline/Matriarchy Myth", *Journal of Anthropological Research*, vol.51, 1995, p.250; Sachchidanand Sahai, *Les Institutions Politiques et L'Organisation Administrative du Cambodge Ancien*, Ecole Francaise d'Extreme-Orient, Paris, 1970, pp.48-49.



another new marriage.<sup>27</sup> The new Civil Code continues to adopt the principle of monogamy by stating that a person who has a spouse shall not marry again. The person having a spouse can only marry again after the prior marriage has been dissolved or a divorce with the previous spouse has been completed. However, a woman is not allowed to remarry before the passage of 120 days after the previous marriage has been dissolved or void. This is a much shorter period comparing to the previous provisions of the old Civil Code and the 1989 Law.<sup>28</sup> This restriction would be lifted if the woman had been pregnant before the previous marriage became dissolved or void and has delivered the baby; or, if she has obtained a medical certification to testify that she was not pregnant.<sup>29</sup>

#### 4. Registration of Marriage

Article 955 of the new Civil Code provides that “a marriage shall come into effect by virtue of notification, public notice, conclusion of marriage contract in the presence of the registrar and marriage registration”.<sup>30</sup> It is presumed that any marriage not going through this process will have no legal effect under the present Code. The notification is submitted to, and public notice is posted at, the local administrative office having jurisdiction over the area where the bride resides. This has become a serious conceptual challenge for the traditional Cambodian society, as most of married couples during the previous regimes did not go through this legalization process.<sup>31</sup> What defined a socially legitimate marriage was a wedding ceremony to be organized under the name of the

<sup>27</sup> Article 6 and 24 of the 1989 Law. A similar provision already existed in Article 147 of the French Civil Code.

<sup>28</sup> Article 245 of the old Civil Code set the period at 10 months whereas Article 9 of the 1989 Law redefined that period to be 300 days.

<sup>29</sup> Article 950 of the new Civil Code.

<sup>30</sup> The detail procedures are stipulated in a Sub-Decree No.103 on Civil Status (Civil Registration) issued by the Royal Government of Cambodia on December 29, 2000.

<sup>31</sup> This is particular serious for couples married under the Khmer Rouge regime between 1975 and 1979. There was no registration process during those days, but their *de facto* relationship as husbands and wives continued afterwards. In addition, the legal requirement of marriage registration was ambiguous between the subsequent period of 1979 and 1989 when the Law on Marriage and Family was adopted to require legitimization of marriage by registration with the local authority. However, it has also been frequently reported that many men and women living in the rural areas continued to get married without taking into serious account the legal requirement of registration, but mainly with approvals from the parents or guardians, including in cases of international marriage. See for example the Cambodian NGO Committee on CEDAW, *Shadow Report 2013 Assessing Government of Cambodia's Progress in Implementing the United Nations Convention on the Elimination of All Forms of Discrimination Against Women*, pp.37-39; Dorine Van Der Keur, “Legal and Gender Issues of Marriage and Divorce in Cambodia”, *Cambodian Law and Policy Journal*, Vol2, July 2014, p.16.

parents, guardians or elderly persons standing as the patron(s) of the couple, and the subsequent *de facto* cohabitation of the couple. But now, the mere organization of a wedding ceremony to be followed by *de facto* cohabitation of a couple does not result in sufficient legal effect for the purpose of application of the Civil Code. *De facto* cohabitation of a couple is now referred to as illegitimate marital relationship of which the legal effect is explicitly denied as a result of the provisions of Articles 958(2), which states that a marriage shall be treated as void “where the parties do not effect notification, public notice, conclusion of the contract of marriage or registration thereof”.<sup>32</sup>

Provisions on registration of marriage also existed in the old Civil Code, but in a more complicated form due to the parallel elements of a legitimation system by means of marriage registration and a legally sanctioned polygamy value. Legitimacy of marriage was therefore divided into two classes.<sup>33</sup> Class one legitimacy was recognized for the marriage with the first wife, whereas the subsequent marriages with the second and other wives were considered legitimate only under the second class.<sup>34</sup> The different classes of legitimacy implied different legal effects.<sup>35</sup> Despite the fact that socially or in a family, a marriage could take place only with the blessing and approval of the parents or guardians of the potential couple, the old Civil Code attempted to draw a technical line separating this social or cultural legitimacy of a marriage from the concept of legal legitimacy. Any marriage which had not been notified to the public and not been filed to the local registrar for registration was considered invalid under Articles 138 and 159.<sup>36</sup>

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<sup>32</sup> Article 958(2) of the new Civil Code. See also *The Civil Code Part 6*, a textbook in Khmer prepared in March 2012, by the working group of legal professionals including potential trainers at the Royal Academic for Training of Judges, supported by JICA and the Japanese Ministry of Justice, p.26.

<sup>33</sup> Article 139: “There are two kinds of marriage. They are marriage of first (class) legitimacy and marriage of second (class) legitimacy”.

<sup>34</sup> Article 142: “Legal cohabitation which a man enters into for the first time shall be considered having first (class) legitimacy. Other cohabitations shall be considered having second (class) legitimacy”.

<sup>35</sup> One of these differences was reflected in the portion of property to be given to the wives as a result of divorce not caused by their own faults. The first wife could be given one half of the properties acquired through joint efforts between the husband and the wife. Those included property acquired through work, management of family assets, or profits in the forms of interests or returns from an investment using the capital of the husband or the wife. However, the second wife could only claim back her original assets, but not any portion of the common assets. Cf. Articles 252 and 254 of the old Civil Code. The other differential treatment existed with regard to succession of the assets from the deceased husband. The first wife would enjoy priority over the subsequent wives. Cf. Articles 497-498.

<sup>36</sup> Article 138: “Marriage is not the ceremony in conformity with religious rules or tradition, but the only fact of a man and a woman declaring in public that they both agree to conclude a contract of husband and wife”. Article 159: “Any marriage which has not been filed to a registrar to register in the marriage registration shall be considered invalid. This means there has not been a marriage or that the marriage will not need to be filed to the court for revocation”.

Public notification in this context meant notification of the information on the would-be-marriage to the public. The notification had to be done in front of the registrar at the place where the bride resided and the marriage had to be registered as determined by the provisions of the old Civil Code.<sup>37</sup> The legitimization process therefore consisted of at least two important components - notification in public and registration at the registrar's. Article 183 stipulated that, although a marriage which had not been notified to the public in advance could not be revoked, the registrar who allowed the marriage to take place shall be fined an amount of 20 to 100 riels by the court.<sup>38</sup> The provision was apparently quite ambiguous. It was not clear whether "posting of notification" here referred literally to the act of notification, or it meant something beyond notification so as to include also the component of registration of a marriage into the official record. Would the registrar be fined only when he/she had failed to post the notice or when he/she had failed both to post the notice and to register the marriage. The related question would then also be why Article 183 emphasized on the issue of irrevocability of an unnotified marriage. Could it have meant that the unnotified marriage, either registered or unregistered, could not be revoked because it had been invalid from the very beginning under Article 159. Or, could it have meant that a registered marriage which had not been notified in advance to the public would be valid and could not be revoked, since the fault was the registrar's. Hence the disciplinary fines of 20-100 riels regardless of any other conditions such as negligence or intention. However, it would sound a bit mysterious to conclude that a registrar would be subjected to administrative discipline for his/her failure to notify in public a potential marriage but not for his/her failure to register the marriage in the official record. Any answers to these questions related to the old Civil Code apparently do not serve practical purpose, but they would be essential for understanding more accurately the concept of legal legitimacy that the old Civil Code attempted to introduce into the Cambodian society with regard to marriage and family-building during the early 20<sup>th</sup> century.

A child born out of the illegitimate marriage was accordingly considered

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<sup>37</sup> The second paragraph of Article 138 (sic) (it should have been Article 137) and the second paragraph of Article 138.

<sup>38</sup> Article 183 of the old Civil Code: "A marriage that took place without prior posting of notification in conformity with the law may not be revoked. But the registrar who let this marriage take place shall be fined by the misdemeanor court from 20 to 100 riels".

illegitimate child.<sup>39</sup> The couple would then need to claim their parenthood in front of the registrar at the time of the child-birth certification. If only one of the parents did so, the child would be considered having only a single parent.<sup>40</sup> However, there was no differentiation as to the right of legitimate and illegitimate children to succession. The effect of an illegitimate marriage would therefore have real impacts mainly upon the couple concerned, particularly the wife when she had to confront any other wife/wives who could be married legitimately by the husband under the polygamy system.

### III. Concluding Summary

Modernization of law on marriage introduced during the colonial period in Cambodia initiated some changes that have important social and cultural implications until today. But it was far from being radical in many aspects. On issues of substance, such as voluntariness, marriageable age and polygamy vs. monogamy, the old Civil Code took a rather cautious approach. The change only became radical after the havocs of the destructions in the 1970s and 1980s, when traditional sense of morality and social values up till the Khmer Rouge period, such as polygamy and male domination, were subject to denial and contempt. But on the issue of institutional legitimization of marriage, the approach taken by the old Civil Code was more resolute with a view to importing a westernized concept of legal legitimacy as opposed to the pre-existing concept of social and cultural legitimacy sanctioned by the hierarchical order of a paternalistic family structure. Disciplinary measures were introduced presumably to pressure the state agents to promote this new legal legitimation but it has been quite unclear as to the real impacts of these measures. However, the legitimization procedures of the early 20<sup>th</sup> century, consisting of public notification and official registration, also became irrelevant at the peak of the civil war when the ordinary administrative function of the state was seriously hampered. They only came back after the 1989 Law on

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<sup>39</sup> Article 279: “An illegitimate child is one born by a father and a mother who built a family tie together without being married in conformity with the law”.

<sup>40</sup> Articles 280 and 281 of the old Civil Code.

Article 280: “When the father and the mother who did not married in conformity with the law claim any child to be theirs with certainty in front of the registrar at the time of birth certification, the father and the mother shall be considered the parents of the child”.

Article 281: “If only the mother or the father makes the claim alone, the illegitimate child shall be considered the child of the claimant alone”.

Marriage and the Family and the Sub-decree no.103 of December 2000<sup>41</sup> were enacted, and further found their way into the new Civil Code in 2007.

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<sup>41</sup> Subdecree #103 on Registrar issued by the Royal Government on December 29, 2000, defining the competent authorities and the basic procedures in registering birth, marriage and death in the Kingdom of Cambodia.