



FACTSHEET – UPR 2018 – Cambodia

3rd CYCLE UNIVERSAL PERIODIC REVIEW

Access to Justice

Access to justice is often inaccessible in Cambodia due to a lack of judicial independence and impartiality, insufficient legal aid, limited access to legal information, as well as routine fair trial rights violations.

Joint submission by: Destination Justice (DJ), the Cambodian Center for Human rights (CCHR), and the Cambodian Human Rights and Development Association (ADHOC). Supported by Transparency International Cambodia (TI), the Advocacy and Policy Institute (API) and IFEX.

SUMMARY OF KEY ISSUES FROM PREVIOUS UPR CYCLES

During Cambodia's 2nd UPR cycle, 59 recommendations were made in relation to access to justice, covering topics such as the functioning of judicial system, fair trial rights, the lack of judicial independence and legal aid. Of these, the Royal Government of the Kingdom of Cambodia (RGC) accepted 45 and noted 14. While some progress has been made, most recommendations have not been fully implemented, undermining access to justice.

NATIONAL FRAMEWORK

Cambodia is a party to most key international human rights treaties, including the International Covenant on Civil and Political Rights; in 2007, the Constitutional Council ruled that such treaties were directly applicable in Cambodian domestic law. Further, the Constitution guarantees respect for human rights as stipulated in international human rights treaties and sets out key principles such as equality before the law, protection against arbitrary arrest and detention, and the right to a fair trial (Arts. 31 & 38). The Penal Code, the Code of Criminal Procedure and the 1995 Law on the Bar also contain key protections for those within the judicial system, such as the presumption of innocence and the right to free legal representation for those without financial means to access it independently. In 2014, the Law on the Organization and Functioning of the Courts, the Law on the Organization and Functioning of the Supreme Council of the Magistracy and the Law on the Statute of Judges and Prosecutors ("laws on the judiciary") were promulgated. In 2016, a Law on Juvenile Justice was adopted. The RGC is working on a nationwide legal aid policy and a law on access to information.

CHALLENGES & IMPACTS

Lack of Independence and Impartiality of the Judiciary

- In 2018, Cambodia ranked 112 out of 113 countries in terms of rule of law, and scored zero in relation to the independence of the judiciary.
- The 2014 laws on the judiciary give the executive **excessive control over the judiciary**.
- High-level actors such as the Supreme Court's President and Appeal Court's President are **members of the ruling party's central committee**.
- The judicial system is used as a tool to target political opponents, rights activists, journalists and critical social media users. **Between April 2017 and March 2018, legal actions were taken against at least 36 HRDs as a result of their work.**
- **The judiciary's lack of independence has fostered impunity**, with crimes against environmental defenders, land-activists, garment workers, trade unionists, and journalists often not investigated or investigated without transparency, independence and impartiality.
- Allegations of wrongdoings by those connected to the government are **rarely thoroughly investigated or prosecuted**.

Insufficient Access to Legal Aid

- Due to the **inadequacy of the State-sponsored legal aid system**, the right to a lawyer is not fully respected. There is no framework to ensure access to information about legal aid services.
- Cambodia has a **lack of lawyers**. In 2017, there were 1,019 registered lawyers, amounting to six per 100,000 people. Only 98 were registered to provide state-sponsored legal aid.
- Legal aid is **not compulsory for cases involving a misdemeanor** (even if it includes a prison sentence) **or at all stages of proceedings**, violating international standards.
- Lawyers often meet their clients for the first time at the hearing, making it **impossible to prepare an effective defence**.

- **The legal aid budget is grossly insufficient**, despite recent increases. In 2017, the Bar Association of the Kingdom of Cambodia (BAKC) received approximately 5,000 requests in mandatory cases, yet, the budget only covered 2,000 cases.
- The insufficiency of legal aid **disproportionately impacts vulnerable groups** such as those living in rural or remote areas, women and marginalized groups.

Limited Access to Legal Information

- **Access to laws and jurisprudence remains limited, irregular and decentralized** with little efforts made to disseminate them, creating a significant obstacle to the rule of law.
- **Access to information is not legally protected.** A law is currently being drafted but the contents of the draft published in February 2018 fails to meet international standards.
- Access to justice is **particularly limited outside of the capital** (the only Appeal Court is located in Phnom Penh). Considering that most of the population live in rural areas, many have limited information about their rights. However, the Ministry of Justice has announced the construction of three additional appeal courts by July 2019 and four additional courts in following years.

Violation of Fair Trial Rights

- Imprisonment prior to a final judgment being issued is quasi-automatic, including for juveniles. As of May 2018, **74% of all detainees were in pre-trial detention.**
- Judges generally fail to undertake an in-depth, objective and evidence-based assessment of whether detention is justified, and **fail to consider alternatives to prison.**
- **The presumption of innocence is routinely ignored.** Confessions are often the sole basis for a conviction, with the judges ignoring claims that they were obtained under coercion or torture.
- **The right of the accused to present and challenge evidence is not respected**, while the incriminating evidence often fails to meet the requisite standard for a finding of guilt.
- When issuing their judgment, **judges often fail to detail the legal basis and the evidence they rely upon for their ruling.**
- There are **insufficient protections for women inside the judicial system**, and the lack of female representation in the judiciary creates a hostile environment where victims are often re-traumatized and/or blamed.
- **The 2016 Law on Juvenile justice is not properly implemented**, leaving juvenile defendants particularly vulnerable.

RECOMMENDATIONS

- I. Amend the **three laws on the judiciary** to ensure their compliance with international human rights standards.
- II. Guarantee the **effective and impartial application** of the Constitution, legislation and court rulings, in accordance with SDG 16.3.
- III. Take all measures required to effectively **combat impunity**, including through independent investigations, prosecutions and trial of alleged perpetrators.
- IV. Ensure that all criminally accused persons have **access to legal aid**, including in cases of misdemeanors and felonies, in accordance with the Code of Criminal Procedure, the ICCPR and SDG 16.3.
- V. Allocate a **sufficient legal aid budget**, which allows for the provision of legal aid at all stages of criminal proceedings, including at the investigative and appeal stages.
- VI. Establish **regional Appeal Courts**, in accordance with the Law on the Organization of the Courts, and ensure their proper operationalization by the end of 2023.
- VII. Enact and ensure that **the Law on Access to Information effectively safeguards the right to obtain legal information**, in full compliance with Cambodia's international human rights obligations and with SDG 16.10.02.
- VIII. Create a **free, accessible and up-to-date official legal information database**, including all the laws, decrees, royal decrees, circulars and regulations, by 2021.
- IX. Ensure that the competent judicial authorities, when ruling on pre-trial detention, **interpret the justifications for pre-trial detention strictly and narrowly.**
- X. Require that all judges strictly **respect the presumption of innocence.**
- XI. Drawing from the Extraordinary Chambers in the Courts of Cambodia, **adopt legislation protecting the rights of victims of gender-based violence** in legal proceedings, focusing on respect of privacy, legal and psychological support, in compliance with SDGs 5.2 and 5. C.
- XII. Take measures to ensure **respect for juvenile's privacy** in judicial proceedings, as provided by the Law on Juvenile Justice, by 2020.

For additional details and full recommendations, please refer to the full Access to Justice submission.