

5 Advocacy through Legal Services





Advocacy Expert Series

Book 5

Advocacy through Legal Services

Edition 2

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We encourage you to copy part or all of this guide and to share it with others.

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The Advocacy Expert Series is a set of educational publications developed by the Advocacy and Policy Program at Pact Cambodia that explores the principles, strategies, and techniques of effective advocacy campaigns. Titles in the Advocacy Expert Series include:

Book 1: Advocacy Campaign Management

Book 2: Building Relationships with Government

Book 3: Working with the Media

Book 4: Building and Maintaining Coalitions

Book 5: Advocacy through Legal Services

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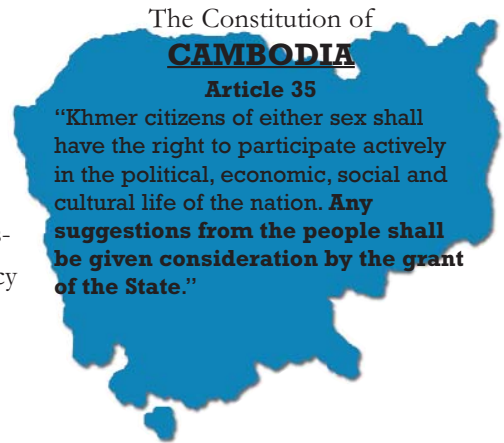
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Introduction

One of the most important powers in any society is the ability to create and enforce laws. The people who hold this power have tremendous influence over the lives of citizens. The purpose of this book, the fifth in our Advocacy Expert Series, is to explore how we can use the legal system to improve the lives of people and advance the goals of our advocacy campaign.



What is the Law?

A law is a rule of behavior or conduct established and enforced by the government for the benefit of its citizens. Laws help people interact with each other, set standards, resolve conflicts, and protect people from harm. Good laws are:

JUST

They must uphold basic principles of human rights and the Constitution.

FAIR

They must apply to everyone equally.

UNIVERSAL

They must apply to all situations of similar behavior.

PRECISE

They must be clearly defined and not contradict other laws.

ENFORCEABLE

They must be easy to understand and follow so people can use them to protect and defend their rights.

The role of the legal system is to decide if a law has been broken and if so, determine the appropriate punishment. Punishment serves two main purposes: to correct a person's unlawful behavior and to discourage other people from committing the same crime. Punishment of criminal acts creates a sense of justice, fairness, and stability in a community.

NOTE

The state may seek justice for unlawful acts by **imposing a fine** or **sending a person to jail**. A private citizen may sue for money but **cannot send a person to jail**.

Courts carry out or "administer" justice. In Cambodia, judges conduct investigations, examine the evidence, and decide if anyone deserves compensation or punishment. Court decisions set an example for other people to respect and follow the laws.



GOVERNMENT

Writes laws with input from the people



POLICE

Investigate crimes and enforce the laws



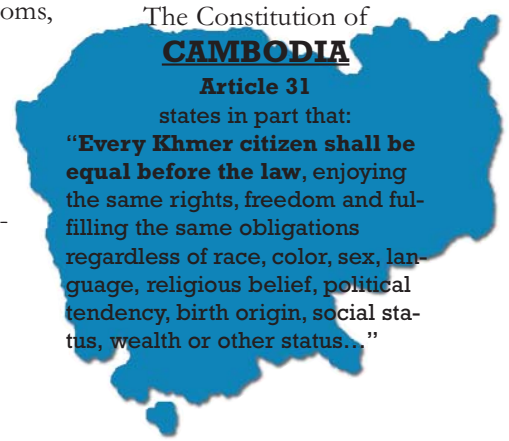
JUDICIAL SYSTEM

Administers justice

Customs, Culture, and Laws

Customs are traditions, beliefs, and practices held by a group of people. Taking our shoes off before entering a home is a custom in Cambodia. Culture refers to the religion, history, art, values, and knowledge shared by a racial, religious, or social group. Building Wats and practicing the Buddhist religion are part of Cambodia's culture. To ensure easy understanding, laws are often based on customs and culture. Some common customs, such as treating people differently based on their gender, are not legal.

Treating a person or group differently than another is called "discrimination". Article 31 of the Cambodian Constitution makes discrimination illegal. For example, placing an advertisement for a job only open to men is illegal because it discriminates based on gender.



What is a lawyer?



Lawyers receive special training in the law and the function of the courts. There are many ways that a lawyer can help us understand our rights and the laws governing our communities. For example, if we are accused of a crime, a victim of a crime, want to start a new business, or need a divorce, a lawyer can explain our rights, represent us in court, and argue our case before a judge. Lawyers are also advocates. They speak for people who cannot speak for themselves.

What is a Prakas?

Laws are general statements of rules and principles. When a law is passed in Cambodia, the responsible Ministry writes a **Prakas** to provide clarification about how the law will ultimately be enforced. The Prakas is then distributed to all members of government, police officers, sangkat chiefs, commune council members, and made available to citizens.

International Court of Justice

The **International Court of Justice** (World Court), located in The Hague, Netherlands, was created by the United Nations to resolve disputes between two or more countries.

International Criminal Court

The **International Criminal Court**, also located in The Hague, Netherlands, was created by the United Nations to resolve crimes that a country's own justice system fails to prosecute. The crime must affect the entire international community.

Arbitration Council

The **Arbitration Council**, located in Phnom Penh, was formed under Cambodia's Labor Law and decides labor disputes between employers and employee unions. It is composed of a three-person panel chosen by employees and employers.

Advocacy in
CAMBODIA
After months of failed negotiations, the owner of the Raffles Hotel chain and the employee's union approached the **Arbitration Council** to help solve their dispute over service fees. The Council decided that Raffles Hotel illegally locked out 97 employees and required Raffles to reinstate the employees, pay back wages, and stop negotiating with any union not registered or acknowledged by the Ministry of Labor.
<http://www.arbitrationcouncil.org>

Constitutional Council

The **Constitutional Council's** primary function is to determine the constitutionality of laws. Its nine members are chosen by the King, the National Assembly, and the Supreme Council of the Magistracy.

The Supreme Court

The **Supreme Court**, located in Phnom Penh, is the highest court of appeals in the country. Its jurisdiction covers the whole territory of Cambodia and its decisions are binding. This court has a *civil chamber*, with five judges, that makes decisions on civil matters such as marriage, family, administrative, labor, and commercial disputes. There is also a *criminal* chamber with four judges that decides criminal cases. If the Supreme Court is presented with a case about constitutional issues, they may request that the case be decided by the Constitutional Council.

Supreme Council of the Magistracy

The **Supreme Council of the Magistracy** ensures the smooth functioning of the judicial system. This council has nine members: the King, the Minister of Justice, the President of the Supreme Court, the Prosecutor General of the Supreme Court, the President of the Appellate Court, the Prosecutor of the Appeals Court, and three judges (elected by the judges themselves). The Supreme Council of the Magistracy has the power to promote and discipline judges.

The Appellate Court

The **Appellate Court** is located in Phnom Penh and hears appeals from the military, provincial, and municipal courts from all over the country. It has seven judges and a three judge panel, called the *Trial Council*, that decides each case. If a party believes their case was wrongly decided in the lower courts, they can appeal the decision in the Appellate Court.

Provincial Courts

The **Provincial Courts** resolve disputes that occur in the provinces of Cambodia. There is a provincial court in the capital city of each province (19 total).

Military Court

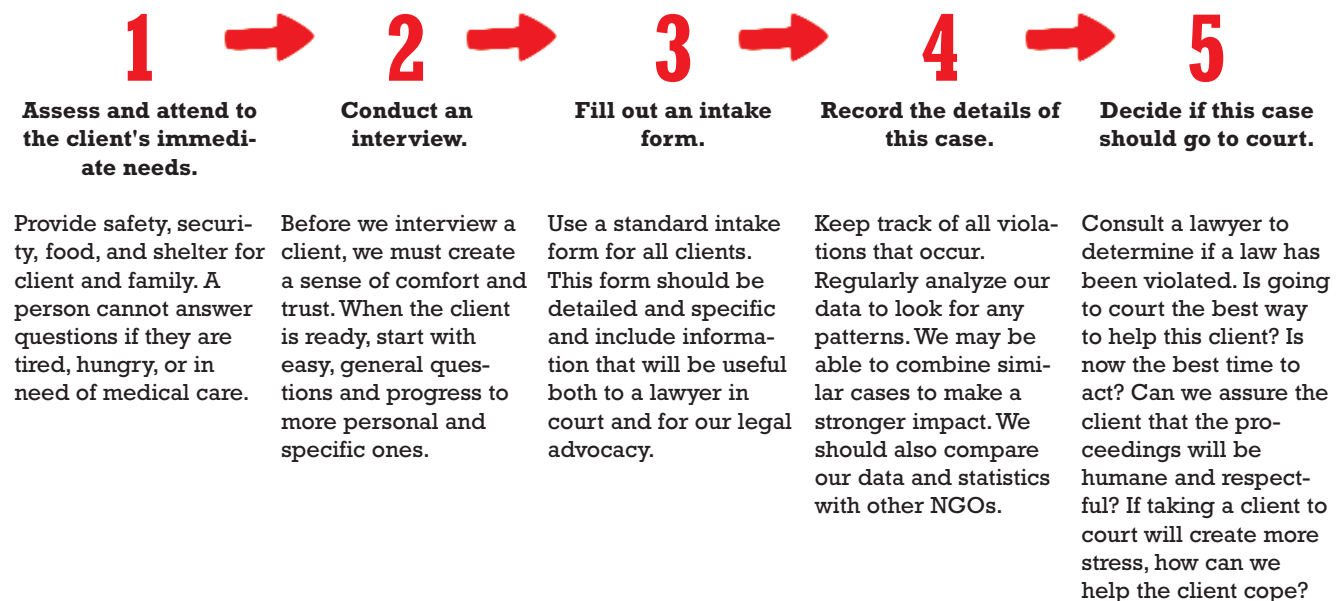
The **Military Court** resolves disputes concerning military discipline or destruction of military property. Any other offenses are decided by the municipal and provincial courts. The military court is controlled by the Ministry of Defense.

Municipal Courts

The **Municipal Courts** resolve disputes based in the municipalities of Phnom Penh and Sihanoukville.

Working with Clients

In addition to advocating for greater rights, many NGOs provide beneficiaries with important services such as health care, food, security, shelter, and job training. Sometimes a beneficiary's problem can only be solved through the legal system. When a person is denied a job because of their HIV status or a farmer's land is illegally seized, the most appropriate action is to help the victim go to court.



We should never pursue a legal case without the full approval, knowledge, and understanding of our client.

There are many good reasons that clients refuse to go to court. In protecting our clients' rights, we should not violate their trust, the confidential nature of their problem, or make decisions on their behalf **without their consent**.

If, together with our client, we decide that the case should go to court then we will need to **contact a legal service**, such as Legal Aid of Cambodia, Cambodian Defenders Project, or Protection of Juvenile Justice, **develop a legal strategy**, and **monitor and review the case** as it progresses.

Advocacy in
CAMBODIA

The Cambodian Defenders Project (CDP) was established in 1994 as a project of the International Human Rights Law Group in Cambodia. In addition to providing free legal defense to poor and vulnerable people, the CDP has established several projects to raise legal awareness, advocate for better legislation, and provide protection for particularly disadvantaged groups.
<http://www.cdpcambodia.org>

Interviewing

Interviewing is one of the best ways to understand a client's needs and collect information to help solve their problem. The interview process is not simply a "question and answer" session but rather a series of steps designed to build a trusting relationship. Our job is to clarify the situation, collect all relevant information, and help our client decide the best way to proceed.

After we ensure that our client is safe, allow them to tell the whole story without questions or interruptions. Often, client's stories describe painful experiences and are difficult to tell. It is important we give them the time, attention, and respect they deserve. If done well, the interview process can help to establish a relationship with the client and give us a general picture of the situation. If the client is comfortable, we can then ask specific questions to clarify details.

Interview questions can be divided into two types: **open** and **closed**. **Open** questions are more general and allow the client to decide how they want to answer. Use open questions early in the interview process to understand basic details of the situation and further develop trust with the client. **Closed** questions are more specific and often can only be answered with a "yes" or "no." Since closed questions might feel rigid and impersonal, we should use this type of question rarely and only after we have developed a strong, trusting relationship.



"Tell me about what happened that night?"

"Who was involved?"

"How are you feeling now?"

"How do you would you like to proceed?"

"Are there people who can support you during this difficult time?"

"Why do you think it happened?"

"What are your concerns about the future?"



"Where did it happen?"

"Did you return home after the incident?"

"Did anyone witness the incident?"

"Did you know the perpetrator?"

"Did you eat dinner that night?"

"Do you have a marriage certificate?"

"What time did it happen?"

Intake Forms

The interview experience will vary widely depending on the interviewer, the client, and the circumstances. However, the questions asked should be the same for each client. One way to standardize the process is to use an "intake form." An intake form includes basic questions relevant for all interviews as well as specific legal questions. Create an intake form in consultation with a lawyer or use the sample intake form in the back of this book. Make sure that all intake interviews are conducted by a trained staff member who is sensitive to the difficulties that a client may experience.

It is important to describe the "intake process" to a client before beginning an interview. Explain that an interview may feel long and invasive but its primary purpose is to collect information. With this information we will be able to determine which service to provide for them. Encourage clients to ask questions if the process seems unclear. Finally, organize intake forms so that information is grouped logically and readily accessible. For example, we may want to group all cases of domestic abuse by province or age of victim.

Over time, people's memories fade, witnesses move, and bruises from physical abuse heal. It is important to record information and evidence early in order to capture the pain and suffering that the client experienced at the time of the incident.

We have provided a complete **sample intake form** in the back of this book. Feel free to use or adapt for your client interviews.

CLIENT INFORMATION

Name: HENG Given Name Sam A Family Name

Date and place of birth: Kampot, May 2

Gender: Male

Residential address: Street 410 #17

Since: JUNE, 2003

Number of Years: 1 1/2

Contact phone number: 012 356 076

Next of kin/Emergency Contact: SOTHEARY S

Relationship: Mother

Number of Children: 2

Dependents and their relationship to accused:

- Sopheasam ATH
- Dara Sam ATH
- Sotheary Sam ATH

Occupation: metal worker
(Please ask client to describe their employment history briefly.)

Employer: Chen Metal shop

Since: June 2003

Client Income: \$100 month

Household Income: \$150 month (m)

Education:
(Please ask client to describe education history such as highest level of client about additional training or certifications that they have received)
High school (grade

Enforcing the Law

Sometimes a client’s case seems clearly appropriate for legal action. However, when a law is new or not correctly enforced we may need to first “test” the legal system’s response. Below are two possible ways to test the new HIV/AIDS law in Cambodia.

	TEST CASE #1	TEST CASE #2
<p>DECIDE WHAT BEHAVIOR NEEDS TO BE CHANGED</p> <p>↓</p>	<p>We have heard that hospitals and clinics in several provinces are revealing people’s HIV/AIDS status in exchange for money.</p>	<p>We have heard that garment factories are refusing to hire HIV+ people.</p>
<p>SELECT YOUR TARGET</p> <p>↓</p>	<p>The largest hospitals and clinics in the 6 largest provinces.</p>	<p>A random sample of garment factories</p>
<p>RECRUIT VOLUNTEERS</p> <p>↓</p>	<p>Find people willing to attempt to bribe hospital and clinic staff.</p>	<p>Work with HIV/AIDS coalitions like CPN+ (Cambodian People’s Network of People Living with HIV/AIDS) to find people willing to apply for jobs at targeted garment factories.</p>
<p>ACT!</p> <p>↓</p>	<p>Volunteers attempt to bribe hospital and clinic staff. Keep careful records of all responses. Have volunteers record any conversations with hidden audio or video recorders.</p>	<p>Volunteers apply for jobs and must declare their HIV status. Keep careful records of all results. Have volunteers record any conversations with hidden audio or video recorders.</p>
<p>GO TO COURT</p>	<p>Using Articles 31 and 33 of the HIV/AIDS law, sue hospital and clinic staff. Violations can be punished \$12.50 to \$50 fine, a one to six month prison sentence and additional administrative punishment for civil servants.</p>	<p>Using Article 36 of the HIV/AIDS law, sue employers. Violators can be punished \$25 to \$250 and can face imprisonment for one to six months. Punishment doubles for repeat offenders and civil servants are supposed to receive administrative sanctions.</p>

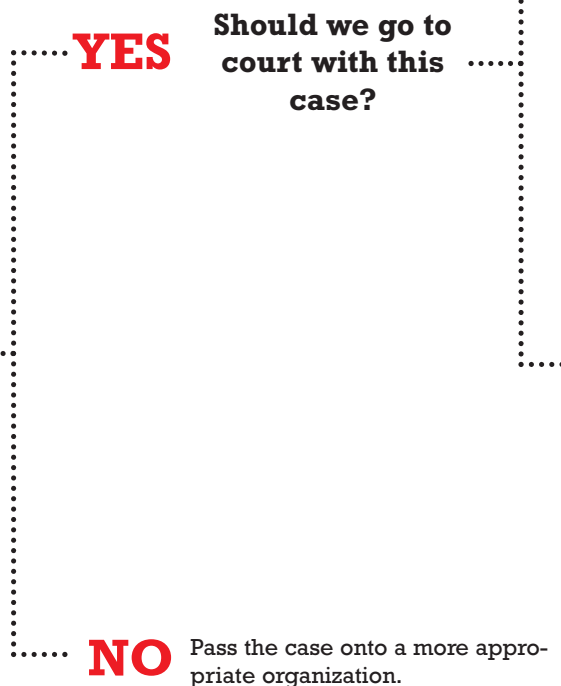
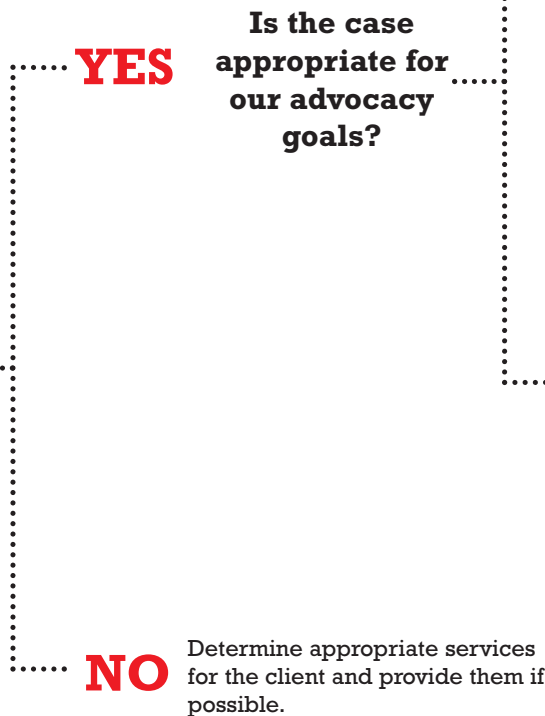
Preparing a Legal Strategy Plan

To prepare a legal strategy that advances our advocacy efforts we need to answer, with the help of a trained lawyer, the following questions:

<p>Does our client want to go to court?</p> <p>.....</p> <p>Is our client ready to pursue legal action? Have we adequately prepared them to fight the injustice in court?</p>	<p>Is the case appropriate for our advocacy goals?</p> <p>.....</p> <p>It is important to balance our goals of a successful legal advocacy campaign with our concerns for the client. If our client's needs do not match our advocacy goals, we should pass the case onto a more appropriate organization.</p>	<p>Should we go to court with this case?</p> <p>.....</p> <p>Before going to court we should make sure we have the necessary skills, expertise, and resources to give our client the best chance of success.</p>	<p>Is there a law that directly addresses the violation?</p> <p>.....</p> <p>Conduct research to determine if existing laws apply to the client's situation. Research the Constitution and international laws to determine if any other law might apply to the client's situation. Be creative! Consider how basic constitutional rights—health, personal safety, education, expression—may apply.</p>
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Does our client want to go to court?

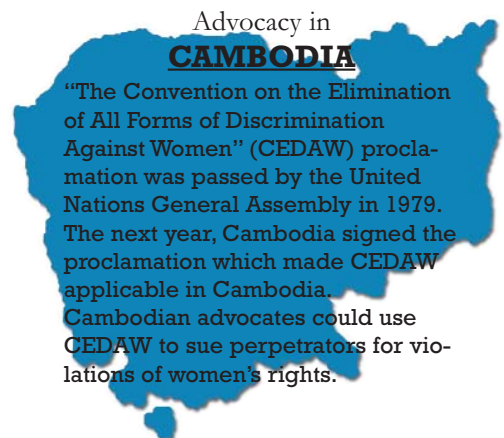


YES Is there a law that directly addresses the violation?

YES With a trained lawyer, work with the client to prepare their case. If possible, join multiple claims together and using existing law **GO TO COURT!**

NO With a trained lawyer, work with the client to prepare their case. If possible, join multiple claims together and using Constitutional or international law **GO TO COURT!**

NO Create a stronger case by conducting test cases, gathering more evidence, or working with another organization with greater expertise.



Even without a law that directly applies to our client’s situation we may choose to go to court to draw attention to the need for a better law.

What if there is no law?

Sometimes, there is no law that directly addresses our client’s problem. In these situations we need to use the legal system to point out the need for a new law. Here are some possible approaches:

Use **EXISTING LAWS**

If there is no specific existing law that directly addresses our client’s problem, we can use similar laws to protect our client’s rights in court. For example, although Cambodia does not have a law against domestic violence, we can prosecute abusive spouses under current assault laws.

Use **INTERNATIONAL LAW**

Remember that international laws are binding in Cambodia. Sue perpetrators, police, or the Government for not complying with international law or treaties.

Lobby **INTERNATIONAL ORGANIZATIONS**

International organizations can help bring a case to international courts or establish an international tribunal.

Use the **CONSTITUTION**

As the highest law of the land, the Constitution protects the basic rights – health, personal safety, education, expression, etc. – of all Cambodians. Sue perpetrators, police, and the Government for violations of the Constitution.

Use the **CONSTITUTIONAL COUNCIL**

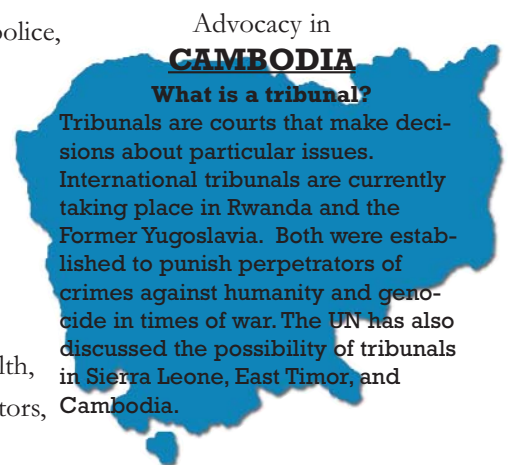
With proper support from one tenth of National Assembly members, one fifth of Senators, the Governor of Phnom Penh, or the King we can ask the Constitutional Council to review the constitutionality of an existing law.

Stage a **“MOCK” COURT**

Invite legal experts to work with students, victims, or others to create a “mock” court. In our mock court we can present cases we cannot bring to a real court. Pressure decision makers to acknowledge the issue by publicizing our mock court in the media.

DOCUMENTATION and **SUPPORT**

Gather evidence of violations. Publish our results to create a sense of public outrage about the injustice of a situation.



Creating a Court of Public Opinion

Although bringing cases to court is an important part of the advocacy process, it may not be enough. Judges often make decisions that we do not expect, which could hinder our advocacy goals. When this happens, we need to create a “**court of public opinion**”. In a “court of public opinion”, we present our case directly to the public who will in turn, pressure decision makers to take action. Here are some way to create a “court of public opinion”:

RECORD THE EVIDENCE



VIDEO

Record video evidence of violations and the impact on victims.



PHOTOS

Take pictures to show the problem or the effects of the problem.



INTERVIEWS

Record conversations with affected community members, including victims and perpetrators.



DOCUMENTS

Collect written evidence or legal documentation of violations.

1 in 8 elderly women...
1 in 4 women...
1 in 3 children...
3 out of 5 men...
5 of 6 teenage girls...

STATISTICS

Gather statistics about the violations from a variety of sources including our client intake forms.



Advocacy in **CAMBODIA**

In 1995, Global Witness, an international NGO, documented a multi-million dollar illegal logging operation between Thai logging companies and the Khmer Rouge. After publishing the evidence, Global Witness used international pressure to force the Thai government to close its borders to logging. This contributed to the demise of the Khmer Rouge because they no longer had funds to support themselves.

<http://www.globalwitness.org>

Creating a Court of Public Opinion

BRING THE EVIDENCE TO THE PUBLIC



PRINT PUBLICATIONS

Publish evidence in newspapers, magazines, or journals. If the Government is involved, contact international journalists who will not have the same security concerns as local journalists.



SHOW A FILM

Create a film that highlights the violations and tells victim's stories. Show the film in museums, schools, on the Internet, or travelling vehicles.



BUILD A MUSEUM OR MEMORIAL

Museums and memorials are especially popular with tourists who will bring information and ideas back to their home countries.



BROADCAST A RADIO PROGRAM

The radio is a cheap and cost-effective way to communicate across the country, especially to people living in rural areas.



INVOLVE THE PUBLIC

Hold a poster competition to encourage people to illustrate their experiences. Put their pictures on display along with statistics to reinforce the message.



PUBLICIZE STATISTICS

Incorporate statistics about violations into our media campaign.

IMAGE: According to recent research, 1/4 women are domestically abused in Cambodia. The Cambodian Committee of Women (CAMBOW) incorporated this statistic into their logo.



WRITE A BOOK

Writing a book about violations gives us an opportunity to tell the complete story.



CREATE A WEBSITE

With its powerful blend of text and images, websites are an effective way to communicate to a wide audience.



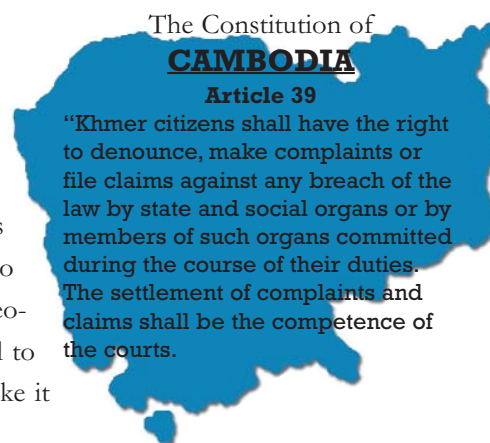
Advocacy in CAMBODIA

Through extensive analysis of documentation, photographs, personal interviews, and forensic science, The Documentation Center of Cambodia (DC-CAM) has created a convincing legal case for an international tribunal against the Khmer Rouge. DC-CAM brings their evidence to the public in many ways: a dramatic photo exhibition at Toul Sleng Museum, a magazine, a website, radio broadcasts, and a forthcoming book about the personal stories and interviews.

<http://www.dcccam.org>

Ethics

In this series, we have presented best practices used by advocates around the world. We know that advocates often work in places where the rule of law is unclear and democratic practices are fragile. Although following the rules to achieve our advocacy goals instead of using bribery and corruption may jeopardize passage of important legislation, **dare to take that risk**. If we fail to advocate in an open, honest, legal, transparent, and ethical manner we make it difficult for all other advocates who follow us.



If our advocacy efforts do not lead to directly to real improvements in people's lives we must **stop, think and **question** our actions.**

Court Watch

The judicial system does not always work in an open, honest, legal, transparent, and ethical manner. One way for us to promote a fair judicial system is by monitoring court proceedings. We can "watch" the courts by sending trained representatives to attend trials and record judgments, decisions, and actions. If necessary, we can attract local and international attention to any inconsistencies in the behavior of judges, prosecutors, or court clerks. "Court watching" deters unlawful behavior and encourages an impartial judicial process.

Conclusion

The legal system is one of the best tools to fight oppression, poverty and injustice. Understanding the legal system, therefore, is one of the most important skills in any advocacy campaign. From drafting new legislation to going to court, we can use the legal system to better people's lives and advance the goals of our advocacy campaign. Together with the skills you have learned in the other four modules of our Advocacy Expert Series, you are ready to make a great start on your next advocacy campaign.



“Injustice **anywhere is a threat
to justice **everywhere**.”**

Martin Luther King

Glossary

Administer

To manage, direct, supervise, or settle issues, problems or laws.

Arbitration

The process by which two people or groups appoint an impartial person or group to help settle a dispute.

Civil

Concerning citizens and their relationships with each other or with the state.

Compensate

To offer something, such as money or time, as payment for harmful actions.

Criminal

Unlawful actions.

Discrimination

Treating a person or group differently than another.

Jurisdiction

The power and authority to make legal decisions.

Mock court

An imitation court used to simulate the proceedings of a real court.

Perpetrator

A person who has broken the law.

Prosecute

To pursue a criminal court action.

Tribunal

Courts that make decisions about particular issues.

Right

A privilege due a citizen.



Resources

For more information on these topics:

Arbitration Council website

<http://www.arbitrationcouncil.org>

Cambodian Defenders Project website

<http://www.cdpcambodia.org>

Constitution of Cambodia

<http://www.cambodia.org/facts/constitution.html>

Introduction to the Cambodian Judicial Process

Koy Neam, The Asia Foundation (1998)

Critical Legal Thinking: Legislation – A Study Text Book Part (II)

Dr. Wilhelm Treiber, Andrea Behm, and Hout Sotheary, Khmer Institute for Democracy (2004)

<http://www.bigpond.com.kh/users/kid/>

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Sample Intake Form

If we encounter a question that a client is unable to answer write down “**Client cannot answer at this time**” on the intake form.

CASE BACKGROUND

Case No:

Date case file opened: _____
Day Month Year

Date the information below was recorded: _____
Day Month Year

Staff person completing this form:

Has legal advice been previously sought for this problem? **YES** **NO**

If so, when and from who?

Have we acted for this client on any problem in the past? **YES** **NO**

If so, when?

What type of problem?

CLIENT INFORMATION

Name: _____
Given Name Family Name

Date and place of birth:

Gender:

Residential address:

Since:

Number of Years:

Contact phone number:

Next of kin/Emergency Contact:

Relationship:

Number of Children:

Dependents and their relationship to accused:

1. Relationship:
2. Relationship:
3. Relationship:

Occupation:

(Please ask client to describe their employment history briefly.)

Employer:

Since:

Client Income:

Household Income:

Education:

(Please ask client to describe education history such as highest level of education attained or number of years in school. Please also ask the client about additional training or certifications that they have received.)

BACKGROUND OF PROBLEM

Details of problem:

Documents client brought to interview:

(photographs, journals, official records, etc.)

- | | | | |
|----|----------------|------------|-----------|
| 1. | Copy attached? | YES | NO |
| 2. | Copy attached? | YES | NO |
| 3. | Copy attached? | YES | NO |

Name and address of people who are witnesses or potential opponents of the client if the case goes to court:

- | | |
|----|---------------|
| 1. | Relationship: |
| 2. | Relationship: |
| 3. | Relationship: |

Names of others involved in this problem and details of how their position relates to the client:

- | | |
|----|---------------|
| 1. | Relationship: |
| 2. | Relationship: |
| 3. | Relationship: |

Has the client spoken about the problem with police or other local government official?

YES **NO**

If so, with who?

When?

Was a written record made of the complaint? **YES** **NO**

Did the client receive medical care in relation to this problem? **YES** **NO**

PHYSICAL EVIDENCE

Bruises, Cuts, or Wounds

Photo

Weapon

Clothing

ACTION TO BE TAKEN

In collaboration with the client, please list the next steps that we will take for this client. Please include the client's goals and identify any resources that the client has that will help achieve these goals.

Documents the client must obtain:

- 1.
- 2.
- 3.

What must to be done for this problem to progress towards resolution?

Action we will take before our next meeting:

Action the client will take before our next meeting:

Date and location of next meeting with client:

Has an entry been made in calendar about the time and date of the next meeting with the client?

YES NO

Summary and/or Impressions of Interview:

Staff signature

Day Month Year



Additional copies of this document are available at:



Pact Cambodia
Phnom Penh Center, 3rd Floor (Fourth Level)
Corner Sihanouk (274) & Sothearos (3) Blvd.
Sangkat Tonle Bassac, Khan Chamkar Morn
Phnom Penh, (P.O. Box 149)
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www.pactcambodia.org