

Third Universal Periodic Review of the Kingdom of Cambodia - Pre-session

Joint-statement on Access to Justice in Cambodia

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

Geneva, 12 December 2018

Excellencies,
Ladies and gentlemen,

I am pleased to present on behalf of six national and international organizations about the situation on access to justice in Cambodia.

We participated in one national consultation organized by the Cambodian Government regarding their national report.

During Cambodia's 2nd UPR cycle, 59 recommendations were made in relation to access to justice. Of these, Cambodia accepted 45 and noted 14. These came from states across Europe, Asia, Africa, and the Americas. While some progress has been made, most recommendations have not been fully implemented.

In light of Cambodia's 3rd UPR cycle, I will discuss four key issues and corresponding recommendations, including concerns regarding judicial independence, insufficient access to legal aid, limited access to information, and violations of fair trial rights.

Issue 1: Laws on the Judiciary are insufficient to protect the separation of powers

- In 2014, three laws on the judiciary were passed following previous UPR recommendations. Unfortunately, instead of improving the situation, they gave the executive excessive control over the judiciary.

Recommendation:

- 1. Amend the three laws on the judiciary to ensure their compliance with international human rights standard.***

Issue 2: Insufficient access to legal aid

- The legal aid budget is insufficient, despite recent increases. In 2017, approximately 5000 cases requested legal aid in mandatory cases, yet the budget only covered 2000 cases. On average, only US\$50 to US\$70 is reimbursed per case.
- In addition, legal aid lawyers often only meet their client for the first time at trial, and are not available during investigative and appeal stages.
- The limited number of lawyers is particularly felt outside Phnom Penh, which disproportionately impacts those living in rural and remote communities, particularly women and marginalized groups.
- Therefore, the right to a lawyer is not fully respected.

Recommendation:

- 1. Allocate a sufficient budget for legal aid, which allows the provision for legal aid at all stages of criminal proceedings, including investigation and appeal stages.***

Issue 3: Limited access to the courts and to legal information

- Access to justice is particularly limited outside of the capital, where the only Appeal Court is located. However, the Ministry of Justice has announced the construction of three additional appeal courts by July 2019 and four additional courts in following years.
- Access to laws and jurisprudence is limited, irregular and decentralized with little efforts made to disseminate them.
- An Access to Information law is currently being drafted but the content of the draft published in February 2018 fails to meet international standard.

Recommendation:

- 1. 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.**
- 2. Enact and ensure the law on access to information effectively safeguards the right to obtain legal information, in full compliance with Cambodia's international HR obligation and with SDG 16.10.02.**

Issue 4: Violation of Fair Trial Rights

- The presumption of innocence is routinely ignored. Confessions are often the sole basis for a conviction, with judges ignoring claims that they were obtained under coercion or torture.
- Rates of pre-trial detention are very high, including for juveniles. As of May 2018, 74% of all detainees were in pre-trial detention.
- Pregnant women and mothers of young children are routinely held in pre-trial detention, with no consideration of the mother's and child's wellbeing.
- The number of women in the judiciary is drastically low: 14% of all judges, 12% of Prosecutors, and 20% of lawyers are women.
- Men's dominance over the judicial system contributes to a hostile environment where victims of abuse or sexual violence are often re-traumatized or blamed.
- Judges often fail to provide sufficient reasons for their judgments.
- Juveniles are not sufficiently protected (pre-trial detention, no respect for their privacy, and no consideration of alternatives to prison sentences)

Recommendations:

- 1. Ensure that justifications for pre-trial detention are interpreted strictly and narrowly.**
- 2. Require that all judges strictly respect the presumption of innocence.**
- 3. Adopt legislation protecting the rights of victims of gender-based violence in legal proceedings, focusing on respect of privacy, legal and psychological support**

On a final note, I would like to emphasize on the crucial role of the justice system and the importance for Cambodia to receiving specific recommendations along with a commitment from recommending states to assist in the implementation.

In this statement, I have highlighted only few key recommendations, and I therefore invited you to read our full submission and our factsheet for the list of our recommendations.

Thank you for your attention!