



FACTSHEET – UPR 2019 – Cambodia

3rd CYCLE UNIVERSAL PERIODIC REVIEW

Access to Justice: Legal Aid

The right to legal aid for criminally accused persons is guaranteed by Cambodia’s legal framework, however this framework is insufficient and not uniformly upheld for all offences and defendants. In reality, the state-sponsored legal aid system in Cambodia is underfunded and understaffed, resulting in the poorer members of society receiving inadequate, if any, legal representation. Consequently, access to justice in Cambodia is itself dependent on wealth and social status, undermining the vital principle of rule of law.

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, one recommendation referenced access to legal counsel for those detained whilst exercising their right to freedom of assembly: *“ensure all persons detained have timely access to their families and to legal counsel”* (Germany); however, no recommendations in either the 1st or 2nd UPR cycles directly addressed the issue of legal aid. The first ever recommendation regarding legal aid was made in the 3rd UPR cycle by Australia which related to the creation of ‘one-stop service centres’ to provide free services for victims of gender-based violence. Of the 198 total recommendations made in Cambodia’s 3rd cycle, 25 pertained to access to justice (13%). The one recommendation that specifically prioritized the right to legal aid therefore accounts for 4%.

NATIONAL FRAMEWORK

Cambodia is a party to most key international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR); in 2007, the Constitutional Council ruled that such treaties were directly applicable in Cambodian domestic law. The right to legal representation is enshrined in Article 14 of the ICCPR which entitles all accused individuals *“to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it”*. The right to legal representation is also incorporated in the Constitution of Cambodia, stating that any individual should enjoy the right to defense through the judicial system (Article 38). Article 300 of the Criminal Procedure Code also provides protection for the right to legal aid in stating that *“The accused may be assisted by a lawyer chosen by himself. He may also make a request to have a lawyer appointed for him in accordance with the Law on the Bar”* and Article 304 determines that *“The Royal Prosecutor shall inform the accused of his right to defense by a lawyer of his own choice, or of one pursuant to the Law on the Bar”*. The Law on the Bar itself prescribes that a special fund be established to provide legal representation for individuals who cannot afford the pay for it themselves (Article 29).

CHALLENGES & IMPACTS

- Legal aid representation is only required for criminal cases involving felonies or for juveniles. As a result, legal aid is only provided by the Bar Association of the Kingdom of Cambodia (BAKC) in these mandatory cases. It is not compulsory in cases involving a misdemeanor (even if it includes a prison sentence) or at all stages of proceedings, failing to meet international standards.
- The insufficient legal aid system contributes to systematic underrepresentation, particularly for cases involving misdemeanors and cases outside Phnom Penh.
- Cambodia has a lack of lawyers. By 26 April 2019, there were just 1346 Rightful lawyers (1068 male and 278 female), and 291 internship lawyers (193 male and 78 female). Furthermore, in 2017, only 98 lawyers were registered to provide state-sponsored legal aid.
- The lack of legal aid policy means there is no qualification criteria for legal aid lawyers, or work management principles such as monthly caseloads. There is also no framework to ensure access to information for the public about legal aid services.
- Lawyers often meet their clients for the first time at the hearing, making it impossible to prepare an effective defense.
- There is no provision for a comprehensive merit test if legal aid is required for the interests of justice, thereby failing to ensure legal aid is provided for the most vulnerable accused, such as women, ethnic minorities and LGBTIQ individuals.

RECOMMENDATIONS

Recommendations made by Member States during the 3rd cycle of UPR:

- I. Allocate sufficient human and financial resources to establish at least five one-stop service centres by 2024, to provide support services free of charge to victims of gender-based violence (Australia).

Our further recommendations:

- I. By mid-2021, establish or assign a **department within the Ministry of Justice** which is responsible for and resourced to supervise the provision of legal aid.
- II. Ensure that **all** criminally accused persons, including those accused of both misdemeanors and felonies, have **access to legal aid** in accordance with the Code of Criminal Procedure, the ICCPR and SDG 16.3.
- III. By 2022 finalize and implement a **comprehensive legal aid policy**, following consultations with relevant stakeholders including civil society.
- IV. Conduct a comprehensive needs assessment to determine the required **annual legal aid budget** through consultations with relevant stakeholders including civil society and allocate a sufficient legal aid budget in accordance with its findings, which allows for the **provision of legal aid at all stages of criminal proceedings**, including investigative and appeal stages.
- V. **Increase the number of lawyers** registered annually with the BAKC according to the country's actual needs, ensuring that bribery or political affiliation do not restrict acceptance of lawyers.
- VI. Amend Article 4 of the Law on the Bar to **allow paralegals to provide legal aid services** and formalize their role and training requirements by 2020.
- VII. Establish in law processes to provide **access to remedy** when the right to legal aid is violated by 2020.

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