

Access to Justice: Access to Legal Information

Access to legal information is a fundamental precondition for rule of law, and an important aspect of access to justice. States are required to update and disseminate information to the public on laws, regulations, policies, decisions, and duties of public institutions relating to rights, freedoms, obligations, and public interests. Despite recognizing this right in its legislation and National Strategic Plan, Cambodia continues to leave this right unfulfilled; access to laws and jurisprudence remains limited, irregular, delayed and decentralized.

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

Cambodia's 2nd UPR cycle led to two recommendations regarding freedom of information, including: *“Establish a law on freedom of information in accordance with international standards”* (Belgium). However, no recommendations have specifically mentioned enhancing protections for access to *legal* information. In Cambodia's 3rd UPR Cycle none of the 198 recommendations made pertained to access to legal information, while access to justice more generally accounted for 13% of recommendations.

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. Under Article 19(2) of the ICCPR, the public has the *“freedom to seek, receive and impart information and ideas of all kinds”*, which includes to access laws passed by their government, while General Comment no.34, which interprets that article, specifically notes that the public has *“a right of access to information held by public bodies”*. In addition, Cambodia's 2014-2018 National Strategic Plan prioritizes *“enhancing access to judicial information”*, as does the January 2018 draft Law on Access to Information which states that *“All public institutions shall abide by the principle of maximum disclosure. Forward this end, they shall regularly update and broadly disseminate information about action plans, budgeting, fulfillment of tasks, responsibilities, and other decisions in connection with national and public interests such as: (...) d) Laws, regulations, policies, decisions, and duties of public institutions relating to rights, freedoms, obligations, and public interests”* (Article 6).

CHALLENGES & IMPACTS

- The January 2018 draft Law on Access to Information vests public institutions with discretion to “*reduce or delay the time frame on [the release of] confidential information either in part or in whole*” for up to 25 years, in a wide range of circumstances (art. 21). This is too vague to satisfy the narrow requirements of international law.
- The approach to making legal information available is not uniform in practice. The limited information which is disseminated is scattered across numerous government websites and Facebook pages. One example is the Royal Gazette Facebook page, which serves as an apparently official channel for disseminating free online editions of certain royal decrees, sub decrees, proclamations, decisions and circulars from the Royal Cabinet, the Government and its ministries.
- Efforts by third parties to fill the information gap have failed. These efforts included attempts to assist the government to build a centralized legal database, a practice by legal practitioners and civil servants to share new laws and regulations on Facebook, and the development of legal literature.
- Despite the National Strategic Plan for 2014-2018, key judicial information, in particular, court decisions, remain largely unavailable.
- While the Constitutional Council regularly publishes its decisions, those from other courts are largely impossible to access. This lack of access makes applying legal precedent impossible and hinders lawyers from mounting effective legal defenses.
- Access to legal information and to justice is particularly limited outside of the capital, when most of the population lives in rural areas. The only appeal court is located in Phnom Penh, although two provincial Appeals Courts are under construction.

RECOMMENDATIONS

Although no recommendations on access to legal information were made by member states at the 3rd UPR, the following recommendations for reform of Cambodia’s legal system are vital for ensuring access to justice:

- I. Enact and ensure that the Law on Access to Information **effectively safeguards the right to access to legal information**, in full compliance with Cambodia’s international human rights obligations and with SDG 16.10.02.
- II. Create a **free, accessible and up-to-date official legal information database**, including all the laws, decrees, royal decrees, circulars and regulations in Cambodia, by 2021.
- III. Publish every new decision of the Supreme Court and the Court of Appeal on a **freely accessible online platform** by 2021.
- IV. Establish **regional Appeal Courts** to increase access to justice in the Cambodian provinces, in accordance with the Law on the Organization of the Courts, and ensure their proper operationalization by the end of 2023.
- V. Operationalize the *Maisons de la Justice* initiative as a means of **accessing legal support and legal information nationwide**, by the end of 2022.

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