

# GENDER-BASED VIOLENCE VICTIMS' RIGHTS AT TRIAL

The delivery of fair justice requires finding a **balance** between the **rights of the accused and the rights of the victims**. In Cambodia, the rights of gender-based violence ("GBV") victims are guaranteed by international and domestic law, including their right to access justice without discrimination and to enjoy the same procedural rights as other parties at trial.

## LEGAL FRAMEWORK RELEVANT TO GBV VICTIMS' RIGHTS AT TRIAL



### International Law & Standards

#### International Covenant on Civil & Political Rights

- **Article 3** – Equality of Rights between men & women
- **Article 14** – Right to a fair trial : the right to equality before courts & tribunals guarantees equal access and equality of arms, and ensures that the parties to the proceedings in question are treated without discrimination (UNHRC, General Comment N°32)
- **Article 16** – Recognition as a person before the law

#### Convention for the Elimination of Discrimination Against Women

- **Article 5(a)** – State obligation to eliminate stereotyping & cultural prejudices
- **Article 15(1)** – Equality of men & women before the law

#### Basic Principles and Guidelines on the Right to a Remedy and Reparation (UN Resolution 60/147)

- **Article 10** – States should treat victims with humanity & respect for their dignity & human rights + necessity for states to ensure the safety, physical and psychological well-being & privacy of the victims and their families.
- **Article 12** - States should provide proper assistance to victims seeking access to justice.

#### Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (UN Resolution 67/187)

- **Principle 4** - States should provide legal aid to victims of crime, where appropriate, and without prejudice to or inconsistency with the rights of the accused.
- **Guideline 9**- States should take appropriate measures to ensure the right of women to access legal aid, which includes the provision of legal aid, advice, court support services in all legal proceedings to female victims of violence to ensure access to justice & avoid re-victimization and other services such as translation of legal documents where requested or required.



### Cambodian Law

#### Cambodian Constitution

- **Article 31** - Equality of all citizens before the law & to enjoy the same rights & freedoms without discrimination of any kind.
- **Article 45** – Abolition of all forms of discrimination against women

#### Law on Domestic Violence

- **Article 31** - Equal rights of legal representation for victims & perpetrators

#### Code of Criminal Procedure

- **Article 144** – Right to an interpreter
- **Article 150** – Right of civil parties to legal representation & be interviewed in the presence of their lawyer

#### Cambodian Code of Judicial Ethics

- **Article 31** – Obligation for judges to adjudicate cases without discrimination of any kind.



## ACCESSIBILITY

GBV Victims are entitled to **access to justice** for GBV committed against them. This requires **court mechanisms and procedures** to be **accessible**. It is therefore important that any communication or accessibility barriers are removed for victims to provide appropriate and effective engagement in trials.

Courts must therefore inform the victim of their rights in a **language they understand** and **use terminology** that is **appropriate to their age and level of education**.

## ACCESS TO LEGAL REPRESENTATION

In Cambodia, providing free legal representation to victims of crime who wish to participate in proceedings as civil parties is not compulsory, running the risk that victims will not have their rights adequately represented. International standards dictate that States should **provide legal aid to the maximum extent possible**, including to **victims of crime**.

States should additionally take **appropriate measures** to ensure the right of **women** to access legal aid, including by providing **legal aid, legal advice**, and **court support services** in all legal proceedings to **female victims of violence** to ensure access to justice.



## NON-DISCRIMINATION AT TRIAL



Stereotyping and gender bias in the justice system hinders female victims' access to justice. **Sexist, derogatory, and degrading language** constitutes a **violation** of the right to **non-discrimination**, the right to **equal legal protection** and **equality before the courts**.

According to international standards, the **judiciary** - which includes not only judges but **all professionals** of the justice system (lawyers, prosecutors, clerks, etc.) - is under an **obligation** to ensure that all legal procedures in cases involving allegations of GBV against women are handled in a **gender-sensitive manner, impartial and fair**, and remain **unaffected** by gender stereotypes or discriminatory interpretation of legal provisions.

## FULL DISCLOSURE AND EQUALITY OF ARMS

International law provides for **equality of arms of all parties at trial**.

Equality of arms means that *"the same procedural rights are to be provided to all the parties unless distinctions are based on law and can be justified on objective and reasonable grounds, not entailing actual disadvantage or other unfairness."* (UNHRC, General Comment N°32)

**Judges** therefore have a **crucial role** in ensuring equality of arms as they have control of the courtroom.



## DECISION-MAKING ACCORDING TO THE LAW

Judges are required to assess the facts of the case **in accordance with the law**. This obligation stems from the fundamental **principle of legality** enshrined in both international and domestic law. For **fair justice** to be rendered, offenders must be punished for their acts as defined by law. If perpetrators are convicted for a lesser offense than what they have committed, this undermines the victim's rights.

Judges must **explain both the facts and the law** on which the criminal judgment rendered is based in order to allow the accused to understand why and how the verdict has been reached, why the accused was found guilty, and to **avoid biased and discriminatory verdicts**.

Sources: UN Docs CCPR/C/GC/32; CEDAW/C/GC/33; CEDAW/C/GC/35; CCPR/C/GC/32; A/RES/65/228



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