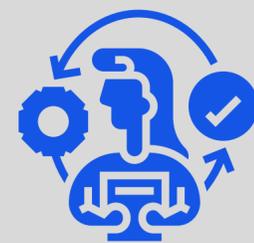


THE RIGHT TO ADEQUATE TIME AND FACILITIES TO PREPARE A DEFENSE AND THE RIGHT TO SPEAK WITH A LAWYER

Definition

The right to adequate time and facilities to prepare a defense lays out the criteria required to ensure that the accused has **the time and means to be able to properly defend themselves**. This right applies at **all stages** of the legal proceedings and to **all criminal charges** without taking account of their seriousness.

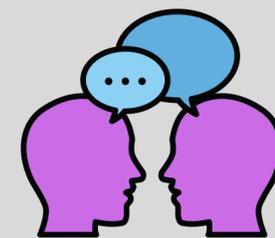


Adequate time: The length of time that is “adequate” depends on the circumstances of each case. The requirement of adequate time is to ensure that the accused is able to properly prepare to challenge the prosecution’s evidence and investigation, and to present defense witnesses.



Adequate facilities: The necessary facilities required by the defense include access to case documents and evidence, access to all materials that the prosecution plans to present in court or that are exculpatory, and access to a duly reasoned, written first instance judgment and the trial transcripts at the appeal stage.

The accused must also have **time to speak with a counsel** of their own choosing and must therefore be granted **access to a lawyer promptly**. This right is granted to all accused but is particularly important when they are detained or imprisoned. Detained accused must be able to **communicate confidentially** and **without restrictions, powers, or undue interference** with their counsel.



Legal Framework

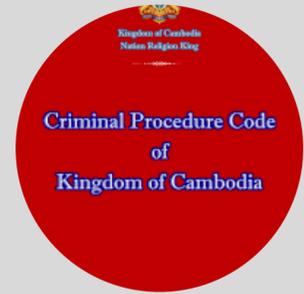
International Law

The right to adequate time and facilities to prepare a defense and the right to speak with a lawyer are expressly protected by Article 14(3)(b) of the International Covenant on Civil and Political Rights (ICCPR) which states, “In the determination of any criminal charge against him, everyone shall be entitled to have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing.”



Cambodian Law

These rights are also protected by Article 48 the Cambodian Code of Criminal Procedure (CCPC) which states, “If the accused requests such time or if the court finds that the case may not be tried immediately, the trial shall be adjourned to another trial date [...]” as well as Articles 145, 259, and 319 of the CCPC, and Article 29 of the Law on Juvenile Justice.



Importance

The right to adequate time and facilities to prepare a defense and the right to speak with a lawyer are critical to **guarantee a fair trial** and the application of the fundamental principle of **equality of arms**, which gives both the prosecution and the defense an equal opportunity to prepare and present their case.



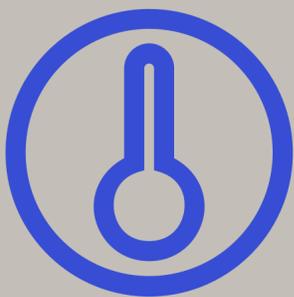
Ensuring a fair trial extends beyond the courtroom. Without allowing the accused the adequate time and facilities to prepare their defense, there is a risk of wrongful conviction and of miscarriage of justice.

Limitations

The right of the accused to adequate facilities to prepare a defense, which entitles them to access all evidentiary materials that the prosecution plans to present in court or that are exculpatory, is **not absolute** and can therefore **exceptionally be restricted**.



In **exceptional circumstances**, the court can permit the prosecution to withhold the disclosure of certain documents from the defense. However, such non-disclosure must pursue a **legitimate aim** (e.g., the protection of the fundamental rights of another individual or national security or the safeguard of an important public interest) and be **strictly necessary** and **proportionate** to the legitimate aim. Any restriction on the defense’s right to access evidence must be decided by the court and not the prosecution and must not jeopardize the principle of equality of arms and the fairness of the trial.



The right to speak with a lawyer of a detained or imprisoned individual may be **restricted or suspended in exceptional circumstances**. These circumstances must be **specified by law or lawful regulations** and **considered indispensable** by a judicial or other authority to maintain security and good order. In any circumstances, communication with their counsel cannot be denied to a detained or imprisoned individual for more than a few days.

September 2022