



FACTSHEET – UPR 2019 – Cambodia

3rd CYCLE UNIVERSAL PERIODIC REVIEW

Access to Justice: Fair Trial Rights

Fair trial rights are protected in Cambodia through both general and specific provisions set out in a number of instruments. Nevertheless, there are still many issues that need to be addressed, such as poor prison conditions, overcrowded prisons with a large number of prisoners in pre-trial detention, the presumption of innocence (which is routinely ignored), the almost non-existent right to an effective defense, juveniles who lack protection and a lack of reasoned judgements. Cambodia's 3rd UPR cycle recognized and raised these issues.

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

In Cambodia's 2nd UPR, five of the 205 total recommendations made mentioned fair trial rights (2.4%). Two of these recommendations, made by Belgium and Austria, related to pretrial detention. The remaining three raised access to justice for women and juveniles. During Cambodia's 3rd UPR cycle, 198 recommendations were made in total, with 25 pertaining to access to justice (13%). Among these 25 recommendations, there were five specifically regarding fair trial rights (20%). One recommendation urged a reduction in current pre-trial detention lengths, one prioritized amendments to the juvenile justice system and the remaining five pertained specifically to eradicating judicial discrimination of women and improving women's access to justice (20%).

NATIONAL FRAMEWORK

Cambodia is a party to most key international human rights treaties, including the United Nations Universal Declaration on Human Rights (UDHR) and 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. Both these statutes guarantee the right to a fair and public hearing by an independent and impartial tribunal. The ICCPR further develops the concept of a fair trial, which includes, but is not limited to, the following rights and principles: the presumption of innocence, the right to a public hearing, the right to be tried without undue delay, the right to understand the nature and cause of the charge, the right to adequate time and facilities to prepare a defense, the right to legal representation, the protection against self-incrimination (not to confess guilt as a result of coercion or inducement), and right to appeal to a higher court on grounds of fact and law. Further protections for fair trial rights are afforded by Article 38 of the Constitution of Cambodia which establishes the rights of Khmer citizens, guaranteeing that: *"the prosecution, arrest, police custody or detention of any person shall not be done, except in accordance with the law... Confessions obtained by physical torture or mental pressure shall not be admissible as evidence of guilt. The doubt shall benefit the accused. Any accused is presumed innocent up to the final verdict of the court. Any individual shall have the right to his/her own defense through the judicial system."* The Code of Criminal Procedure of the Kingdom of Cambodia (CCPC), the Criminal Code of the Kingdom of Cambodia (Penal Code), and the Law on Juvenile Justice also provide for fair trial rights.

CHALLENGES & IMPACTS

- While the exceptional character of pre-trial detention in criminal cases is protected under Cambodian law, in practice, pre-trial detention is quasi-automatic: for instance, in 2016, 70.6% of detainees were in pre-trial detention, among which 36.5% were awaiting final judgment. Pre-trial detention is usually lengthy, and many are held without a date for trial having been set.
- Between 28 April 2016 and 29 June 2017, the ADHOC 5 were detained without trial. President of the dissolved opposition CNRP party, Kem Sokha, was detained in September 2017, and released after a year under conditions amounting to house arrest.
- Judges fail to undertake in depth, objective and evidence-based assessments of whether detention is justified despite the 2014 introduction of a form requiring judges to provide reasoning for detention.
- Poor prison conditions, including overcrowding and lack of basic sanitary facilities, render pre-trial detention more difficult. While the authorities have acknowledged that prisons conditions are problematic, no concrete measures have been taken since the last UPR.
- Defendants often appear in Court in the uniforms of convicted prisoners, leading to preconceptions of guilt.

- The right to a lawyer is not fully respected and individuals are not always able to access an effective defense as a result of the inadequacy of the state-sponsored legal aid system and the general lack of information available to the public about the availability of legal aid.
- 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.
- The right of the accused to present and challenge evidence is not respected, while incriminating evidence often fails to meet the requisite standard for a guilty verdict.
- When issuing their judgments, judges often fail to detail the legal basis and the evidence they rely on.
- The number of women in the judiciary is drastically low: just 14% of all judges, 12% of prosecutors, and 20% of lawyers are women. Such inequality in accessing judicial professions has an impact on women defendants, victims and witnesses.
- Domestic violence is often not recognized as a criminal offence and many women choose not to bring charges heightening impunity for gender-based crimes. Notably, only 20% of cases of domestic violence monitored during the beginning of 2014 and the end of 2016 resulted in criminal proceedings.

RECOMMENDATIONS

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

- I. Take all necessary steps towards a substantive reduction in the time spent by persons in pretrial detention (**Austria**).
- II. Redouble efforts to eradicate discrimination against women in the legal sphere and put an end to harmful practices and discriminatory stereotypes of which Cambodian women are victims (**Uruguay**).
- III. Overcome obstacles to access to justice for women victims of violence (**Iraq**).
- IV. Reinforce judicial mechanisms to fight sexual and family violence and human trafficking, and carry out a programme for raising awareness and education on these issues (**Togo**).
- V. Guarantee that the victims of the land grab are fairly heard and, where appropriate, receive fair compensation and non-discriminatory access to justice (**Switzerland**).
- VI. Provide mandatory training on prosecution procedures for cases of gender-based violence for law enforcement and judicial officers (**Republic of Moldova**).
- VII. Conduct comprehensive investigations of cases of domestic and sexual violence, and ensure that perpetrators are prosecuted and victims are adequately compensated (**Republic of Moldova**).
- VIII. Amend national legislation in order to ensure it is in line with the Convention on the Rights of the Child, paying special attention to the provisions of the Criminal Code and the juvenile justice system (**Uruguay**).

Our further recommendations:

- I. Promote the greater use of **alternatives to pre-trial detention**, including judicial supervision, in accordance with SDG 16.3.2.
- II. Require that all judges inform defendants about the **presumption of innocence**, including the burden of proof and the protection against self-incrimination, and about their right to state sponsored legal aid.
- III. Thoroughly investigate allegations that a confession was not given with **free and informed consent**; ensure that the burden of proof is on the Prosecution to show that a confession was not obtained under duress, coercion or torture.
- IV. Allow defendants who have not yet received a final judgement to appear in Court wearing civilian clothes.
- V. Inform the public about the right to **state-sponsored legal aid**, including through publications in police offices, prisons and court buildings.
- VI. Develop clear **guidelines regarding the presentation and evaluation of evidence**, building on the work of the ECCC, and ensure that all judges are trained accordingly.
- VII. Drawing from the practice of the ECCC, establish a framework in which judges are obligated to inform and **explain the legal and evidential reasons behind their verdict** and ensure that reasoned written judgements are given to the defendant.
- VIII. Drawing from the ECCC, adopt legislation **protecting the right of victims of gender-based violence** in the context of legal proceedings, focusing on respect of privacy as well as legal and psychological support, in compliance with SDGs 5.2 and 5.C.
- IX. Adopt urgent measures to **ensure respect for juvenile's privacy** in judicial proceedings, as provided by the Law on Juvenile Justice, by 2020.
- X. Limit pre-trial detention of juveniles to **exceptional cases** when no other alternative exists and ensure that, in such case, all necessary measures are taken to respect the juvenile's rights.

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