



BRIEFING NOTE

Senate Commission 6

Roles and Duties of Cambodian Lawyers

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1. Introduction

Seeing the importance of the legal profession, the Law on the Bar was established in 1995¹ after legal and judicial reform was initiated by the Royal Government of Cambodia in 1993.² The Law on the Bar provides lawyers with independence in order to serve justice and, this profession may only operate within the framework of the Bar Association.³

This briefing note will provide a study of the roles and duties of Cambodian lawyers, as well as the challenges for lawyers to fulfill their tasks. Based on the existing documents, this briefing note addresses four main research questions:

1. How important are lawyers in the Cambodian judicial system?
2. What are the roles and duties of a Cambodian lawyer?
3. What are the challenges facing lawyers in fulfilling their duties to protect their clients?
4. What are the mechanisms to address issues facing lawyers in fulfilling their duties?

2. The Importance of Lawyers in the Cambodian Judicial System

Lawyers have mission to contribute the rule of law, strengthen social justice and protect human rights, according to Article 4 of the Code of Ethics.⁴ Usually, the professional associations of lawyers has a key role to play in (1) upholding professional standards and ethics, (2) protecting their members from persecution and improper interference, and (3) to ensure the lawyer are able to provide legal services to all clients.⁵ According to the UN Basic Principles on the Role of Lawyers, the professional association should cooperate with the government and other institutions to protect public interest and promote justice by ensuring that everyone has effective and equal services.⁶

For example, Article 300 of the Cambodian Code of Criminal Procedure states that the accused person may be assisted by a lawyer chosen by him/herself, and he/she may also request to have a lawyer appointed for him/her, according to the Law on the Bar.⁷ In addition, minors and accused of crimes may not appear in court without the assistance of a law-

yer.⁸ In cases where the accused person is unable to pay for a lawyer, the Government or the Bar Association must provide them one.⁹

The Bar Association (see Figure 1 below) – the institution representing lawyers – is a non-governmental organization which independently performs their duties and is validated by the Law on the Bar.¹⁰

The Bar Association's Fund was established under Article 29 of the Law on the Bar, and these funds are held by the Bar Association of the Kingdom of Cambodia (BAKC) – hereinafter called "BAKC Contribution"¹¹. For practical purposes, Cambodian legal aid is divided into three parts. (1) The members of the Bar Association are required to contribute each year to the Bar Funds^{i 12}, (2) The Royal Government of Cambodia allocates a legal aid budget each year, and (3) Other sources of legal aid are provided by the private sector, NGOs or foreign governments.¹³

The Bar Fund is dedicated for Bar Association activities, such as "providing income to lawyers who defend poor people".¹⁴

There are some NGOs that employ Cambodian lawyers to protect and promote human rights or provide legal aid to vulnerable people.¹⁵ Likewise, this legal aid may also be used to prevent mistreatment during detention and reduce wrongful convictions.¹⁶

3. Roles and Duties of Cambodian Lawyers

According to the UN Basic Principles on the Role of the Lawyers, due to the fact that Cambodian lawyers have an important role in ensuring the rule of law and protecting citizens' rights, their performances shall not be under any restriction or intervention.¹⁷

In performing their duties, Cambodian lawyers use and interpret the laws, as well as, provide explanations regarding the meaning and importance of these laws to citizens.¹⁸ Additionally, in cases where a law fails to respond to the needs of the citizens, the lawyers are also supposed to assist in amending the law. In the legislative process, lawyers can provide lawmakers with experience and consultation with regard to the implementation of laws. In addition, they are supposed to protect

ⁱ Internal Rules of the Bar Association, Article 5 state that "Lawyers and foreign lawyers shall require to paid contribution to the Bar Association accordance to the decision of the Bar Council"

citizens' rights and file complaints if any authority violates laws. Lawyers also act as the representatives of their clients in the judicial process to lawfully fight for the rights for the clients before the court.¹⁹ All lawyers have the duty of confidentiality towards their clients.²⁰

3.1. Roles of Cambodian Lawyers

While lawyers play important roles in commercial, labor, and administrative cases, this section focuses only on criminal and civil cases.²¹

- Criminal cases: While prosecutors take legal action against those charged with criminal offenses, lawyers are responsible for the protection of the charged or accused person. In addition, lawyers can act as representatives of the victim in civil actions, according to article 2 of the Law on the Bar. Cambodian lawyers can also ask the investigating judge to conduct an investigation or forensic examination on evidence. All evidence found by lawyer is to be presented to the judge(s) for them to examine and take under consideration.²²
- Civil case: In civil cases, lawyers can protect their clients during the judicial proceedings. However, they have to have prior agreement with their clients, according to Article 2 of the Law on the Bar²³

3.2. Duties of Cambodian Lawyers

According to the Law on the Bar, Code of Ethics and the BAKC internal rules, the duties of a Cambodian lawyer can be classified into three main types: duties as a member of a professional association, duties as a professional serving his/her client, and duties as a legal professional serving in the judicial framework.²⁴

- Duties to the profession: lawyers have a duty to protect and maintain their prestige and consider the public interest rather than their selves. Also, they should ensure that legal services are accessible to all the citizens, both rich and poor. Therefore, lawyers shall take part in any program related to the legal aid as it is stated in Article 52 of the Code of Ethics, "A lawyer shall actively and diligently do the assignment, provide common services, and defend the poor people on a pro bono basis assigned by the Bar Association. A Lawyer may not refuse any tasks assigned by the

Bar Association without proper reasons.”²⁵ In addition, as provided for in Article 4 of the Law on the Bar all lawyers must join this association.²⁶

- Duties to the client: lawyers are the representatives of the clients. They use their knowledge and skills to protect their clients before the court. In the process of providing legal services to the clients and building trust, lawyers shall (a) have a discussion with the clients regarding the case; (b) find the facts and study the related laws; (c) provide advice to clients concerning their rights; and (d) prepare and deliver the defense for clients during a trial.²⁷

a) Complaints: the lawyer shall ask clients to identify the subject of the complaint (s) – and lawyers may represent clients with their agreement or defend clients in adjudicatory bodies in all stages of the judicial proceeding before they supply the application of complaints to the court. In a civil case, if the complaint is legally defective and it cannot be remedied, the court may issue a judgment to dismiss.²⁸ The lawyer could also explain to clients the judicial procedures and how they might disadvantage the case. Additionally, lawyers will identify the relevant facts and laws in order to file a written complaint with a court.²⁹

b) Before the Trial : In criminal case, when the charged person appears for the first time, the investigating judge shall check his identity – inform him of the imputed act and its legal ramifications and receive his statement after informing him of the right to remain silent. The investigating judge shall also inform the charged person of his rights to choose a lawyer or to have a lawyer appointed according to the Law on the Bar.³⁰

When a charged person has a lawyer, the investing judge shall summons the lawyer at least five days before the interrogation takes place. During that period, the lawyer may examine the case file.³¹

After the investigating judge has interrogated the charged person, she/he may or may not be detained depending on the judges’ decision and/or after a request from the Royal Prosecutor. In this case the lawyer must defend the

charged person.³² Either the lawyer or charged person may submit a request to the investigating judge for the release of him/her at any time.³³ Lawyers must provide clear reasons for releasing their client.

c) During the Trial: Lawyers play a vital role in trial proceedings as they provide facts and laws in order to defend their client's rights and interests. These include:

- Facts: The lawyer addresses disputed facts by providing statements that benefit the client. The lawyer can also present exculpatory evidence to the court such as witnesses and other beneficial evidence.
- Laws: Lawyers have to review questions of law in order to identify which laws will be used to address the facts. They present the defenses' case by providing Articles of law to address facts during trial proceedings.
- Final Written Pleadings: Before judges make a decision, lawyers provide his/her final statement regarding their client. In his/her final statement, the lawyer may request that the client be released, provided compensation, or reject the other party's accusation.
- Duties to the court: It is a primary duty of lawyers to assist the court to achieve justice. Consequently, lawyers shall not disclose any false evidence before the court. However, if clients do not want them to present any facts, which are related to the clients' wrong doings, the lawyers must obey the clients' wishes since it is not the task of the lawyers to find guilt.³⁴

4. Challenges

The lack of a legal aid system is one of the main obstacles to access to justice in Cambodia. The government provides a legal aid budget especially for criminal cases which is, according to experts, approximately 300 million riels (or 75.000 USD) per year to cover costs required for access to justice in all provinces.³⁵

This is in comparison to the legal aid budget provided by the government of Thailand in 2014 which was 459,472,243.27 USD (14,590.8 million THB) to promote public access to the justice system³⁶, Cambodian aid is small, and it is probably not sufficient to cover even nominal fees of a legal aid lawyer. It can be one of the reasons why it is hard to recruit lawyers to work in the provinces.³⁷

There is a lack of specific data available regarding Cambodian legal aid. However, the lack of funding might lead to the poor quality of legal services as lawyers do not have enough time to meet their clients and conduct investigations.³⁸ In addition, according to experts³⁹, there is no specific legal aid policy to address these issues. Policy options for the government to address this could be to increase the legal aid budget and provide a more holistic strategy in order to ensure a strong legal aid programme that delivers a valuable service to those who need legal assistance.

In Cambodia, there is only one Bar Association in Phnom Penh that covers the national territory. Thus, lawyers prefer to work in the city rather than the provinces. In contrast, in France, local Bar Associations for legal aid are located in every province.⁴⁰ Lack of a Bar Association is also a main issue to enhance and bring legal services to the local people. To tackle this issue the government one option can be to establish a Bar Association in every province – to ensure that it has enough lawyers to support legal aid services.

5. Conclusion

Lawyers have the duty to their clients to provide legal services and freely represent their legal interests. However, some challenges still remain to allow lawyers to fulfill their task such as poor legal aid, the low numbers of lawyers and the lack of institutions like the Bar Association in provinces that would make access to justice for local people easier. The Royal Government could address those issues by providing more legal aid budget and establish a Bar Association in provinces - to promote public awareness of judicial rights and access to fast and effective legal services.

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- ² Royal Government of Cambodia (RGC), (2014). *National Strategic Development Plan 2014-2018*. Phnom Penh: RGC, p1
- ³ Law on the Bar, Article 1.
- ⁴ Dorine. V. van der Keur, (2014). *Raising the Cambodian Bar*.
- ⁵ UN, (1990). *Basic Principle on the Role of Lawyers*. Cuba: Havana. Available at: <https://www.un.org/ruleoflaw/blog/document/basic-principles-on-the-role-of-lawyers/> [accessed on 03 Feb. 2017]
- ⁶ Ibid.
- ⁷ Ministry of Justice, (2007). *Cambodian Code of Criminal Procedure*. Phnom Penh : MoJ. Article 300.
- ⁸ *Cambodian Code of Criminal Procedure*. Article 303.
- ⁹ National Assembly, (1995). *Law on the Bar*. Article 29.
- ¹⁰ The Khmer Institute of Democracy. *Role of the Lawyer*. p. 33. Available at: <http://www.khmerrough.com/pdf/CriticalThinking-Eng/Part4-CriticalThinking.pdf> . [Accessed on 03 Feb 2017].
- ¹¹ BACK,. *Bank Account of BACK Contribution*. [online] Available at: <http://www.bakc.org.kh/en/> [accessed on 03 Feb. 2017]
- ¹² National Assembly, (1995). *Law on the Bar*. Article 29.
- ¹³ National Assembly, (1995). *Law on the Bar*. Article 29.
- ¹⁴ National Assembly, (1995). *Law on the Bar*. Article 29.
- ¹⁵ Ibid.
- ¹⁶ Ibid.
- ¹⁷ UN, (1990). *Basic Principle on the Role of Lawyers*.
- ¹⁸ Law on the Bar, Article 3
- ¹⁹ Ibid.
- ²⁰ Law on the Bar, Article 19
- ²¹ Law on the Bar, Article 3
- ²² Hun, B. *Mission, Roles, and Duties of Lawyers*.
- ²³ Law on the Bar, Article 2
- ²⁴ Hun, B. *Mission, Roles, and Duties of Lawyers*.
- ²⁵ Ibid. pp. 35-36.
- ²⁶ *The Law on the Bar*.
- ²⁷ The Khmer Institute of Democracy. *Role of the Lawyer*. p. 37.
- ²⁸ Ministry of Justice, (2007). *Civil Code Procedure*. Article 81
- ²⁹ Ibid. Article 75
- ³⁰ Ministry of Justice, (2007). *Criminal Code Procedure*. Article 143
- ³¹ Ibid. Article 145
- ³² Ibid. Article 206
- ³³ Ibid. Article 217 and 245
- ³⁴ Ibid. p. 38.
- ³⁵ Run, S. (2016). *Role of Professional Bodies and Legal Aid Organizations in Cambodia*. Bangkok. Available at <http://www.lrct.go.th/en/wp-content/uploads/2016/04/S3-3-Run-Saray-Legal-Aid-Cambodia.pdf> [08 Feb 2017]
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- ³⁷ Run, S. (2016). *Role of Professional Bodies and Legal Aid Organizations in Cambodia*.
- ³⁸ Ibid.
- ³⁹ Ibid.

⁴⁰ Prisoners Abroad, (2005). *Factsheet France Legal System (Remand)*. London: United Kingdom. Available at <http://www.legalaidreform.org/national-legal-aid-systems/national-legal-aid-systems-by-country/item/739-france> [access on 20 Feb 2017].