



Fact Sheet: Institutions Series: The Appellate Court of Cambodia

Institution: The Appellate Court of Cambodia (the “Appeal Court”)

Snapshot: The Appeal Court is a centralized appeal court, located in Phnom Penh, empowered to hear all appeals on questions of law and/or fact in criminal and civil judgments handed down in all first instance courts throughout the Kingdom of Cambodia (“Cambodia”). Any steps to introduce regional Appeal Courts will increase the accessibility of appeal proceedings to all Cambodians who may wish to appeal civil or criminal judgments but who face obstacles of geographical isolation and insufficient means to travel to Phnom Penh – and would therefore represent a positive step in terms of access to justice in Cambodia.

Introduction

In light of recent reports that the Ministry of Justice (the “MOJ”) plans to establish regional branches of the current centralized Appeal Court throughout Cambodian provinces, this fact sheet provides an overview of the role and functions of the Appeal Court as well as its effectiveness in the context of wider problems relating to access to justice in Cambodia. This fact sheet is written by the Cambodian Center for Human Rights (“CCHR”), a non-aligned, independent, non-governmental organization that works to promote and protect democracy and respect for human rights – primarily civil and political rights – throughout Cambodia.

The Appeal Court

The Appeal Court is a centralized appeal court located in Phnom Penh, but its jurisdiction covers the whole of Cambodia. It hears cases appealed from provincial/municipal Courts of First Instance as well as military courts (if the accused is military personnel). The Appeal Court hears all appeals on issues of law and fact against both civil and criminal judgments. However, the Appeal Court is not the final court of appeal in Cambodia: appeals can also be made to the Supreme Court on (1) points of law and (2) points of law and fact. The Supreme Court is the highest court of appeal in Cambodia.

A dissatisfied party to a judgment or decision may instigate an appeal by filing an appeal submission with the office of the clerk of the court of first instance which rendered the initial judgment. Article 377 of the Cambodian Criminal Procedure Code (the “CCPC”) specifically provides for a detained convicted person’s right to instigate an appeal process via the chief of the prison or detention center where he/she is held. While still having a right of appeal, civil parties may only appeal based on their civil interest, namely the amount of any reparations granted or the refusal to do so, and cannot put any new request before the Appeal Court that was not put before the Court of First Instance (Art. 402 of the CCPC). Both civil parties and convicted persons have one month in which to appeal (Art. 382 of the CCPC).

Proceedings before the Appeal Court are heard by a bench of three judges and are public unless the the Appeal Court considers that a public hearing “*would cause a significant danger to the public order or morality*” (Art. 392 of the CCPC). The Appeal Court may affirm, modify or annul the relevant decision of the lower court in whole or in part, including reversing a finding of guilt and replacing it with an acquittal in a criminal case – following a re-hearing of the case on its merits (Arts 405-406 of the CCPC). If the Appeal Court modifies a sentence handed down by a Court of First Instance, the original sentence cannot be aggravated (*i.e.*, increased) even when the Appeal Court decides to reclassify an offense for which the Court of First Instance entered a conviction (Art 399 of the CCPC).

Access to justice in Cambodia

Access to justice is a major issue throughout the Cambodian judicial system, with poverty and limited domestic education of individual rights affecting the ability of Cambodian people to secure legal advice and representation to institute civil proceedings and even defend themselves in criminal proceedings. This issue certainly extends to instituting and responding to appeal proceedings. The problem is especially acute in rural areas of Cambodia, where many live in grinding poverty without the means to cease working and travel the often long distances to take part in court proceedings

In the context of criminal proceedings, the right of a convicted person to have his/her conviction and sentence reviewed by a higher tribunal according to law is a fundamental human right enshrined in Article 14(5) of the International Covenant on Civil and Political Rights (the “ICCPR”), which Cambodia signed and ratified in 1992, and which is incorporated into domestic law by virtue of Article 31 of the Constitution of Cambodia. Restricting this right by making it difficult and expensive for appellants and their families and supporters to travel to a centralized Appeal Court renders the guarantee contained in Article 14(5) of the ICCPR largely hollow in practice. This is presumably why Article 389 of the CCPC requires a detained appellant to be transferred without delay to the nearest prison or detention center to the seat of the Appeal Court. Under Article 415 of the CCPC, if the appellant is properly summonsed, but fails to appear at the hearing, the court may declare the opposition motion void. Thereafter, the default judgment cannot be modified, and has full effect against all parties. However, the appellant is still free to refer his/her case to the Supreme Court.

In April 2012, the Cambodian League for the Promotion and Defense of Human Rights (“LICADHO”) released a Briefing Paper entitled ‘*In Absentia 2012: An Update on Cambodia’s Inmate Transportation Crisis & the Right to Appeal*’, following a 2010 report which found an “epidemic” of *in absentia* criminal appeals in Cambodia. LICADHO found a slight decrease in the number of inmates with appeals pending (15.4% down from 17% in 2010), though overall approximately 800 inmates found themselves in circumstances where the General Department of Prisons lacked the vehicles, gasoline, staffing and funding necessary to transport these prisoners to their appeal hearings. They found that the only solution available to prisoners wishing to attend their appeal hearings was to pay their own way, an option which is difficult or impossible for the vast majority in Cambodia.

Conclusion

The establishment of regional appeal courts, each covering designated regional appeal districts comprising several provinces in a specific geographical area, was one of the recommendations to come out of the LICADHO report. CCHR also welcomes any plan by the MOJ to establish provincial branches of the current centralized Appeal Court as a positive step towards at last addressing shortcomings in funding and resources within the prison system as regards transporting appellants to their appeal hearings. Such steps will increase the accessibility of appeal proceedings to all Cambodians who may wish to appeal civil or criminal judgments but face obstacles of geographical isolation and insufficient means to travel to Phnom Penh.

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