

2009 RGOC-CIVIL SOCIETY ACCESS TO JUSTICE DIALOGUE

Banteay Meanchey, Kampong Thom, Kampong Cham and Prey Veng

General Secretariat, Council for Legal and Judicial Reform

1. INTRODUCTION

During September and October 2009 the General Secretariat for the Council for Legal and Judicial Reform undertook a series of workshops to promote discussions between the Government and civil society on the issue of access to justice. The workshops were held in Banteay Meanchey, Kampong Thom, Kampong Cham and Prey Veng and were made possible by funding from DANIDA and technical support from AusAID. Each workshop consisted of approximately 150 participants drawn from commune councils, district governors & deputy governors, civil society, private sector, police posts & inspectors, provincial prison, gendarmerie, provincial departments and the court & prosecution.

Each participant was provided with an information pack consisting of the Planning Guide for Justice Sector Institutions, the Legal and Judicial Reform Implementation Plan of Action, LJR Strategy, Indicator Monitoring System, LJR Project Catalogue, LJR Vision Document, Document on the progress of the implementation of the action plan, LJR Bulletin, Model Court project documents. For the majority of participants this was the first time that any of these documents had been received.

Each workshop was for one and a half days. The first day consisted of presentations on the Legal and Judicial Reform from the General Secretariat, CLJR and Provincial Deputy Governor as well as presentations on the civil and penal procedures from the Court and Prosecution. Further presentations on access to justice issues from Civil Society and the Police were also made. There was time made available for discussions at this point.

It should be noted that the courts which had partaken in the Model Court process were far more articulate when faced with questions from participants. There was a better understanding from these courts of the limitations they face and the principles they need to follow in order to develop. As a result they were better able to engage in constructive discussions and were less defensive of failings in the system. They also were able to articulate their planned approach to fixing problems through the structure of their strategic plans.

The second day saw the participants split into groups where challenges to access to justice and recommendations for improving the system were made. Each group made a presentation to the workshop on their findings.

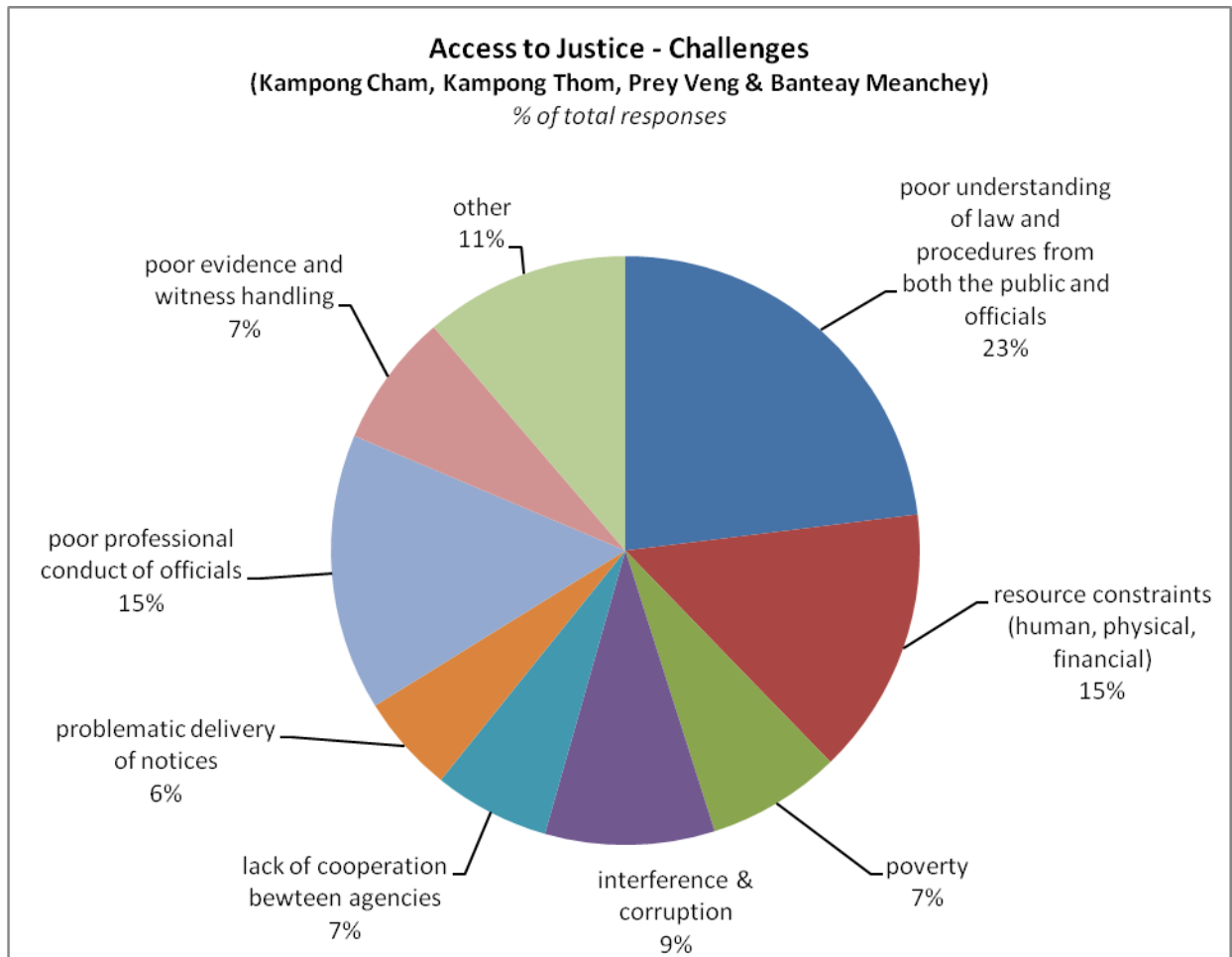
The workshops provided a chance for concerns from the commune level to be raised and also for civil society to be able to engage in constructive debate on what are normally seen as sensitive topics. The coordination effort between the provincial governments and the General Secretariat CLJR ensured that the right environment was provided for this type of dialogue to occur in a productive manner.

2. SUMMARY OF WORKSHOP FINDINGS

2.1 Challenges to Accessing Justice Services

There was a high level of consistency in the types of challenges that participants felt were important despite participants coming from a variety of stakeholder groups.

The most important challenge was identified as the lack of information available to the public and law enforcement officials, particularly at the commune level. This included information on new laws as well as procedures for accessing justice services. It was felt that a number of problems in law compliance, law enforcement and confidence in the system stemmed from this basic lack of information and understanding at the commune level. Participants noted that this encouraged both the public and officials at the commune level to seek informal means to access justice which at times brought them in conflict with the law and denied them the rights that they should enjoy. This in turn caused confusion at the commune level as to the relationship between alternate dispute resolutions mechanisms (ADRs) and the courts.



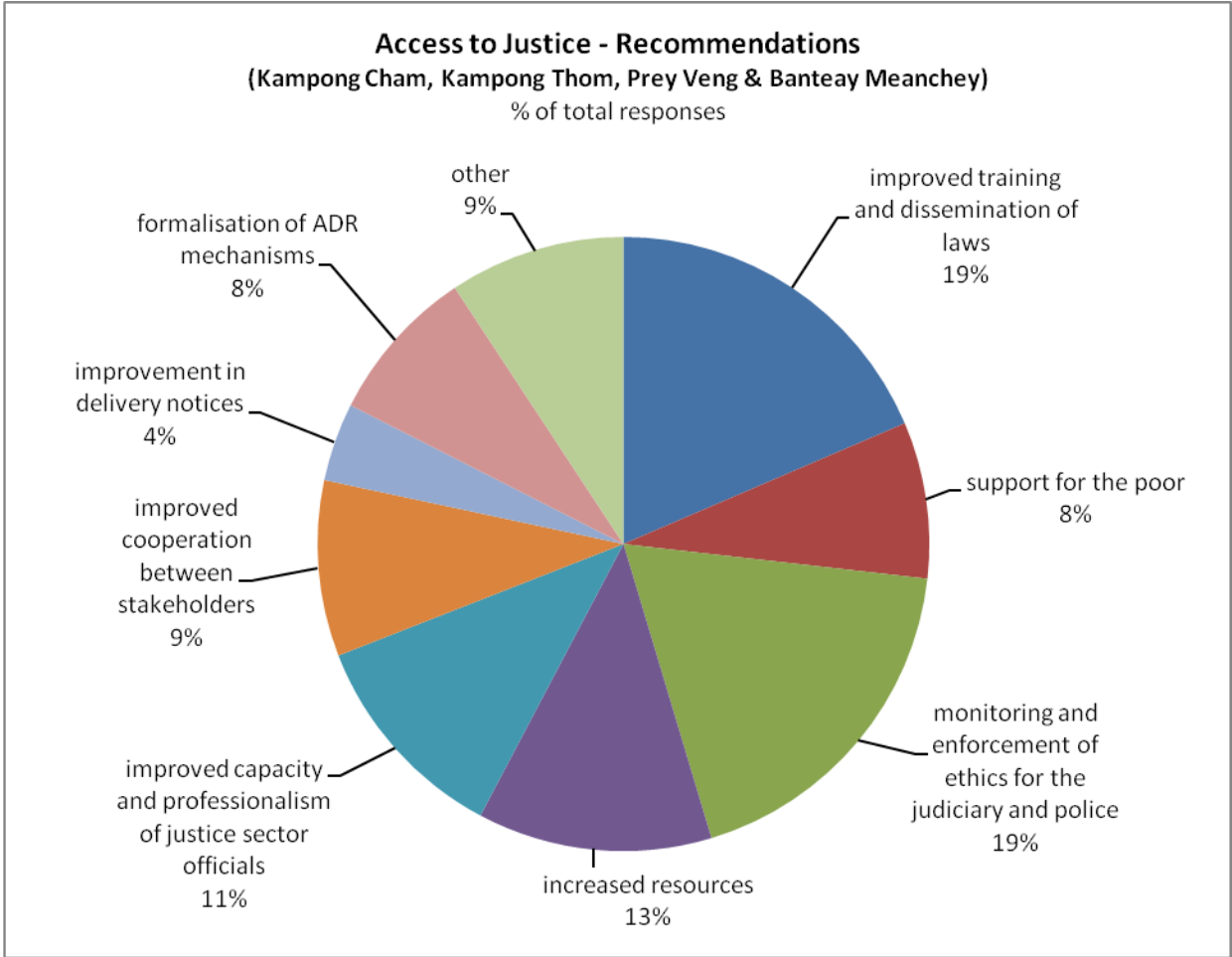
Participants also noted that the lack of resources for the sector reduced the ability for justice services to be delivered effectively. This was felt to be particularly problematic in remote communes where the

cost of travel made investigations and accessing the provincial court prohibitively expensive. This was not just an issue for the judicial police but for the court and prisons as well. It was generally felt by participants that there was a need for greater resources to be provided to the sector in order to speed the process and increase the geographical reach of the formal justice system.

The conduct of officials when dealing with the public was also identified as a key constraint. It should be noted that this is different to the issue of corruption. Participants noted that too many officials did not keep appointment times, were slow in dealing with investigations and generally lacked a sense of urgency in dealing with complaints from the public. It was felt that this discouraged the public from accessing justice services and contributed to the lack of confidence in the formal justice system.

2.2 Recommendations for Improving Access to Justice Services

Just as the lack of information, particularly at the commune level, was seen as a challenge to accessing justice, improving training for officials at the commune level and the broader dissemination of laws to the public was seen as a key recommendation for effecting change. This extended to information on procedures and the ability to access forms and documents needed to access the formal justice system.



Participants felt in equal measure that monitoring and disciplinary mechanisms to improve the ethical standards of court officials, judicial police and other officials in the sector was needed to improve confidence in the system and to reduce incidences of corruption. This is a significant recommendation given that the majority of the participants are themselves officials in the justice sector. This is different from the professionalism of justice sector officials which participants also saw as important however not to the same degree.

Participants also recognized that resource constraints reduce the ability for sector agencies to perform their duties and hence recommended that more resources be allocated to the sector. This included financial resources, staffing for police and courts as well as equipment and transport for investigations. This was emphasized by those working in remote communes who found that often there were insufficient resources available for the formal justice system to be accessed and until such time as those resources were made available then access to formal justice for people in these remote communities would be denied for all but the most serious of crimes and for almost all civil matters.

3. WORKSHOP OUTCOMES

(i) Improved knowledge of laws and procedures

A majority of participants remarked that it was the first time that they had received comprehensive information on the new civil and criminal procedures, information on new laws and information on the various processes involved in accessing justice through the courts. This also incorporated clarification of the role of ADRs in providing justice and how they interact with the formal court structure.

(ii) Opportunity to share opinions constructively

Many participants felt that the forum allowed for the constructive dialogue between different stakeholders who are often antagonistic towards each other. This included civil society, judicial police, the courts, prisons, commune councilors and district and provincial government officials. Each group had a different set of responsibilities and concerns yet were able to articulate the difficulties they faced from shortcomings in their own and other agencies without parties having to be defensive. The end result was constructive discussion and greater understanding of obligations and constraints faced by various stakeholders as well as identifying obligations and constraints that parties held in common.

(iii) Improved understanding of the Legal and Judicial Reform

A number of participants also remarked upon the improved understanding of the policy of the government and why different reforms were occurring. This was particularly noted upon by participants from the communes who often had limited access to such information. It is envisaged that the documentation provided to the participants will assist in the further dissemination of this information.

(iv) Improved coordination capacity of the General Secretariat CLJR

The workshops provided a new set of contacts and methodology for engaging stakeholders in the Legal and Judicial Reform. The General Secretariat now has another successful format that it can repeat in other localities which improves its overall capacity to act as a facilitator for reform implementation.

(v) Forum for civil society to participate in the Legal and Judicial Reform

The large mix of stakeholders in the forum allowed for civil society and to an extent the private sector to provide constructive feedback on the implementation of the reform and to make recommendations on a technical level with limited advocacy from either side.

(vi) Provision of feedback on obstacles to the implementation of the reform and recommendations for improving service delivery

The workshops provided an avenue for those working at the commune level to be able to articulate the obstacles they face and to ensure that recommendations for improvement are heard at the policy level. This is important as the flow of information between the policy makers in Phnom Penh and the implementers at the commune level has been problematic for a variety of reasons. The workshops allowed discussions to occur and the information received by both decision makers and implementers should assist in improving the Legal and Judicial Reform implementation and effect.

4. LESSONS LEARNED

(i) use of neutral venues

The workshops took place in hotels in three provinces and in a university in one. This use of neutral venues proved beneficial as it encouraged active participation from the court and civil society and reduced the sense that the meeting was being directed by the executive.

(ii) workshop structure

The workshops needed more time for discussions on procedures. It transpired that for most participants this was their first opportunity to raise procedural queries with the court and prosecution and this took quite some time. Participants noted that these discussions were educational and often dealt with practical procedure issues faced at the commune level.

(iii) demand for information

A significant amount of documentation was provided for the participants, the printing of which subsumed over half the total budget. Despite this there was demand for further documentation and an extra print run of the existing documentation had to be undertaken. Future workshops should be seen as an opportunity to provide information to the provinces and a limited number of districts and communes. To meet this demand additional information on new relevant laws and procedures should be prepared.

(iv) use of General Secretariat

The General Secretariat CLJR proved a useful facilitator as it already had a measure of confidence of the judiciary and the executive. Relationships with civil society groups in the provinces were also improved as a result.

(v) private sector engagement

Engagement of the private sector in discussions and feedback is important and proved beneficial in Banteay Meanchey. Engaging the private sector in the other provinces was less successful. One problem was that the facilitators, development partner assistance and the provincial authorities had little experience with this type of engagement. Better effort needs to be made to engage the private sector and more discussions with chambers of commerce needs to occur.

5. RECOMMENDATIONS

Following the conclusion of the four workshops and analysis of the information received from participants it is recommended that:

- (i) The workshops be further undertaken in other provinces
- (ii) That the information gathered form part of the Indicator Monitoring System
- (iii) That plans be made for improving the dissemination of information on laws and procedures to the commune level on a nation-wide basis
- (iv) That the recommendations made by participants be presented to the Council for Legal and Judicial Reform for consideration

APPENDIX 1: Group Discussion: Findings & Recommendations Summary (Banteay Meanchey, Kampong Thom, Kampong Cham & Prey Veng)

<p>Commune Councilors</p> <p><i>CHALLENGES</i></p> <ul style="list-style-type: none"> • There is a lack of understanding of the laws and insufficient information getting to the commune level. This includes law enforcement officers. This makes it difficult to determine what is and isn't a crime. • Most people do not know the procedure for filing complaints and there is little information available to assist them in this. • Many people want to deal with cases only at the commune level. What the commune can and cannot arbitrate is unclear • Poor people are unable to hire lawyers and often unable to attend court. This is difficult when case handling is very slow. • Summons and notices handled at the commune are often incomplete, arrive too late or are brought by the complainant themselves • Middle-men who broker cases interfere with the justice process and there appears to be little that can be done about them 	<p><i>RECOMMENDATIONS</i></p> <ul style="list-style-type: none"> • That information be made available at the commune level on laws and procedures for registering complaints. This should included training courses for commune councilors • That reduced fees and other support mechanisms be considered to improve access to justice for the poor • Arbitration undertaken by the commune prior to a case being filed is taken into consideration by the court • That complaints be handled more quickly and that notices be clear and on time
<p>District Governors & Deputy Governors</p> <p><i>CHALLENGES</i></p> <ul style="list-style-type: none"> • There is a lack of understanding of laws and little dissemination to the district level. This includes the understanding of law enforcement officers. • Some parties use contacts or bribery to influence cases. There are also administrative decisions made which contradict court decisions which cause confusion. • Poor ethics and understanding reduces public confidence in law enforcement officers and the court • Poverty limits access to the courts and legal representation 	<p><i>RECOMMENDATIONS</i></p> <ul style="list-style-type: none"> • Training courses and information on laws & procedures be delivered to the local level • Training on procedures and ethics be made to law enforcement officials • The authority for alternate dispute resolution needs be made clear • That court notices be delivered by the court and they be given the means to do so. • That the courts not accept influence or bribes, but act independently. Mechanisms to promote the independence of the court should be supported. • That lawyers with offices near the court be

<ul style="list-style-type: none"> • Delivery of summons is made by third parties and not the court itself 	<p>available for the poor</p>
<p>Provincial Departments and Prisons</p> <p><i>CHALLENGES</i></p> <ul style="list-style-type: none"> • There is a lack of understanding of the law from the public and insufficient dissemination of information. This includes the understanding of procedures and how to file complaints • Final judgments are often delayed or not delivered to the prison at all • Investigations often are unable to produce sufficient evidence. Some of the evidence consists of documents that are in fact forgeries, particularly in land cases. • There is confusion from the public as to the roles of the communes, police and courts in dispute resolution • Inconsistency in the application of the law reduces public confidence • Poor people cannot afford defense lawyers and lose a disproportionate number of cases • When the wrong people are arrested due to poor information on warrants no-one is held accountable for the mistake 	<p><i>RECOMMENDATIONS</i></p> <ul style="list-style-type: none"> • Law enforcement officers need to held accountable for both improper activities as well as for slow work • Legal training and information dissemination needs to occur at the local level, including training on ethics for law enforcement officials • Legal aid should be available • ADR's at the district level should be promoted • The SCM must be seen to impose strict disciplinary measures on judges and prosecutors found guilty of wrongdoings
<p>Police Posts & District Inspectors</p> <p><i>CHALLENGES</i></p> <ul style="list-style-type: none"> • There is a lack of understanding from the public of laws and procedures, including how to access the court. There is also limited dissemination of laws and information to the local level • There is insufficient support for the poor • A lack of confidence in the system makes it difficult to find witnesses to crimes • There is a lack of cooperation between the courts and health services • There are a lack of forms, procedures and resources to provide the services required. • NGO support tends to focus only on certain 	<p><i>RECOMMENDATIONS</i></p> <ul style="list-style-type: none"> • A dedicated budget line for the delivery of court notices and orders be provided. • That transport be made available for the delivery of those summoned, particularly from remote areas • That summons provide sufficient information to properly identify the person who is to receive it • That prosecutors & court contact the judicial police in incidences where case files are incomplete so the situation can be rectified • That trainings for law enforcement officers from both the government and NGOs be made

<p>areas</p> <ul style="list-style-type: none"> • Some offenders use contacts or bribery to gain favourable decisions at court 	<p>available</p> <ul style="list-style-type: none"> • That sufficient technical equipment for determining evidence be made available
<p>Gendarmerie</p> <p><i>CHALLENGES</i></p> <ul style="list-style-type: none"> • There is limited understanding of the law from the public. This also impacts upon people’s understanding as why sometimes the accused are released by the courts. The lack of understanding of procedures also makes people believe the courts are difficult to access resulting in a reluctance to file complaints. • There are sometimes outside influences on the case from a number of different sources. • The delivery of notices and orders to remote locations is difficult due to the lack of resources available and the lack of information on the notices. • There is insufficient cooperation between the CNP and the Gendarmerie • There is insufficient budget or equipment to conduct proper investigations • The desire of communities to treat domestic violence issues internally 	<p><i>RECOMMENDATIONS</i></p> <ul style="list-style-type: none"> • Improved dissemination of laws to rural areas • A dedicated budget line for the delivery of court notices and orders be provided. • That notices be given to judicial police within a stipulated time frame • That prosecutors & court contact the judicial police in incidences where case files are incomplete so the situation can be rectified • That mechanisms that ensure that courts follow procedures correctly be strengthened • That more technical equipment and judicial police be made available
<p>Civil Society and the Private Sector</p> <p><i>CHALLENGES</i></p> <ul style="list-style-type: none"> • There is a lack of understanding from the public of laws and procedures, including how to access the court. There is also limited dissemination of laws and information to the local level • The fee structure in the courts is too high, especially in criminal cases • Poor people cannot afford defense lawyers and lose a disproportionate number of cases. There is also difficulty in finding representation • There is uncertainty as to the role of communes, police and courts in dispute resolution as well as the role of the cadastral 	<p><i>RECOMMENDATIONS</i></p> <ul style="list-style-type: none"> • Information on laws and procedures should be more broadly disseminated to both the public and to law enforcement officials. • The code of ethics for judges and prosecutors should be better enforced • The anti-corruption law should be passed • The public should be encouraged to discuss problems with law enforcement officials and disciplinary actions against those found of wrongdoing should be enforced. This should be supported by an M&E system. • The SCM must be seen to impose strict disciplinary measures on judges and

<p>commission</p> <ul style="list-style-type: none"> • The process can take too long which reduces confidence in the system • People are fearful of providing testimony as they are afraid of ramifications, partly through the lack of protection for witnesses and partly through the culture of impunity • There is insufficient cooperation between specialist institutions and between authorities and NGOs • Insufficient enforcement of ethics results in cases being influenced by non-legal factors • There are insufficient resources for judicial police or for the court to conduct investigations thoroughly • There are problems with the late delivery of court notices 	<p>prosecutors found guilty of wrongdoings</p> <ul style="list-style-type: none"> • Law subjects should be incorporated into the school curriculum • A formalised ADR structure needs to be put in place • Coordination mechanisms between agencies and NGOs should be developed. Budget should also be made for regular consultation with broader stakeholders. • Sufficient resources should be made available for investigations and the investigation judge should have a greater role in interviews. • Fees for criminal cases should be removed. • Receipts should be provided for all payments made • legal aid should be made available for the poor • Measures should be taken to improve the speed of case file handling
<p>Courts and Prosecution</p> <p><i>CHALLENGES</i></p> <ul style="list-style-type: none"> • Insufficient resources and budget for court operations and investigations. • Lack of lawyers, clerks and associated experts • Difficulties in the enforcement of decisions • Insufficient cooperation between institutions • Limited understanding of the law and procedures from the public • Interventions that impact upon court independence occur both through the hearing process and the enforcement of decisions. • Poor evidence provided compounded by a lack of forensic expertise and equipment and the reluctance of witnesses to participate • Lack of court forms and documents • The courts are often far away from scenes of crimes making investigations, the delivery of notices and the monitoring of decision enforcement difficult. 	<p><i>RECOMMENDATIONS</i></p> <ul style="list-style-type: none"> • Increase in court physical and human resources including sufficient operational budget • More lawyers and associated experts • The statute for judges, prosecutors and court clerks to be enacted • Court forms and documents that can be used in all courts in the country • Accommodation arrangements for judges and prosecutors who have been rotated • Enforcement of the codes of ethics • Improved coordination between institutions

APPENDIX 2: PARTICIPANT FEEDBACK

Each participant in the four workshops was asked to fill a feedback form which asked their opinion of the workshop and any requests for the future.

