

This Case Story was submitted to the 2016 CLA Case Competition. The competition was open to individuals and organizations affiliated with USAID and gave participants an opportunity to promote their work and contribute to good practice that advances our understanding of collaborating, learning, and adapting in action.

## CLA in Developing Effective Models of Legal Representation: CCHR's Human Rights Defenders Project

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*Credit: Cambodian Center for Human Rights.*

### What is the general context in which the story takes place?

The situation of human rights and fundamental freedoms in Cambodia is extremely challenging. The increase in political and social mobilization since the 2013 elections has been accompanied by an increase in repressive tactics. In particular, human rights defenders (HRDs) are regularly targeted, harassed, and charged with criminal offenses for speaking out against government policies. On June 13, 2016, in his opening statement to the Human Rights Council, the UN high commissioner for human rights referred to recent high-profile arrests of opposition and civil society members as indicating a “drastic and deplorable narrowing of the democratic space” in Cambodia.

The Cambodian Center for Human Rights (CCHR) has long worked to protect HRDs, who, due to their activism, find themselves the subject of threats, including legal threats of arrest, detention, or prosecution. From 2012-2014, CCHR partnered with the Asia Foundation to implement Supporting Civil Society in Cambodia, a 2-year project supported by the U.S. State Department Bureau of Democracy, Human Rights, and Labor. One project objective was to pilot a new performance-based model of legal assistance that builds the capacity of lawyers to improve the support provided to

HRDs. In 2014, CCHR sought and was granted support for its Protecting Fundamental Freedoms project, which will be delivered over 3 years with \$500,000 grant funding from USAID. One work stream will focus on people whose work places them at risk of experiencing violations of their fundamental freedoms. This includes the continued provision of legal assistance to HRDs.

**What was the main challenge or opportunity you were addressing with this CLA approach or activity?**

In 2012, the initiation of a new project cycle involving partners with the expertise to craft a new model for engaging and paying lawyers and delivering tailored training on specialized areas of law provided an opportunity to address issues affecting the delivery of legal representation for HRDs that had been observed by CCHR and across the sector more broadly. From the design and planning stages, the project was intended to respond to existing challenges in the provision of legal assistance by utilizing partners' divergent areas of expertise and knowledge. One legacy of the UN Transitional Authority that administered Cambodia from 1992-1993 is a rich civil society and human rights sector whose actors collaborate on shared goals. CCHR was therefore able to draw not just on its own experiences of providing legal representation, but also on those of colleagues and partners carrying out similar programs.

Legal assistance programs have sought to extend their impact and reach to more clients, resulting in increased caseloads being handled by a limited pool of lawyers. As a result, the focus has tended to be on the mere provision of legal representation, rather than defining and achieving particular desired outcomes (e.g., having charges dropped or sentences suspended) and confronting the charges strongly on the substance of their arguments, which would have the potential to narrow the space available for the courts to manipulate outcomes.

Traditional legal aid models, including those CCHR used prior to 2012, typically rely on full-time salaried lawyers or a system of outsourcing in which lawyers receive a single payment package per case, paid in advance. Under both models, performance is not linked to outcomes or to efforts involved in preparing the case for court, creating two major challenges. First, it virtually eliminates any possibility for CCHR to exercise control over the manner in which a case's day-to-day activities are conducted; payment is simply for lawyers to take care of cases in the manner that they see fit. Second, while many of the lawyers employed by CCHR were personally engaged in their cases and worked conscientiously to secure the best outcomes for their clients, it is clear that a system of payment with no link to how the representation is conducted or its results will fail to provide an incentive for lawyers to pursue all stages of the process with the utmost diligence or to do all within their means to secure optimum outcomes. For example, before 2012, CCHR had observed that lawyers engaged under the existing system skipped certain necessary court procedures, which CCHR believed negatively affected the outcome of cases.

A further challenge was that legal aid lawyers often lack knowledge and understanding of the specialized laws that are commonly encountered in cases against HRDs (e.g., those related to defamation, incitement, and property destruction).



**Describe the CLA approach or activity, explaining how the activity integrated collaborating, learning, adapting culture, processes, and/or resources as applicable.**

The piloting and implementation of the new performance-based legal assistance model was a major innovation for Cambodia. The new legal aid model was developed through a collaborative process involving both partners, from a synthesis of different performance data they had obtained through past experience. In addition to the evaluation of CCHR's own experiences and anecdotal evidence, the learning process incorporated research on the Cambodian judicial system and many consultations among individuals and groups with legal technical expertise.

The design process focused on the shared project objective of providing sophisticated legal assistance to those organizations or individuals facing legal actions that are often politically motivated. In doing so, the design process took into account, learned from, and made adaptations directly designed to address the shortcomings of the existing system. The design of the new model aimed to combat the identified issues of lack of incentive and financial inefficiency in the existing legal aid system by paying lawyers on the completion of specific case-driven deliverables rather than on the previous inefficient salary basis. A pool of 10-12 independent lawyers would be selected, trained in the specialized laws, and assigned to a particular case via a memorandum of understanding. Throughout, the collaborative design process kept its focus on the shared objective of the adaptation of existing practice and the introduction of a new, effective, and sustainable model of legal assistance that would help hold the courts or government authorities accountable for sound application of laws.

Key to the new model was the design of a new payment form, with a list of itemized required court procedures. This responded to the issues identified above by giving CCHR greater control over the conduct of the case, as each procedural step conducted (or omitted) became visible in the payment structure. These tasks are based on the requirements of existing relevant laws and policies, as well as current judicial practices in all stages of the court proceedings. The model also includes the suggested amount of time needed to accomplish the tasks and pre-determined, generally accepted rates for each task that lawyers perform. For each completed task, the lawyer would receive the corresponding payment, thereby incentivizing them to comply with necessary legal procedures and fully exhaust all possible legal avenues in representing the client.

The project initially targeted 10 cases to be taken on by utilizing the legal representation from the cadre of lawyers within the timeframe of the project. However, as of the end of October 2014 (the time at which the monitoring and evaluation report on the project was finalized), the lawyers had represented 20 cases involving 103 individuals. A group of 12 independent lawyers or those working with NGOs were selected and trained in the specialized laws. CCHR's senior lawyer assigned cases and monitored their performance. The lawyers were then paid for their services based on the legal tasks delivered. A system of performance evaluation and case assignment was managed jointly by the Asia Foundation and CCHR's senior lawyer, allowing implementation issues to be identified early.

As well as increasing efficiency in order to highlight the shortcomings of the judiciary, the new model also aimed to create a platform for sharing good legal practice to address knowledge gaps observed among Cambodian legal practitioners. To address this challenge, the project built upon the existing capacity across Cambodia's legal community by training local lawyers in areas of law particularly relevant to civil society's operating space through a number of training sessions.

**Were there any special considerations during implementation (e.g., necessary resources, implementation challenges or obstacles, and enabling factors)?**

Since March 2013, CCHR has successfully tested the new model. However, there is an inherent limitation to any assessment of the quality and efficiency of legal representation provided as, due to the frequent political motivation behind the cases, the ultimate outcome may be predetermined regardless of the quality of the defense provided by the HRD's lawyer. The project provided legal assistance and representation only to victims of violation of freedom of expression, assembly, and association; it targeted cases based on individual need and risk, where potential clients met CCHR's criteria for qualification as a HRD. These cases included where the governmental or judicial actors tend to use the laws abusively and arbitrarily in order to repress the rights and freedoms of rights activists and human rights defenders, apply the laws inconsistently with the Constitution or international human rights laws, or misapply the laws due to a lack of common understanding of the laws.

By October 2014, only seven of the 12 trained lawyers were assigned to work on the cases selected by the project. Some lawyers expressed interest in the work, but because they were working full-time with NGOs, they were usually unable to find the time to engage in the project. Six of the lawyers have their own private firms, so they had ample time to participate in the project. Since then, the pool of lawyers has been maintained at approximately the same level, with 11 lawyers currently retained by CCHR under the scheme.

A number of practical issues arose, the majority of which could be remedied over the course of implementation.

The lawyers received a 2-day training from Asia Foundation staff. From the evaluation, the participants indicated that they had not received any training on the jurisprudence of the United Nations Human Rights Committee on freedom of expression. They noted that the training had addressed the appropriate legal issues, which the courts had not tackled correctly, and suggested that the project make more time available for more comprehensive training. In response to this demand, and given the potential to amplify the impact of the project, two additional trainings were conducted.

The ability of participants to attend scheduled trainings presented a further challenge, as some of the lawyers had to cancel at the last minute due to other commitments. CCHR corrected this issue for the duration of the project through flexible scheduling, by holding subsequent trainings on weekends when such conflicts were less likely to arise.

Finally, CCHR's complex internal financial policies created some logistical issues concerning the disbursement of funds due. Payment by task required lawyers to submit separate payment and expenses requests for each task, which initially proved cumbersome and difficult. However, following adaptations of practice by CCHR to provide guidance to the lawyers, and support from CCHR's finance team in preparing the necessary documents, these issues were successfully addressed.

## **With your initial challenge/opportunity in mind, what have been the most significant outcomes, results, or impacts of the activity or approach to date?**

The project has been highly effective in combating the issues of lack of incentive and financial inefficiency in the existing legal aid system. The lawyers expressed satisfaction that the tasks listed within the different stages of the trial have guided them in effectively and efficiently working with both clients and the courts. In this way, the new model can be seen to have improved the efficiency and quality of the service delivered. Likewise, the lawyers were satisfied with the suggested fees for each task. As of today, lawyers retained by CCHR have provided representation in 40 cases, including those continued or initiated under the auspices of CCHR's Protecting Fundamental Freedoms project. Of those, two cases have resulted in the acquittal of the individuals, one individual received a royal pardon, and one individual, although convicted, was released with a suspended sentence.

Payment records demonstrated that, using the tasks in the model, lawyers made efforts to exhaust all legal means in order to fully represent their clients, such as seeking and interviewing defense witnesses, and in filing most of the motions allowed in the Criminal Procedure Code in order to force judges to address the rights of the defendants. This rigorous and proactive attitude by lawyers represents a bold new approach seldom seen in previous court cases, especially in those involving high-profile and/or well-connected people.

At the same time, this focus on quality, with its higher demands on the lawyers' time, has necessarily meant that a more limited number of cases can be taken. NGOs that continue to employ salaried lawyers are able to accept a larger number of cases, although, as noted above, there is a risk that the heavy workload of individual lawyers could have a detrimental effect on the litigation outcomes.

## **What were the most important lessons learned?**

In CCHR's view, the new model has had a direct and positive impact on the outcomes of cases that would not have been achieved prior to 2012. Based on feedback from lawyers and other legal aid organizations, the new performance-based model is more effective and sustainable than the existing system in helping to hold the courts and government authorities accountable for sound application of laws.

However, while the performance-based model appears to have been largely successful, monitoring and evaluation carried out at the end of the project in October 2014 highlighted a number of lessons that could be learned and recommendations that could be implemented moving forward.

For example, reflection was required on how to apply the model in the context of the NGOs' increasing and demanding caseload. One area in which practical improvements and adaptations could be made concerned the case management system used during the pilot stage, which would benefit from enhancement. These lessons have been applied in preparing the implementation of CCHR's ongoing Protecting Fundamental Freedoms project, which includes in its monitoring plan the

maintenance of a database of beneficiaries of legal assistance that contains the date of referral, demographic information, the type of support offered, and the outcome of the support.

Finally, given the project's overall success, efforts were made to allow the model to be replicated by other organizations. The model was presented to other NGOs in Cambodia that work to support HRDs, and the payment form has been shared with other NGOs that expressed interest in shifting to the performance-based model. In this way, project impact could be multiplied significantly, and the positive outcomes in the efficiency of representation and ability to hold the judiciary to account could be amplified across the whole sector.

### **Any other critical information you'd like to share?**

Through its ongoing Protecting Fundamental Freedoms project, CCHR continues to provide legal representation using the performance-based model. Most recently, lawyers retained by CCHR acted in the high-profile trial of three activists from the environmental NGO Mother Nature. On July 1, 2016, all three were convicted for acting as instigators to the offence of threatening to cause destruction, defacement, or damage followed by an order, with their sentences suspended. The activists intend to appeal, and CCHR's lawyers will continue to provide support for this action.

Anecdotal evidence suggests that when lawyers retained by CCHR under the performance-based model work with other lawyers (e.g., on cases with multiple defendants), CCHR's lawyers take a noticeable leading role. A deputy prosecutor was heard to remark that the new proactive approach of CCHR's lawyers was forcing him and his team to work harder, and to grapple with legal and procedural issues they were not used to addressing. Similarly, some HRDs facing legal threats have specifically requested legal representation by one of the lawyers from the pool working under a memorandum of understanding with CCHR, which can be seen as a further sign of confidence in the quality and efficiency of the service now provided.

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