## Challenges in accessing legal aid services

- Legal aid services are deteriorating. The number of civil society lawyers has **dramatically declined** since the last UPR, shifting the burden almost entirely to the State system. This has further **widened the justice gap** in Cambodia.
- Insufficient funds and an inadequate payment system for state sponsored legal aid services mean that lawyers seldom meet their clients before trial.
- Under Cambodian Law, suspects in police custody **must wait 24 hours** before being allowed to request a lawyer.
- Authorities **routinely hold people for extended periods before granting access to a lawyer** or charging them. This disproportionately impacts poor people who are frequently detained and sentenced based on little credible evidence.

**Recommendation:** By 2027, amend Article 98 of the Code of Criminal Procedure to allow access to a lawyer at the beginning of the period of police custody.

## Lack of legal representation in court

- Legal representation is only mandatory in felony cases or cases involving children in conflict with the law, which **falls short of international standards**.
- There is a disparity in access to legal representation between the capital and regional areas. In 2022, **only 66.7% of defendants had legal representation** across the country’s four Courts of Appeal in cases monitored by CCHR. This figure dropped to a mere 44.2% at the Tbong Khmum Appeal Court.
- In S1 2023, defendants were unrepresented in 100% of the petty crimes cases and 65% of the misdemeanor cases monitored by CCHR. Appeal cases without a lawyer are **seldom processed** or are **significantly delayed**.

**Recommendation:** By 2027 amend Article 301 of the Code of Criminal Procedure to ensure that all people have access to a lawyer, including misdemeanour cases, in line with SDG 16.3 and relevant international standards.

## Semi-automatic use of pre-trial detention

- Cambodia’s prison population has **increased by 20%** since the last UPR cycle. It is currently at **350% capacity**, ranking as the 5th most overcrowded prison system globally.
- There is an estimated **40,000 people** in detention facilities. **Two-thirds of the prison population is waiting for a first instance or an appeal hearing**.
- Although pre-trial detention should only be an **exceptional measure**, it was used in **80%** of the appeal hearings monitored by CCHR in 2020 and 2021; **56.6%** of those monitored in 2022; and **61.8%** of those monitored in 2023.
- When an acquittal is appealed by the prosecution, Cambodian law **leaves it to the prosecution to decide whether the defendant is released** from detention pending appeal.

**Recommendation:** Address prison overcrowding by: (i) simplifying and disseminating information to people in detention and prison authorities on conditional release under the conditions set out in articles 512 and 513 of the Code of Criminal Procedure; and (ii) promoting the greater use of alternatives to pre-trial detention, including judicial supervision.

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**Submitted by:**

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**Torture claims go unaddressed**

- A total of 20 defendants involved in the trials monitored by CCHR from January 2019 to July 2023 alleged that they were threatened into giving a confession. A further 60 defendants stated that they were subject to violence or torture to extract a confession.
- This figure is assumed to be an underestimate of the prevalence of torture because only appeal cases were monitored. Torture claims made by defendants are usually discarded by appeal judges due to the lack of evidence.
- Civil society actors noted that the prevalence of threat, violence or torture is almost routine. They stated that a lack of resources, training and command pressure at the local level provides space for torture and forced confessions.

**Recommendation**: Continue to strengthen the operation and capacity of the National Committee Against Torture to monitor, investigate and enforce transparent disciplinary measures for any claim of coercion, duress or torture made by a defendant in criminal proceedings or by a person in a place of detention.

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**Lack of respect for the fair trial rights of children**

- The pre-trial detention of children should be a measure of last resort under Cambodian Law.
- However, 88.5% of the child defendants involved in the cases monitored by CCHR from January 2019 to July 2023 were subject to pre-trial detention.
- Child detainees rarely interact with lawyers. The lack of community-based rehabilitation alternatives and specialized judges further exacerbates the challenges faced by child defendants.
- Cross-examination and pronouncement of judgments in cases involving children in conflict with the law should be conducted in camera. However, the target courts took measures to protect the privacy of child defendants in only 54.5% of the cases monitored by CCHR.

**Recommendation**: Continue to develop and strengthen processes that eliminate the excessive use of pre-trial detention of children in conflict with the law; and take the necessary steps to protect the privacy of children in conflict with the law during criminal proceedings, including the systematic use of privacy screens and closed hearings.

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**Gender-based discrimination undermines fundamental rights of women**

- Data indicates that only 15% of judges, 14% of prosecutors, and 22% of lawyers are women. This lack of substantive equality and gender parity in the legal profession and judiciary adversely impacts the rights of women defendants and women who experience gender-based violence.
- Women charged with petty crimes or misdemeanor offenses, particularly low-level poverty-rated crimes, are falling through the cracks with very limited access to justice.
- Around 73% of women in prison are being held for minor drug-related charges, and there are now over 100 infants living alongside their detained mother without access to basic nutrition and medical services.

**Recommendations**: By 2027: (1) establish a gender equality framework, action plan and adequate budget to ensure a responsive and inclusive legal and judicial workplace for diverse women at all levels; and (2) develop gender specific guidelines for how judges determine bail applications and alternative sentencing of cases involving mothers, pregnant women, women with babies, and women with disabilities.

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**A lack of judicial independence continues to erode trust**

- No legal provisions prevent judges from being members of political parties. Judicial and related personnel typically have close links with the ruling political party, often holding leadership positions.
- The three fundamental laws pertaining to the judiciary, adopted in 2014, weaken the separation of powers and the independence of the judiciary by giving the Justice Ministry significant control over judicial budgets and the appointment, promotion, tenure, and removal of judges and prosecutors.
- There has been a rhetorical commitment from the new leadership of the Ministry of Justice to address corruption in the judiciary, but little concrete action has been seen.

**Recommendation**: By 2027 amend the three 2014 Laws pertaining to the judiciary to ensure that judicial authorities can manage their own budget and personnel without interference from the Justice Ministry; and remove any conflict of interest by forbidding judges to be members of a political party.