



SUMMARY OF KEY ISSUES FROM PREVIOUS UPR CYCLES

During its 3rd UPR, Cambodia received 25 recommendations on issues such as judicial independence, access to justice, and fair trial rights. It accepted 22 and noted three.

While some progress has been made, especially in expanding legal aid services and opening three new Courts of Appeal, most of the recommendations have not been implemented. Below is a snapshot of the most pressing issues.

ACCESS TO LEGAL AID SERVICES

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.

RIGHT TO LEGAL REPRESENTATION

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.
In 2022, Phnom Penh Appeal Court (AC) judges did not inform unrepresented defendants of their right to legal representation in 36.7% of the cases monitored by CCHR. This figure dropped to 94.4% at the Preah Sihanouk AC.

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.

RIGHT TO LIBERTY

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.

Submitted by:



មជ្ឈមណ្ឌលសិទ្ធិមនុស្សកម្ពុជា
Cambodian Center for Human Rights



## 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.

## 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.

## 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.

## 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.

Endorsed by:

