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Human Rights Council Joint Submission for the Universal Periodic Review of the Kingdom of Cambodia

Access to Justice in Cambodia

Cambodia: 2024 (Fourth Cycle, 46th session)

Joint submission by the Cambodian Centre for Human Rights (CCHR), the Cambodian Human Rights and Development Association (ADHOC) and the Centre for Law and Transformative Change (CLTC), and endorsed by Cambodian Human Rights Action Coalition, Advocacy and Policy Institute, Legal Aid Cambodia, Community Legal Education Centre, Gender and Development for Cambodia and Transparency International Cambodia.

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1. Introduction

1. The joint submission to the 4th Universal Periodic Review (UPR) of the Kingdom of Cambodia (**Cambodia**) was prepared by the ‘Coalition for Access to Justice’ (**Coalition**) comprised of the Centre for Law & Transformative Change (**CLTC**), the Cambodian Center for Human Rights (**CCHR**) and the Cambodian Human Rights and Development Association (**ADHOC**).¹ The Coalition has decades of experience in actively working to improve fair trials and access to justice in Cambodia. They have a long-standing participation in submitting reports on behalf of civil society for the UPR process and actively working to improve access to justice in Cambodia.² The submission is endorsed by Cambodian Human Rights Action Coalition, Advocacy and Policy Institute, Legal Aid Cambodia, Community Legal Education Centre, Gender and Development for Cambodia, and Transparency International Cambodia.

2. The topics to be covered in this report directly relate to fair trial rights, access to justice and the independence of the judiciary. Sub-themes include child justice and women in the law. People affected are the general population, women, children, judges, prosecutors, lawyers and persons deprived of their liberty. Access to justice for the purpose of this submission is in relation to the formal criminal justice system. All relevant supported and noted recommendations will be evaluated.

3. Cambodia was last reviewed under the 3rd UPR cycle (January 2019). Cambodia received 198 recommendations, with Justice and Access to Justice addressed in 25 recommendations. The State supported 22 and noted 3 of these recommendations.

4. Thirteen recommendations are related to the criminal justice system and will be addressed below: 9 recommendations to support judicial independence (7 supported, 2 noted), 2 related to access to justice (supported), 1 related to access to justice for children (supported), and 1 related to fair trial rights (supported). All directly relate to SDG 16.3 (access to justice for all) and 16.6 (effective accountable and transparency institutions).

1.1. Methodology

5. The methodology used to prepare this report is founded on the Coalition’s extensive experience and engagement with the justice system, data collection and reporting, stakeholder engagement and desktop research. Information provided was obtained through targeted data collection by civil society, extensive trial monitoring, interviews with civil society legal aid lawyers and discussions with stakeholders directly concerned with the recommendations of the 3rd UPR cycle. The report draws upon public information available as reported by the Ministry of Justice (MoJ), local and international non-government organizations, and the United Nations special procedures and treaty bodies. Verification of the information is difficult. Limited international funding for access to justice programming in Cambodia has restricted the data available. Some reporting by international organisations and national news reporting has been used.

2. Fair Trial Rights

2.1. General overview

6. During the 3rd UPR cycle one recommendation was made in relation to fair trial rights and one in relation to child justice.

7. Recommendation 110.126 (Austria): unable to assess progress. A lack of independent information available makes it difficult to determine if there has been any progress made in addressing the length of time people are held in pre-trial detention.

8. Recommendation 110.194 (Uruguay): partially implemented. The Royal Government of Cambodia (RGC) has established an inter-ministerial working group (MoJ, Court of Appeal and UNICEF) that promotes alternative penalties for offenses committed by minors.³ However, alternative penalties are seldom used in practice.

9. From January 2019 to July 2023, CCHR monitored 1,326 criminal appeal trials involving 1,866 defendants. Monitoring took place in Phnom Penh between 2019-2021. In 2022 monitoring extended to the three new regional Courts of Appeal. Monitoring is conducted to assess adherence to fair trial rights.⁴ The figures presented in this section relate to the above-mentioned period, unless stated otherwise.

10. The data indicates that some key fair trial rights were consistently upheld: the pre-trial right to speak with a lawyer, the right to adequate time and facilities to prepare a defense, the right to a public judgement, the prohibition of double jeopardy and the non-retroactive application of criminal law. Below is an overview of fair trial rights that were partially upheld, improvements made and challenges faced, since the 3rd UPR cycle.

2.2. Rights to a public hearing and to be present at trial

11. The RGC is commended for its remarkable progress made with respect to the rights to a public hearing. CCHR court monitoring indicates that the public and media are allowed access to the courtrooms. Court monitoring also shows a significant improvement with the Courts of Appeal posting hearing notices on a public board and/or online. In 2019, CCHR court monitoring recorded that the court failed to post a hearing notice in 100% of the cases observed. However, the practice changed for the better in 2022 where the court failed to post a hearing notice in only 27% of cases. This improved further in the first 6 months of 2023 to 19%. Practice differs between the different regional Courts of Appeal.

12. The right to be present at trial has fluctuated.⁵ CCHR court monitoring shows that in 2019, 81% of people were present at their trial. While 2020 shows an improvement to 90.8%, 2021 shows a slight decline to 83% of people being present at their trial. In 2022 this figure averaged 83.4% across all four Courts of Appeal: from 74.7% at the Preah Sihanouk Appeal Court, 81% in both Phnom Penh and Tbong Khmum, to 91% at the Battambang Appeal Court. The Court of Appeal state that a case may proceed without a defendant if his or her lawyer is present, if the appeal request is not considered valid, if the appeal request is made by the prosecution or if the case has been pending before the Court for a long time and a party requests the judges to adjudicate the case without the presence of the accused.⁶

Recommendations:

- i. Continue to promote the right to a public hearing by ensuring that all court staff and judges are made aware of the requirement to post daily schedules of all hearings online and on information boards outside the courts.
- ii. Provide fair trials training and allocate resources to reduce instances of court hearings and trials proceeding in a defendant's absence, in line with national laws and international fair trial standards.

2.3. Right to liberty and to be tried without undue delay

13. Cambodia's prison population has increased by 20% over 4 years. It is currently at 350% capacity, ranking it the 5th worst prison system globally due to overcrowding.⁷ Official statistics are difficult to obtain but recent figures indicate that there are 40,000 people held in detention facilities. A third held in pre-trial detention and a third waiting for an appeal.⁸

14. In July 2021, the MoJ stated it had ‘resolved’ 37,900 cases as part of a 13 month campaign to reduce prison overcrowding (roughly 96% of the total backlog).⁹ However, figures show this effort had little impact on prison overcrowding.¹⁰

15. Pre-trial detention must be used exceptionally.¹¹ But judges report feeling pressured by the community to keep people in prison and police are pressured to close cases.¹²

16. In 2020 and 2021 court monitoring showed that pre-trial detention was used in 80% of cases. CCHR monitored two misdemeanor cases involving a female defendant and a child under 14 years old, both of whom were sent to pre-trial detention.¹³ Cases monitored in 2022 indicated that Battambang Appeal Court cases have the highest use of pre-trial detention, at 68.3%. Phnom Penh, Preah Sihanouk and Tbong Khmum at 51-53%. The first half of 2023 shows the use of pre-trial detention was 60.7% across the four Courts of Appeal, with cases before both Preah Sihanouk and Battambang Appeal Court recording 75% use of pre-trial detention.

17. The right to liberty is critical to protecting the presumption of innocence. However, when an acquittal is appealed by the prosecution, the prosecution decides whether the accused person is released from detention pending appeal.¹⁴ Over ten years Cambodia Bridges to Justice (CBJ) have intervened in 64 cases where people were found innocent in the first instance, but have remained behind bars waiting for the prosecutor’s appeal to be heard, sometimes for decades.¹⁵

18. Article 387 of the Code of Criminal Procedure states appeal cases must be processed within a ‘reasonable time.’ In 2022 CCHR data indicates that an appeal took place in less than a year in 87.3% of cases in Battambang Appeal Court; 88.7% in Tbong Khmum Appeal Court and 84.6% in Preah Sihanouk Appeal Court. However, in the Phnom Penh Appeal Court only 57.3% of cases were heard within a year and 20% took place more than two years later. In 2020 an appeal was heard five and half years after the first instance verdict; a case where the person’s original sentence was five years imprisonment.¹⁶ Similarly, CBJ reports that appeal proceedings can take up to seven years. In 2021, in 48% of the cases on its priority list, defendants were coming to the end of or completed serving their original sentence at the time of the appeal hearing.¹⁷

Recommendations:

- iii. 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, in line with UN Sustainable Development Goal 16.3.2.
- iv. By 2027, amend Article 387 of the Penal Procedure Code to provide a time bound limit of 10 days for appeals filed by the prosecutor and 3 months for all appeals cases brought by the defendant.
- v. Take action to process and release any person that was acquitted at the first instance trial and support the presumption that they remain at liberty pending and during the hearing of any appeal against the acquittal by a prosecutor.

2.4. Rights to legal representation and to understand the nature of the charges

19. Cambodia's legislation only mandates legal aid for children and felony cases,¹⁸ which falls short of international standards.¹⁹ Of cases monitored between January and June 2023, in 100% of petty crimes cases and 65% of misdemeanor cases defendants were unrepresented. In the same period only 2 felony cases went unrepresented. These figures do

not speak to the quality of representation or the time taken to prepare a defence. It is noted that of the cases that the CCHR monitored the conviction rate was 86%.

20. There is a disparity in access to legal representation between the capital and regional areas. In 2019 CCHR monitored the only Court of Appeal in Phnom Penh, where 75% of people were represented by a lawyer. The 3 new regional Courts of Appeal started accepting cases in 2022. In 2022, across the four Courts of Appeal, CCHR recorded a drop that showed that 66.7% of people were represented by a lawyer. The Phnom Penh Court of Appeal remained consistent with 75% of people being represented by a lawyer. However, in the regional courts this number fluctuated from 64.4% in Preah Sihanouk, 61.8% in Battambang Appeal Court and 44.2% in Tbong Khmum. It is reported that appeal cases without a lawyer are seldom processed or are significantly delayed and the number of people without access to a lawyer is much higher.²⁰

21. In 2022 the judges in the Phnom Penh Appeal Court did not inform unrepresented defendants of their right to legal representation in 36.7% of cases monitored. The figures in other courts were 56.25% of cases in Battambang, 25.9% in Tbong Khmum and a startling 94.4% at the Preah Sihanouk Appeal Court.

22. By contrast, in 2022, a judge informed defendants of all the relevant charges in 96.8% of cases in Tbong Khmum, 91.5% in Preah Sihanouk but only 47.6% in Phnom Penh and 51.7% in Battambang. This right appears to have eroded in Phnom Penh over the past 5 years. In 2019 CCHR monitored the Court of Appeal in Phnom Penh and recorded that in 68.8% of cases a judge stated all the relevant charges against the defendant.

23. During the monitoring period parties were consistently given the opportunity to view the case file prior to the hearing, to present evidence and to question and call witnesses. No witnesses were called in most of the hearings. However, of the cases that provided witness testimony 46% of witnesses were present in the courtroom before being questioned.

Recommendations:

- vi. Provide guidelines to judges that they are duty bound to inform defendants of the nature of the charges, right to legal counsel and the right to remain silent.
- vii. By 2027 amend Article 301 of Code of Criminal Procedure to ensure that all people have access to a lawyer, including misdemeanour cases, in line with SDG 16.3, the ICCPR and international norms and standards.

2.5. Rights during interrogation and the prohibition of torture

24. During the monitoring period 15 defendants indicated that they had been interrogated by the police without a lawyer being present. The rate of threats, violence and torture used to coerce the defendant into confessing reduced slightly from 6.7% (2019) to 5.7% (2022). However, a total of 20 defendants alleged that they were threatened into giving a confession and 60 defendants stated that they were subject to violence or torture to extract a confession.

25. This figure is assumed to be an underestimate of the prevalence of torture because the cases monitored were cases on appeal (often years after arrest) where it is difficult to present reliable evidence on torture. Other civil society actors note that the prevalence of threat, violence or torture is almost routine. They state that a lack of resources, training and command pressure at the local level provides space for torture and forced confessions.²¹

Recommendations:

- viii. 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, in accordance with OP-CAT standards.
- ix. Continue to provide training to the National Police as well as local and sub-national officials about the UNCAT, OP-CAT standards and international norms for safeguarding against torture, including guidelines on good investigative techniques that can reduce torture.

2.6. Presumption of innocence

26. Fundamental to fair trial rights is the presumption of innocence.

27. In 2019 65.7% of cases monitored showed that judges failed to inform the defendants of their right to remain silent and to refuse to answer questions. Data shows that this right has improved. In 2022 this figure dropped to 36%. However, this figure differs in the different Courts of Appeal (36.2% in Phnom Penh; 55.6% in Battambang; 52.8% in Tbong Khmum and 83.3% in Preah Sihanouk).

28. CCHR monitored the principles of presumption of innocence, fairness and impartiality in courts. In the five-year period, although defendants were not handcuffed in the courtroom, the defendants in detention appeared in court in prison uniform. 21.4% of the defendants wore the blue uniform of convicted prisoners.

Recommendation:

- x. By January 2025, develop clear guidelines and procedures on the dress code of defendants that balances respect for individual rights, maintains integrity and upholds the right to a fair and impartial trial.

2.7. Duration of trials and right to a reasoned judgement

29. In 2022 monitoring shows most of the hearings were short, averaging 28:44 minutes. In the same period 43.76% lasted 15 minutes or less and only 9.40% lasted over an hour. These figures raise concerns over the thoroughness with which the cases were examined, including felonies with sentences carrying life in prison. CCHR court monitors noted that in the shortest hearings a defendant was either absent or/and not represented.

30. Over the monitoring period the judges failed to provide judicial reasoning in 70.5% of the cases where the verdict was read in the presence of a CCHR trial monitor (227 out of 322). The Phnom Penh and Battambang Appeal Courts note that judicial reasoning is only given if the parties are present, adding that it did not contravene any legal provision. They stressed that a full copy of the judgement is always sent to the parties.

Recommendations:

- xi. By 2027 establish procedural guidelines to make sure that judges read aloud the legal and evidential reasons behind their decision when delivering a criminal verdict.
- xii. Take action to improve transparency and uniformity in court decision making processes by providing and publishing all criminal and civil judges' decisions (redacting where necessary for privacy) and the reasons for the decisions, in accordance with the right to a fair and public hearing.

2.8. Children in conflict with the law

31. The detention of children should be a measure of last resort.²² Despite the adoption of the Law on Juvenile Justice (July 2016), practical implementation has not aligned with the legal principles.²³ CCHR's trial monitoring show a quasi-systematic use of pre-trial detention in the cases involving children in conflict with the law: 88.5% of the child defendants (77 out of 87) were subject to pre-trial detention from January 2019 to July 2023 highlighting the gap between policy and practice.

32. Pre-trial detention should never be applied to children under 14.²⁴ However, CCHR has monitored eleven instances of children aged 14-15, and one child under the age of 14 being held in pre-trial detention. In one instance a child under 14 was held in pre-trial detention and then sentenced to imprisonment by the Court of First Instance for a misdemeanor. His appeal was heard almost 2 years after he first entered detention.²⁵

33. Numerous instances reveal that child detainees rarely interact with lawyers.²⁶ In 2021 CCHR documented that a boy in conflict with the law aged 16-17 was subjected to violence by the authorities to obtain a confession. The boy also stated that he did not have any lawyer to assist him in the police, prosecution, and judicial investigation stages.²⁷ This case is not in isolation.²⁸ Such shortcomings impede access to justice and undermine the safeguards established for children in conflict with the law. The absence of community-based rehabilitation alternatives and specialized judges further exacerbates the challenges faced by children.²⁹

34. Cross-examination and pronouncement of judgments in cases involving children in conflict with the law should be conducted *in camera*.³⁰ However, in 2022, the target courts took measures to protect the privacy of child defendants in only 54.5% of the monitored cases (12 out of 22). No such measures were taken in the eight cases monitored at the Phnom Penh and Preah Sihanouk Appeal Courts. By contrast, the Battambang Appeal Court took measures to protect their privacy in 85.7% of cases (12 out of 14), while the Tbong Khmum Appeal Court systematically conducted closed hearings for cases involving child defendants.

Recommendations:

- xiii. Continue to develop and strengthen processes that eliminate the excessive use of pre-trial detention of children in conflict with the law, in line with international standards on child rights and the Law on Juvenile Justice.
- xiv. Review the criminal procedure legislation to ensure its compliance with international standards on child justice systems, including the Beijing Rules, the UNICEF guidance for legislative reform on child justice and the UNICEF implementation handbook for the Convention on the Rights of the Child.
- xv. As recommended by the Special Rapporteur on the situation of human rights in Cambodia, accelerate comprehensive training for specialized justice actors to be properly trained in the Law on Juvenile Justice, implement alternative detention pathways for children, and create special courts to process cases involving children in conflict with the law.
- xvi. 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, in line with existing legal provisions on child justice and criminal procedure.

3. Access to Justice

35. Access to justice, including the right to legal assistance, is a fundamental right established under international and national law.³¹

3.1. Implementation of recommendations from the previous cycle

36. During the 3rd UPR cycle two recommendations related to improving access to justice for people in conflict with the law. Given the dire overall state of access to justice and the willingness of the RGC to address access to justice recommendations, we would encourage more recommendations to support changes in line with international norms and standards.

37. Recommendation 110.120 (Greece): partially implemented. In 2020 3 new Courts of Appeal opened in Tbong Khmum, Battambang and Preah Sihanouk.³² In June 2022 the MoJ announced the creation of 3 additional appeal courts in Siem Reap, Oddar Meanchey and Stung Treng provinces by the end of 2022.³³ As of October 2023 this has not happened.

38. Recommendation 110.128 (Turkey) partially implemented. The RGC continues to make efforts to promote and protect human rights through its commitment to expanding legal aid services. The MoJ and BAKC now coordinate legal aid lawyers in every courthouse, operate 66 Justice Centres for the poor and provide legal rooms in 19 of 25 municipal provincial prisons to support free access to a lawyer.³⁴ A new legal aid hotline also places a team of 35 advisors on stand-by to address concerns from the public on legal related issues.³⁵ No data or information is available on the hotline and inquiries made by the Coalition could not verify the operation of these services. The backlog of court cases in the first instance are being cleared and new regulations on conditional release have opened the door to non-custodial measures, bail and pretrial releases.³⁶

39. In 2021 the BAKC provided legal aid support to 8,425 clients in 5,182 cases that included 1,453 children.³⁷ This is an increase from 2020 where the BAKC reported that they provided legal representation to 4,000 clients in 2,566 cases.³⁸ The shortage in open data availability, difficulties with access and data usability have made it challenging to verify this information.

40. The 2018 state sponsored legal aid budget was reported to be US\$222,000.³⁹ In 2022 this increased to US\$640,000.⁴⁰ There is no publicly available budget for 2023.

3.2. Access to Legal Aid Services

41. Paragraph 2.4 shows access to legal aid services is deteriorating. While efforts have been made to decentralize access to justice it remains limited in rural and regional areas. In some cases one or two lawyers provide legal aid support for an entire province.

42. Legal aid services provided by civil society have been dramatically declining since the last UPR cycle. This has created an extraordinary drop in access to justice and widened the justice gap in Cambodia. It has also shifted the burden almost entirely to the State system.⁴¹ The decline in international support for civil society lawyers correlates to the decline in access to justice. It is observed that the presence of a civil society legal aid lawyer in the courtrooms places positive pressure on the system.

43. Access to a lawyer is often delayed, allowing for people in police custody to be questioned without a lawyer present. This is inconsistent with established international human rights norms.⁴²

44. In May 2023 ADHOC provided legal support for three union leaders who were arrested and detained in Rattanakiri. They were denied access to a lawyer for 48 hours in a process

that was full of irregularities. They were later released on bail.⁴³ This mirrors the delay in access to a lawyer in similar cases.⁴⁴ Authorities routinely hold people for extended periods before granting access to a lawyer or charging them. This disproportionately impacts people from poor communities who are frequently detained and sentenced based on very little credible evidence.⁴⁵

Recommendation:

- xvii. By 2027 amend Article 98 of Code of Criminal Procedure, remove the permitted 24-hour delay in access to a lawyer and allow access to a lawyer at the beginning of the period of police custody for questioning. Also amend the same article to make it clear that this article does not limit the detainee's access to either a lawyer *or* other person but lawyer *and* any other person.

3.4. Funding for Legal Aid Services

45. Lawyers seldom meet their clients before trial. Challenges with the budget provided to the BAKC mean that responding to applications for legal aid support and providing legal aid services is delayed.⁴⁶ BAKC assigned lawyers are not supported to provide legal aid during investigative and appeals stages or if proceedings are delayed.⁴⁷

46. In the previous UPR Cycle, it was reported that legal aid lawyers were refunded up to US\$70 for their representation.⁴⁸ This has increased slightly to US\$100 per case and US\$200 in cases where the Bar Association has a Memorandum of Understanding with UNICEF or the Ministry of Women Affairs. This information was provided by a civil society lawyer and is not publicly available. Additional costs are either borne by the lawyer or passed on to families. After a case is closed a lawyer must submit a report and invoice to the BAKC for a refund of any expenses (up to US\$100), which are not always approved.

Recommendations:

- xviii. Increase the fee paid to all state-sponsored legal aid cases to US\$200 and address the payment system for state sponsored legal aid services to support staggered payments that facilitate early interventions to investigate and gather evidence.
- xix. By 2025 expedite engagement with civil society and international organisations to adopt a comprehensive legal aid policy that recognises the critical role of legal aid, supports SDG 16 and is in line with international standards.
- xx. By 2027 take action to simplify court governance processes, including the prompt approval for legal aid support and free access to case files and copies.
- xxi. By 2026 establish an open data-set that is publicly accessible and usable to improve systems of legal aid service delivery and the administration and financing of justice.

3.5. Women and the law

47. Legal practice in Cambodia reflects a glaring gender disparity with women significantly underrepresented. Only a quarter of practicing lawyers are women. Women are underrepresented in the judiciary.⁴⁹ The lack of substantive equality and gender parity in the legal profession and judiciary adversely impacts the criminal justice system.

48. Women's access to legal services and treatment within the legal system deviates from international standards.⁵⁰ Around 73% of women in prison are being held for minor drug related charges and there are now over 100 infants living with their mother in detention.⁵¹ In 2019 a woman was 8 months pregnant and held in pretrial detention for possessing US\$2.50 worth of methamphetamine.⁵² The mother was never provided a lawyer and

unaware of her right to apply for bail.⁵³ Five months later her baby received inadequate access to health services and died.

49. It is noted that there is a Memorandum of Understanding with the Cambodian National Council for Women to expand legal services to girls and women victimized by violence.⁵⁴ However, women charged with pretty crimes or misdemeanor offences, particularly low-level poverty-rated crimes, are falling through the cracks with very limited access to justice.

Recommendations:

xxii. By 2027 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 that supports SDG 5 and 16.7.

xxiii. By 2027 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 and diverse SOGIEC in line with the Bangkok Rules and international laws and norms.

4. Independence of the Judiciary

50. Separation of powers and an independent judiciary is prescribed by international and national law.⁵⁵ However, a lack of independence of the judiciary has been a recurring issue, repeatedly raised since 1994.⁵⁶

4.1. Implementation of recommendations from the previous cycle

51. During the 3rd UPR cycle 7 recommendations were supported and 2 were noted in relation to the independence of the judiciary. Supported: recommendation 110.122 (Lithuania); 110.123 (Ireland); 110.125 (Austria); 110.127 (Belgium); 110.133 (Ukraine); 110.124 (Japan); 110.118 (Italy); Noted: 110.119 (Germany) and 110.121 (Norway). All called for necessary steps to be taken to ensure judicial independence. Despite yearly training for judges and prosecutors on technical skills, professional ethics and international human rights law, judicial independence remains problematic.⁵⁷ The judiciary continues to be used to suppress fundamental human rights and is damaged by corruption. While there has been a rhetorical commitment from the new leadership of the MoJ to address corruption in the judiciary, little concrete action has been seen, particularly on the structural anti-corruption reform within the court system.

4.2. Impunity

52. The judiciary is routinely used to suppress political opposition or detain activists, union members or citizens making politically sensitive comments through arbitrary charges of incitement.⁵⁸ In 2021 and 2022 CCHR's Fundamental Freedoms Monitoring Project documented a total of 65 Strategic Lawsuits Against Public Participation that targeted 120 individuals in retaliation for their exercise of the right to freedom of expression.⁵⁹ Numbers are difficult to determine. However, the Cambodian League for the Promotion and Defense of Human Rights and Reporters Without Borders estimated that at the beginning of September 2023 there were at least 25 political dissidents, one union leader, 18 land rights activists and three journalists in detention.⁶⁰

53. Decisions to pursue judicial investigations often lack transparency and do not adhere to due process rights under domestic or international laws. In June 2021 an autistic Cambodian child was sentenced to 8 months in prison for comments made on social media.⁶¹ In March 2022 the Phnom Penh Municipal Court convicted 20 opposition

politicians and activists in a mass trial that had no credible evidence.⁶² In March 2023, in a trial riddled with delays and full of irregularities, Mr Kem Sokha was sentenced to 27 years for treason and conspiracy with a foreign power.⁶³ In May 2023 the main opposition party was banned from contesting the July 2023 elections for not having the right paperwork. An unsuccessful appeal was made to the National Election Committee of Cambodia.⁶⁴ This list is not comprehensive and there are many more unreported cases of people sentenced on charges of incitement or defamation. Publicly available data does not exist to verify the number of people investigated, charged with or sentenced based on charges of incitement or defamation.

Recommendation:

- xxiv. Take action to stop acts of impunity, release detained human rights defenders and political dissidents and drop the charges against them.

4.3. Separation of Powers

54. No legal provisions prevent judges from being members of political parties. It is reported that judicial and related personnel have close links with the ruling political party, often holding leadership positions.⁶⁵ This includes the Chief Justice of the Supreme Court (1998-2023), who sits on the ruling party's elite Permanent Committee. This level of political influence means that justice is impossible for cases that involve political matters or human rights violations perpetrated by the government.

55. The MoJ also appointed Supreme Court vice-president and CPP Central Committee member Chiv Keang to replace him as acting president.⁶⁶

56. Moreover, the three fundamental laws pertaining to the judiciary - the Law on the Organization and Functioning of the Courts (LOC), the Law on the Statute of Judges and Prosecutors (LSJP), and the Law on the Organization and Functioning of the Supreme Council of Magistracy (LOFSCM), adopted in 2014 - aim to ensure the independence of the judicial power and to protect the rights and freedom of Cambodian citizens.

Regrettably, these laws 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.⁶⁷

Recommendation:

- xxv. By 2027 amend the Law on the Organization and Functioning of the Courts, the Law on the Statute of Judges and Prosecutors, and the Law on the Organization and Functioning of the Supreme Council of Magistracy 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.

4.4. Judicial integrity and transparency in decision-making

57. The lack of transparency and active corruption in the judiciary in Cambodia is destructive of the public's trust to use courts to resolve conflicts. The judiciary is said to be the most corrupt institution in Cambodia.⁶⁸ The World Justice Project ranks Cambodia the most corrupt judiciary in the world.⁶⁹ Similarly, Cambodia scored 0 points for independent judiciary in the 2020 Freedom House Report. Due to the extreme sensitivity of judicial independence, information and case studies are difficult to report on. From internal case data available to the consortium, sentencing practices are not uniform and there is little cohesion to sentencing practices or decision-making processes across the different courts.

Recommendations:

- xxvi. Take action to address corruption in the judiciary and enforce accountability for violations that compromise judicial integrity in accordance with the standards set out in the national laws, Code of Judicial Ethics, the UN's Basic Principles on the Role of Lawyers and Basic Principles on the Independence of the Judiciary and SDG16.6.
- xxvii. Issue a standing invitation to the Special Rapporteur on Independence of Judges and Lawyers to assess the situation and identify ways to improve the judiciary and legal profession.

¹ The Centre for Law & Transformative Change (CLTC) is a collective of international lawyers and justice development experts who have over 20 years of experience using law and justice systems as a catalyst for transformative change. CLTC does this by providing legal, technical, and programmatic support to local civil society groups, national and international institutions, and lawyers networks and associations. The Cambodian Center for Human Rights (CCHR), founded in 2002, is a non-aligned, independent, non-governmental organisation that works to promote and protect democracy and respect for human rights – primarily civil and political rights – throughout Cambodia.

² ADHOC and CCHR led the 2018 Access to Justice consortium for the 3rd UPR cycle. They have both been active participants in Cambodia's 1st and 2nd UPR cycles, including through joint-submissions and participation in pre-sessions in Geneva. For the 4th Cycle submissions for Cambodia, in partnership with UNOHCHR, CCHR coordinated a one-day workshop "Civil Society Organization Consultative Workshop for the 4th UPR of Cambodia" and a follow-up "UPR Validation Workshop".

³ CCHR, *Fair Trial Rights in Cambodia Monitoring at the Phnom Penh Court of Appeal - 2021 Annual Report*, (June 2023), at <https://www.sithi.org/medias/files/projects/sithi/publication/cchr-annual-report-on-fair-trial-rights-jan-dec-eng-20230612-100006.pdf>, 11.

⁴ All the data used in this section can be accessed at [CCHR's human rights education platform](#).

⁵ In United Nations, *International Covenant on Civil and Political Rights (ICCPR)*, Article 14(3)(d); E/CN.4/1996/93, para. 36

⁶ CCHR, *Fair Trial Rights in Cambodia Monitoring at the Phnom Penh Court of Appeal - 2021 Annual Report*, (June 2023), at <https://www.sithi.org/medias/files/projects/sithi/publication/cchr-annual-report-on-fair-trial-rights-jan-dec-eng-20230612-100006.pdf>, 28.

⁷ *World Prison Brief Data* at <https://www.prisonstudies.org/country/cambodia> and https://www.prisonstudies.org/highest-to-lowest/occupancy-level?field_region_taxonomy_tid=All (accessed 14 September 2023).

⁸ Human Rights Council, *Situation of human rights in Cambodia: Report of the Special Rapporteur on the situation of human rights in Cambodia*, (2022), 10. See also Kate Flower, "Strengthening Legal Aid in Cambodia's Courts of Appeal", *International Bridges to Justice* (November 2022), at https://www.ibj.org/wp_main/wp-content/uploads/2022/11/FINAL-Policy-Paper-November.pdf, 8.

⁹ Voun Dara, "Ministry of Justice wraps up case backlog clean-up effort", *Phnom Penh Post*, 30 June 2021, at <https://www.phnompenhpost.com/national/ministry-justice-wraps-case-backlog-clean-effort>.

¹⁰ Roseanne Gerin, "UN committee raises concern over Cambodia's crowded, unsanitary prisons", *Radio Free Asia*, 14 March 2022, at <https://www.rfa.org/english/news/cambodia/human-rights-committee-03142022191656.html>

¹¹ Kingdom of Cambodia, *Code of Criminal Procedure*, Article 203.

¹² Kate Flower, "Strengthening Legal Aid in Cambodia's Courts of Appeal", *International Bridges to Justice* (November 2022), at https://www.ibj.org/wp_main/wp-content/uploads/2022/11/FINAL-Policy-Paper-November.pdf, 19.

¹³ CCHR, *Fair Trial Rights in Cambodia Monitoring at the Phnom Penh Court of Appeal - 2021 Annual Report*, (June 2023), at <https://www.sithi.org/medias/files/projects/sithi/publication/cchr-annual-report-on-fair-trial-rights-jan-dec-eng-20230612-100006.pdf>, 19.

¹⁴ Kingdom of Cambodia, *Code of Criminal Procedure*, Article 398.

¹⁵ Kate Flower, "Strengthening Legal Aid in Cambodia's Courts of Appeal", *International Bridges to Justice* (November 2022), at https://www.ibj.org/wp_main/wp-content/uploads/2022/11/FINAL-Policy-Paper-November.pdf, 15.

¹⁶ CCHR, *Fair Trial Rights in Cambodia Monitoring at the Phnom Penh Court of Appeal - 2021 Annual Report*, (June 2023), at <https://www.sithi.org/medias/files/projects/sithi/publication/cchr-annual-report-on-fair-trial-rights-jan-dec-eng-20230612-100006.pdf>, 20.

¹⁷ Kate Flower, "Strengthening Legal Aid in Cambodia's Courts of Appeal", *International Bridges to Justice* (November 2022), at https://www.ibj.org/wp_main/wp-content/uploads/2022/11/FINAL-Policy-Paper-November.pdf, 10.

¹⁸ Kingdom of Cambodia, *Code of Criminal Procedure*, Article 301.

¹⁹ In United Nations, *ICCPR*, Article 14(3), it is specified that "In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: ... (d) ... to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it" (emphasis added); The United Nations Principles and Guidelines on Access to Legal Aid In Criminal Justice Systems further outlines "States should ensure that anyone who is detained, arrested, suspected of, or charged with a criminal offence punishable by a term of imprisonment

or the death penalty is entitled to legal aid at all stages of the criminal justice process” (emphasis added), See *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems* (United Nations General Assembly publication, 2013), Principle 3, para. 20; see also CCPR/C/KHM/CO/2, para. 17.

²⁰ Kate Flower, “Strengthening Legal Aid in Cambodia’s Courts of Appeal”, *International Bridges to Justice* (November 2022), at https://www.ibj.org/wp_main/wp-content/uploads/2022/11/FINAL-Policy-Paper-November.pdf, 10.

²¹ Kate Flower, “Strengthening Legal Aid in Cambodia’s Courts of Appeal”, *International Bridges to Justice* (November 2022), at https://www.ibj.org/wp_main/wp-content/uploads/2022/11/FINAL-Policy-Paper-November.pdf, 7 & 9.

²² United Nations, ICCPR, Article 12; United Nations, *Conventions on the Rights of the Child (CRC)*, Articles 24, 37, 40; CRC/C/GC/24; *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (United Nations General Assembly publication, 1985).

²³ Sithi, ‘Law on Juvenile Justice’ (2016) (Cambodia) at <https://sithi.org/laws/2016-06-29-law-on-juvenile-justice>.

²⁴ Kingdom of Cambodia, *Law on Juvenile Justice (Juvenile Justice)*, Article 39.

²⁵ The maximum period for detention for a child charged with a misdemeanor is 2.5 years.

²⁶ Kate Flower, “Strengthening Legal Aid in Cambodia’s Courts of Appeal”, *International Bridges to Justice* (November 2022), at https://www.ibj.org/wp_main/wp-content/uploads/2022/11/FINAL-Policy-Paper-November.pdf, 14; CCHR, *Fair Trial Rights in Cambodia Monitoring at the Phnom Penh Court of Appeal - 2021 Annual Report*, (June 2023), at <https://www.sithi.org/medias/files/projects/sithi/publication/cchr-annual-report-on-fair-trial-rights-jan-dec-eng-20230612-100006.pdf>, 19.

²⁷ CCHR, *Fair Trial Rights in Cambodia Monitoring at the Phnom Penh Court of Appeal - 2021 Annual Report*, (June 2023), at <https://www.sithi.org/medias/files/projects/sithi/publication/cchr-annual-report-on-fair-trial-rights-jan-dec-eng-20230612-100006.pdf>, 22.

²⁸ For more case studies see also: This Life Cambodia, ‘No Place for a Child: Alternatives to imprisoning children in Cambodia’, (February 2021), 35 - 40 at <https://thislife.ngo/diversion>; Kate Flower, “Strengthening Legal Aid in Cambodia’s Courts of Appeal”, *International Bridges to Justice* (November 2022), at https://www.ibj.org/wp_main/wp-content/uploads/2022/11/FINAL-Policy-Paper-November.pdf, 14.

²⁹ A/HRC/51/66.

³⁰ Kingdom of Cambodia, *Law on Juvenile Justice*, article 47; Kingdom of Cambodia, *Penal Procedure Code*, article 396.

³¹ United Nations, *The Universal Declaration of Human Rights*, Articles 8 & 10; United Nations, ICCPR, Articles 2 & 14; and Kingdom of Cambodia, *Constitution*, Articles 31, 38. Cambodia acceded to the ICCPR in 1992, and Article 31 of the Constitution directly incorporates international human rights obligations into Cambodian domestic law. See also Constitutional Council of the Kingdom of Cambodia, Decision No. 092/003/2007 (10 July 2007), 2.

³² CCHR, *Fair Trial Rights in Cambodia Monitoring at the Phnom Penh Court of Appeal - 2021 Annual Report*, (June 2023), at <https://www.sithi.org/medias/files/projects/sithi/publication/cchr-annual-report-on-fair-trial-rights-jan-dec-eng-20230612-100006.pdf>, p10. See also Voun Dara, ‘Regional appeal courts set in motion’, *Phnom Penh Post*, 4 March 2020, at <https://www.phnompenhpost.com/national/regional-appeal-courts-set-motion>.

³³ Buth Reaksmeay Kongkea, ‘Case load forces ministry to set up more appeal courts’, *Khmer Times*, 9 June 2022, at <https://www.khmertimeskh.com/501090610/case-load-forces-ministry-to-set-up-more-appeal-courts/?fbclid=IwAR0ABKu6vtI3fI8yaslvC2aeLrpOM7sUUanWcYaTTi1LzHodqRyIEjt4PCM>.

³⁴ A/HRC/WG.6/32/KHM/1, 5; CCHR, *Fair Trial Rights in Cambodia Monitoring at the Phnom Penh Court of Appeal - 2021 Annual Report*, (June 2023), at <https://www.sithi.org/medias/files/projects/sithi/publication/cchr-annual-report-on-fair-trial-rights-jan-dec-eng-20230612-100006.pdf>, p. 9-10.

³⁵ Soth Koemsoeun, ‘Human rights committee’s legal hotline receives praise’, *Phnom Penh Post*, 4 December 2019, at www.phnompenhpost.com/national/human-rights-committees-legal-hotline-receives-praise.

³⁶ A/HRC/51/66, 10-11.

³⁷ Voun Dara, ‘Public Defenders programme expanding legal aid provisions’, *Phnom Penh Post*, 18 January 2022, at <https://www.phnompenhpost.com/national/public-defenders-programme-expanding-legal-aid-provision>.

³⁸ Voun Dara, “BAKC represents poor in nearly 5,000 cases”, *Phnom Penh Post*, 11 November 2020) at <https://www.phnompenhpost.com/national/bakc-represents-poor-nearly-5000-cases>.

³⁹ Destination Justice et al, “Joint Submission to the Human Rights Council of the United Nations Third Universal Periodic Review of the Kingdom of Cambodia”, (12 July 2018), 6.

⁴⁰ Voun Dara, ‘Public Defenders programme expanding legal aid provisions’, *Phnom Penh Post*, 18 January 2022, at <https://www.phnompenhpost.com/national/public-defenders-programme-expanding-legal-aid-provision>.

⁴¹ Kate Flower, ‘Shaping stronger pathways to justice in Cambodia’, *Centre for Law and Transformative Justice* (May 2023), <https://cltc.law/wp-content/uploads/2023/07/SSP2J-in-Cambodia-Report.pdf>.

⁴² The Basic Principles on the Role of Lawyers require that access to legal assistance be available to a detained person at the anytime, including at the beginning of their detention; access to a legal aid lawyer should be provided promptly (Guideline 3, United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems); see also the framework to guide Member States on the principles on which a legal aid system in criminal justice is outlined in General Assembly resolution 67/187, para. 2; Kingdom of Cambodia, *Penal Procedure Code*, article 98 allows access to a lawyer after 24 hours in police custody.

⁴³ This information is extracted from an internal ADHOC case file note.

⁴⁴ For a full discussion of the case of the ADHOC see: American Bar Association Center for Human Rights, ‘Fair Trial Rights Report: The ADHOC Five’, (June 2023).

⁴⁵ A/HRC/51/66, 11.

⁴⁶ CCHR, *Fair Trial Rights in Cambodia Monitoring at the Phnom Penh Court of Appeal - 2021 Annual Report*, (June 2023), at <https://www.sithi.org/medias/files/projects/sithi/publication/cchr-annual-report-on-fair-trial-rights-jan-dec-eng-20230612-100006.pdf>, 29-30.

- ⁴⁷ Destination Justice et al, “Joint Submission to the Human Rights Council of the United Nations Third Universal Periodic Review of the Kingdom of Cambodia”, (12 July 2018).
- ⁴⁸ Destination Justice et al, “Joint Submission to the Human Rights Council of the United Nations Third Universal Periodic Review of the Kingdom of Cambodia”, (12 July 2018), 7.
- ⁴⁹ See [Lawyer Statistics](#) provided by the BAKC, accessed 22 July 2022.
- ⁵⁰ See for example, Rules 47-52 A/RES/65/229 which allows for special provisions for pregnant women, breastfeeding mothers and mother’s with children; Rule 58 states that women offenders should not be separated from their families or communities without taking into account their background or family situation.
- ⁵¹ A/HRC/51/66, 11; Kate Flower, “Strengthening Legal Aid in Cambodia’s Courts of Appeal”, *International Bridges to Justice* (November 2022), at https://www.ibj.org/wp_main/wp-content/uploads/2022/11/FINAL-Policy-Paper-November.pdf, 12; See also the discussion on children detained with their mothers on the deplorable conditions, inadequate food and hygiene issues face by women and women with children in detention within Amnesty International, ‘Cambodia Submission to the UN Human Rights Committee’, (2020), p7.
- ⁵² Radio Free Asia, ‘Rights Official Urges Thorough Probe into Death of Infant Detained with Mother in Cambodia’, *Radio Free Asia*, 18 February 2020, at <https://www.rfa.org/english/news/cambodia/infant-02182020133943.html>
- ⁵³ Radio Free Asia, ‘Rights Official Urges Thorough Probe into Death of Infant Detained with Mother in Cambodia’, *Radio Free Asia*, 18 February 2020, at <https://www.rfa.org/english/news/cambodia/infant-02182020133943.html>.
- ⁵⁴ Voun Dara, ‘BAKC inks MoU for victimized women’, *Phnom Penh Post*, 21 March 2021, at <https://www.phnompenhpost.com/national/bakc-inks-mou-victimised-women>.
- ⁵⁵ Kingdom of Cambodia, *Constitution*, Articles 51, 128, 130, and 132 also provide for the separation of powers and for an independent judiciary; Article 1 of the Law on the Status of Judges and Prosecutors - this law determines the status of judges and prosecutors and other principles related to judges and prosecutors, aiming at ensuring the independence of the judiciary in accordance with the Constitution of the Kingdom of Cambodia and the Basic Principles on the Independence of the Judiciary adopted by the United Nations; See also UNCAC Art 11.
- ⁵⁶ E/CN.4/1994/73.
- ⁵⁷ A/HRC/WG.6/32/KHM/1, 7.
- ⁵⁸ HRW Cambodia, ‘Repression of Opposition Increases: International Pressure Needed for Rights Improvements’, *HRW Cambodia*, 14 January 2020.
- ⁵⁹ CCHR, ‘[Cambodia Fundamental Freedoms Monitor: Sixth Annual Report](#)’, (2022), 21; CCHR, ‘[Cambodia Fundamental Freedoms Monitor: Seventh Annual Report](#)’, (September 2023), 25.
- ⁶⁰ LICADHO, ‘Cambodia’s Prisoners of Interest,’ accessed on 5 September 2023 at https://www.licadho-cambodia.org/prisoners_of_interest/; Reporters Without Borders, ‘Asia - Pacific: Cambodia’, at <https://rsf.org/en/country/cambodia> (accessed on 5 September 2023).
- ⁶¹ UN Press Release, ‘Cambodia: UN experts deeply disturbed by detention of boy with autism for on-line criticism’, (2 September 2021), at <https://www.ohchr.org/en/press-releases/2021/09/cambodia-un-experts-deeply-disturbed-detention-boy-autism-line-criticism>; Sopheng Cheang and David Rising, ‘Rights groups decry conviction of autistic Cambodian teen’, *APNews*, 2 November 2021.
- ⁶² HRW Cambodia, ‘Opposition Politicians Convicted in Mass Trial’, *HRW Cambodia*, 17 March 2022, at <https://www.hrw.org/news/2022/03/17/cambodia-opposition-politicians-convicted-mass-trial>.
- ⁶³ Ravina Shamdasani, ‘OHCHR Press Briefing Note on Cambodia’, (3 March 2023) at <https://www.ohchr.org/en/press-briefing-notes/2023/03/press-briefing-notes-cambodia>. See also OHCHR Press Release, ‘Cambodia: UN experts say Kem Sokha trial is “tainted”’, (17 January 2020), at <https://www.ohchr.org/en/press-releases/2020/01/cambodia-un-experts-say-kem-sokha-trial-tainted>.
- ⁶⁴ OHCHR Press Release, ‘Cambodia: UN experts call for free and fair electoral environment ahead of July general elections, (25 May 2023), at <https://www.ohchr.org/en/press-releases/2023/05/cambodia-un-experts-call-free-and-fair-electoral-environment-ahead-july>.
- ⁶⁵ A/HRC/51/66, 10. See also CCPR/C/KHM/CO/3, 7.
- ⁶⁶ Hul Reaksmey, ‘Ruling Party Adds Supreme Court Justices to Central Committee.’, *VoA*, 24 January 2018.
- ⁶⁷ CCHR, *Fair Trial Rights in Cambodia Monitoring at the Phnom Penh Court of Appeal - 2021 Annual Report*, (June 2023), at <https://www.sithi.org/medias/files/projects/sithi/publication/cchr-annual-report-on-fair-trial-rights-jan-dec-eng-20230612-100006.pdf>, 8.
- ⁶⁸ Transparency International Cambodia, ‘Civil Society Report of the Implementation of Chapter II (Prevention) and Chapter V (Asset Recovery) of the UNCAC in Cambodia’, (July 2021), 6; see also Sorn Sarath, ‘Cambodia ranked most corrupt in the region – judicial system the main cause’, *CamboNews*, 26 January 2022, at <https://cambojanews.com/cambodia-scored-the-lowest-in-the-region-as-the-corrupt-country-judicial-system-found-the-main-source-of-corruption/>.
- ⁶⁹ World Justice Project, ‘Rule of Law Index: Cambodia’ (2022) at <https://worldjusticeproject.org/rule-of-law-index/factors/2022/Cambodia/Absence%20of%20Corruption/>.