



## FAIR TRIAL RIGHTS NEWSLETTER

### The Right to Understand the Nature and Cause of the Charges and Explanation of Rights for Women Defendants

www.cchrcambodia.org

Issue 12: March 2021

The Cambodian Center for Human Rights (CCHR) has been conducting trial monitoring since 2009, to observe criminal trials in Cambodian courts and to assess their adherence to international and Cambodian fair trial standards. Since March 2013, CCHR's Fair Trial Rights Project has been monitoring hearings in the Phnom Penh Court of Appeal. This newsletter is part of a series of [newsletters](#) that analyze the findings of CCHR's monitoring. The present newsletter focuses on the obligation for judges to state and inform women defendants of all relevant charges against them, and the judges' duty to explain to women defendants their right to legal representation or self-defense, as well as their right to remain silent in order to avoid self-incrimination. All the data collected is publicly available in our trial [monitoring database](#).

#### Relevant Legal Framework and Equality Before the Law

Article 31 of the Constitution of the Kingdom of Cambodia ("the Constitution") provides that all citizens must be equal before the law, irrespective of their gender, while Article 45 abolishes all forms of discrimination against women and states that men and women are "equal in all fields".

Both national law and international standards provide that all defendants accused of criminal offenses, including women defendants, must be informed, at the earliest opportunity, of the nature of the acts for which they have been charged. Judges have the obligation to provide an adequate explanation and to make sure that the defendant understands the nature and cause of the charge against her. Without this essential information, it is impossible to properly prepare a defense or to give comprehensive information to a lawyer in cases where the defendant is legally represented. In addition, judges must also inform the women defendants of their right to

#### Article 325: Code of Criminal Procedure of the Kingdom of Cambodia

*"The presiding judge shall inform the accused of the charges [s]he is accused of."*

#### Article 14(3)(a): International Covenant on Civil and Political Rights

*"In the determination of any criminal charge against him, everyone shall be entitled to be informed promptly and in detail in a language which [s]he understands of the nature and cause of the charge against [her]."*

seek legal representation or to self-defense. The judges shall further ensure that the defendant is aware of her right to remain silent, and not to confess guilt. Such notification of rights must be performed by judges during trials, at the earliest opportunity.

The right for everyone to have a defense is enshrined in Article 38 of the Constitution, while Article 128-New states that, "the judicial power is the guarantor of impartiality and

the protector of the citizens' rights and liberties." The judges shall fulfill their duties in strict respect of the law, in all honesty and conscientiousness. Under Article 325 of the Code of Criminal Procedure of the Kingdom of Cambodia ("CCPC"), the presiding judge shall inform the accused of the charges she is accused of. As per Article 396 of the CCPC, these rules applicable to the Court of First Instance are extended to the Court of Appeal. They also apply to juveniles: Article 51 of the Law on Juvenile Justice states that "at commencement of trial, the court shall advise the minor in a language that the minor can understand of the following rights: The rights at trial as stipulated in Article 6 (procedural right of minor) of this law".

Further, Article 14(3)(a) of the International Covenant on Civil and Political Rights ("ICCPR"), to which Cambodia is a party and which is incorporated into domestic law by Article 31 of the Constitution, states that in the determination of any criminal charge against [her], the defendant has the right "to be informed promptly and in detail in a language which [s]he understands of the nature and cause of the charge against [her]." Its paragraph (3)(d) further provides that the defendant is entitled to be tried in her presence, and to defend herself in person, or through legal assistance of her own choosing. The defendant also has the right to be informed, if she does not have legal assistance, of this

right. Finally, paragraph (3)(g) of the same article protects individuals against self-incrimination, that is against the use of force or threats to obtain a confession of guilt by someone.

Pursuant to Article 2 of the ICCPR, Cambodia must respect and ensure respect for the fair trial rights contained in Article 14, and take all necessary steps to adopt law or other measures necessary to give effect to those rights. The implementation of the explanation of rights at trial is essential to ensure the accused has an opportunity to present the best possible defense to any charges against her.

### Findings from CCHR's Trial Monitoring

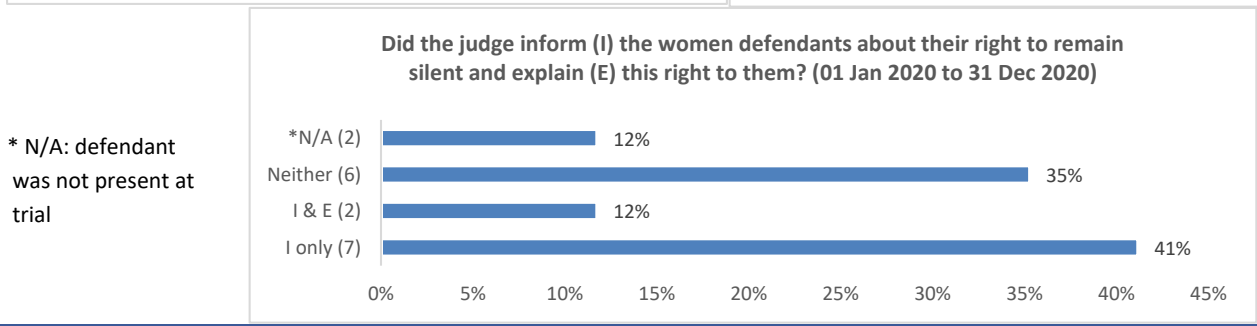
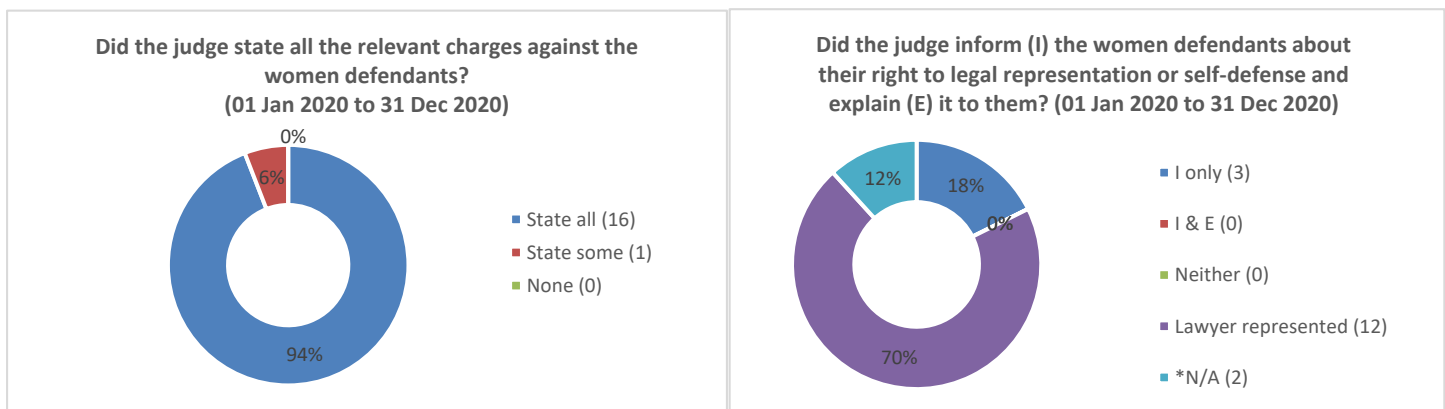
Between 01 January 2020 and 31 December 2020, CCHR monitored 200 cases at the Phnom Penh Court of Appeal. **17 of these cases** involved 18 women defendants. CCHR observed whether the Court stated all relevant charges and informed the women defendants of their individual judicial rights, as well as whether the Court fully explained to them the following rights: the right to be informed of and to understand the nature of the charges; the right to legal representation or to self-defense; and the right to remain silent.

CCHR found that during the monitoring period, the judge stated all relevant charges against the women defendants in the majority of the cases, namely in **16 of them** (94%). In **1 case** (6%) however, the woman defendant was only partly informed of the charges against her.

As for the women defendants' right to legal representation or to self-defense, the judge only informed the defendants about this right in **3 cases** (18%) and failed to explain this right to the defendants in all of the cases that CCHR monitored. In none of the cases monitored did the judge both inform the women defendants about their right to legal representation or to self-defense and explain this right to them. In **12 cases** (70%), a lawyer represented the accused, obviating the need for the judge to inform the accused about her right to have a lawyer. In 2 cases (12%), the woman defendant was not present at trial.

In regard to the right to remain silent, the judge both informed the women defendants about this right and explained it to them in **2 cases** (12%). In **7 cases** (41%), the women defendants were only informed of this right. In **6 cases** (35%), the judge failed to even mention this right. Finally, in **2 cases** (12%), the woman defendant was not present at the hearing.

### The Right to Understand the Nature and Cause of the Charges and Explanation of Rights in Numbers



\* N/A: defendant was not present at trial

Only a few cases involving women defendants were monitored by CCHR in 2020. The figures mentioned above show that the court fully upheld women defendants' fair trial rights in only a limited number of cases. In the rest of the cases, the court's compliance with fair trial rights leaves something to be desired. The court must uphold the rights of women defendants - and any other defendant - in line with national and international fair trial standards.

### **Recommendations:**

CCHR calls on the judges in Cambodia's Courts to:

- Inform the women defendants about the charges against them and fully explain these charges to them;
- Inform women defendants about their rights during the trial - including the right to legal representation or to self-defense, and the right to remain silent during the hearings - and fully explain these rights to them;
- Promote the full and free exercise of women defendants' rights throughout trial;
- Fully implement the concept of fair trial rights based on national law and international standards; and
- Follow best practices from the Extraordinary Chambers in the Courts of Cambodia ("ECCC").

Previous issues of CCHR's Fair Trial Rights newsletter are available online ([Issue 1](#), [Issue 2](#), [Issue 3](#), [Issue 4](#), [Issue 5](#), [Issue 6](#), [Issue 7](#), [Issue 8](#), [Issue 9](#), [Issue 10](#) and [Issue 11](#)). You can also read our [2018 annual report](#), [2019 annual report](#) and [2020 annual report](#) on "Fair Trial Rights in Cambodia, Monitoring at the Court of Appeal", outlining key findings from CCHR's monitoring of the Court of Appeal in Phnom Penh.