



## **FAIR TRIAL RIGHTS NEWSLETTER**

The Right to Legal Representation and to be Present at Trial

[www.cchrcambodia.org](http://www.cchrcambodia.org)

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The Cambodian Center for Human Rights (“CCHR”) has been conducting trial monitoring since 2009, to observe criminal trials in Cambodian courts and assess their adherence to international and Cambodian fair trial standards. Since March 2013, CCHR’s Fair Trial Rights Project has been monitoring hearings in Phnom Penh’s Court of Appeal. This newsletter is part of a series of [newsletters](#) that will analyze the findings of CCHR’s monitoring. The present newsletter focuses on the issues facing those charged with crimes, in particular their access to legal representation and their right to be present at their own trial, providing our 2019 data. All the data collected is publicly available in our [trial monitoring database](#).

### ***The Right to Legal Representation***

A vital aspect of the right to a fair trial is having the opportunity to obtain legal representation. Legal procedures can be complex and without a legal representative an individual is likely to be at a disadvantage, as they may lack knowledge of the law and the court system, and do not have someone to advocate for them in court. Furthermore, an individual’s right to be represented by a lawyer should not be limited by their individual financial circumstances. Where individuals cannot afford to pay for a lawyer, the law dictates that the relevant authorities should provide a lawyer free of charge.

### ***The Right to be Present at Trial***

The right to be present at trial is a fundamental element of fair trial rights; it necessitates that the accused parties are permitted to be in court during the trial. Presence at their own trial is vital as it permits them to hear the case

### **Cambodian Code of Criminal Procedure Art. 300**

*“The accused shall appear in person during the hearings at the court. The accused may be assisted by a lawyer chosen by him/herself. The accused may also make a request to have a lawyer appointed for him/her in accordance with the Law on the Statute of Lawyers”*

### **International Covenant for Civil and Political Rights, Article 14(3)(d)**

*“In the determination of any charge against him, everyone shall be entitled: to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; 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.”*

against them and present their defense. Holding a trial without the accused person present hinders their ability to defend themselves and renders the trial unlawful.

### **Legal Framework**

Cambodian legislation solidifies these rights through the Cambodian Code of Criminal Procedure. Article 300 requires that the accused *appears in person* at court and provides that they may request a lawyer.

Article 301 provides that the assistance of a lawyer is compulsory in two circumstances: firstly, where the case involves a felony charge, and secondly where the accused is a minor. While this means that Cambodian legislation adequately upholds the right to legal representation

for juveniles and individuals accused of felonies, it falls short of international human rights standards for cases involving any offence other than a felony (for example, a misdemeanor). International human rights law does not make any distinction between offence levels, and instead requires the right to legal representation to be universally applicable, irrelevant of the offence.

The right to be present at trial is also enshrined in national as well as international legislation. The Code of Criminal Procedure affords defendants the right to “*appear in person*” at their trial and the International Covenant for Civil and Political Rights requires that trials are held “*in the presence*” of the accused. Trials *in absentia* are not impermissible under international human rights law, however they may be permitted in exceptional circumstances and when it is required in the interest of justice.

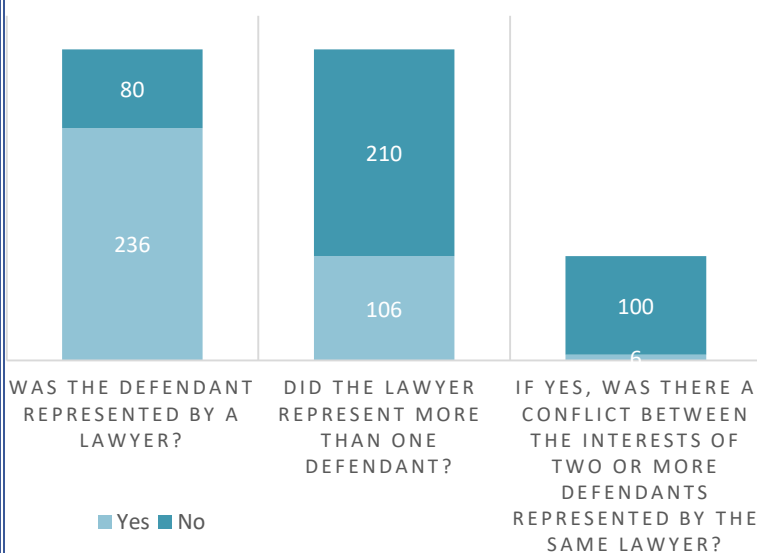
## The Right to Legal Representation and to be Present at Trial in Numbers

### Findings from CCHR's Trial Monitoring

The Fair Trial Rights Project's monitoring of the Court of Appeal between 1 January 2019 and 31 December 2019 collected data for 218 criminal trials involving 316 defendants. The project analyzed each trial's adherence to fair trial rights and the level of protection for each defendant's right to legal representation and to be present at trial

#### Right to Legal Representation

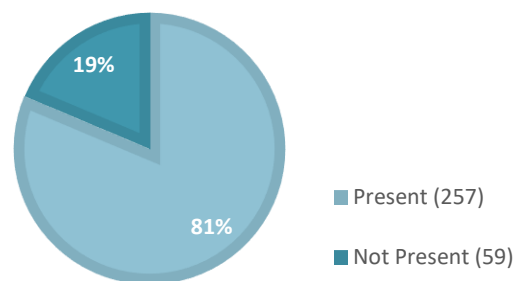
25% (80) of all defendants who were accused of misdemeanor crimes were not represented by a lawyer. This suggests that one in every four defendants at the Court of Appeal do not have their right to legal representation upheld.



Positively, there were no cases recorded in which juveniles or defendants accused of a felony were without representation. Every juvenile or defendant accused of a felony was represented by a lawyer, in line with the additional protections provided by Article 301 of the Cambodian Code of Criminal Procedure. Worryingly, CCHR's monitoring found six defendants where there was a conflict of interest, specifically the lawyer represented multiple defendants in the same case. For instance, defendants provided their inculpatory answers to other defendants during the hearing.

#### Right to be Present at Trial

The Fair Trial Rights Project recorded 59 defendants were not present at their own trial during the monitoring period. This amounts to 19% of defendants being tried *in absentia*, which does not meet international human rights standards. CCHR's research discovered that in most cases the accused's absence during hearings was because they were not informed by the Court of Appeal of the trial date and because of a lack of availability of transportation from the detention center to the Court.



#### Recommendations

CCHR calls on the Royal Government of Cambodia and judges to ensure the following:

- The Court of Appeal and the General Department of Prisons must consult and coordinate with each other to address any logistical and communication issues as soon as possible regarding the locations of defendants, and in particular:
  - The General Department of Prisons must ensure that information on the transfer of detained persons is regularly sent to General Prosecution to ensure the Court of Appeal gives the information regarding date and time of the appeal hearings to the correct correctional center, in which the defendant is detained;
- The Judges of the Court of Appeal should postpone any hearing if the defendant is not present, even if he or she is represented by a lawyer, unless he or she has unequivocally and formally waived his or her right to be present.
- Judges should respect the right to legal representation universally, irrespective of the type of crime, as provided under international law.

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](#) and [Issue 8](#)). You can also read our [2018 annual report](#) and [2019 annual report](#) on "Fair Trial Rights in Cambodia, Monitoring at the Court of Appeal", outlining key findings from its monitoring of the Court of Appeal in Phnom Penh.