



## **FAIR TRIAL RIGHTS NEWSLETTER**

### **The right not to be compelled to confess guilt or to testify against oneself**

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

**Issue 11: November 2020**

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 Appeal Court. This newsletter is part of a series of [newsletters](#) that analyze the findings of CCHR's monitoring. The present newsletter focuses on the right not to be compelled to confess guilt or to testify against oneself. All the data collected is publicly available in our trial [monitoring database](#).

#### ***The right not to be compelled to confess guilt or to testify against oneself***

All individuals accused of a crime have the right not to be compelled to confess guilt or to testify against themselves. This safeguard is twofold. Firstly, the defendant may not be compelled or forced to provide evidence against themselves. In practice, this means that when a defendant makes a confession, it must be done in the absence of any coercion, whether this is direct or indirect, physical or psychological. This right is therefore closely linked to the internationally recognized prohibition of torture and of cruel, inhuman or degrading treatment or punishment, enshrined in Article 7 of the International Covenant on Civil and Political Rights ("ICCPR"). Should any confession or statement be obtained through coercion, torture or other ill-treatment, it must be excluded from the evidence, except if it is used as evidence that such treatment

#### ***Article 38: The Constitution of the Kingdom of Cambodia***

*"[...] Confessions obtained by physical torture or mental pressure shall not be admissible as evidence of guilt [...]"*

#### ***Article 321: Code of Criminal Procedure of the Kingdom of Cambodia***

*"[...] A confession shall be considered by the court in the same manner as other evidence. Declaration given under physical or mental duress shall have no evidentiary value [...]"*

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

*"In the determination of any criminal charge against him, everyone shall be entitled not to be compelled to testify against himself or to confess guilt."*

occurred. Secondly, the defendant cannot be compelled to self-incriminate by testifying against themselves. The right against self-incrimination is an essential element of judiciary proceedings, as it is difficult to imagine a fair trial in which an accused is forced to give self-incriminating evidence. In other words, the two-pronged right gives the accused the unfettered right not to provide evidence that could be used against them. To ensure that the defendant is protected from coercion by the investigating authorities, it is crucial that a lawyer is present during any interrogations of the

defendant. A lawyer's presence can deter the judicial police from disregarding the fair trial rights of the defendant. Finally, it should be noted that if a person decides to exercise their right not to be compelled to confess guilt or to testify against oneself, the circumstances in which the judge could draw any negative inference from the person's silence are restricted.

#### ***Relevant legal framework***

The right to be free from torture or cruel, inhuman or degrading treatment or punishment, a key component of the right not to be compelled to confess guilt, is enshrined in Article 38 of the Constitution of the Kingdom of Cambodia ("the Constitution") which *"prohibits all physical abuse of an individual"* and states that the law *"protects the life, honor and dignity of citizens"*. Article 321 of the Cambodian Code of Criminal Procedure ("CCPC") doubles down on this right, by

voiding of any evidentiary value a declaration that has been given under physical or mental duress. The CCPC, in Article 145, provides a further safeguard against threats or torture being used during interrogation by stating that “*a charged person can be interrogated only in the presence of his lawyer*”. The Article does however allow for one exception, permitting the judge to question the charged person without a lawyer if the latter does not show up despite having been summoned. In that case, the written record of the charged person’s interrogation must indicate that the interrogation took place without a lawyer being present. The Law on Juvenile Justice in Article 5 also protects minors against “*torture, corporal punishment, or other physical or mental treatment which is cruel, inhumane, or degrading*”. Article 6 then recognizes for minors “*the right not to be forced to give testimony against him/herself*”.

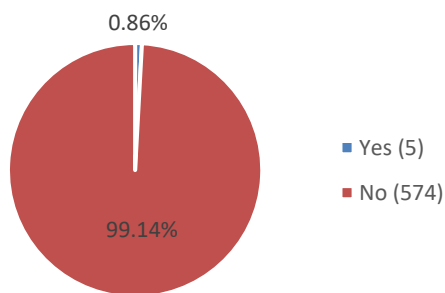
In international law, the protection against self-incrimination is enshrined in Article 14(3)(g) of the ICCPR which states that “*in the determination of any criminal charge against him, everyone shall be entitled not to be compelled to testify against himself or to confess guilt*”. As the ICCPR is incorporated into domestic law by Article 31 of the Constitution, this right must be given full effect in Cambodia. Article 7 of the ICCPR provides that “*no one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment*”, mirroring word-for-word Article 5 of the Universal Declaration of Human Rights and echoing the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The prohibition of torture is considered a peremptory norm of international law, from which no derogation is permitted. Pursuant to Article 2 of the ICCPR, Cambodia must uphold and ensure respect for the fair trial rights contained in Article 14 and take all necessary steps to adopt laws or other measures necessary to give effect to those rights.

### Findings from CCHR’s Trial Monitoring

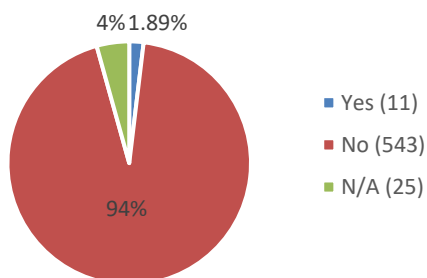
Between **1 September 2018 and 31 August 2020**, CCHR monitored 421 cases at the Phnom Penh Court of Appeal, involving 579 defendants. In all cases, CCHR observed whether there was anything to suggest that the defendant was interrogated without a lawyer present, whether threats were made to coerce the defendant into confessing to the alleged crime, or that violence or torture were used to coerce the defendant into confessing to the alleged crime. During the reporting period, CCHR found that defendants raised during the trials at the Court of Appeal: at the judicial police stage, five defendants (0.86%) were interrogated without a lawyer present. Moreover, CCHR’s monitoring team identified elements that suggested threats were made against 11 defendants (1.89%) to obtain a confession. More worryingly, 26 defendants (4.5%) alleged that violence or torture was used on them to coerce them into confessing.

**While the number of monitored cases that recorded coercion or torture during interrogations (either psychological or physical) at the judicial police stage, are small in numbers, it is nevertheless a matter of serious concern. There are no exceptions to the prohibition of torture. The right not to be compelled to confess guilt therefore must be fully respected; even one defendant alleging torture or coercion is too many.**

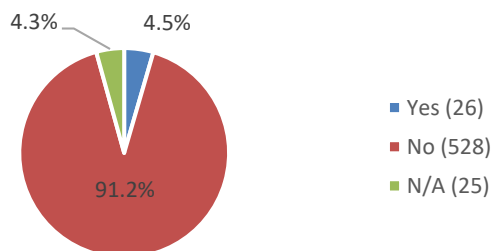
Was there anything to suggest that the defendant was interrogated without a lawyer present?

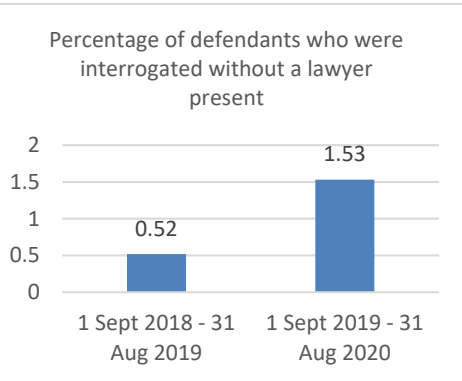


Was there anything to suggest that threats were used to coerce the defendant into confessing to the alleged crime?



Was there anything to suggest that violence or torture were used to coerce the defendant into confessing to the alleged crime?



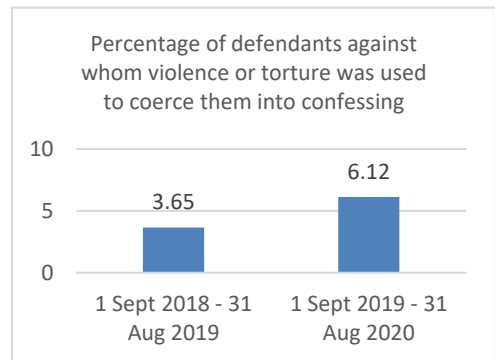


### Evolution of respect for the right in the Court of Appeal

According to data from CCHR’s court monitoring over the last two years, the number of defendants interrogated without their lawyer present has slightly increased. Between 1 September 2019 and 31 August 2020, three defendants (1.53%) were interrogated without their lawyer present, up from two (0.52%) for the same period the year before. While this difference may seem small, it should be kept in mind that Cambodian law requires that the interrogation of a charged person may only take place in the presence of their lawyer, and Article 14(3)(b) of the ICCPR provides that every person has the right to “*communicate with council of [their] own choosing*”. This is crucially important as a lawyer’s presence at interrogations constitutes a safeguard against possible abuses by investigating

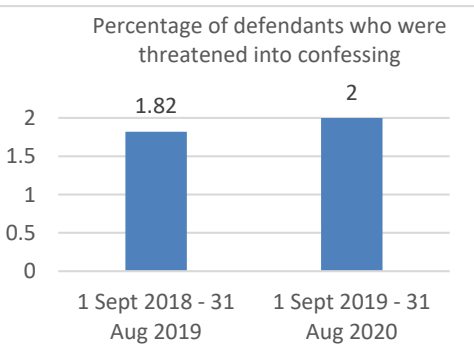
authorities and ensures justice is carried out fairly and with consideration for the defendant’s rights.

CCHR’s figures further seem to indicate an increase in the percentage of cases in which the right not to be compelled to confess guilt was not fully respected. While the total number of defendants who claim to have been coerced or tortured into confessing guilt, has gone down between 1 September 2019 and 31 August 2020 compared to the same period the year before, statistics show that, proportionally to the number of cases monitored, instances in which this right was not fully respected are actually on the rise. Four defendants alleged during the trial at the Court of Appeal they were threatened into confessing guilt at judicial police stage between 1 September 2019 and 31 August 2020, down from seven for the period 1 September 2018 to 31 August 2019. However, taking into account the number of cases that



were monitored during each of these two periods (265 monitored cases for the period 1 September 2018 to 31 August 2019, 156 in the same period 2019 to 2020), this accounts for a slightly higher percentage of the total number of defendants (2% in 2019-2020; 1.82% in 2018-2019). Similarly, while the number of defendants who claim that torture or violence was used on them to coerce them into confessing at the judicial police stage, has gone down from 14 during the 2018-2019 period to 12 during the 2019-2020 period, this number represents a higher percentage of the total number of defendants (6.12% in 2019-2020; 3.65% in 2018-2019). These figures show no significant

improvement in the protection of the right not to be compelled to confess guilt, despite its importance in upholding fair trial rights.



improvement in the protection of the right not to be compelled to confess guilt, despite its importance in upholding fair trial rights.

### Recommendations

CCHR calls on the judges in Cambodia’s courts to:

- Ensure that a lawyer shall be present during the interrogation of a suspect or defendant;
- Promptly and thoroughly investigate any claim by a defendant that threats, torture or violence was used against them to coerce them into confessing;
- If investigations find reasonable grounds to believe that a confession or other evidence was obtained in a coercive or violent manner, rule the evidence inadmissible and ensure relevant re-trials are conducted;
- If investigations find torture or violence was used, ensure the perpetrator is held legally accountable and appropriate reparations are made to victims;
- Promote the full and free exercise of the accused’s rights throughout trials;
- Fully implement the concept of fair trial rights based on national and international standards, and to follow the best practices in 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](#) and [Issue 10](#)). You can also read CCHR’s [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 its monitoring of the Court of Appeal in Phnom Penh.

