



FAIR TRIAL RIGHTS NEWSLETTER **EXPLANATION OF RIGHTS**

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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 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 will analyze the findings of CCHR’s monitoring. The present newsletter focuses on the obligation for judges to inform the accused of the charges against him or her, and the judges’ duty to explain to the accused their right to legal representation or self-defense as well as their right to be silent in order to avoid self-incrimination. All the data collected is publicly available in our trial [monitoring database](#).

Relevant Legal Framework

Those accused of criminal offenses must be informed of the nature of the acts for which they have been charged, at the earliest opportunity. Judges have the obligation to provide an adequate explanation and to make sure that the accused understands the nature and cause of the charge against him or 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 accused person is legally represented. In addition, judges must also inform the accused of their right to seek legal representation or to self-defense. The judges shall further ensure that the accused is aware of his or 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 of the Kingdom of Cambodia (the Constitution), while Article 128-New of the Constitution, states that “the judicial power is the

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

“The presiding judge shall inform the accused of the charges 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 he understands of the nature and cause of the charge against him.”

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, in accordance with Article 129-New of the Constitution. Articles 300 and 301 of the Cambodian Code of Criminal Procedure (“CCPC”) further provide that an accused has the right to be represented by a lawyer of his or her own choosing. Under Article 325 of CCPC, the presiding judge shall inform the accused of the charges

he is accused of. As per Article 396 of CCPC, these rules are extended to the Court of Appeal as well as the Court of First Instance. 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 him, everyone shall be entitled to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him.*” Its paragraph (3)(d) further provides that everyone is entitled to be tried in one’s presence, and to defend himself or herself in person, or through legal assistance of his or her own choosing; to be informed, if he or 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 effects to those rights.

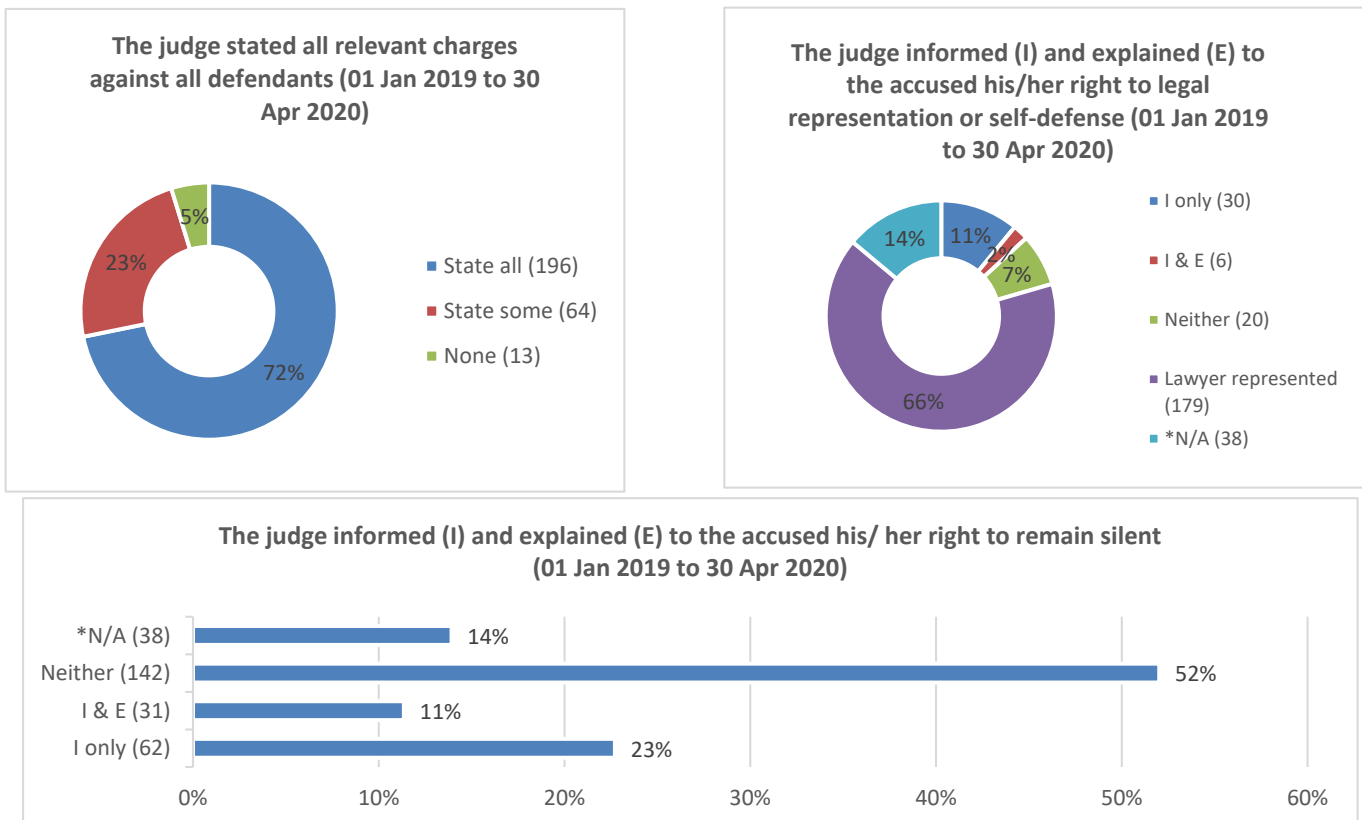
The implementation of the explanation of rights at trial stages is essential in order to ensure that the accused has an opportunity to present the best possible defense to any charges against him or her.

Findings from CCHR's Trial Monitoring

Between 1 January 2019 and 30 April 2020, CCHR monitored 273 cases at the Phnom Penh Court of Appeal. In all cases, CCHR observed whether the Court informed the accused of their entitlement to individual rights, as well as whether the Court fully explained these rights *i.e.* the right to be informed of and to understand the nature of the charges; the right to legal representation; to self-defense; and the right to remain silent, by judges during the hearings.

CCHR found that, during the monitoring period, the judges informed the accused of the charges against them and explained the nature of said charges in the majority of the cases, namely in 196 of them (72%). In 64 cases (23%) however, only parts of the charges were explained to the defendant and in 13 cases (5%), the judges did not inform the defendant about the charges altogether. As for the accused's right to legal representation or to defend himself/herself, the judges informed the accused about this right in 30 cases (11%). The judges provided explanations on this right in only 6 cases (2%). In 20 cases (7%), the accused was neither informed about, nor received an explanation of, his/her right to legal representation or self-defense. In 179 cases (66%), a lawyer represented the accused, obviating the need for the judges to inform the accused about their right to have a lawyer. In 38 cases (14%), the accused was not present at trial. In regard to the right to remain silent, judges both informed and explained this right to the accused in 31 cases (11%). In 62 cases (23%), the accused were only informed of this right, and in 142 cases (52%), the judges failed to even mention this right. Finally, in 38 cases (14%), the accused was not present at the hearing.

Explanation of Rights in Numbers

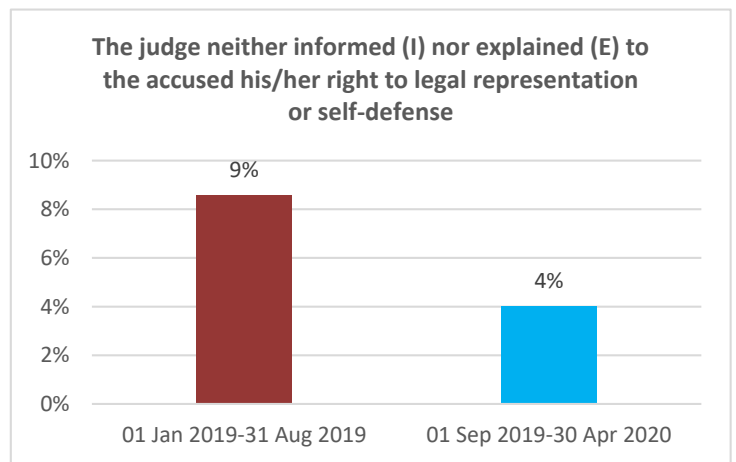
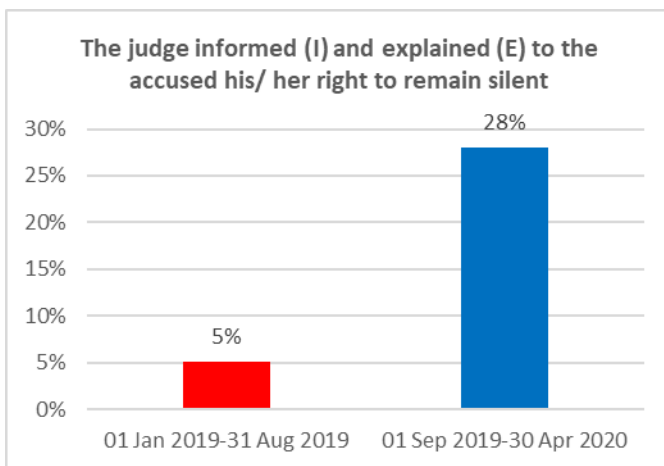


* N/A: defendant not present at trial

Based on the above figures, it is clear that in only a small number of cases the judges provided full explanations to the accused of their rights. Therefore, the accused's rights have not been fully respected, and such practice did not conform with national and international standards on fair trial rights.

Evolution of Implementation of Explanation of Rights

The explanation of the accused rights by judges in the Court of Appeal has improved since the CCHR team met with the Court to discuss the findings of CCHR's 2019 Fair Trial Rights Annual Report on 27 August 2019. In the eight months after the meeting (01 September 2019 to 30 April 2020), judges did not explain of right of the accused to legal representation in 4% of monitored cases (3 out of 75). This represents an improvement from the previous period, as in the eight months before the meeting (01 January 2019 to 31 August 2019), the right was not explained in 9% (17/198 cases) of monitored cases. As for explanations of the right to remain silent, this improved significantly after the meeting, as in the eight months before this was only explained to defendants in 5% (10/198) of monitored cases, and after the meeting was explained in 28% (21/75) of the monitored cases.



Recommendations:

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

- Inform and fully explain to all defendants the charges against them;
- Inform and fully explain to all defendant their rights during the trial, including the right to legal representation; the right to self-defense; and the right to remain silent during the hearings;
- 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](#) and [Issue 9](#)). 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.