



FAIR TRIAL RIGHTS NEWSLETTER

The Right to Legal Representation and to be Present at Trial

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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 quarterly newsletters that will analyze the findings of CCHR’s monitoring and discuss its broader issues. The present newsletter focuses on the issues facing Cambodian citizens who are accused of crimes, in particular their access to legal representation and their right to be present at their own trial.

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 confusing and without a legal representative an individual is likely to be at a disadvantage, perhaps lacking knowledge of the law and the court system, and without someone to represent them in court. Furthermore, an individual’s right to be represented by a lawyer should not be limited by an inability to afford the expense. 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 him/her to hear and challenge the case against him/her, and to present his/her defense.

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.”

To hold a trial without the accused present would hinder their ability to defend themselves and render the trial unlawful.

Legal Framework

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

Article 301 of the same statute provides that the assistance of a lawyer is compulsory in two circumstances: where the case involves a felony and where the accused is a minor. Whilst 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 such a distinction between offences, 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.

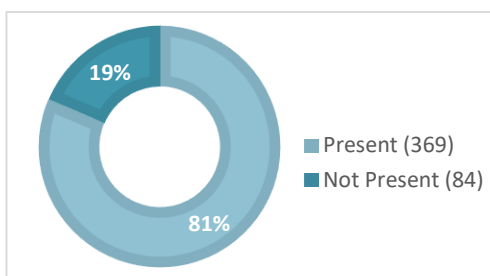
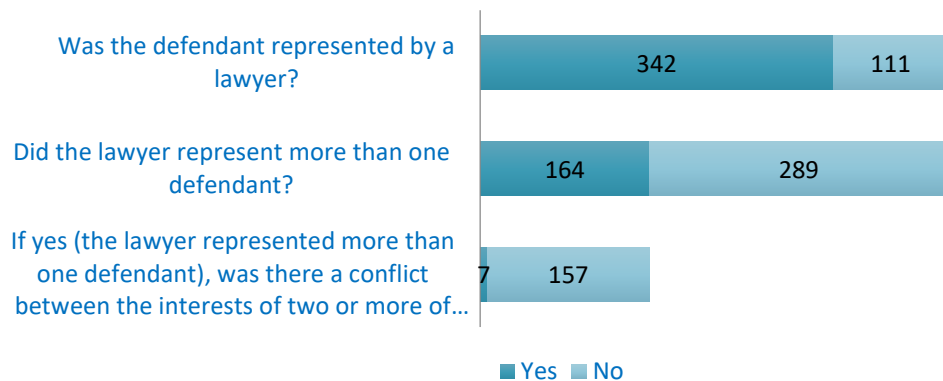
The Right to Legal Representation and to be Present at Trial in Numbers
Findings from CCHR's Trial Monitoring

The Fair Trial Rights Project's daily monitoring of the Court of Appeal between 1 November 2017 and 28 February 2019 collected data for 301 criminal trials involving 453 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.

25% (111) of all the defendants CCHR monitored were not represented by a lawyer. This suggests that one in every four defendants at the Court of Appeal does not have their right to legal representation upheld. In line with the distinction national legislation makes by affording extra protection to juveniles and felony defendants, there were no cases recorded

without legal representation for a juvenile or a defendant accused of a felony. It therefore follows that every case involving a felony and/or a juvenile was represented by a lawyer.

CCHR's monitoring data also highlights that in seven cases there was a conflict of interest, where the lawyer represented multiple defendants.



The Fair Trial Rights Project also recorded that during the monitoring period, 84 defendants were not present at their own trial. This amounts to 19% of defendants being trialed *in absentia* and therefore not meeting international human right standards for the right to be present. CCHR's research also discovered that in most cases, the accused's absence during hearings was due to the lack of transportation from the detention center to the Court.

Recommendations

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

- The Court of Appeal and the General Department of Prisons should consult and coordinate with each other in order 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 Prosecutors;
 - The Court of Appeal must ensure that information regarding date and time of the appeal hearings are sent 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](#) and [Issue 6](#)). You can also read our 2017 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 between 1 November 2016 to 31 October 2017.