



FAIR TRIAL RIGHTS NEWSLETTER

The Right to Be Presumed Innocent

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The Cambodian Center for Human Rights (“CCHR”) has conducted trial monitoring to observe criminal trials and assess their adherence to both international and Cambodian fair trial standards since 2009 and has been monitoring hearings in the Phnom Penh Court of Appeal specifically from March 2013. This newsletter is part of a series of [newsletters](#) that analyze our findings. The present issue focuses specifically on the right to be presumed innocent. All the data collected is publicly available in our [trial monitoring database](#).

The right to be presumed innocent as a fundamental right

Both international and domestic law recognize the presumption of innocence as a fundamental right. Adherence to this principle is not only a necessary condition for guaranteeing the right to a fair trial, but also a fundamental tool for inspiring trust in the rule of law. Article 11(1) of the Universal Declaration of Human Rights (“UDHR”) guarantees the right to be presumed innocent until proven guilty. Article 14(2) of the International Covenant on Civil and Political Rights, to which Cambodia is a party, and which, like the UDHR, is incorporated into domestic law by the Constitution, provides that *“Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.”* Article 38 of the Constitution of the Kingdom of Cambodia provides that *“Any accused shall be presumed to be innocent until they are finally convicted by the court.”* The right manifests itself in many different ways. For example, it places the burden of proof on the prosecution and guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt.¹ It also requires all public authorities, including prosecutors, police and government officials, to refrain from affecting the outcome of a trial by making public statements about the guilt of the accused.² This

Article 38 of the Constitution of the Kingdom of Cambodia

“Any accused shall be presumed to be innocent until they are finally convicted by the court.”

Article 14(2) of the International Covenant on Civil and Political Rights

“Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.”

includes a duty to ensure that the media is discouraged from undermining the fairness of a criminal trial by prejudging or influencing its outcome. In practical terms the presumption of innocence also encompasses the right of the defendant to appear before the court with the appearance and dignity of a free and innocent person and their right to remain silent. Defendants must therefore not be handcuffed, placed behind glass, in cages, or required to wear a prison uniform³ and judges must inform of and explain them their right to remain silent.

The right to be presumed innocent in practice

Prison uniforms

When a defendant attends a hearing in the uniform of a convicted person,⁴ the implication is that the defendant is a guilty criminal, which risks affecting (consciously or subconsciously), the judgment of the presiding judge or judges, the manner in which proceedings are conducted, and ultimately the outcome of the case. The Human Rights Committee have found that even *“the requirement that pre-trial detainees and convicts must wear jackets indicating their place of detention constitutes degrading treatment”* and that the requirement to wear such jackets during trial may infringe on the presumption of innocence.⁵

¹ UNCHR ‘General Comment 32’ (2007) UN Doc CCPR/C/GC/32, para 30.

² *Ibid.*

³ *Ibid.*

⁴ In this newsletter, a “convicted person” refers to a person who has been found guilty by the court and whose conviction has become final following the

exhaustion of all possible appeals. “Defendant” refers to any person facing criminal charges who has not been finally convicted.

⁵ UNHRC ‘Concluding observations of the Committee on the initial report of Benin,’ November 2004 UN Doc CCPR/C/82/BEN), para. 21.



CCHR: defendants in convicts' uniform

Rule 115 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules), adopted by the General Assembly in 2015, states that *“An untried prisoner shall be allowed to wear his or her own clothing if it is clean and suitable. If he or she wears prison dress, it shall be different from that supplied to convicted prisoners.”* While this document is not legally binding on Cambodia or other UN Members, it represents an internationally recognized best practice for the treatment of prisoners. In the Extraordinary Chambers in the Courts of Cambodia (“ECCC”), defendants are permitted to wear their own clothes at all stages of the criminal process until final conviction.

In Cambodia, the uniform to be worn by prisoners is set out in Prison Procedure No. 5 (4.1), ‘Prisoner Uniforms and Cell Equipment’ of the 2003 Prison Procedure of the Ministry of Interior: *“Admitting officers are to ensure that when a convicted person is admitted to prison, he/she is provided with the following uniform items and cell equipment: two blue cotton shirts with a white stripe around the collar; two pair of blue cotton trousers with a white stripe down each outside leg.”* In 2013 a [Prakas](#) was issued dictating that persons who have not been convicted, or whose convictions are not yet final but who are detained by the authorities will wear a dark orange

uniform. While the provision of different uniforms for convicted persons and those whose convictions are not yet final is welcome, in order to ensure that the right to be presumed innocent is fully respected *all* defendants whose convictions are not yet final should be able to wear their own clothes to court.

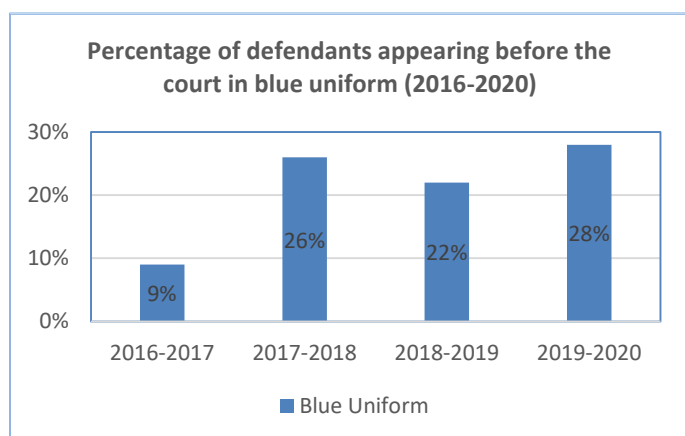
From 1 November 2019 to 31 December 2020, CCHR monitored 203 cases involving 255 individual defendants at the Phnom Penh Court of Appeal. All cases concerned individuals who had been convicted at first instance but whose convictions were being appealed and were not yet final. During this monitoring period, 72 defendants appeared before the court in blue convict uniforms. 149 defendants appeared in dark orange uniforms designated for individuals who had not yet been convicted, or their own clothes. 34 defendants were either absent from proceedings entirely, or appeared in their own clothes due to the fact that they were not being held in pre-trial detention.

It therefore appears that the right to be presumed innocent is not being fully respected. More than a quarter of defendants appear before Court in the blue convict uniform. Despite the introduction of dark orange uniforms, the situation is not improved, compared to the findings in 2018/2019 when in the 239 cases monitored by CCHR at the Phnom Penh Court of Appeal between 1 November 2018 and 31 October 2019, 22% (77 out of 352) of defendants appeared in blue convict uniforms.



That defendants whose conviction is not yet final appear before the court in convict uniforms is contrary to the Constitution, the 2013 [Prakas](#), and Prison Procedure No.5. It is also inconsistent with international human rights law, which guarantees the right to the presumption of innocence, and international standards such as the United Nations Standard Minimum Rules for the Treatment of Prisoners.

Evolution of the right to be presumed innocent (2016-2020)



The number of defendants appearing before the court in blue uniform has significantly increased since 2016. The

data shows that only 9% of defendants appeared before the court in blue uniform in 2016-2017 while 28% defendants appeared before the court in blue uniform in 2019-2020, in violation of their right to be presumed innocent.

The right to remain silent

The right to remain silent is rooted in the presumption of innocence. Judges must therefore ensure that defendants are adequately informed about this right and understand what it entails. Unfortunately, in 2018-2019, appeal judges failed to inform and explain this right to defendants in 66% of the cases monitored by CCHR and only informed defendants in 26% of the cases without providing any explanation. In 2019-2020, appeal judges failed to inform and explain the right to remain silent to defendants in 25.6% of the cases monitored and only informed defendants about this right without explaining it to them in 31% of the cases, showing a notable improvement compared to 2018-2019. However, it is essential that judges inform and explain the right to remain silent to all defendants in order to ensure full respect for the presumption of innocence.

Conclusion and Recommendations

Every defendant has the right to be presumed innocent until proven guilty according to the law. Therefore, CCHR recommends that:

- The Ministry of Interior should follow the international best practices implemented by the ECCC, which allow defendants to wear their own clothing to court at all stages of the criminal process until their conviction becomes final.
- The Ministry of Interior should review and revise its existing legal instruments, policies and practices to ensure they are in line with the international standards set out above. Until such revision has taken place, the Ministry of Interior should ensure the wearing of prison uniforms is implemented in accordance with the provisions of the 2013 Prakas in all cases.
- The Ministry of Justice and Ministry of Interior shall issue and disseminate clear guidelines that defendants who are subject to criminal proceedings must be allowed to appear in the court wearing civil clothes.
- The judges of the Court of Appeal should allow those accused who are brought to court wearing a convict uniform to use their civil uniform instead during hearings.
- The judges of the Court of Appeal should inform and explain the right to remain silent to all defendants

Previous issues of CCHR's Fair Trial Rights newsletter are available on CCHR website ([Issue 1](#), [Issue 2](#), [Issue 3](#), [Issue 4](#), [Issue 5](#), [Issue 6](#), [Issue 7](#), [Issue 8](#), [Issue 9](#), [Issue 10](#), [Issue 11](#), and [Issue 12](#)). 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 its monitoring of the Court of Appeal in Phnom Penh between 1 November 2016 to 31 October 2019.