



## FAIR TRIAL RIGHTS NEWSLETTER The Right to a Reasoned Judgment

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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 the Phnom Penh Court of Appeal. This newsletter is a 2018 series of quarterly newsletters that will analyze the findings of CCHR's monitoring and discuss broader issues. The present newsletter focuses on the right to a reasoned judgment.

In March 2018, the United Nations Special Rapporteur on the situation of Human Rights in Cambodia, Rhona Smith, highlighted the importance of the topic, by calling for "greater transparency in judicial decision-making", "more consistent decisions on evidence and on the application of the law", outlining that those were key to promote greater legal certainty and improve public perceptions. She recommended that "plans to make public judgments and legal reasoning should be progressed".<sup>1</sup>

### What is it?

The right to a reasoned judgment means that a criminal judgment rendered against an individual must explain why and how the verdict has been reached and why the person was found guilty or innocent. To do so, both the facts and the law on which the judgment is based must be explained:

### Cambodian Code of Criminal Procedure Article 357

*"Every judgment shall have two parts: [...] the arguments of facts and laws which led the court to make the decision, and the [...] decision of the court. The facts shall be clear and beyond a reasonable doubt. The court shall examine all charges and arguments raised during the hearing. In the ground judgment, the court shall respond to written conclusions of the parties...."*

• **The facts:** the judgment must set out the facts for which the person is convicted as clearly as possible, including the date, the location, and the actual event(s). In doing so, the judges must ideally refer to the piece(s) of evidence on which they relied in order to reach the finding, for instance a confession, or a specific witness' testimony, and explain why they relied on it.

• **The law:** the judgment must also include the legal basis on which the ruling is based, both in terms of substantive law (the crime) and of criminal liability (the mode of liability: direct perpetrator, accomplice etc.).

Having a reasoned judgment is crucial in safeguarding against arbitrariness,<sup>2</sup> as it compels the judges to explain their decision, and ensures that the person who is convicted knows why, and for what they are convicted.

### Legal Framework

The right to a reasoned and timely judgment is inherent to the right to a fair trial. It is subsumed by Article 14 of the International Covenant for Civil and Political Rights ('ICCPR'), to which Cambodia is a party, which guarantees the right to a public judgment (Art. 14 (1)), but also the right to have one's conviction and sentence reviewed by higher tribunal according to law (Art. 14 (5)).<sup>3</sup>

The Cambodian Code of Criminal Procedure provides that every judgment by the Court of First Instance should have

<sup>1</sup> 'End of mission statement by United Nations Special Rapporteur on the situation of human rights in Cambodia Professor Rhona Smith', 14 Mar 2018, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22819&LangID=E>.

<sup>2</sup> 'Fair Trial Manual', Amnesty International, p. 174, Section 24.2, <https://www.amnesty.org/download/Documents/8000/pol300022014en.pdf> ('Amnesty International Fair Trial Rights Manual').

<sup>3</sup> See also 'Right to Equality before courts and tribunals and to a fair trial, General Comment 32', UN Human Rights Committee ('UN HRC'), UN Doc. CCPR/C/GC/32, July 2007, para 49,

[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/GC/32&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/GC/32&Lang=en) ('UN HRC General Comment 32 (2007)'); *Raphael Henry v. Jamaica*, Adoption of views, Communication No. 230/1987, UN Doc. CCPR/C/43/D/230/1987, UN HRC, 1 Nov 1991, para. 8.4, <http://juris.ohchr.org/Search/Details/453> ('UN HRC Decision in *Raphael Henry v. Jamaica*'); *Victor Francis v. Jamaica*, Adoption of views, Communication No. 320/1988, UN Doc. CCPR/C/47/D/320/1988, UN HRC, 12 May 1993, para. 12.2, <http://juris.ohchr.org/Search/Details/287>; *Bandajevsky v. Belarus*, Adoption of views, Communication No. 1100/2002, UN Doc. CCPR/C/86/D/1100/2002, UN HRC, 28 Mar 2006, para. 10.13, <http://juris.ohchr.org/Search/Details/1248>.

two parts: the grounds for the judgment, meaning “the arguments of facts and laws which lead the court to make decision” and the decision of the court. (Art. 357). The judgment shall be clear, and the Judges shall examine “all charges and arguments raised during the hearing”. It shall also respond to the written conclusions of the parties. (Art. 357). Article 403 of the code provides that this provision equally applies to Appeals Judgments.

Rule 101 of the Internal Rules of the Extraordinary Chambers in the Court of Cambodia (‘ECCC’) largely reflects Article 357 of the Cambodian Code of Criminal Procedure. In addition, the ECCC’s Supreme Chamber emphasized the importance of a duly reasoned judgment and provided a detailed analysis of the type of information which should be included, focusing on the assessment of evidence. It should serve as guidance for the other Courts in the country.<sup>4</sup>

#### Rule 101. Form of the Judgment

1. The judgment shall be divided into two parts: a) the findings, setting out the factual and legal reasons supporting the Chamber’s decision; and b) the disposition by the Chamber. [...]
3. The Chamber shall examine all counts in the Indictment and consider all arguments raised during the trial.
4. The findings in the judgment shall respond to the written submissions filed by all of the parties.
5. The disposition by the Chamber shall set out each crime committed by an Accused, the applicable law, the sentence and any reparations. [...] *Internal Rules of the ECCC (Rev. 9)*

#### What kind of reasons have to be given?

A duly reasoned judgment must include the key findings of the case, as well as a discussion of the evidence, a legal reasoning and conclusions.<sup>5</sup> Examples of details which should be noted include:

- A list of the specific legal provisions;
- A detailed discussion of the evidence upon which the Judges relied to reach their findings, including, where applicable, an explanation as to why they were relied upon despite the Defence challenging its reliability;
- A discussion of the evidence presented by the Defence and an explanation as to the reliability and weight given to it by the Judges;

- An explanation as to why the judges found that a confession was reliable even though the accused alleged torture/coercion.

#### Why is it important?

The right to a reasoned judgment is intrinsically linked to another key fair trial right: the right to appeal. Reasoned judgments allow the parties to see how the Judges evaluated the evidence, how they reached their factual and legal conclusions, and therefore, allows them to identify points which they wish to challenge before the higher court.<sup>6</sup> They also allow the upper courts to properly review and analyse the judgment of the lower court. The judges must be able, on the basis of the judgment, to see which evidence has been relied upon for the conviction, and why. Access to other necessary documents, such as trial transcripts, should also be made available to the parties in a timely manner for them to meaningfully exercise their right to appeal.<sup>7</sup> If one does not have access to a written and reasoned judgment, explaining the various grounds for the conviction or sentence, then the right to appeal is rendered meaningless, which violates fair trial rights.<sup>8</sup>

The right to a reasoned judgment is also closely linked to the right to a public hearing. It promotes transparency which, in turns, allows for public scrutiny of the administration of justice, protects individuals from arbitrariness and abuses of the judicial system, and increases people’s trust in the justice system.<sup>9</sup> The public also has a right to know how the administration of justice is rendered, which is rendered meaningless if a judgment is handed over but no details are provided as to how it was reached. It is important to note, however that in some cases, for instance those involving minors or sexual assaults, the accused or victims’ right to privacy prevails over the public’s interests.

Finally, a reasoned judgment is important for the development of jurisprudence and legal certainty about the interpretation and application of the law, and helps the public to understand which acts and conducts are criminalized, which ones are not.<sup>10</sup>

<sup>4</sup> ‘Appeal Judgment’, Supreme Court Chamber, ECCC, Case 002/01, Doc No. F36, paras 202-209, 430, 440, [https://www.eccc.gov.kh/sites/default/files/documents/court/2016-11-23%2011:55/Case%20002\\_01%20Appeal%20Judgement.pdf](https://www.eccc.gov.kh/sites/default/files/documents/court/2016-11-23%2011:55/Case%20002_01%20Appeal%20Judgement.pdf) (‘ECCC Appeal Judgment in Case 002/01’).

<sup>5</sup> Amnesty International Fair Trial Rights Manual, p. 174, Section 24.2; UN HRC General Comment 32 (2007), para. 29.

<sup>6</sup> ECCC Appeal Judgment in Case 002/01, paras 205, 207; Amnesty International Fair Trial Rights Manual, p. 173, Section 24.2.

<sup>7</sup> UN HRC General Comment 32 (2007), para. 49.

<sup>8</sup> UN HRC Decision in *Raphael Henry v. Jamaica*, para. 8.4.

<sup>9</sup> ‘Legal Digest of International Fair Trial Rights’, *Organization for Security and Co-operation in Europe* (‘OSCE’), 26 Sep 2012, Chapter IV, p. 207, <https://www.osce.org/odihr/94214> (‘OSCE Fair Trial Rights Digest’).

<sup>10</sup> OSCE Fair Trial Rights Digest, Chapter IV, p. 207.

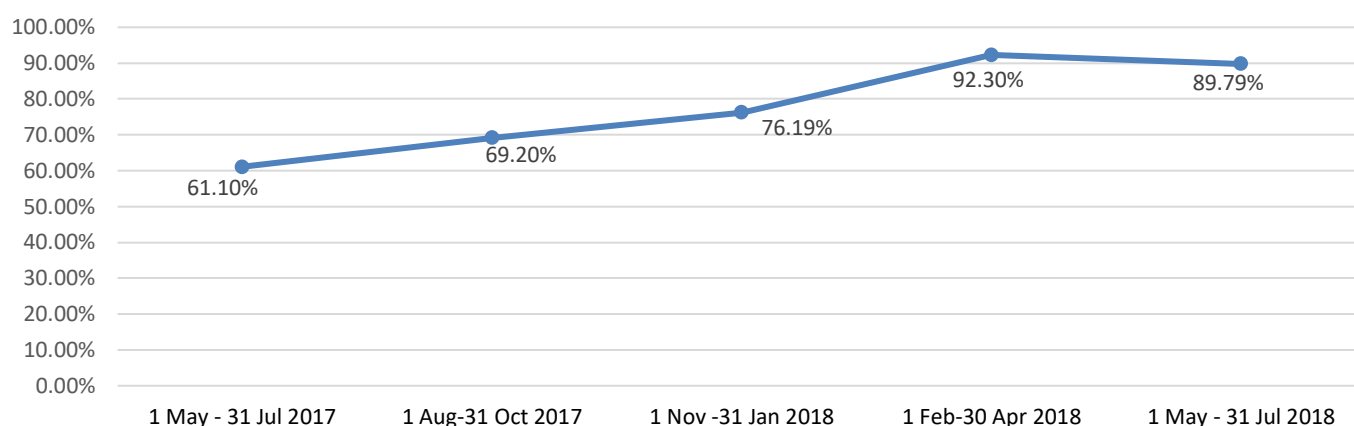
## The Right to a Reasoned Judgment in Cambodia in Numbers

### Findings from CCHR's Trial Monitoring

The right to a reasoned judgment applies to rulings rendered by the Court of Appeal, since, in Cambodia, individuals can challenge its judgments before the Supreme Court. Unfortunately, in nearly all of the cases monitored by CCHR the judges failed to provide detailed reason for their judgment, instead only announcing the ruling.

In 2014-2015, the judges failed to refer to the relevant law when rendering their verdict 80% of the time, and failed to refer to evidence 73% of the time.<sup>11</sup> Between 1 November 2016 and 31 August 2018, CCHR monitored 511 cases involving 824 defendants. CCHR was present when the judgment was rendered in 338 of these cases. Amongst these 338 cases, 72% of the time, no reasoned judgment was given (244 cases).

#### Evolution of cases where no reasoned judgment was given between May 2017 and July 2018



Since May 2017, the percentage of cases where no reasons were given for the judgment has drastically increased, ranging from 61% between May and July 2017 to 89% between May and July 2018. It is essential that more attention is given on this issue in order to protect fair trial rights in Cambodia.

### Recommendations

CCHR calls on the Royal Government of Cambodia and on the Cambodian judiciary to:

- Require that all judges cite the relevant articles of the law and list the key evidence on which they rely for their ruling in their judgment;
- Drawing from the ECCC, set out detailed guidelines indicating the kind of information which must be included in a Judgment and ensure that those guidelines are strictly implemented;
- Guarantee that reasoned written judgments are given to defendants within a reasonable time;
- Ensure that written Judgments are made publicly available, with redactions to be applied where necessary to protect the identity of the defendants, victims or witnesses or for any other reason.

Previous issues of CCHR's Fair Trial Rights newsletter are available online ([Issue 1](#), [Issue 2](#), [Issue 3](#) and [issue 4](#)). 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.

<sup>11</sup> Fair Trial Rights in Cambodia, Monitoring at the Court of Appeal', CCHR, June 2018, p. 37, <http://tmp.sithi.org/index.php?p=detail&id=119&l=en>.