



**FAIR TRIAL RIGHTS NEWSLETTER**  
**Fair Trial Rights for Women in Cambodia**  
www.cchrcambodia.org

**Issue 4: August 2018**

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 Court of Appeal. This newsletter is a 2018 series of quarterly newsletters that will analyse the findings of CCHR’s monitoring and discuss broader issues. The present newsletter focuses on issues faced by women in the Cambodian judicial system, and in particular on equality before the law, pre-trial detention and the prosecution of gender-based violence.

**The Constitution of The Kingdom of Cambodia**  
**Article 31**

*“Khmer citizens shall be equal before the law, enjoying the same rights and freedom and obligations regardless of race, color, sex, language, religious belief, political tendency, national origin, social status, wealth or other status.”*

**Equality Before the Law**

Article 31 of the Constitution of the Kingdom of Cambodia provides that all citizens must be equal before the law, irrespective of their gender, while Article 45 abolishes all forms of discrimination against women and states that men and women are “equal in all fields”. While women and men alike are faced with the same issues inside Cambodia’s judicial system, the effect is disproportionately felt on women, thereby amounting to *de facto* discrimination. For instance, Cambodia’s [shortage of legal aid lawyers](#) has been found to [disproportionately impacts](#) those living in rural and remote communities, particularly women. Other issues include the right to be present, to presumption of innocence and to remain silent, the right to be informed of and have these rights explained.

Pregnant women and mothers are particularly vulnerable while in detention.

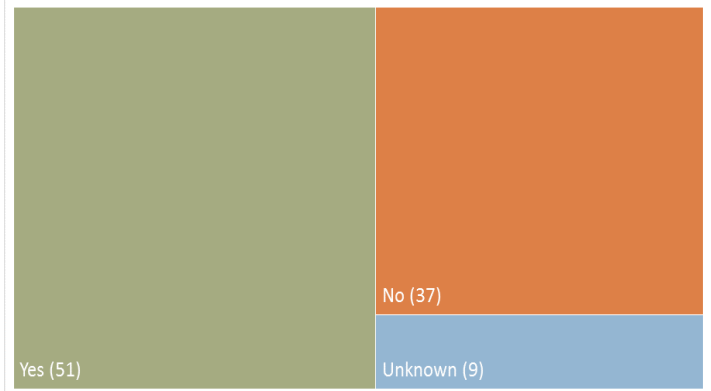
**Pre-Trial Detention**

While the exceptional character of pre-trial detention in criminal cases is protected by Articles 203 and 205 of the [Cambodian Code of Criminal Procedure](#), in practice, pre-

trial detention is quasi-automatic. Women, especially those who are pregnant or mothers, warrant special attention. Current and expecting mothers can be exceptionally vulnerable to loss resulting from infringement of their rights, and imprisonment where a mother is separated from her child or where the child is also in the prison can have [physical](#)

[and emotional consequences](#) on both mother and child. International law ([The Bangkok Rules](#)) emphasize that women’s specific situation should be considered when making decisions about detention especially in the case of pre-trial detention. Pregnant women and mothers of young children are [routinely held](#) in pre-trial detention, with no consideration of their situation or of the mother’s and child’s wellbeing. Out of 453 cases monitored by CCHR between November 2016 and June 2018, 76 involved a total of 97 women, and 53% were held in pre-trial detention.

**Pre-trial detention** (per individual)



**No Specific Protection During Trials**

Women are largely underrepresented in the judicial system. [Between 2013 and 2017](#), the number of women in the judiciary has barely changed: only 14% of all judges, 12% of Prosecutors, 22% of court clerks and 20% of lawyers are women. Such inequality in accessing judicial professions has [a significant impact](#) on women defendants, victims and witnesses and contributes to a hostile environment where

victims of abuse or sexual violence are often re-traumatized or blamed.

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The Extraordinary Chambers in the Courts of Cambodia (“ECCC”), which forms part of the Cambodian legal system, has a number of measures in place to protect the interests of women inside the judicial system. The Judges are responsible for ensuring the protection of victims and witnesses, including the conduct of in camera proceedings and protection of the victims’ identity (Art. 33 New, [ECCC Law](#)) and physical protection measures (Rule 29 (7), [ECCC Internal Rules](#)). Further, the ECCC has a victim support section (Rule 12 *bis*, [ECCC Internal Rules](#)), and women victims of GBV under the Khmer Rouge also benefitted from [psychological support](#) throughout the process. However, no measures exist to protect the privacy of women, in particular victims or witnesses, nor are there specific mechanisms in place to provide psychological support where needed, in the regular Cambodian Courts.

Further, access to justice and accountability is also an issue. According to [a 2017 report](#) by Human Rights NGO Licadho, domestic violence is often not recognized as a criminal offence and many women choose not to bring charges, or drop complaints, with only 20% of cases of domestic violence monitored during the beginning of 2014 and the end of 2016 resulting in criminal proceedings.

While [significant steps](#) have been taken to ensure access to remedy and accountability for women victims of gender-based violence under the Khmer Rouge Regime, it remains limited to the ECCC. However, a draft law to set minimum standards in connection to gender-based violence, covering topics such as emergency medical support, protection orders, and access to remedy, is [reportedly](#) being prepared by the Ministry of Women’s Affairs and includes consultations with relevant NGOs.

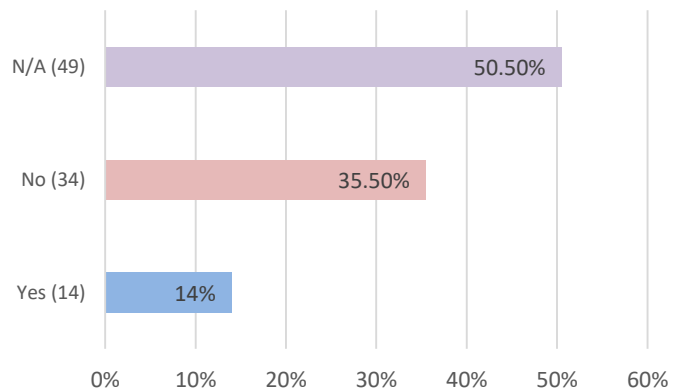
## Fair Trial Rights for Women in Cambodia in Numbers

### Findings from CCHR’s Trial Monitoring

1 November 2016 – 30 June 2018

Between November 2016 and June 2018, CCHR monitored 453 cases of which there were 97 women defendants involved in 76 cases. Out of these women, 27 (28%) did not appear in Court, some of them as a result of a lack of communication between the Court of Appeal and the detention centre; and 25 defendants (26%) were not represented by a lawyer. Further, 14% of the women defendants appeared in court wearing their prison uniform, which is [contrary to the presumption of innocence](#).

#### Did the women defendants appear before the Appeal Court in prison uniform? (per individual)



14% of the women defendants appeared in court wearing their prison uniform, which is [contrary to the presumption of innocence](#).

In nine of 25 cases where the women were not represented by a lawyer, the defendant was not informed of their right to legal representation or given explanations of their fair trial rights. Finally, in 70% of the cases involving women, the judges neither informed the defendant of, nor explained their right to remain silent, while only in five cases were defendants informed of their rights and received detailed explanations.

453 cases

377 cases involving male defendants (83%)

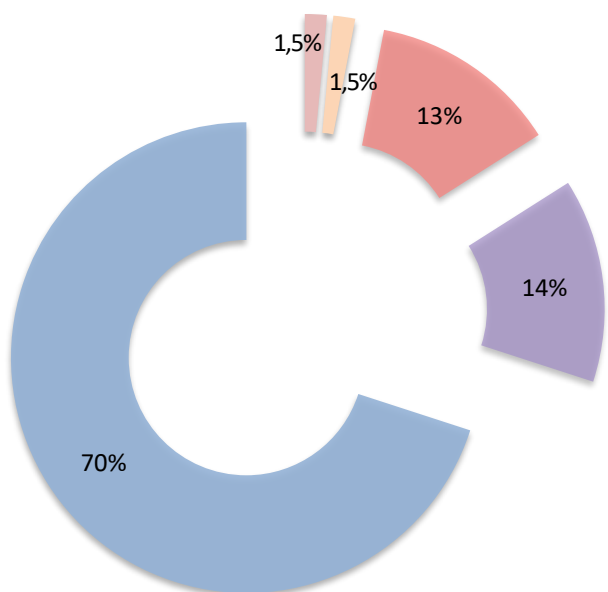
76 cases involving women defendants (17%)

737 individuals

97 women (13%)

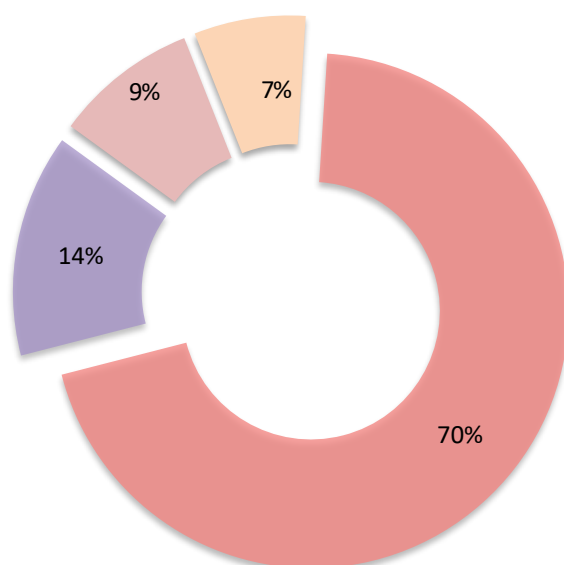
640 men (87%)

**Did the judge inform (I) and explain (E) to the women defendants of their right to legal representation or self-defense? (per case)**



- Informed Only (1)
- Informed & Explained (1)
- Neither (10)
- N/A\* (11)
- Case was already represented by a lawyer (53)

**Did the judge inform (I) and explain (E) their right to remain silent to the women defendants? (per case)**



- Informed Only (7)
- Informed & Explained (5)
- Neither (53)
- N/A\* (11)

*Note: \* Absence of defendant*

### **Recommendations**

CCHR calls on the Royal Government of Cambodia to:

- Review its legal aid policy to ensure effective equal access to justice and legal representation for women.
- Instruct the Ministry of Interior to follow the best practices of the Extraordinary Chambers in the Courts of Cambodia (ECCC) in terms of witness and victims' protection.
- Adopt legislation protecting the right of victims of gender-based violence in the context of legal proceedings, focusing on respect of privacy as well as legal and psychological support
- Adequately train judicial actors on gender-specific issues.

Previous issues of CCHR's Fair Trial Rights newsletter from 2017 are available online ([Issue 1](#), [Issue 2](#), and [Issue 3](#)).

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.