



**មជ្ឈមណ្ឌលសិទ្ធិមនុស្សកម្ពុជា**  
**Cambodian Center for Human Rights**

June 2014

# Fair Trial Rights in Cambodia Monitoring at the Court of Appeal



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## Cambodian Center for Human Rights

This report on “Fair Trial Rights in Cambodia” (the “Report”) is an output of the Cambodian Trial Monitoring Project implemented by the Cambodian Center for Human Rights (“CCHR”). CCHR’s vision is of a non-violent Kingdom of Cambodia (“Cambodia”), in which people enjoy their fundamental human rights, are treated equally, are empowered to participate in democracy and share the benefits of Cambodia’s development. CCHR desires rule of law rather than impunity; strong institutions rather than strong men; and a pluralistic society in which variety is harnessed and celebrated rather than ignored or punished. CCHR’s logo shows a white bird flying out of a circle of blue sky – this symbolizes Cambodia’s claim for freedom. To realize its vision, CCHR works to promote and protect democracy and respect for human rights – primarily civil and political rights – throughout Cambodia. For more information, please visit [www.cchrcambodia.org](http://www.cchrcambodia.org).

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## Definitions & Acronyms

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BAKC	The Bar Association of the Kingdom of Cambodia
Cambodia	Kingdom of Cambodia
CCHR	Cambodian Center for Human Rights
CCPC	Code of Criminal Procedure of the Kingdom of Cambodia
Checklist	The checklist used by CCHR Trial Monitor to record trial data when monitoring trials
Checklist Guidance	Comprehensive guidance notes to help CCHR Trial Monitor understand each question in the Checklist
Code of Conduct	A document outlining the obligations of non-interference, objectivity and confidentiality to which CCHR Trial Monitor is bound
Constitution	The Constitution of the Kingdom of Cambodia
Court of Appeal	The Phnom Penh Court of Appeal of the Kingdom of Cambodia
CRC	Convention on the Rights of the Child
Penal Code	The Criminal Code of the Kingdom of Cambodia
Database	The database in which CCHR Trial Monitor store trial data recorded on checklists
EWMI	East West Management Institute
ICCPR	International Covenant on Civil and Political Rights
MoI	Ministry of Interior
MoJ	Ministry of Justice
MoSA	Ministry of Social Affairs
N/A	Non-Applicable
NGO	Non-governmental organization
ODIHR	Office for Democratic Institutions and Human Rights
OHCHR	Office of the United Nations High Commissioner for Human Rights
OSCE	Organization for Security and Co-operation in Europe
Project	CCHR Trial Monitoring Project
Report	This Annual Report on Fair Trial Rights in Cambodia
Reporting Period	From 1 March 2013 to 31 January 2014
RGC	Royal Government of Cambodia
Strategy	The Legal and Judicial Reform Strategy of the Royal Government of Cambodia
Trial Monitor	CCHR trial monitor
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNICEF	United Nations International Children's Emergency Fund
UNTAC	United Nations Transitional Authority in Cambodia
UNTAC Law	Provisions relating to the Judiciary and Criminal Law and Procedure applicable in Cambodia during the Transitional Period, 1992
USAID	United States Agency for International Development

## Executive Summary

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The functioning of the judiciary has been among the major human rights concerns in Cambodia for some time, central as it is to the protection and enforcement of other rights and the establishment of the rule of law. Although there have been steady improvements in the adherence to some of the procedures that underpin fair trial rights within the Cambodian judiciary, many areas of concern remain. One of the major issues that impacts upon fair trial rights in Cambodia is the lack of separation of powers and the continued influence that the executive exert on the judiciary.

Besides the overall concerns related to the lack of independence of the judiciary in Cambodia, issues related to the rights to a public hearing, to legal representation and to be present at trial, and the presumption of innocence, are at risk in Cambodia. In addition, the quality of evidence presented in hearings is often very poor and threatens the right to be convicted beyond a reasonable doubt.

CCHR's Trial Monitoring Project (the "Project") has collected data from the monitoring of 204 criminal trials at the Court of Appeal between 1 March 2013 and 31 January 2014 (the "Reporting Period") in order to assess its adherence to fair trial rights as set out in international and Cambodian law. The Report presents and analyzes the data collected during the Reporting Period.

**Chapter 1 (Introduction)** explains the right to a fair trial as a fundamental and universally recognized human right and provides a brief overview of relevant fair trial rights, before setting out the scope, methodology and purpose of this Report.

**Chapter 2 (Data and Findings)** presents the data collected at the Court of Appeal for selected relevant fair trial rights and analyzes the data for the purpose of identifying trends in adherence to fair trial rights. Thanks to the analysis, this Chapter identifies which fair trial rights are well respected and ones which are violated at the Court of Appeal.

**Chapter 3 (Conclusions and Recommendations)** makes recommendations addressed to a number of different bodies and institutions including the Royal Government of Cambodia ("RGC"), the Ministry of Justice ("MOJ"), law enforcement authorities, prison authorities, as well as non-governmental organizations ("NGOs") in relation to the Reports' findings.

CCHR hopes that the data, analyses and recommendations set out in the Report will help to facilitate increased respect for fair trial rights and help support those working to ensure that the justice system in Cambodia is fair and equal for all.

# 1 Introduction

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## 1.1 The Right to a Fair Trial

The right to a fair trial forms an important component of the rule of law and the proper administration of justice. It is a fundamental and universally recognized human right, enshrined at the highest level of international law by the United Nations Universal Declaration on Human Rights (“UDHR”) and the United Nations International Covenant on Civil and Political Rights (“ICCPR”). Fair trial rights are also guaranteed in the Constitution of the Kingdom of Cambodia (the “Constitution”), and through various individual provisions of domestic laws.

### 1.1.1 *The right to a fair trial under international law*

The right to a fair trial is an essential part of any criminal justice system; it entitles each and every person charged with a criminal offense to be treated fairly and equally while the state determines their guilt or innocence. When implemented correctly, it protects the rights of the accused and the victim, and ensures the proper administration of justice. The right to a fair trial is comprised of a number of different individual rights, which encompass the entire legal process, from the initial arrest of the suspect, through to the completion of the final appeal.

The UDHR<sup>1</sup> and the ICCPR<sup>2</sup> both guarantee the right to a fair and public hearing by an independent and impartial tribunal. The ICCPR further develops the concept of a fair trial which includes, but is not limited to, the following rights and principles: the rights to a public hearing,<sup>3</sup> to be tried without undue delay,<sup>4</sup> to understand the nature and cause of the charge,<sup>5</sup> to adequate time and facilities to prepare a defense,<sup>6</sup> to legal representation,<sup>7</sup> and to the presumption of innocence;<sup>8</sup> the right against self-incrimination (not to confess guilt as a result of coercion or inducement);<sup>9</sup> and the right to appeal to a higher court on grounds of fact and law.<sup>10</sup>

#### **Article 10 of the UDHR**

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

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<sup>1</sup> United Nations General Assembly, Universal Declaration of Human Rights, 10 December 1948, Article 10, <http://bit.ly/1gisTm1>

<sup>2</sup> United Nations General Assembly, International Covenant on Civil and Political Rights ; 16 December 1966, Article 14 (1), <http://bit.ly/1j1mTd1>

<sup>3</sup> Ibid. Article 14 (1)

<sup>4</sup> Ibid. Article 14 (3) (c)

<sup>5</sup> Ibid. Article 14 (3) (a)

<sup>6</sup> Ibid. Article 14 (3) (b)

<sup>7</sup> Ibid. Article 14(3) (d)

<sup>8</sup> Ibid. Article 14 (2)

<sup>9</sup> Ibid. Article 14(3) (g)

<sup>10</sup> Ibid. Article 14 (5)

Cambodia acceded to the ICCPR in 1992 and Article 31 of the Constitution<sup>11</sup> enshrines international human rights obligations into Cambodian domestic law and policy. Thus, international human rights norms, including provisions of the ICCPR, are directly applicable in Cambodian courts, as confirmed by a decision of the Constitutional Council in 2007.<sup>12</sup>

### ***1.1.2 The right to a fair trial under Cambodian law***

The right to a fair trial is protected in Cambodia, through general and specific provisions, set out in a number of instruments. The Constitution provides the basic framework for fair trials. Article 38 of the Constitution establishes the rights of Khmer citizens and protects the right to a fair trial by guaranteeing that:

- There shall be no physical abuse against any individual;
- The prosecution, arrest, or detention of any person shall not be done except in accordance with the law;
- Coercion, physical ill-treatment or any other mistreatment that imposes additional punishment on a detainee or prisoner shall be prohibited; and persons who commit, participate or conspire in such acts shall be punished according to the law;
- Confessions obtained by physical or mental force shall not be admissible as evidence of guilt;
- Any case of doubt shall be resolved in favor of the accused;
- The accused shall be considered innocent until the court has judged finally on the case; and
- Every citizen shall enjoy the right to defense through judicial recourse.

Furthermore, Articles 51, 128, 130, 132 of the Constitution also provide for the separation of powers and an independent judiciary guaranteed by the King.

The Code of Criminal Procedure of the Kingdom of Cambodia (the “CCPC”), adopted in 2007,<sup>13</sup> provides in detail how suspects should be treated and sets out the roles and responsibilities of judges, prosecutors and defense counsel, from initiation of an investigation, to the time of arrest, throughout the entire criminal process until the final appeal.

Finally, the Criminal Code of the Kingdom of Cambodia (the “Penal Code”), which was promulgated in 2009 and came into full force and effect in December 2010, sets out classes of offenses, principles of criminal responsibility and principles of sentencing.

In addition, in June 2003, the Council of Ministers of the Royal Government of Cambodia (“RGC”) approved the Legal and Judicial Reform Strategy (the “Strategy”).<sup>14</sup> The Strategy identifies four guiding principles from the provision of the Constitution to guide legal and judicial reform: the rights of individuals, liberal democracy, the separation of powers, and the rule of law. The Strategy also sets

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<sup>11</sup> The Constitution, Article 31: ‘*The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights, women’s and children’s rights,*’ <http://bit.ly/1hcJqYV>

<sup>12</sup> Constitutional Council of the Kingdom of Cambodia, Decision No. 092/003/2007, (10 July 2007)

<sup>13</sup> The CCPC replaced sections of the provisions relating to the Judiciary and Criminal Law and Procedure applicable in Cambodia during the Transitional Period, 1992 (the “UNTAC Law”).

<sup>14</sup> Council for Legal and Judicial Reform, Legal and Judicial Reform Strategy, adopted by the RGC at the Plenary Session on 20 June 2003.



out seven strategic objectives, which form the basis of the Legal and Judicial Reform Action Plan, which was later approved in 2005.<sup>15</sup>

## 1.2 Purpose, Scope and Methodology

The purpose of the Project is to collect data that can be analyzed to identify strengths and weaknesses in the justice system. By drawing attention to the areas in the trial process that require improvement in terms of respect of the right to a fair trial and making practical recommendations to the relevant justice sector institutions, CCHR supports efforts to strengthen and reform the justice system for the benefit of all citizens.

Between August 2009 and January 2013 the Project monitored trials at the Phnom Penh, Kandal, Banteay Meanchey and Ratanakiri Courts of First Instances and published six bi-annual reports on fair trial rights.<sup>16</sup> In January 2013, the Project ended its monitoring activities at the Courts of First Instances to focus on monitoring at the Court of Appeal. The Project decided to monitor the Court of Appeal to assess how fair trial rights standards are implemented on a higher level. The aim is to provide an analysis of the trends emerging within Cambodia's Court of Appeal in regards to respect for fair trial rights and to create a platform from which further recommendations can be made and improvements implemented.

The Project focuses on a number of fair trial rights. To determine which rights would be considered, CCHR relied on external resources such as reports and studies on fair trial rights in Cambodia and on the Cambodian judicial system. In addition, monitoring at the Court of Appeal, led CCHR to focus on certain components of the right to a fair trial that were different from the monitoring activities at the Courts of First Instances.

The following rights were selected:

- Right to a public hearing;
- Right to understand the nature of the charge;
- Right to an explanation of rights owed to the accused;
- Right to legal representation and to be present at trial;
- Right to the presumption of innocence;
- Right to be tried by an independent and impartial tribunal;
- Right to not be compelled to confess guilt;
- Evidentiary rights (including the right to call and examine witnesses);
- Right to a reasoned judgment;
- Prohibition against retroactive application of penal legislation (being tried for an offense that was not an offense at the time it was committed);
- Prohibition against double jeopardy; and
- Rights of juveniles.

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<sup>15</sup> Council for Legal and Judicial Reform, Plan of Action for Implementing the Legal and Judicial Reform Strategy, adopted by the RGC at the Plenary Session on 29 April, 2005.

<sup>16</sup> The sixth bi-annual reports on fair trial rights in Cambodia are available at : <http://bit.ly/M7mkET>

The Trial Monitor from CCHR attends criminal trials at the Court of Appeal on a daily basis. To effectively and efficiently record relevant trial data, CCHR designed a trial-monitoring checklist (the “Checklist”) for use in the Court of Appeal.<sup>17</sup> This checklist is tailor-made for the Project and includes more than 70 questions, the answers to which indicate whether fair trial rights have been adhered to by the Court. In an effort to sustain constructive engagement, CCHR introduced and explained the Checklist and its trial monitoring activities to representatives of the Court of Appeal. CCHR has also developed a one-page annex to the Checklist for use in trials involving juveniles. With consideration of the brevity of the Checklist, CCHR has compiled comprehensive guidance notes (the “Checklist Guidance”)<sup>18</sup> to ensure uniform interpretation of each Checklist question and understanding of the legal basis and purpose of each question. The Trial Monitor is also provided with a law bank, which outlines the relevant national and international laws underpinning each question in the Checklist.

Finally, CCHR is committed to the international principles applicable to trial monitoring<sup>19</sup> and has devised a code of conduct (the “Code of Conduct”)<sup>20</sup> for its Trial Monitor. The Code of Conduct outlines the obligations of non-interference, objectivity and confidentiality to which the Trial Monitor is bound.

In the conduct of its monitoring activities, specific trials are not targeted; rather, trials were monitored arbitrarily, based on court schedules, to ensure that the data collection process remained objective. When the Trial Monitor observed a trial, the information was recorded directly onto the Checklist. The information sought was limited to the trial process itself and no additional interviews or dialogues took place, other than where the Trial Monitor made efforts to obtain information relating to trial verdicts that were not handed down on the day of trial, but were adjourned to a later date. After each trial, the data from the Checklist is entered into the CCHR Trial Monitoring Database (the “Database”).<sup>21</sup>

CCHR analyzes the trial data recorded in the Database, and identifies positive practices as well as areas for concern arising at trial. The ultimate purpose of the analysis is to identify the strengths and weaknesses of the Court of Appeal and to discuss these issues with the Court and other justice sector stakeholders in order to develop and implement ways to improve the protection of the right to a fair trial in the Cambodian courts. In the next years, as trial monitoring activities continue, the Database will be used to draw comparative analysis and to identify trends in the practices of the Court of Appeal, gauge improvements and identify further recommendations.

A final draft of the Report was sent to the President of the Court of Appeal for comments and recommendations prior to final publication. Once published, Project staff request specific meetings with representatives of the Court of Appeal as well as other justice sector organizations, bodies and institutions to which recommendations are addressed. The meetings serve as a basis for an exchange

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<sup>17</sup> Appeal Hearing Monitoring Checklist, <http://bit.ly/1fbDUEx>

<sup>18</sup> Guidance Note for CCHR Appeal Court Monitoring Checklist, <http://bit.ly/1fbDZYO>

<sup>19</sup> See: Amnesty International, *Amnesty International Fair Trial Manual* (London: Amnesty International Publications, 1998), AI Index POL 30/02/98; Jelena Pejić and Vanessa Lesnie, *What is a Fair Trial: A Basic Guide to Legal Standards and Practice* (New York: Lawyers Committee for Human Rights, 2000); Organization for Security and Co-operation in Europe (OSCE)/Office for Democratic Institutions and Human Rights (ODIHR), *Trial Monitoring: A Reference Manual for Practitioners* (Poland: OSCE/ODIHR, 2008); Bárbara Oliveira and Linda Besharaty-Movaed, *International Commission of Jurists Trial Observation Manual* (Geneva: International Commission of Jurists, 2002).

<sup>20</sup> CCHR Trial Monitoring Code of Conduct, <http://bit.ly/1fbE3Yu>

<sup>21</sup> CCHR Trial Monitoring Database, <http://bit.ly/1fbEbHE>

of ideas and provide insight into the challenges faced by those working to strengthen the justice system. The purpose of dialogue meetings is to promote the implementation of the recommendations set out in the Report.

## 2 Data and Evaluation

This section of the Report sets out the “raw” data recorded on the Checklist at the 204 trials monitored at the Court of Appeal between 1 March 2013 and 31 January 2014 and evaluates this data.

The right of appeal<sup>22</sup> includes the right to a full review. In other words, the review on appeal must concern both the legal and material aspects of the person’s conviction and sentence.<sup>23</sup> As such the review must provide “for a full evaluation of evidence and the conduct of trial.”<sup>24</sup>

FIGURE 1(A): APPEAL HEARINGS MONITORED- FELONIES AND MISDEMEANORS

Data	Felonies		Misdemeanors	
	Nº	%	Nº	%
	114	56	90	44
Total number of trials	<b>204</b>			

Figure 1(a) above shows the number of criminal trials monitored by the Trial Monitor during the Reporting Period, and separates the charges into two different classifications of offense. Article 46 of the Penal Code defines a felony as any offense for which the minimum penalty is imprisonment for more than five years. A misdemeanor is defined in Article 47 as any offense for which the maximum penalty is imprisonment for a term of more than six days and less than or equal to five years.<sup>25</sup>

FIGURE 1 (B): APPEAL HEARINGS MONITORED – PARTIES BRINGING THE APPEAL

Data	By the Defense		By the Prosecution*		By the Prosecution and the Defense		By the Civil Parties	
	Nº	%	Nº	%	Nº	%	Nº	%
	182	89	20	10	1	0.5	1	0.5
Total number of trials	<b>204</b>							

\*Prosecution from both the First Instance and the Court of Appeal

Figure 1(b) shows who appealed the First Instance decision. A judgment issued by a Court of First Instance may be appealed by the Royal Prosecutor of the Court of First Instance and the General Prosecutor attached to the Court of Appeal, the convicted person, the civil party or civil defendant

<sup>22</sup> Article 14 (5) of the ICCPR and Article 375 of the CCPC

<sup>23</sup> United Nations Human Rights Committee, Communication No. 701/1996, *Gómez v. Spain* (Views adopted on 6 April 1998), in UN doc. GAOR, A/55/40 (vol. II), p. 109, para. 11.1. <http://bit.ly/1bhUzWm>

<sup>24</sup> United Nations Human Rights Committee, Communications Nos. 623, 624, 626, 627/1995, *V. P. Domukovsky et al. v. Georgia* (Views adopted on 6 April 1998), in UN doc. GAOR, A/53/40 (vol. II), p. 111, para. 18.11.

<sup>25</sup> Penal Code, Article 48

(both regarding the civil matter).<sup>26</sup> The Figure shows that the majority of the appeals (89%) are brought by the defense.

The section below analyzes the implementation of different relevant components of the right to a fair trial by the Court of Appeal during the Reporting Period. For the purpose of the analysis the Report first sheds light on the practices that put the right to a fair trial at risk before highlighting positive practices.

## 2.1 Fair Trial Rights at Risk

From the analysis based on the data collected during the Reporting Period it appears that a number of rights are not guaranteed and/or implemented in a fully satisfactory manner, and thus, threaten the individuals' right to a fair trial.

### 2.1.1 Right to a public hearing

#### Sources in Cambodian and International law:

- **Article 14(1)** of the ICCPR: "All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law [...]"
- **Article 392** of the CCPC: "The appeal hearing shall be conducted in public."

Everyone has the right to have their guilt or innocence determined in a public trial, except in certain exceptional circumstances, for example when the court considers that a public hearing will cause "significant damage" to public order or morality.<sup>27</sup> The right to a public hearing involves a number of elements: trials should generally be open to the public and conducted orally; information on the venue and date of the trial should be made available to the public; and there should be adequate facilities for public attendance.<sup>28</sup>

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<sup>26</sup> CCPC, Article 375

<sup>27</sup> CCPC, Article 316 states that the court may order a complete or partial *in camera* hearing if it considers that a public hearing will cause significant damage to public order or morality, but a written explanation of such a decision must be included alongside the judgment on the merits of the case. Article 14(1) of the ICCPR provides that the press and public may be excluded from all or parts of a trial for reasons of "morals, public order (*ordre public*) or national security in a democratic society," where publicity would prejudice the interests of justice or where the interest of the private lives of the parties so requires.

<sup>28</sup> United Nations Human Rights Committee, Communication No. 215/1986, *Van Meurs v. The Netherlands*, in U.N. Doc. CCPR/C/39/D/215/1986 (1990) para. 6.2. Cited in supra Note 12, <http://bit.ly/1joZ8AG>

FIGURE 2: RIGHT TO A PUBLIC HEARING

Data	Yes		No	
	N <sup>o</sup>	%	N <sup>o</sup>	%
Was notice of the hearing posted on a public notice board outside the courtroom?	133	65	71	35
Were members of the public obstructed from entering or dismissed from the courtroom?	0	0	204	100

When CCHR started its monitoring activities at the Court of Appeal, no public hearing notice was posted. However, after raising the issue at a meeting with representatives of the Court of Appeal in April 2013, the Project observed that notice of hearing started being posted outside courtrooms. Unfortunately this still remains an inconsistent practice as data shows that it is only in 65% of the hearings that public notice was posted outside the courtroom. In addition, in the majority of the cases, important information such as case numbers, parties' names, nature of the charges, etc., was missing.

During a meeting with the President of the Court of Appeal,<sup>29</sup> the President admitted that the court lacked practice in posting public hearing notice with detailed information. However, he mentioned that there had been a series of internal meetings on the issue and that instructions were sent to the Chief of Court Clerk to address the problem more effectively in order to provide easy access to information to the public.

### 2.1.2 *Right to understand the nature of the charge*

#### Sources in Cambodian and International law:

- **Article 14(3)(a)** of the ICCPR: "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."
- **Article 14(3)(f)** of the ICCPR: "In the determination of any criminal charge against him, everyone shall be entitled to have the free assistance of an interpreter if he cannot understand or speak the language used in court."
- **Article 322** of the CCPC: "The court clerk shall call the names of the accused, civil parties, civil defendants, victims, witnesses and experts and verify the identity of those persons."
- **Article 325** of the CCPC: "The presiding judge shall inform the accused of the charges he is accused of."

<sup>29</sup>CCHR dialogue with the Court of Appeal President, H.E. You Bun Leng and Chief of Court Clerk, Mr. Pun Savath on 5 June 2014

- **Article 330** of the **CCPC**: “If necessary, the presiding judge may seek the assistance of an interpreter/translator.”
- **Article 331** of the **CCPC**: “When questioning a deaf and mute person, the court clerk shall write down the questions and ask the person being questioned to read the questions and answer them in writing. If the person cannot read or is illiterate, the presiding judge shall call on an interpreter/translator for him under the conditions stated in Article 330 [...] The presiding judge may call on any person who is able to communicate with the deaf and mute person.”
- **Article 396** of the **CCPC**: “In addition, the rules that apply to hearings of the Court of First Instance shall also apply to the Court of Appeal.”

Those accused of criminal offenses must be informed of the nature of the offense with which they have been charged. Without this essential information, it is impossible to properly prepare a defense or to give comprehensive instructions to a lawyer in cases where the accused person is legally represented. CCHR’s Trial Monitor collects data regarding the information conveyed to the accused person at the commencement of the trial. Although this information should have already been given to the accused person during the pre-trial/investigation procedures, it is nevertheless important for judges to remind the accused person of this information before the trial commences. This is particularly the case as sometimes charges may have been changed or amended between the initial arrest/charge and the trial.

FIGURE 3: RIGHT TO UNDERSTAND THE NATURE OF THE CHARGE

Data	Yes		No		N/A	
	Nº	%	Nº	%	Nº	%
Did the judge read a brief report of the case?	204	100	0	0	0	0
Did the judge state all relevant charges?	186	91.2	0	0	18	8.8
Did the judge state the relevant law?	155	76	49	24	0	0
Did the judge state the date of the offense?	198	97	6	3	0	0
Did the judge state the place of the offense?	179	88	25	12	0	0
Did the judge state the parties involved?	204	100	0	0	0	0

The figure above shows that in a significant majority of cases, judges at the Court of Appeal re-state the charges, facts, dates and information related to the charges. The right to understand the nature of the charge at the appeal stage of proceedings is almost fully respected.

During a dialogue meeting with the President of the Court of Appeal,<sup>30</sup> the President claimed that defendants have already been informed of charges, relevant articles, relevant laws, and information relating to the offense at the Court of First Instance. However, he recognized that it is better practice for the presiding judges of the Court of Appeal to read a brief report of the case re-affirming charges, relevant laws, facts, and associated information to the defendants.

However, in addition to understanding the nature of the charge, an individual can only exercise his legal rights if he is fully informed of them. As such, judges must not only inform the accused of his legal rights but also explain them. CCHR monitors not only whether judges inform the accused person of his or her entitlement to the individual rights set out in the table below, but also whether full explanations of these rights are given by judges. CCHR has also worked in collaboration with the President of the Court of Appeal on a fair trial rights poster. Since October 2013, the poster is displayed at the Court of Appeal and sets out the basic legal rights to which an individual accused of a criminal offense is entitled.

FIGURE 4: EXPLANATION OF RIGHTS

Data	Did the judge inform (I) and explain (E) to the accused his/her right to legal representation or self-defense?		Did the judge inform (I) and explain (E) to the accused his/ her right to remain silent?	
	N <sup>o</sup>	%	N <sup>o</sup>	%
I only	1	0.5	1	0.5
I & E	5	2.5	1	0.5
Neither	181	89	185	91
N/A	17	8	17	8

What appears from the figure above is that while judges at the Court of Appeal state the charges and facts, they almost systematically fail to inform the defendant of his or her legal rights, let alone explain them. In only one case out of the 204 cases monitored did the judge inform and explain the accused of his or her right to remain silent, or in other words the right not to be compelled to testify against himself/herself or to confess guilt. In addition, in only five cases out of 204 monitored did the judge inform and explain to the defendant his or her right to legal representation. These rights remain valid throughout the judicial proceedings and as such should be re-called at the appeal level. This practice, which seriously impairs the defendant's right to a fair trial, could easily be addressed.

<sup>30</sup> CCHR dialogue with the Court of Appeal President, H.E. You Bun Leng and Chief of Court Clerk, Mr. Pun Savath on 5 June 2014



### 2.1.3 *Right to legal representation and to be present at trial*

#### Sources in Cambodian and International law

- **Article 38** of the **Constitution**: “Every citizen shall enjoy the right to defense through judicial recourse.”
- **Article 14(3)(d)** of the **ICCPR**: “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.”
- **Article 143** of the **CCPC**: “When a charged person, who is a minor appears for the first time, he/she “shall always be assisted by a lawyer. If a charged person does not choose a lawyer, the court shall appoint a lawyer according to the Law on the Bar.”
- **Article 300** of the **CCPC**: “The accused shall appear in person during the hearings at the court. The accused may be assisted by a lawyer chosen by himself. He may also make a request to have a lawyer appointed for him in accordance with the Law on the Bar.”
- **Article 301** of the **CCPC**: “The assistance of a lawyer is compulsory if (i) the case involves a felony; or (ii) the accused is a minor.”
- **Article 389** of the **CCPC**: “An accused in detention shall be transferred without delay by the order of the General Prosecutor to the nearest prison or detention center to the seat of the Court of Appeal.”
- **Article 62** of the **Law on Prison**: “Besides prisoners, any transfer of detained persons from one prison to another shall be notified to the Prosecutor of the transferring territorial jurisdiction to the Prosecutor of the receiving territorial jurisdiction or the competent General Prosecutor.” (CCHR’s translation)

Being charged with an offense can be a daunting experience; legal procedures can be complex and confusing and it is therefore vital that individuals have the opportunity to retain legal representation. The right to be represented by a lawyer ensures that the accused has an opportunity to obtain expert professional advice from an advocate who has the ability to explain the charges against him/her, explain his/her rights, guide him/her through the trial process and represent his/her interests in court. It is compulsory for a person to be legally represented if he or she is accused of a felony offense or if he or she is a juvenile. While it is not mandatory to be legally represented if accused of a misdemeanor

offense (unless a juvenile), individuals still have the option, if they so wish to retain a lawyer (although in such cases the burden to retain a lawyer does not rest with the court).

During a dialogue meeting with the President of the Court of Appeal,<sup>31</sup> the President emphasized that legal representation is mandatory for felony charges and that challenges to ensure legal representation in misdemeanor cases remain due to a lack of legal representation services.

FIGURE 5: RIGHT TO LEGAL REPRESENTATION AND TO BE PRESENT AT TRIAL

Data	Yes		No	
	Nº	%	Nº	%
Was the defendant present?	220	82	50	18
Was the defendant represented by a lawyer in felony trials?	148	100	0	0
Was the defendant represented by a lawyer in misdemeanor trials?	82	67	40	33

\* This data is based on the total number of defendants (270 individuals) involved in the 204 cases monitored.

The Figure shows that in still 18% of the cases the defendant is not present during the hearing and in 33% in cases of misdemeanor charges not represented by a lawyer. Even more worrying, in 12 cases, involving 15 defendants, the trial took place both without the defendant and without his/her lawyer. Of the 12 cases, one appeal was lodged by the civil party and as such only affected the amount of compensation but not the imprisonment sentence. The others complaints were lodged by the defendants in eight cases and by the prosecutor in three cases. In those cases the appeal affected the imprisonment sentence. Such instances are a serious violation of individuals' right to a defense and equality of arms during the trial procedure.

The absence of the defendant is often due to logistical issues and communication problems between the judges and correctional centers/places of detention. The fact that there is only one Court of Appeal for the entire country requires defendants incarcerated in correctional centers in provinces to travel to the Court of Appeal for the day of their hearing. However, often transportation of defendants does not take place because the Court sends information to the wrong correctional center because correctional centers fail to keep the Court updated about transfers of detained persons between correctional centers. These logistical problems could be easily addressed by not only the creation of other Courts of Appeals but also by improving the record keeping and communication between the Court and correctional centers.

In addition, such communication problems and the absence of the defendant also often create unnecessary delays, requiring judges to postpone the hearing. According to CCHR's data the Court of Appeal scheduled hearings in 838 cases between April 2013 and January 2014. Out of the 838 cases, 332 (or 40% of the cases scheduled) were delayed to another date. Reasons for delaying a hearing

<sup>31</sup> CCHR dialogue with the Court of Appeal President, H.E. You Bun Leng and Chief of Court Clerk, Mr. Pun Savath on 5 June 2014

vary and can be because lawyers asked to adjourn the hearing, the defendants objected to the assigned lawyers, there were no legal representations in felony cases, or the defendant was absent. The absence of the defendant is one of the major reasons for delays: between September 2013 and January 2014 (over a period of five months), 44% of the delays were due to the absence of the defendant.

During a dialogue meeting with the President of the Court of Appeal,<sup>32</sup> the President explained that the absence of both the defendant and/or his/her lawyer is often due to (1) defendants having been put out of detention and failing to appear in front of the Court, (2) defendants not finding a lawyer in misdemeanor cases, and (3) transportation issues as explained in the paragraphs above.

### 2.1.4 *Presumption of innocence*

#### Sources in Cambodian and international law:

- **Article 38 of the Constitution:** “The accused shall be considered innocent until the court has judged finally on the case.”
- **Article 14(2) of the ICCPR:** “Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.”

The presumption of innocence is a fundamental and universally recognized fair trial right which applies throughout the period of criminal investigation and trial proceedings up to and including the end of the final appeal.<sup>33</sup> This presumption reflects the principle that the burden of proof lies with the prosecuting body, not the accused, so that the court must be satisfied that the evidence presented has proved the accused’s guilt beyond a reasonable doubt. It is not up to the accused to present evidence to prove that he/her is innocent.

FIGURE 6: THE PRESUMPTION OF INNOCENCE

Data	Yes		No		N/A <sup>34</sup>	
	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%
Did the defendant appear in prison uniform?	140	52	80	30	50	18
Was the defendant handcuffed throughout the hearing?	0	0	220	82	50	18
Were statements made by the judge about the guilt of the defendant prior to the delivery of the verdict?	0	0	270	100	0	0

<sup>32</sup> CCHR dialogue with the Court of Appeal President, H.E. You Bun Leng and Chief of Court Clerk, Mr. Pun Savath on 5 June 2014

<sup>33</sup> Office of the United Nations High Commissioner for Human Rights (“OHCHR”), The Right to a Fair Trial Part I, Chapter 6, p219, <http://bit.ly/1jp0Xxn>

<sup>34</sup> N/A refers to the cases in which the defendant was not present at the hearing.

\* This data is based on the total number of defendants (270 individuals) involved in the 204 cases monitored.

When accused persons attend trial in prison uniform, the presumption of innocence is undermined, particularly when the uniform makes no distinction between remand prisoners and convicted prisoners. Where remand prisoners attend court in prison uniform, they are presented in the same way as prisoners who may have already been convicted and sentenced in relation to other, unrelated offenses. As no distinction is drawn between the two categories of prisoners, this practice has the potential to create speculation as to whether the individual accused is in fact already a convicted offender and as such may influence the judges' decision. Even when accused persons are serving sentences, the fact that they appear before the court in prison uniform is equally prejudicial. The issue of the uniform in which defendants appear in court relies within the responsibility of the General Department of Prison.

The Figure above shows that it is still the common practice (52%) for defendants to appear in prison uniform during their hearings. Such a practice undermines the presumption of innocence.

### **2.1.5 Evidentiary rights**

#### **Sources in Cambodian and International law:**

- **Article 14(3)(e) of the ICCPR:** "In the determination of any criminal charge against him, everyone shall be entitled to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him."
- **Article 153 of the CCPC:** "The investigating judge may question any person whose response is deemed useful to the revelation of the truth [...]The investigating judge may also arrange a confrontation between the charged person [...] and witnesses."
- **Article 298 of the CCPC:** "At their expenses, the accused and civil party may summons witnesses who have not been summoned by the Prosecutor."
- **Article 324 of the CCPC:** "At the commencement of the trial hearing, each party may request the court to hear witnesses who are present in the court room but who were not properly summonsed to testify. Taking the testimony of those witnesses shall be approved by the presiding judge. The court clerk shall record the identity of the witnesses and instruct them to retreat to the waiting room."
- **Article 326 of the CCPC:** "[t]he presiding judge shall listen to the statements of civil parties, civil defendants, victims, witnesses and experts in the order which he deems useful [...] The Royal Prosecutor, the lawyers and all the parties may be authorized to ask questions. All questions shall be asked with the authorization of the presiding judge. Except for questions asked by the Royal Prosecutor and the lawyers, all questions shall be asked through the presiding judge. In case of objection to a question, the presiding judge decides whether the question should be asked."

➤ **Article 394** of the **CCPC**: “Following his questioning of the accused, the presiding judge shall hear the civil party and the civil defendants in the order he deems useful. Witnesses and experts will be questioned only if the court so orders.”

All decisions of the court must be based exclusively upon the evidence presented during the course of the trial. It is therefore essential that each party has the opportunity to present evidence and call witnesses in support of their case.<sup>35</sup> It is equally important that each party is given the opportunity to cross-examine witnesses and to challenge evidence that he or she does not accept. It is encouraging and very positive to note, as the collected data indicates, that in all 204 cases monitored there was nothing to suggest that a party was not given the opportunity to call witnesses.

However, evidentiary rights remain at risks for two main reasons. The Trial Monitor noticed that in the small number of cases in which live witnesses were present (14 cases out of 204), in six instances out of 14 witnesses were present in the courtroom before they were questioned. It is better practice for the witnesses to leave the courtroom and not return until they are called to testify as a way to make sure they are not influenced by other evidence and testimony presented during the trial.

In addition, while it is encouraging to see that the Court continues to seek evidence during the course of trials, the Court of Appeal must also ensure that the evidence that is relied upon is of sufficient quality and that all parties have the opportunity to challenge the evidence. The data collected during the trial monitoring activities indicate that the quality of evidence presented is concerning. Most of the evidence presented in the trials monitored was confessions or documentary evidence. The quality and numbers of evidence presented and considered during a trial hearing is essential to ensure that individuals are proven guilty beyond reasonable doubt. In addition to documentary evidence, judges and prosecutors should be actively seeking and examining other types of evidence where relevant, such as live witnesses, medical evidence and forensic evidence.

During a dialogue meeting with the President of the Court of Appeal,<sup>36</sup> the President explained that the Court of Appeal is a court that reviews both matters of fact and of law. As such, witnesses' presence or the submission of new evidence is necessary. Nonetheless, he highlighted that regardless of continuous efforts from the Court of Appeal, a number of challenges remain, preventing the Court from hearing all witnesses during the hearing. These challenges include (1) summon delivery system to witnesses remains slow, (2) some witnesses provide no clear address, and (3) some witnesses who have already testified are unwilling to provide those testimonies again at the appeal stage. Therefore, the Court of Appeal cannot continuously adjourn hearings to ensure all witnesses' presence so as not to create undue delays.

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<sup>35</sup> Article 334 of the CCPC

<sup>36</sup> CCHR dialogue with the Court of Appeal President, H.E. You Bun Leng and Chief of Court Clerk, Mr. Pun Savath on 5 June 2014

## 2.1.6 The right to a public and reasoned judgment

### Sources in Cambodian and International law:

- **Article 14(1)** of the **ICCPR**: “[...] but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.”
- **Article 317** of the **CCPC**: “In all cases, the court shall announce the judgment during a public session.”

The right to a reasoned judgment is inherent to the right to a fair trial and is included in the right to a public judgment. According to international standards a convicted person is entitled to have, within reasonable time, access to written judgments, duly reasoned, for all instances of appeal in order to enjoy the effective exercise of the right to have conviction and sentence reviewed by a higher tribunal according to law.<sup>37</sup>

FIGURE 7: COURT’S RULING

Data	Guilty		Not Guilty		Re- Investigated		I/U	
	Nº	%	Nº	%	Nº	%	Nº	%
What was the Court’s ruling?	240	89	26	10	4	1	0	0

\* This data is based on the total number of defendants (270 individuals) involved in the 204 cases monitored.

FIGURE 8: THE RIGHT TO A REASONED JUDGMENT

Data	Yes		No		N/A	
	Nº	%	Nº	%	Nº	%
Was the verdict announced in public?	204	100	0	0	0	0

\* This data is based on the total number of defendants (270 individuals) involved in the 204 cases monitored.

It is very positive to note in the Figure above that in all the cases for which information was available the right to a public judgment was respected. However, CCHR Monitor still noticed that in an important number of cases, judges did not refer to articles of the law or evidence presented during the appeal hearing in their verdict. Even when the Court of Appeal upholds a judgment of First Instance, it must explain why it has decided to do so. This is a clear violation of the right to a reasoned judgment and as such a core component of the right to be tried in a fair manner by an independent court. As such, we can only encourage judges of the Court of Appeal to change their practice in order to lift any doubts over the impartiality and professionalism of the judges.

<sup>37</sup> United Nations Human Rights Committee, Communication No. 320/1988, *V. Francis v. Jamaica* (Views adopted on 24 March 1993), in UN doc. *GAOR*, A/48/40 (vol. II), p. 66, para. 12.2; <http://bit.ly/1gfuZQw>

### 2.1.7 Independence, impartiality and professionalism of the judge

#### Sources in Cambodian and International law:

- **Article 128 of the Constitution:** “The Judicial power shall be an independent power. The Judiciary shall guarantee and uphold impartiality and protect the rights and freedoms of the citizens.”
- **Article 132 of the Constitution:** “The King shall be the guarantor of the independence of the judiciary. The Supreme Council of Magistracy shall assist the King in this matter.”
- **Article 14(1) of the ICCPR:** “In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”

The right to be tried by an independent and impartial tribunal is a cornerstone of fair trial rights. Individuals accused must be tried objectively. This fair trial right has been described by the UN Human Rights Committee as “*an absolute right that may suffer no exception.*”<sup>38</sup> Indeed, if a tribunal is not independent or impartial, then all other fair trial rights become superfluous. A court that is affected and influenced by outside sources is not capable of discharging its duty to ensure fair trials.

Although instances where there may have been opportunities for parties to speak to the judge during deliberation are infrequent, it is important to ensure that such cases are eradicated completely. While the data that CCHR has collected does not suggest explicitly that there were any cases of interference in any deliberations, judges must ensure that their conduct does not give rise to the perception that this may have occurred.

#### Case Study: Trial of Chhouk Bandith<sup>39</sup>

**Date:** 31 October 2013

**Court:** Court of Appeal, Phnom Penh

**Judge:** Tang Sunlay (Presiding Judge), Blong Samnang and Oum Sarith

**The Charge:** Article 236 of the Penal Code “Causing involuntary bodily harm.” The charge was based on allegations that Chhouk Bandith fired a gun into a crowd of demonstrators at the *Kaoway Sports Limited* garment factory on 20 February 2012, causing serious injury to three female workers: Keo Nea, 19, Bun Chenda, 21, and Nuth Sokhon, 23.

<sup>38</sup> Human Rights Committee, Communication No. 263/1987; *M. Gonzalez del Rio v. Peru* (CCPR/C/46/D/263/1987), October 28, 1992, para. 5.2., <http://bit.ly/1h33UDx>

<sup>39</sup> CCHR, “Legal Analysis of the Criminal Case Against Ex-Bavet Governor Chhouk Bandith and Police Chief Sar Chantha Arising from the Shooting of Kaoway Factory Workers on 20 February 2012,” (Legal Analysis), November 2013, <http://bit.ly/1dkxtgh>

**Background:** On 15 March 2012, the Svay Rieng Provincial Prosecutor announced that Chhouk Bandith, ex-Bavet City Governor, had been questioned and had confessed to shooting the three women but given reasons for his actions. However, the Prosecutor did not seek pre-trial detention and on 19 December 2012, the Provincial Court dropped the charges against Chhouk Bandith without giving any explanation for its decision.

On 4 March 2013, after two days of closed evidentiary hearings which Chhouk Bandith attended, the Investigation Chamber of the Court of Appeal re-charged the Defendant. His case was re-tried by the Provincial Court in June 2013, in absentia. On 25 June 2013, the Svay Rieng Provincial Court found Chhouk Bandith guilty of “causing involuntary bodily harm” and sentenced him to 18 months imprisonment and ordered him to pay a total of 38 million Riels (approximately US\$9,500) in compensation. Both the defense and the civil parties appealed the decision.

Chhouk Bandith has still not been arrested.

**Conduct of the trial:** Chhouk Bandith was again not present at the appeal hearing. His lawyer Kay Visal told the Court of Appeal that his client knew of the appeal but did not give any further details of his current whereabouts.

During the appeal hearing, judges opted to examine the victims in order to ascertain responsibility for the gunshot injuries rather than accepting the weight of evidence demonstrating the intentional actions of the defendant. More than 50 witnesses were summoned by the Court of Appeal to give evidence at the hearing. While some had not returned the summons to acknowledge receipt of the Court’s summons, many others simply did not attend to give their testimonies to the Court. The only witnesses who turned up to give live evidence were the victims themselves, one military policeman and two local police officers on duty at the *Kaoway Factory* the morning of the shooting.

At the trial before the Svay Rieng Provincial Court, the Court had heard the evidence of Long Thorn, the deputy police chief of Prasat Commune. Long Thorn was one of the witnesses who had been expected to attend but failed to appear. However, his evidence was read to the Court of Appeal who heard that the witness had seen the defendant point a gun at the workers and pulled the trigger and had seen the victims fall to the ground.

Although one of the lawyers for the civil parties asked the Court of Appeal to consider altering the charges against the defendant to “attempted murder” in his closing submissions, little time was spent by the judges on examining the intentional nature of the defendant’s actions.

On 4 November 2013, the Court of Appeal gave its ruling and upheld the conviction of the Defendant for “causing involuntary bodily harm.” Tang Sunlay, the Presiding Judge of the Court of Appeal, stated that the reason for upholding a verdict of “causing unintentional injury” was because the defendant did not know the victims and had no previous dispute with them. However, it is widely believed that the charges against the defendant do not reflect the seriousness of the shooting and the reluctance to properly prosecute and the continuing failure to apprehend the defendant demonstrate the authorities’ lack of impartiality when dealing with those with close associations to the RGC.



It is equally important for judges to convey an image of professionalism at all times if the reputation of Cambodia’s courts is to be improved in the eyes of both national and international observers. Unfortunately, instances of judges answering mobile telephones (2%) and leaving the courtroom during the hearing (11%) do nothing to enhance their image of professionalism or independence.

FIGURE 9: IMPARTIALITY AND PROFESSIONALISM OF THE JUDGE

Data	Yes		No	
	Nº	%	Nº	%
Did the judge behave in an intimidating manner towards a party?	1	0.5	203	99.5
Did the judge leave the courtroom during the hearing?	22	11	182	90
Did the judge answer a mobile telephone during the hearing?	4	2	200	98

### 2.1.8 Trials involving juveniles

#### Sources in Cambodian and International law:

- **Article 14(1)** of the **ICCPR**: “The Press and the public may be excluded from all or part of a trial [...] when the interests of the private lives of the parties so requires [...] but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.”
- **Article 40(2)(b)(vii)** of the **CRC**: “States Parties shall, in particular, ensure that [...] [a child has] his or her privacy fully respected at all stages of the proceedings.”
- **Article 100** of the **CCPC**: “When a detained person is a minor, the judicial police officer shall notify by all means the parents, the legal representative or any person who is responsible for that minor.”
- **Article 212** of the **CCPC**: “A minor under 14 years old may not be temporarily detained. The investigating judge can decide to send the minor temporarily to his guardians or, if there are no guardians, to a Provisional Education and Care Center until the competent judge has made his decision on this issue.”
- **Article 39** of the **Penal Code**: “Minors who committed offences shall be subject to supervision, education, protection and assistance. However, a court may impose a criminal penalty on a minor of fourteen years and over if warranted by the circumstances of the offence or the character of the minor.”
- **Article 40** of the **Penal Code**: “Supervisory, educational, protective and assistance measures shall include: returning the minor to his or her parents, guardian, custodian, or to another person who is trustworthy; committing the minor to a social service agency which cares for minors; committing the minor to a private organization that is qualified to receive minors;

committing the minor to a specialized hospital or institution; placing the minor under judicial protection.”

**Article 40(4)** of the **CRC**: “A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.”

Juveniles who are accused of having committed a criminal offense are entitled to all the fair trial rights that apply to adults, as well as additional protections in recognition of their age, maturity, and intellectual development. The ICCPR and the Convention on the Rights of the Child (the “CRC”), which both entered into force in Cambodia in 1992, set out specific provisions for the treatment of juveniles in criminal justice proceedings and are supported by a number of international rules and guidelines. Articles 31 and 48 of the Constitution explicitly recognize the CRC and guarantee that the State shall protect the rights of children, while the statutory framework also makes provision for differentiated treatment of juveniles in a number of important areas.

During the Reporting Period, out of the 270 individuals defendants involved in cases monitored, eight were juveniles at the time of the offense. Six of them were between 16 and 17 at the time of the offense and one was under 14 years old.<sup>40</sup>

The best interests of the child are to be a primary consideration when ordering or imposing penalties on juveniles found to have infringed the criminal law.<sup>41</sup> Imprisonment of juveniles is to be considered a measure of last resort to be employed only in exceptional cases.<sup>42</sup> Cambodian law also provides for alternative measures to custodial sentences.<sup>43</sup> However, of serious concern is the fact that in five cases (four in cases of felony charges and one in a case of misdemeanor charge) out of eight involving juveniles, judges imposed custodial sentences. In only two cases (one case of felony charge and one case of misdemeanor) were the defendants acquitted and in one case (felony case) the defendant had his sentence shortened and suspended. These figures are of serious concern and at great odds with both international and domestic law, which stipulate that custody in the case of juvenile offenders must only ever be used as a last resort. It is worrying that the Court is not making use of the alternative sentencing options identified in Article 40 of the Penal Code, such as committing the minor to a social service agency or to a qualified private organization or a specialized hospital or institution.

Juveniles’ victims or defendant’s privacy may further be protected through the use of tools such as video conferencing systems which have been installed at the Court of Appeal since January 2013. However, CCHR’s Trial Monitor noticed that the video conference system was never used successfully.

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<sup>40</sup> In the case of the juvenile aged under 14 at the time of the offense, the judge immediately acquitted the juvenile.

<sup>41</sup> Article 2(1) of the CRC. See also, Committee on the Rights of the Child, *General Comment No. 10: Children’s rights in juvenile justice*, paras 10 and 71. <http://bit.ly/1fbEoKP>

<sup>42</sup> Article 37(b) of the CRC

<sup>43</sup> Article 29 and 40 of the Penal Code

In only one instance did the Court attempt to resort to the video conference system but failed to use it due to technical connection issues.

During a dialogue meeting with the President of the Court of Appeal,<sup>44</sup> the President stated that the Court takes into serious consideration circumstances of offenses and characteristics of juvenile defenders before imposing sentences. He explained that the Court of Appeal needs to consider different factors including public order, seriousness of the offense, and social acceptability before imposing non-custodial sentences. Nevertheless, he significantly emphasized that the Court of Appeal had and is making further efforts in implementing the principles of switching imprisonment sentences to non-custodial sentences as much as possible and that the Court has been cooperating with the United Nations International Children's Emergency Fund ("UNICEF") to promote juveniles' rights and rehabilitation.

## **2.2 Fair Trial Rights Upheld**

While CCHR's trial monitoring activities have identified practices that threaten and impede the right to a fair trial as described above, CCHR was also encouraged to see that certain components of the right to a fair trial are well respected and upheld by the Court of Appeal.

### ***2.2.1 Right to adequate time and facilities to prepare a defense***

Any individual facing criminal charges should be provided with adequate time and facilities to prepare a defense to those charges. The length of time that is "adequate" will depend on the nature and complexity of the charges, the number of charges, and the nature of the evidence, amongst other factors. The necessary facilities to prepare a defense will include access to case documents and evidence, so that the accused is fully aware of the charges against him/her and so that he/she is able to provide full instructions to his/her lawyer. At the appeal stage this also means that the defendant should have access to a written judgment and the transcripts of the trial to prepare his case.

The right to adequate time and facilities to prepare a defense is guaranteed by Article 14(3) of the ICCPR,<sup>45</sup> Article 48, 98, 145, 259, and 319 of the CCPC.

In the Reporting Period, in none of the cases monitored was there anything to suggest that the defendant's lawyer was assigned on the day of the appeal; neither did the defense raise the issue of adequate time and facilities for preparation.

### ***2.2.2 Right not to be compelled to confess guilt***

The right is guaranteed under Article 14(3)(g) of the ICCPR<sup>46</sup> and Article 38 of the Constitution. The right not to be compelled to confess guilt encompasses the absolute prohibition against torture and cruel, inhuman, or degrading treatment or punishment. It implies that no direct or indirect physical or

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<sup>44</sup> CCHR dialogue with the Court of Appeal President, H.E. You Bun Leng and Chief of Court Clerk, Mr. Pun Savath on 5 June 2014

<sup>45</sup> Article 14(3)(b) of the ICCPR: "In the determination of any criminal charge against him, everyone shall be entitled to have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing."

<sup>46</sup> Article 14(3)(g) of the ICCPR: "In the determination of any criminal charge against him, everyone shall be entitled not to be compelled to testify against himself or to confess guilt."

psychological pressure should be inflicted on the accused by the investigating or judicial authorities in order to secure a confession of guilt.

In none of the cases monitored during the Reporting Period, was there anything to suggest that the defendant had been interrogated without his/her lawyer. However, the data collected still shows that in seven cases there were suggestions that threats were made to coerce the defendant into confessing to the alleged crime and in 11 cases it was suggested that violence or torture were used to coerce the defendant into confessing to the alleged crime.

While it is positive to see that in the great majority of cases there is nothing that leads to the belief that the defendants' rights during interrogation were violated or that torture was used, the fact remains that one case is one too many. While there are only a relatively small number of cases in which there were indications of coercion, either psychological or physical, it is nevertheless a matter of serious concern that the Court of Appeal must investigate thoroughly. If any claim of any type of coercion is substantiated after an investigation, then judges are under a legal obligation to rule the subsequent confessional evidence inadmissible. While this is an issue that should be dealt with during the investigation stage of proceedings, trial judges must also remain vigilant and ensure that any claims of coercion that have not been dealt with during the pre-trial stages of the case are thoroughly investigated before the trial is allowed to proceed any further.

### ***2.2.3 Prohibition against double jeopardy***

Double jeopardy – or the principle of *res judicata* (literally translated as “already judged”) – refers to the right of a person to be protected from being tried for the same crime or action more than once. It provides that the final judgment of a court, be it acquittal or conviction of the accused, shall act as a bar to any further prosecution for the act. There are a number of benefits of having this finality, both to the individual accused and the society as a whole, including the prevention of wasting legal resources where decisions have been made.

The prohibition against double jeopardy is enshrined in Article 14(7) of the ICCPR,<sup>47</sup> Article 23 of the Penal Code and Article 12 of the CCPC.

It is very positive to note that in none of the cases monitored was there anything suggesting that the defendant had been tried and sentenced for this offense previously.

### ***2.2.4 Prohibition against retroactive application of criminal law***

A fundamental principle of criminal law is that no one can be found guilty of a criminal offense for an act or omission that did not constitute a criminal offense at the time the alleged action or omission took place. Similarly, a heavier penalty may not be imposed than the one that was applicable at the time when the criminal offense was committed.

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<sup>47</sup> Article 14(7) of the ICCPR: “No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.”

The prohibition against retroactive application of criminal law is guaranteed by Article 15 of the ICCPR, and Article 3 and 10 of the Penal Code.

In none of the trials monitored was the law under which the defendant was charged not in force on the date the offense was allegedly committed.

### 3 Conclusion and Recommendations

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The data collected during the course of the Project highlights the need for reform in a number of areas. While the Court of Appeal is generally adhering to the procedures that are meant to ensure fair trial rights, the concerns lie in the more substantive issues.

Besides the overall concerns related to the lack of independence of the judiciary in Cambodia, the most important issues to be addressed as a matter of priority include the lack of public notice of hearings, the systematic failure of judges to inform and explain defendants of their rights, the high numbers of hearings where defendants are not present and, when present, the percentage of cases where they appear in prison uniform. In addition, the analysis of the data shows that the quality of evidence presented is very poor and threatens the right to be convicted beyond reasonable doubts and that judgments are, in the majority of cases, not based on law or evidence. In addition to these areas of concern, the wider issues of juvenile justice and sentencing practices need to be addressed.

Overall, to address some of the issues highlighted in this Report, the capacity of the Court of Appeal should be enhanced to enable it to resolve its case log, avoid delays, and manage new cases in a proper and timely manner. To that end, CCHR welcomes the announcement by the RGC that additional Courts of Appeals in other provinces will be created as this would address some of the issues raised above.

Some of the concerns raised in this Report could easily and quickly be addressed such as improved coordination regarding the transportation of defendants from correctional centers to their hearing, asking witnesses to leave the hearing before they make their statements, ensuring judges do not leave the court room or answer their phones during the hearing and explaining their rights to defendants. By taking immediate measures to address those concerns, the Court of Appeal could set a precedent, serve as an example to the Courts of First Instances and as such positively impact on the overall quality of the administration of justice in Cambodia.

In addition, to the recommendations made above and in response to the shortcomings that the data collected during the Reporting Period has highlighted, CCHR would like to make additional recommendations as set out below.

#### 3.1 Recommendations to Enhance the Independence of the Judiciary

- The adoption of the Law on Organization and Functioning of the Courts and Prosecutions, the Law on Amendment of the Supreme Council of Magistracy and the Law on Statute of Judges and Prosecutors by the National Assembly and the Senate seriously undermine the independence of the judiciary. The laws were passed despite the lack of public consultations and amid serious concerns from civil society regarding the power the laws give to the executive over the judiciary. The Constitutional Council should send back these laws to the Parliament requesting they amend the law in order to ensure they comply with the Constitution and international human rights law in upholding the principle of the independence of the judiciary.

### **3.2 Recommendations Regarding the Explanation of Rights**

A standard form should be drafted and implemented for use in all courts. The form should be read out by the court clerk and should set out the following information in order to ensure that the brief report read by the presiding judge is complete:

- The offense(s) with which the defendant is charged and the relevant law(s);
- The date, time, location of the alleged offense and relevant parties; and
- The trial rights of the accused, along with a standard and comprehensive explanation of those rights.

Failure to read out the above information at the beginning of a trial should constitute grounds to appeal a conviction.

### **3.3 Recommendation Regarding the Right to be Present at Trial**

- The Court of Appeal and the General Department of Prisons should consult and coordinate in order to quickly address any logistical and communication issues regarding the location of defendants;
- The General Department of Prisons must ensure that information about 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.

### **3.4 Recommendations Regarding the Right to Legal Representation**

CCHR recognizes the difficulties and financial constraints that impact the provision of legal aid lawyers. To address this difficulty:

- The RGC must recognize the provision of legal aid as a priority and allocate funding accordingly;
- The Bar Association of the Kingdom of Cambodia (“the BAKC”) should implement a scheme whereby junior lawyers are assigned to assist senior lawyers who are representing defendants on a legal aid basis. The scheme could form part of a wider continuing professional development scheme and constitute a part of the formal training of junior lawyers. The junior lawyers would be responsible for research and preparation of cases, taking some of the burden away from the senior lawyers, who would then be in a position to represent a larger number of defendants; and
- To increase public awareness of the right to legal representation, legal aid NGOs should work with the RGC to disseminate information at the commune level.

### **3.5 Recommendations Concerning the Presumption of Innocence**

- The MoI should issue a directive in relation to Article 4(5) (F) of the Proclamation 217 on the Administration of Prisoners, making it clear that detainees must come before the court in their own civil clothing.

### **3.6 Recommendations Regarding the Impartiality and Professionalism of Judges**

- The MoJ and the BAKC should work together to review the code of conduct for judges and implement any necessary amendments. The amendments should include a complete ban on the use of mobile telephones while the court is in session and an obligation for judges to conduct all deliberations in isolation;
- During long hearings, presiding judges should allow for short breaks during which judges, prosecutors and lawyers could either leave the court room or answer their phones.

### **3.7 Recommendations Regarding Trials Involving Juveniles**

- The RGC must ensure that the draft Juvenile Justice Law is enacted as a matter of priority. The law must include appropriate guidance on the use of pre-trial detention and should advocate for the implementation of alternatives to custodial sentences that focus on education, integration and rehabilitation;
- Before presiding over/prosecuting cases involving juvenile defendants, judges and prosecutors should undergo specific training regarding issues relating to juvenile justice; this training should be implemented jointly by the MoJ and the BAKC;
- Wherever possible, for example, in courts that have multiple courtrooms sitting at any one time, a separate courtroom should be allocated to deal exclusively with cases involving juveniles. No public access (save for access for the parent/guardian of the juvenile defendant) should be permitted and reporting restrictions should be imposed. Where it is not possible to allocate a separate courtroom, members of the public should not be granted access to the hearing and the child's name or any other identifying details must not be displayed on any public notice board;
- All juveniles shall be entitled to have an appropriate adult (parent, guardian or other suitable person over the age of 18) present during police questioning and at every court hearing;
- Sentencing options for juveniles must be widened. The MoJ, supported by the MoSA, should implement a set of sentencing guidelines relating to juveniles whereby the focus is placed firmly upon rehabilitation rather than punishment alone. The incarceration of children must be avoided at all costs and should be implemented in only the most serious cases, where other forms of sentencing have been exhausted or where imprisonment is required for reasons of public protection; and
- The MoJ and the MoSA should implement diversion schemes, in which a juvenile offender is supported and rehabilitated within the community as an alternative to formal prosecution. This scheme must be implemented for all first time offenders with the exception of the most serious felony offenses;
- The Court of Appeal should make use of the video conference system currently available at the Court and ensure staffs are trained accordingly.



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## 5 Appeal Hearing Monitoring Checklist

### A. General Hearing Information

1. OVERVIEW				
1(a) Appeal hearing Date:	Start Time:		Room Number:	
1(b) Monitors:				
1(c) Party bringing the appeal (give reasons):	<input type="checkbox"/> Defense <input type="checkbox"/> Prosecution (Court of First Instance or Appeal Court) Reason for appeal: Date of Appeal: <span style="float: right;"><input type="checkbox"/> I/U</span>			
1(d) Judge:	1 <sup>st</sup> 2 <sup>nd</sup> 3 <sup>rd</sup>			
1(e) Prosecutor:				
1(f) Clerk:				
1(g) Lawyer:				
1(h) Number of Defendants	Total:			
	Adult:	Male:	Present:	Absent:
		Female:	Present:	Absent:
	Juvenile:	Male:	Present:	Absent:
		Female:	Present:	Absent:
	Legal Person Representative:	Male:	Present:	Absent:
		Female:	Present:	Absent:
1(i) Number of Victims	Total:			
	Adult:	Male:	Present:	Absent:
		Female:	Present:	Absent:
	Juvenile:	Male:	Present:	Absent:
		Female:	Present:	Absent:
	Legal Person Representative:	Male:	Present:	Absent:
		Female:	Present:	Absent:
1(j) Original verdict and sentence (use extra sheet if the defendants are more than 5)	Imprisonment: D <sub>1</sub> : D <sub>2</sub> : D <sub>3</sub> : D <sub>4</sub> : D <sub>5</sub> :	Fine: D <sub>1</sub> : D <sub>2</sub> : D <sub>3</sub> : D <sub>4</sub> : D <sub>5</sub> :	Compensation: D <sub>1</sub> : D <sub>2</sub> : D <sub>3</sub> : D <sub>4</sub> : D <sub>5</sub> :	Date of Verdict: <input type="checkbox"/> I/U
1(k) Which Court of First Instance is the party appealing from?				
1(l) In which prison was the defendant detained?	<input type="checkbox"/> N/A <input type="checkbox"/> I/U			

## APPELLATE RIGHTS

2. RIGHT TO A PUBLIC HEARING	
2(a) Was notice of the hearing posted on a public board outside the courtroom?	<input type="checkbox"/> Yes <span style="margin-left: 200px;"><input type="checkbox"/> No</span>
2(b) Were members of the public or media prevented from entering or dismissed from the courtroom?	<input type="checkbox"/> Yes <span style="margin-left: 200px;"><input type="checkbox"/> No</span> Reason:
3. RIGHT TO UNDERSTAND THE NATURE OF THE CHARGE	
3(a) Did the judge state all relevant charges against all defendants?	<input type="checkbox"/> State all <span style="margin-left: 50px;"><input type="checkbox"/> State some</span> <span style="margin-left: 50px;"><input type="checkbox"/> None</span> <span style="margin-left: 50px;"><input type="checkbox"/> N/A</span>
3(b) Did the judge state the relevant law?	<input type="checkbox"/> Yes <span style="margin-left: 200px;"><input type="checkbox"/> No</span>
3(c) Did the judge state the date of the offense?	<input type="checkbox"/> Yes <span style="margin-left: 200px;"><input type="checkbox"/> No</span>
3(d) Did the judge state the place of the offense?	<input type="checkbox"/> Yes <span style="margin-left: 200px;"><input type="checkbox"/> No</span>
3(e) Did the judge state the parties involved?	<input type="checkbox"/> Yes <span style="margin-left: 200px;"><input type="checkbox"/> No</span>
3(f) If required, was an interpreter provided? If required, but <i>not</i> provided, why was an interpreter not provided?	<input type="checkbox"/> Yes <span style="margin-left: 100px;"><input type="checkbox"/> No</span> <span style="margin-left: 100px;"><input type="checkbox"/> N/A</span> Comment:
3(g) If required, were provisions made for those with disabilities? If yes, what disability was provided for?	<input type="checkbox"/> Yes <span style="margin-left: 100px;"><input type="checkbox"/> No</span> <span style="margin-left: 100px;"><input type="checkbox"/> N/A</span> <input type="checkbox"/> Hearing <span style="margin-left: 100px;"><input type="checkbox"/> Sight</span> <span style="margin-left: 100px;"><input type="checkbox"/> Other</span> Comment:
4. EXPLANATION OF RIGHTS <span style="float: right;">N/A <input type="checkbox"/></span>	
4(a) Did the judge inform (I) and explain (E) to the defendant his or her right to legal representation or to self-defense?	<input type="checkbox"/> I only <span style="margin-left: 100px;"><input type="checkbox"/> I and E</span> <span style="margin-left: 100px;"><input type="checkbox"/> Neither I nor E</span>
4(b) Did the judge inform (I) and explain (E) to the defendant his or	<input type="checkbox"/> I only <span style="margin-left: 100px;"><input type="checkbox"/> I and E</span> <span style="margin-left: 100px;"><input type="checkbox"/> Neither I nor E</span>

her right not to answer or answer?	
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**5. RIGHT TO CALL AND EXAMINE WITNESSES**

5(a) Was anything said by any party during the hearing or did anything happen to suggest that any party <b>was not</b> given the opportunity to call witnesses?	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, which party? <input type="checkbox"/> Prosecutor <input type="checkbox"/> Defense <input type="checkbox"/> Civil Party Reason:  If yes, was a formal application made at any stage during the hearing for the witness to attend? <input type="checkbox"/> Yes <input type="checkbox"/> No
---	--

5(b) Were the witnesses present in the courtroom before they were questioned?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
---	---

**PLEASE GIVE A CLEAR DESCRIPTION OF THE FACTS OF THE CASE:**

**6. PRESENTATION OF EVIDENCE:**

**6.1: PROSECUTION**

<b>6.1(a) Confession evidence</b>	Where was confession made? <input type="checkbox"/> Police <input type="checkbox"/> Prosecutor <input type="checkbox"/> Investigating Judge <input type="checkbox"/> Other: <input type="checkbox"/> No
<b>6.1(b) Documentary evidence</b>	Summary of Contents: <input type="checkbox"/> N/A Reason (if known) that evidence is read and witness not present: <input type="checkbox"/> I/U <input type="checkbox"/> N/A
	Were any submissions re: reading out evidence rather than calling the witness made by any party? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A If Yes, which party? <input type="checkbox"/> Defense <input type="checkbox"/> Civil Party <input type="checkbox"/> Other:
	Detail:
	Does any party disagree with content? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A







	Reason (if known) that evidence was read and witness not present: <input type="checkbox"/> I/U <input type="checkbox"/> N/A
	Were any submissions re: reading out evidence rather than calling the witness made by any party? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A If No, who and why? <input type="checkbox"/> Prosecutor <input type="checkbox"/> Defense <input type="checkbox"/> Other: Detail:
	Does any party disagree with content? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A If Yes, which party? <input type="checkbox"/> Prosecutor <input type="checkbox"/> Defense <input type="checkbox"/> Other: Detail:
<b>6.3(b) Live non-expert witness evidence</b>	Summary of Evidence: <input type="checkbox"/> No
	Challenges to the evidence by any other party (describe nature of challenge and detail which party) <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A If there were any challenges, which party made the objection? <input type="checkbox"/> Prosecutor <input type="checkbox"/> Defense <input type="checkbox"/> Other: Detail:
<b>6.3(c) Expert evidence</b>	Type: <input type="checkbox"/> Forensic <input type="checkbox"/> Medical <input type="checkbox"/> Other: <input type="checkbox"/> N/A
	Expert present or statement read out? <input type="checkbox"/> Present <input type="checkbox"/> Absent <input type="checkbox"/> N/A If absent, giving reason: <input type="checkbox"/> I/U
	Other parties agree with expert evidence? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A If No, who and why? <input type="checkbox"/> Prosecutor <input type="checkbox"/> Defense <input type="checkbox"/> Other: Detail:
	If read out and expert not present, were submissions re: reading out evidence rather than calling expert made by any party? Give details. <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A If Yes, which party?

	<input type="checkbox"/> Prosecutor	<input type="checkbox"/> Defense	<input type="checkbox"/> Other:
Give detail:			

#### 6.4 OBJECTIONS

Did any party make any formal objections to any evidence during the hearing? Describe nature of the objection and the judges' response:

Yes  No  N/A

Prosecution	Defense	Civil Party

#### 7. RIGHT TO FULL DISCLOSURE/ EQUALITY OF ARMS

7(a) Was anything said during the hearing or did anything happen to suggest that any party **was not** given the opportunity to present evidence?

Yes  No

If yes, which party?

Prosecutor  Defense  Civil Party

Comment:

If yes, was a formal application made for the evidence to be admitted?

Yes  No

7(b) Was there anything to suggest that any party **was not** given the opportunity to question witnesses?

Yes  No  N/A

If yes, which party?

Prosecutor  Defense  Civil Party

Comment:

If yes, was a formal application made at any stage during the hearing to question the witness?

Yes  No

7(c) Was there anything to suggest that any party did not have an opportunity to view the case file prior to the hearing?

Yes  No  N/A

If yes, which party did not have access to the case file prior to the hearing?

Prosecutor  Defendant (if self-represented)  Defense Counsel  Civil Party

Comment: [Please provide details as to why it is suggested that the relevant party did not have access to the case-file]

7(d) Were the defendant or defense counsel denied the opportunity to have the last word?

Yes  No  N/A

Defendant  Defense Counsel

If no, comment:

#### 8. INDEPENDENCE, IMPARTIALITY AND CONDUCT OF THE JUDGES INVOLVED

8(a) Did the judge behave in an intimidating manner towards any party?

Yes  No

If yes, please explain:

8(b) Did the judge make discriminatory comments about any party?	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, was the discriminatory comment based on the party's: <input type="checkbox"/> Race <input type="checkbox"/> Gender <input type="checkbox"/> Religion <input type="checkbox"/> Other Please explain the nature of the comment:
8(c) Did any party leave the courtroom during the hearing?	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, which party? <input type="checkbox"/> Judge <input type="checkbox"/> Prosecutor <input type="checkbox"/> Lawyer Please explain reason: <input type="checkbox"/> I/U
8(d) Did any party answer a mobile telephone during the hearing?	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, which party: <input type="checkbox"/> Judge <input type="checkbox"/> Prosecutor <input type="checkbox"/> Lawyer How did they respond? <input type="checkbox"/> Respond briefly and hang up <input type="checkbox"/> Conduct a conversation If yes, was the ring tone: <input type="checkbox"/> Audible <input type="checkbox"/> On silent  If yes, how many times was the telephone answered during the hearing?

**9. DELIBERATION**

Finish time:

9(a) Was there a deliberation?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Next day <input type="checkbox"/> I/U If yes, how long: If no, comment:
9(b) Was there anything to suggest that any party entered the deliberation room during deliberation?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/> I/U If yes, which party? <input type="checkbox"/> Prosecution <input type="checkbox"/> Defense <input type="checkbox"/> Civil Party <input type="checkbox"/> Court Official

**10 ASSESSMENT OF EVIDENCE**

**10(a) Did the evidence presented substantiate the necessary elements of the offense?**

Elements of offense:	Relevant evidence:

**10(b) Summaries of closing arguments:**

Prosecution	Defense	Civil Party

<b>11. VERDICT</b>					
11(a) Was a verdict delivered on the day of the hearing?	<input type="checkbox"/> Yes	<input type="checkbox"/> No			
	If no, was the date that the verdict would be delivered announced during the hearing?				
	<input type="checkbox"/> Yes	<input type="checkbox"/> No			
11(b) Date of verdict:	_____				<input type="checkbox"/> N/A
11(c) How many judges were present when the verdict was delivered?	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> I/U	
11(d) Was the verdict announced in public?	<input type="checkbox"/> Yes	<input type="checkbox"/> No			<input type="checkbox"/> I/U
	If no, please comment:				
11(e) Summary of judge's reasons, if any, for verdict :	<input type="checkbox"/> None				<input type="checkbox"/> I/U
11(f) Were the lawyers representing the parties present during the verdict?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A	<input type="checkbox"/> I/U	
11(g) Was there anything to suggest that the judge based his or her verdict on evidence that was not in the case file or presented at trial?  If yes, please provide details:	<input type="checkbox"/> Yes		<input type="checkbox"/> No		

**TOTAL TIME OF HEARING:**

**SPECIAL NOTE:**

## Individual Defendant Information

12. CRIMINAL RESPONSIBILITY					
Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
12(a) Was the defendant a juvenile at the time the offense was committed?  (Please complete Annex 1 for each juvenile defendant)	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
13. LEGAL BASIS OF CHARGES					
Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
13(a) Charge against defendant  Offense: Relevant law: Relevant article of the law:	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor <input type="checkbox"/> Petty Offense	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor <input type="checkbox"/> Petty Offense	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor <input type="checkbox"/> Petty Offense	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor <input type="checkbox"/> Petty Offense	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor <input type="checkbox"/> Petty Offense
13(b) Elements of offense to be proven in order to secure a conviction:					

## PRE-TRIAL RIGHTS

14. RIGHT TO LIBERTY AND TO BE TRIED WITHOUT UNDUE DELAY					
Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
14(a) Date of alleged offense:	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U
14(b) Date of arrest:	Date: _____ <input type="checkbox"/> I/U <input type="checkbox"/> N/A	Date: _____ <input type="checkbox"/> I/U <input type="checkbox"/> N/A	Date: _____ <input type="checkbox"/> I/U <input type="checkbox"/> N/A	Date: _____ <input type="checkbox"/> I/U <input type="checkbox"/> N/A	Date: _____ <input type="checkbox"/> I/U <input type="checkbox"/> N/A
14 (c) Was there judicial supervision?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

	<input type="checkbox"/> I/U	<input type="checkbox"/> I/U	<input type="checkbox"/> I/U	<input type="checkbox"/> I/U	<input type="checkbox"/> I/U
14 (d) Was there provisional detention?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U
If Yes, what date did provisional detention begin?	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U
What date did provisional detention finish?	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U
14 (e) Was there an application for bail?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U				
If Yes, Summary of defense application and any proposed conditions of judicial supervision:	<input type="checkbox"/> N/A				
Summary of Prosecutor's comments:	<input type="checkbox"/> N/A				
Summary of Civil Party comments:	<input type="checkbox"/> N/A				
Judges' decision and reasons:	<input type="checkbox"/> N/A				

**15. RIGHTS DURING INTERROGATION AND THE PROHIBITION AGAINST TORTURE**

Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
15(a) Was there anything to suggest the defendant was interrogated without a lawyer present? If yes, please explain:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
15(b) Was there anything to suggest that threats were made to coerce the defendant into confessing to the alleged crime? If yes, please explain:	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

15(c) Was there anything to suggest that violence or torture were used to coerce the Defendant into confessing to the alleged crime?  If yes, please explain:	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes
	<input type="checkbox"/> No	<input type="checkbox"/> No	<input type="checkbox"/> No	<input type="checkbox"/> No	<input type="checkbox"/> No
	<input type="checkbox"/> N/A	<input type="checkbox"/> N/A	<input type="checkbox"/> N/A	<input type="checkbox"/> N/A	<input type="checkbox"/> N/A

**16. PRE-TRIAL RIGHT TO SPEAK WITH A LAWYER AND RIGHT TO ADEQUATE TIME AND FACILITIES TO PREPARE A DEFENSE**

<b>Defendant</b>	<b>Defendant 1</b>	<b>Defendant 2</b>	<b>Defendant 3</b>	<b>Defendant 4</b>	<b>Defendant 5</b>
16(a) Was there anything to suggest that the defendant's lawyer was assigned on the day of the appeal?  If yes, please explain:	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
16(b) Was the issue of adequate time and facilities for preparation raised by the defense?  If yes, please explain:	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

## TRIAL RIGHTS

17. RIGHT TO BE PRESENT AND TO LEGAL REPRESENTATION					
Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
17 (a) Was the defendant present?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
17 (b) Was the defendant represented by a lawyer?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
17(c) Did any of the lawyers represent more than one defendant?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, was there a conflict between the interests of two or more of the defendants represented by the same lawyer? Details:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
18. PRESUMPTION OF INNOCENCE					
Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
18(a) Did the defendant appear before the court in prison uniform?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
18(b) Was the defendant handcuffed throughout the hearing?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
18(c) Were any statements made by the judge about the guilt of the defendant prior to the delivery of the verdict?  If yes, please provide details:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
18 (d) Was there anything to suggest that the judge drew an inference of guilt from the silence of the defendant?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A



If yes, please explain:					
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**19. PROHIBITION AGAINST DOUBLE JEOPARDY**

Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
19(a) Was there anything to suggest that the defendant had been tried and sentenced for this offense previously? If yes, please explain:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

**20. PROHIBITION AGAINST THE RETROSPECTIVE APPLICATION OF PENAL LEGISLATION**

Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
20(a) Was the law under which the defendant is charged in force on the date the offense was allegedly committed?  If no, please explain:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

**21. VERDICT**  I/U

Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
21(a) What was the court's ruling?	<input type="checkbox"/> Guilty <input type="checkbox"/> Not guilty <input type="checkbox"/> Re-investigated <input type="checkbox"/> Pre-trial	<input type="checkbox"/> Guilty <input type="checkbox"/> Not guilty <input type="checkbox"/> Re-investigated <input type="checkbox"/> Pre-trial	<input type="checkbox"/> Guilty <input type="checkbox"/> Not guilty <input type="checkbox"/> Re-investigated <input type="checkbox"/> Pre-trial	<input type="checkbox"/> Guilty <input type="checkbox"/> Not guilty <input type="checkbox"/> Re-investigated <input type="checkbox"/> Pre-trial	<input type="checkbox"/> Guilty <input type="checkbox"/> Not guilty <input type="checkbox"/> Re-investigated <input type="checkbox"/> Pre-trial
21(b) Did the judge refer to the article of the law under which the defendant had been charged?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
21(c) Did the judge refer to the evidence presented?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
21 (d) If the defendant confessed to the alleged offense at any stage prior to or during the trial, did the judge rely on the confession as evidence? (if no confession – N/A)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/> I/U

22. SENTENCE <input type="checkbox"/> N/A <input type="checkbox"/> I/U					
Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
22(a) Was the defendant sentenced to imprisonment?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Length:  Prison:  Probation:					
22(b) Was the defendant ordered to pay a fine?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Amount:					
22(c) Was the defendant ordered to pay compensation?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Amount:					
22(d) Was there any other alternative sentence?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, please provide details:					

## JUVENILE DEFENDANT

23. AGE					
Juvenile Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
23(a) Age at the time of the offense	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17
23(b) If under the age of 14 at the time of the offense, did the judge immediately acquit the juvenile?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
24. PRE-HEARING DETENTION					
Juvenile Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
24(a) Age at the time of pre-hearing detention?	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17 <input type="checkbox"/> N/A	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17 <input type="checkbox"/> N/A	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17 <input type="checkbox"/> N/A	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17 <input type="checkbox"/> N/A	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17 <input type="checkbox"/> N/A
24(b) Was there anything to suggest that the juvenile was not separated from adults?  Comment:	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
APPEAL HEARING <input type="checkbox"/> N/A					
Juvenile Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
25(a) Were any measures taken to protect the privacy of the juvenile during the hearing?  Details:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
25(b) Did the judge give the juvenile the chance to express his or her views freely, either personally or through a representative such as a lawyer or parent?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

26. SENTENCE <input type="checkbox"/> N/A <input type="checkbox"/> I/U					
Juvenile Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
26(a) Did the judge cite Article 38 or 39 of the Penal Code when sentencing the juvenile?	<input type="checkbox"/> Article 38 <input type="checkbox"/> Article 39 <input type="checkbox"/> Both <input type="checkbox"/> Neither <input type="checkbox"/> N/A	<input type="checkbox"/> Article 38 <input type="checkbox"/> Article 39 <input type="checkbox"/> Both <input type="checkbox"/> Neither <input type="checkbox"/> N/A	<input type="checkbox"/> Article 38 <input type="checkbox"/> Article 39 <input type="checkbox"/> Both <input type="checkbox"/> Neither <input type="checkbox"/> N/A	<input type="checkbox"/> Article 38 <input type="checkbox"/> Article 39 <input type="checkbox"/> Both <input type="checkbox"/> Neither <input type="checkbox"/> N/A	<input type="checkbox"/> Article 38 <input type="checkbox"/> Article 39 <input type="checkbox"/> Both <input type="checkbox"/> Neither <input type="checkbox"/> N/A
26(b) Was there anything to suggest that the judge considered imposing a non-prison sentence?  Comment:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No