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Cambodian Center for Human Rights

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Fair Trial Rights in Cambodia

Monitoring at the Court of Appeal



Cambodian Center for Human Rights (CCHR)

This report on “Fair Trial Rights in Cambodia” (the “Report”) is a publication of the Fair Trial Rights Project, implemented by the Cambodian Center for Human Rights (“CCHR”). CCHR is a non-aligned, independent, non-governmental organization (“NGO”) that works to promote and protect democracy and respect for human rights – in particular civil and political rights – in the Kingdom of Cambodia (“Cambodia”). CCHR’s vision is of a non-violent 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.

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Acronyms

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
Database	The database in which CCHR Trial Monitor store trial data recorded on checklists
ECHR	European Court of Human Rights
HRC	United Nations Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
I/U	Information Unknown
MoI	Ministry of Interior
MoJ	Ministry of Justice
MoSVY	Ministry of Social Affairs, Veterans and Youth Rehabilitation
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
Penal Code	The Criminal Code of the Kingdom of Cambodia
Project	CCHR Trial Monitoring Project
Reporting Period	1 November 2016 and 31 October 2017
RGC	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

Executive Summary

The functioning of the judiciary, which is central to the protection and enforcement of human rights and essential to the establishment of the rule of law, has been a major concern in Cambodia. 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 issue is linked to some provisions of three fundamental laws on the judiciary, which adversely impact the independence of the judiciary as well as, more generally, the separation of powers,¹ and which therefore endanger the right to be tried by an impartial and independent tribunal.

CCHR's trial monitoring has collected data from the monitoring of 340 criminal trials at the Court of Appeal, between 1 November 2016 and 31 October 2017 ("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.

CCHR's Fair Trial Rights Project ("Project") found that a number of key fair trial rights were guaranteed before the Court of Appeal during the period between November 2016 and October 2017– including the protections against double jeopardy and against non-retroactivity, the right to understand the nature and cause of the charges, the right to have adequate time and facilities to prepare one's defense, and the right to a public judgment. Regrettably however, the monitoring also uncovered a lack of compliance with some fundamental fair trial rights. Most notably, the presumption of innocence is not fully respected, and insufficient attention is given to allegations that a confession – which often form the basis for convictions – was obtained under duress or violence. The right to be present at trial and to have legal representation is not always respected, and the right to present evidence is often applied in a very restrictive manner. Further, in the vast majority of the cases, reasons are not provided for the Court of Appeal's ruling; instead, the Court only states that the first instance's decision is upheld or overturned without explaining why. Lastly, the rights of juvenile defendants, who are given special protection under international human rights law and in Cambodian law, are often not given due weight. Therefore, respect for fair trial rights must still be significantly improved.

The Report is structured as follows:

1. Introduction: provides a brief overview of relevant fair trial rights, before setting out the scope, methodology and purpose of this Report.

2. Data and Evaluation: identifies which fair trial rights are being respected and which are not being sufficiently respected at the Court of Appeal, through an analysis of the data collected during CCHR's monitoring.

¹ Statement by the United Nations Special Rapporteur on the Situation of Human Rights in Cambodia, Professor Surya P. Subedi, 24 June 2014, <https://bit.ly/2uQra4Z>; referring to the Law on the Organization and Functioning of the Courts, the Law on the Organization and Functioning of the Supreme Council of the Magistracy and the Law on the Statute of Judges and Prosecutors.

3. Evolution of Fair Trial Rights Protection Between 2014 and 2017: outlines key trends in terms of adherence to international fair trial rights standards by the Court of Appeal. It presents a comparison of the data collected during the reporting period of the present report (1 November 2016 to 31 October 2017, thereafter “2016-2017”) with the data collected through CCHR’s daily monitoring of trials heard at the Court of Appeal between 1 July 2014 and 30 June 2015 (“2014-2015”).

4. Conclusions and Recommendations: contains recommendations addressed to various bodies of the judiciary 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 Report’s findings.

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

1. Introduction

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 fundamentally and universally recognized right, enshrined in 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 by the Constitution of the Kingdom of Cambodia (“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 and encompasses the entire legal process, from the initial arrest of the suspect, through to the completion of the final appeal.

The UDHR² and the ICCPR³ 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,⁴ the presumption of innocence,⁵ the right to be tried without undue delay,⁶ the right to understand the nature and cause of the charge,⁷ the right to adequate time and facilities to prepare a defense,⁸ the right to legal representation,⁹ the protection against self-incrimination (not to confess guilt as a result of coercion or inducement),¹⁰ and the right to appeal to a higher court on grounds of fact and law.¹¹

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.

² United Nations General Assembly, Universal Declaration of Human Rights (“UDHR”), 10 December 1948, Article 10, <http://bit.ly/1gisTm1>.

³ United Nations General Assembly, International Covenant on Civil and Political Rights (“ICCPR”), 16 December 1966, Article 14 (1), <http://bit.ly/1j1mTd1>.

⁴ ICCPR, Article 14 (1).

⁵ ICCPR, Article 14 (2).

⁶ ICCPR, Article 14 (3) (c).

⁷ ICCPR, Article 14 (3) (a).

⁸ ICCPR, Article 14 (3) (b).

⁹ ICCPR, Article 14 (3) (d).

¹⁰ ICCPR, Article 14 (3) (g).

¹¹ ICCPR, Article 14 (5).

Cambodia acceded to the ICCPR in 1992, and Article 31 of the Constitution incorporated international human rights obligations into Cambodian domestic law.¹² Further, 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 2007.¹³

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 through physical or mental force shall not be admitted as evidence of guilt;
- Any reasonable doubt that arises shall be resolved in favor of the accused;
- The accused shall be considered innocent until the court has finally decided 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 for an independent judiciary, as guaranteed by the King.

The Code of Criminal Procedure of the Kingdom of Cambodia (“CCPC”), adopted in 2007,¹⁴ establishes in detail how suspects should be treated. It sets out the roles and responsibilities of judges, prosecutors and defense counsels; from the initiation of an investigation, to the time of arrest, throughout the entire criminal process until the final appeal. The Criminal Code of the Kingdom of Cambodia (“Penal Code”), which was promulgated in 2009 and came into force in December 2010, sets out classes of offenses, principles of criminal responsibility and principles of sentencing.¹⁵

Additionally, the Three Fundamental Laws Pertaining to Judiciary, namely the Law on the Organization of the Court,¹⁶ Law on the Statute of Judges and Prosecutors,¹⁷ and the Law on the Organization and

¹² Constitution, Article 31: ‘The Kingdom of Cambodia recognizes and respects 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/2yOKOfU>.

¹³ Constitutional Council of the Kingdom of Cambodia, Decision No. 092/003/2007, 10 July 2007.

¹⁴ 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”). It can be found at <http://bit.ly/2C9dRwR>.

¹⁵ The Penal Code can be found at <http://bit.ly/2BD6cpf>.

¹⁶ The Law on the Organization of the Court is available at <http://bit.ly/2rIN0vy>.

¹⁷ The Law on the Statute of Judges and Prosecutors is available at <http://bit.ly/2DsCgQR>.

Function of the Supreme Council of Magistracy,¹⁸ adopted in 2014, aim to ensure the independence of the judiciary power, and to protect the rights and freedom of Cambodian citizens.

Finally, the Law on Juvenile Justice, adopted in July 2016 and which came into force in January 2017,¹⁹ sets out the norms and procedures in dealing with minors who commit criminal offences.²⁰ The law is to be strictly applied so as to safeguard the rights and best interests of the minor.

In June 2003, the Council of Ministers of the RGC also approved the Legal and Judicial Reform Strategy (“Strategy”).²¹ It identifies four guiding principles, emanating from the Constitution, to guide legal and judicial reform: the rights of individuals, the principle of liberal democracy, the separation of powers, and the rule of law. The Strategy also sets out seven strategic objectives,²² which formed the basis of a Legal and Judicial Reform in a National Strategic Development Plan for 2014-2018.²³ The first of these objectives was the improvement of the protection of fundamental rights and freedoms.

Furthermore, in May 2017, the Permanent Secretariat of the Committee for Legal and Judicial Reform of Ministry of Justice initiated the 100 Days Campaign to Assess the Performance and Efficiency of Courts.²⁴ The campaign aims to update strategies and reform the justice system to make it more reliable, precise and applicable. Its purpose is also to improve the image of the courts as well as the trust and confidence of the public.

1.2. Purpose, Scope and Methodology

The purpose of the Project is to analyze collected data obtained through our daily monitoring of the Court of Appeal in order to identify strengths and weaknesses within the justice system. By drawing attention to areas within the trial process that require improvements - such as respecting fair trial rights - and making practical recommendations to relevant justice sector institutions, CCHR wishes 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.²⁵ In January 2013, the Project ended its monitoring activities at the Courts of First Instances, to focus on monitoring the Court of Appeal. The decision to monitor the Court of Appeal was made in

¹⁸ The Law on the Organization and Function of the Supreme Council of Magistracy is available at <http://bit.ly/2Bd4NEP>.

¹⁹ Law on Juvenile Justice, <http://bit.ly/2EVZnAz>.

²⁰ See also UNICEF, Q&A on the newly adopted Juvenile Justice Law in Cambodia, 19 September 2016, available at <http://bit.ly/2r6JvZO>.

²¹ Council for Legal and Judicial Reform, Legal and Judicial Reform Strategy, adopted by the RGC at the Plenary Session on 20 June 2003, see <http://bit.ly/2EvRgSd>.

²² The objectives are: 1) Improvement of the protection of fundamental rights and freedoms; 2) Modernization of the legislative framework; 3) Provision of better access to legal and judicial information; 4) Enhancement of the quality of legal processes and related services; 5) Strengthening of judicial services, i.e. judicial power and prosecutorial services; 6) Introduction of alternative dispute resolution mechanisms; 7) Strengthening of legal and judicial sector institutions to fulfill their mandates. See Cambodian Rehabilitation and Development Board, Council for the Development of Cambodia, Position Paper, Government’s Policy Performance, paras 15-24, available at <http://bit.ly/2EvRgSd>.

²³ 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; see also RGC, National Strategic Development Plan 2014-2018, pp. 9-12, paras 2.11 to 2.23, available at <http://bit.ly/2pEnsaX>.

²⁴ Notification on 100 Days Campaign to Assess the Performance and Efficiency of Courts, dated on 12 May 2017, issued by The Permanent Secretariat of the Committee for Legal and Judicial Reform of Ministry of Justice, <http://bit.ly/2FBc5Wi>.

²⁵ The six bi-annual reports on fair trial rights in Cambodia are available at <http://bit.ly/M7mkET>.

order to assess the standards of fair trial rights being implemented by a higher court. The aim is to provide an analysis of the trends emerging within Cambodia's Court of Appeal with 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 key fair trial rights. In order to determine which rights should 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 the Court of Appeal led CCHR to focus on certain components of fair trial rights that differ from the Courts of First Instances.

The following rights were selected:

- Right to a public hearing;
- Right to understand the nature and cause of the charge(s);
- Right to an explanation of rights owed to the accused;
- Right to adequate time and facilities to prepare a defense;
- Right to legal representation and to be present at trial;
- Right to the presumption of innocence;
- Right to not be compelled to confess guilt;
- Evidentiary rights (including the right to call and examine witnesses);
- Right to a public and 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,
- The specific rights of juveniles.

The Trial Monitor from CCHR attended 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 ("Checklist") for use in the Court of Appeal.²⁶ This checklist was 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 had compiled comprehensive guidance notes ("Checklist Guidance")²⁷ to provide an understanding of the legal basis and purpose of each question and ensure a uniform interpretation of each question. The Trial Monitor was also provided with a document providing a legal framework, which outlines the relevant national and international laws underpinning each question in the Checklist. CCHR paid particular attention to the fact that the right to appeal²⁸ encompasses the right to be granted a full review. In other words, the review of an appeal must involve both the legal and material aspects of the person's conviction and sentence.²⁹ As such, the review must

²⁶ CCHR's Appeal Hearing Monitoring Checklist, <http://bit.ly/2DOdo3U>.

²⁷ Guidance Note for CCHR Appeal Court Monitoring Checklist, <http://bit.ly/1fbDZYQ>.

²⁸ ICCPR, Article 14 (5); CCPC, Article 375.

²⁹ United Nations Human Rights Committee, Communication No. 701/1996, *Gómez v. Spain*, 6 April 1998, in UN doc. GAOR, A/55/40 (vol. II), p. 109, para. 11.1, <http://bit.ly/1bhUzWm>.

provide “for a full evaluation of evidence and the conduct of trial.”³⁰ Finally, CCHR is committed to the international principles applicable to trial monitoring³¹ and has devised a code of conduct (“Code of Conduct”) for its Trial Monitor.³² The Code of Conduct outlines the obligations of non-interference, objectivity and confidentiality by which the Trial Monitor is bound.

While monitoring activities at the Court of Appeal, specific trials were not targeted; rather, the trials to be monitored were randomly selected, on the basis of the court’s schedules, to ensure that the data collection process remained unbiased and representative. When the Trial Monitor observed a trial, the information was recorded directly onto the Checklist. The data gathered was limited to the trial process itself; no additional interviews or dialogues took place, except 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 gathered was entered into the CCHR Trial Monitoring Database (“Database”).³³

CCHR analyzed the trial data recorded in the Database, and sought to identify positive practices as well as areas of concern arising at each trial. The ultimate purpose of the analysis was to identify the strengths and weaknesses of the Court of Appeal insofar as respect for fair trial rights was concerned, and to discuss these issues with the Court as well as other justice sector stakeholders, in order to develop and implement ways to improve the protection of the right to a fair trial in Cambodian courts. As trial monitoring activities continue, the Database will be used to draw comparative analysis and to identify trends in the practice of the Court of Appeal, gauge improvements and identify further recommendations.

A final draft of the present Report was sent to the President of the Court of Appeal, for comments and recommendations, and CCHR’s Project team met him on 5 April 2018 to discuss the findings. Once published, Project staff will request specific meetings with representatives of the Court of Appeal and with other justice sector organizations, bodies and institutions to which recommendations will be addressed. The meetings serve as a basis for an exchange of ideas and provide insight into the challenges faced by those working to strengthen the justice system, and aim to promote the implementation of the recommendations set out in the Report.

³⁰ United Nations Human Rights Committee, Communications Nos. 623, 624, 626, 627/1995, *V. P. Domukovsky et al. v. Georgia*, 6 April 1998, in UN doc. GAOR, A/53/40 (vol. II), p. 111, para. 18.11, <http://bit.ly/2mhTaM5>.

³¹ See Amnesty International, *Fair Trial Manual*, 1998, <http://bit.ly/2mn7L4a>; Lawyers Committee for Human Rights, *What is a Fair Trial: A Basic Guide to Legal Standards and Practice*, 2000, <http://bit.ly/2CT37SC>; Organization for Security and Cooperation in Europe (OSCE) / Office for Democratic Institutions and Human Rights, *Trial Monitoring: A Reference Manual for Practitioners*, 2008, <http://bit.ly/2CVLX77>; International Commission of Jurists, *Trial Observation Monitoring*, 2002, <http://bit.ly/2EyWzJf>.

³² CCHR Trial Monitoring Code of Conduct, <http://bit.ly/1fbE3Yu>.

³³ CCHR Trial Monitoring Database, <http://bit.ly/2BbUOj3>.

2. Data and Evaluation

This section of the Report sets out the “raw” data recorded on the Checklist from the 340 trials monitored at the Court of Appeal between 1 November 2016 and 31 October 2017, which will be evaluated throughout the Report.

Figure 1(a): Appeal hearings monitored – felonies, misdemeanors and petty offenses

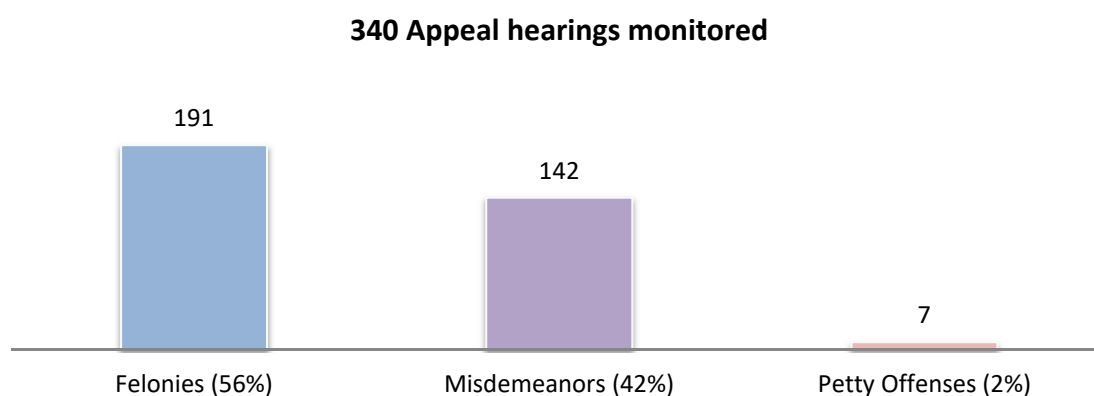
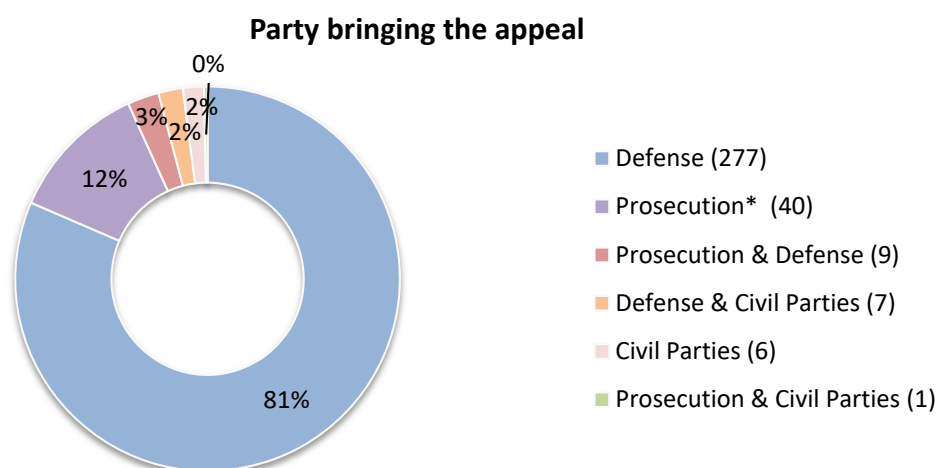


Figure 1(a) above shows the number of criminal trials monitored by the Trial Monitor during the Reporting Period, and separates the charges into three different classifications of offenses. Article 46 of the Penal Code defines a felony as any offense for which the maximum penalty is imprisonment of more than five years. A misdemeanor is defined in Article 47 as any offense for which the maximum penalty is imprisonment for more than six days and less than or equal to five years. According to Article 48, a petty offense is one for which the maximum sentence of imprisonment incurred is six days or less, or, punishable solely by a fine.³⁴

Figure 1(b): Party bringing the appeal



*Prosecution from the Court of First Instance and the Court of Appeal.

³⁴ Criminal Code, Article 48.

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 (both regarding the civil matter).³⁵ The Figure shows that the majority of appeals (81%) were filed by the defense.

The section below analyzes the implementation of the different relevant components of fair trial rights by the Court of Appeal during the Reporting Period. For the purpose of the analysis, the Report will first highlight those aspects of fair trial rights which are respected in the Court of Appeal, and then shed light on the practices that put fair trial rights at risk.

2.1. 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 hopeful to see that certain components of the right to a fair trial are well respected and upheld by the Court of Appeal.

Fair Trial Rights Protected by the Court of Appeal	
•	Protection against double jeopardy
•	Non-retroactivity of the law
•	Right to understand the charge(s)
•	Right to have adequate time and facilities to prepare one’s defense
•	Right to a public judgment

2.1.1. Protection against double jeopardy

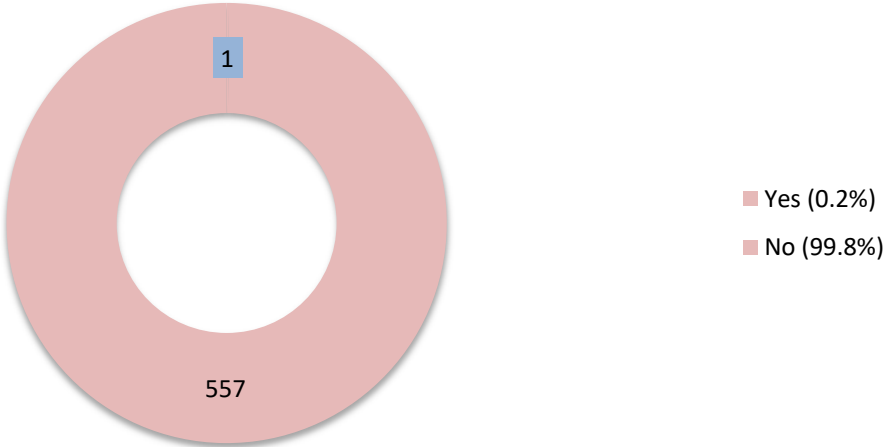
Sources in Cambodian and International Law	
ICCPR Article 14 (7)	“No one shall be liable to be tried or punished again for an offence for which he has already been convicted or acquitted in accordance with the law and penal procedure of each country.”
Penal Code Article 23	“No one may be prosecuted for the same conduct for which he or she has already been tried abroad and who, in the event of conviction, establishes that he or she has already served the penalty or that the penalty has been extinguished by statute of limitation.”
CCPC Article 12	“In applying the principle of <i>res judicata</i> , any person who has been acquitted by a court judgment cannot be prosecuted once again for the same act, even if such act is subjected to different legal qualification.”

³⁵ CCPC, Article 375.

Double jeopardy – or the principle of *res judicata* (literally translated as “already judged”) – refers to the right of a person not to be tried for the same crime or action more than once. It provides that the final judgment of a court, be it an acquittal or conviction, shall act as a bar to any further prosecution for the same act. There are a number of benefits of having this finality, both to the individual accused and the society as a whole, by providing legal certainty, and avoiding the waste of legal resources where decisions have been made.

Figure 2: The prohibition against double jeopardy³⁶

Was there anything to suggest that the defendant had been tried and sentenced for this offense previously?



It is encouraging to note that only one of the 558 defendants involved in the 340 cases monitored by CCHR had already been tried and sentenced for the same offense in the past.

2.1.2. Prohibition against the retroactive application of criminal law

Sources in Cambodian and International Law	
UDHR Article 11(2)	“No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.”
ICCPR Article 15	“No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby. Nothing in this article shall prejudice the

³⁶ This data is based on the total number of defendants (558 individuals) involved in the 340 cases monitored.

	trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.”
Penal Code Article 3	“Conduct may give rise to criminal conviction only if it constituted an offence at the time it occurred.”
Penal Code Article 10	“A new provision which prescribes a lighter penalty shall be applicable immediately. However, final judgments shall be enforced regardless of the severity of the relevant penalties. A new provision which prescribes a heavier penalty shall be applicable only to acts committed after the provision came into force.”

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 other than the one that was applicable at the time when the criminal offense was committed.

Figure 3: Prohibition against retroactive application of criminal law

Data	Yes		No	
	Nº	%	Nº	%
Was the law under which the defendant is charged in force on the date the offense was allegedly committed?*	558	100	0	0

* This data is based on the total number of defendants (558 individuals) involved in the 340 cases monitored.

None of the trials monitored indicated that the law under which the defendant was charged was not in force on the date the offense was allegedly committed. CCHR’s findings therefore show that the protection against double-jeopardy is protected.

2.1.3. Right to understand the nature and cause of the charge(s)

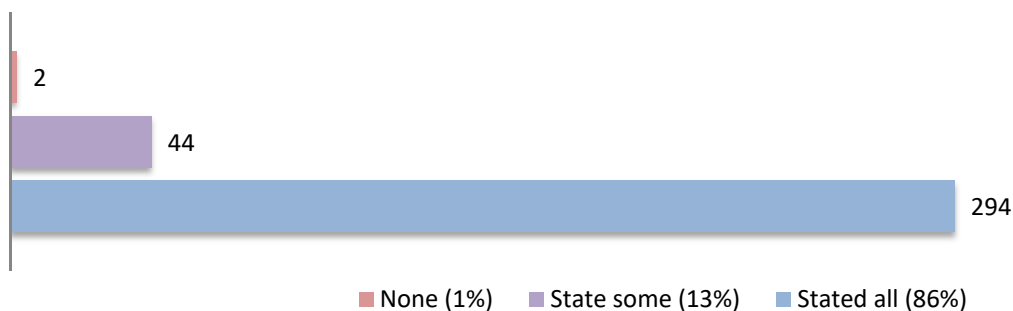
Sources in Cambodian and International Law	
ICCPR Article 14(3)(a)	“In the determination of any criminal charge against him, everyone shall be entitled to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him.”
ICCPR Article 14(3)(f)	“In 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.”
CCPC Article 322	“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.”
CCPC	“The presiding judge shall inform the accused of the charges he is accused of.”

Article 325	
CCPC Article 330	“If necessary, the presiding judge may seek the assistance of an interpreter/translator.”
CCPC Article 332	“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.”
CCPC Article 396	“[T]he rules that apply to hearings of the Court of First Instance shall also apply to the Court of Appeal.”
Law on Juvenile Justice Article 6	“Every minor suspected or accused of having committed an offence shall have the following basic procedural rights: [...] The right to refuse to answer questions with or without the presence of a lawyer [...] The right to be informed of the charge(s) [...]”
Law on Juvenile Justice Article 51	“At the commencement of trial, the court shall advise the minor in a language that the minor can understand of the following rights: The rights at trial as stipulated in Article 6 (procedural right of minor) of this law [...].”

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 procedure, it is nevertheless important for judges to remind the accused person of this information before the trial commences, and to make sure that the accused understands it. This is particularly important in cases whereby charges may have been changed or amended between the initial arrest/charge and the actual trial.

Figure 4(a): The right to understand the nature and cause of the charge(s) - Overview

Did the judge state all relevant charges against all defendants?



During the Reporting Period, the data compiled showed that, in the majority of cases (294 of 340), the judges did inform defendants of all relevant charges against them. In 44 cases, however, only parts of the charges were stated to the defendant. In only two cases, the judges did not inform the defendant about the charges.

Figure 4 (b): The right to understand the nature and cause of the charge(s) - Details

Data	Yes		No		N/A ³⁷	
	Nº	%	Nº	%	Nº	%
Did the judge state the relevant law?	328	96	12	4	0	0
Did the judge state the date of the offense?	325	96	15	4	0	0
Did the judge state the place of the offense?	309	91	31	9	0	0
Did the judge state the parties involved?	333	98	7	2	0	0
If required, was an interpreter provided?	4	1	3	1	333	98
If required, were provisions made for those with disabilities?	1	0.3	1	0.3	338	99.4

The figure above shows that in a significant majority of cases, judges at the Court of Appeal re-stated 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 was therefore frequently respected.

2.1.4. Right to adequate time and facilities to prepare a defense

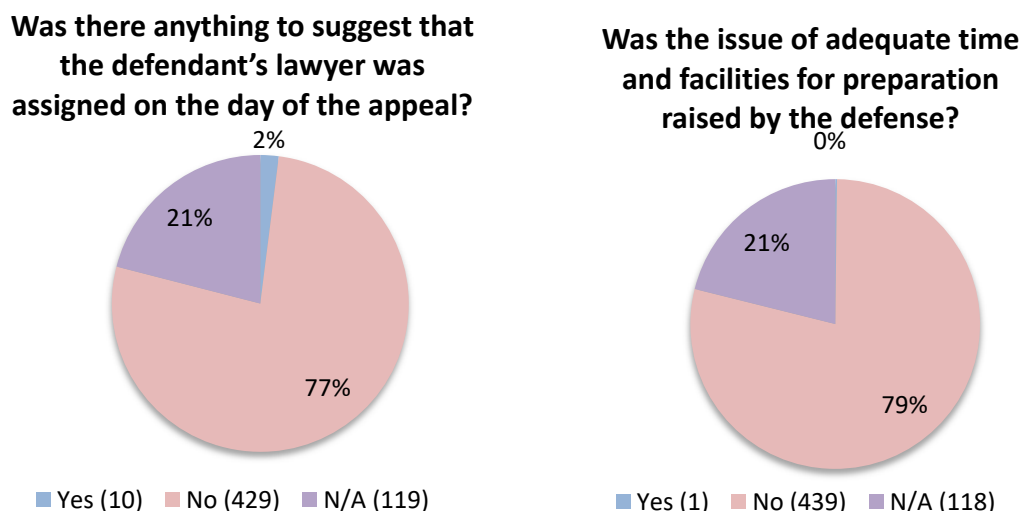
Sources in Cambodian and International Law	
ICCPR Article 14(3)(b)	“In the determination of any criminal charge against him, everyone shall be entitled to have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing.”
CCPC Article 48	“[...] If the accused requests such time or if the court finds that the case may not be tried immediately, the trial shall be adjourned to another trial date [...]”
CCPC Article 98	“After a period of twenty-four hours from the beginning of the police custody has expired, the detainee may request to speak with a lawyer or any other person selected by the detainee [...] The selected person may enter into the custodial site and talk with the detained person for 30 minutes under conditions guaranteeing the confidentiality of the discussion. Following the discussion, the selected person may make a written note to be placed on the case file.”
CCPC Article 145	“When a charged person has a lawyer, the investigating judge shall summon the lawyer at least five days before the interrogation takes place. During that period, the lawyer may examine the case file [...]”

³⁷ N/A refers to the Khmer defendant or defendant without disability.

CCPC Article 259	“The General Prosecutor of the Court of Appeal and lawyers may examine the case file until the beginning of the hearing. The General Prosecutor of the Court of Appeal shall provide a written submission to the court clerk at least one day before the hearing date [...]”
CCPC Article 319	“Before the hearing, lawyers can examine the case file in the court clerk’s office under the supervision of the court clerk [...]”
Law on Juvenile Justice Article 29	“Whenever the prosecutor decides to issue the initial charge, s/he shall promptly and directly notify the minor and, if appropriate, the minor’s designated representative or support person and minor’s lawyer of the initial charge in order to prepare the 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.³⁸ The guiding principle is that the accused must be able to properly prepare his/her defense – that is, prepare to challenge the Prosecution’s evidence, investigate, and present defense witnesses. 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.³⁹ In addition, the right to adequate facilities includes the provision of facilities enabling confidential communications with counsel.⁴⁰ At the appeal stage this also means that the defendant should have access to a written first instance judgment, and the transcripts of the trial in order to prepare his case.

Figure 5: Right to adequate time and facilities to prepare a defense⁴¹



³⁸ UN Human Rights Committee, General Comment 13: 1984, para. 9, <http://bit.ly/1vnBOE8>.

³⁹ UN Human Rights Committee, General Comment 13: 1984, para. 9, <http://bit.ly/1vnBOE8>.

⁴⁰ UN Human Rights Committee, General Comment 13: 1984, para. 9, <http://bit.ly/1vnBOE8>. UN Human Rights Committee, CCPR General Comment 32, 2007, para. 34, <http://bit.ly/1zOgr0M>

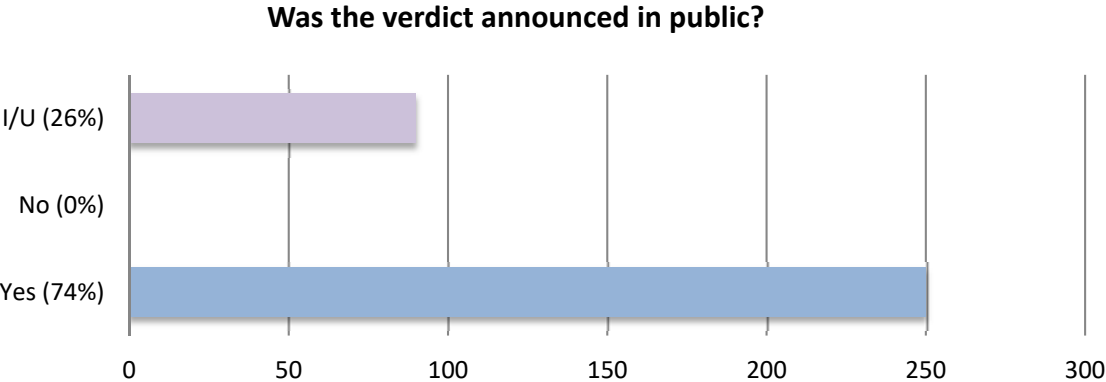
⁴¹ This data is based on the total number of defendants (558 individuals) involved in the 340 cases monitored. N/A refers to cases in which defendant was not represented by a lawyer.

While the monitoring of the appeal hearing did not provide CCHR with all the requisite information to assess whether or not the accused had sufficient time and adequate facilities to prepare their defense, from the information available to CCHR, it is very positive to note that the great majority of monitored cases indicate that the right was respected. CCHR monitored that only 2% of all defendants had their lawyers assigned to them on the day of the appeal, and that most had a lawyer earlier on. Out of 340 cases, only one defendant’s lawyer raised the issue of preparation and he had asked the judges to read the facts of the case in order to defend his client.

2.1.5. Right to a public judgment

Sources in Cambodian and International Law	
ICCPR Article 14(1)	“[...] 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.”
CCPC Article 317	“In all cases, the court shall announce the judgment during a public session.”
Law on the Organization of the Court Article 7	“[...] In all cases, a judgment shall be announced publicly [...]”

Figure 6: The right to a public judgment⁴²



In all the cases for which information was available, the right to a public judgment was respected.

⁴² This data is based on the total number of defendants (558 individuals) involved in the 340 cases monitored. I/U refers to cases in where the information was not available, or cases are not followed up because the Trial Monitor is not present at the date of verdict delivery.

2.2. Fair Trial Rights at Risk

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.

Fair Trial Rights at Risk at the Court of Appeal	
•	Right to a public hearing
•	Right to be present at trial and to legal representation
•	Right to the presumption of innocence
•	Right not to be compelled to confess guilt
•	Right to present one’s defense (evidentiary rights)
•	Right to a reasoned judgment
•	Rights of juveniles

2.2.1. Right to a public hearing

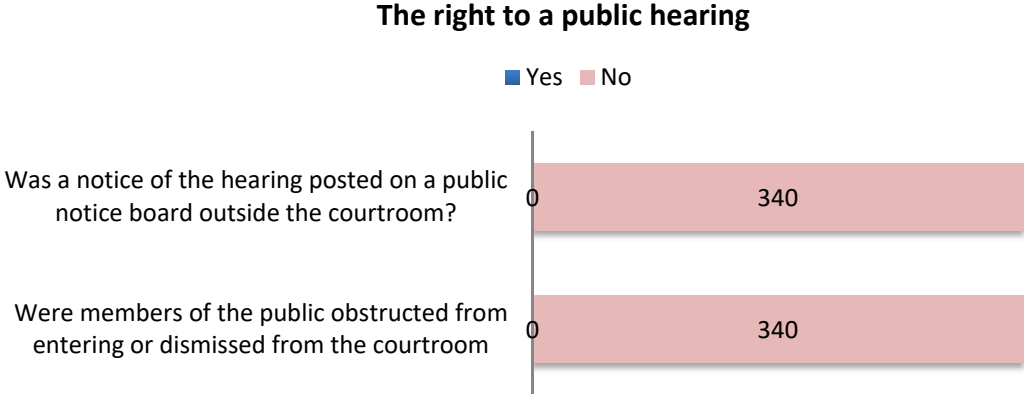
Sources in Cambodian and International Law	
ICCPR Article 14 (1)	“In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law [...]”
CCPC Article 392	“The appeal hearing shall be conducted in public.”
Law on the Organization of the Court Article 7	“The hearing shall be 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, juvenile defendant or morality.⁴³ The right to a public hearing

⁴³ 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

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.⁴⁴

Figure 7: The right to a public hearing



Hearing notice is one way of promoting public hearing by informing the public who are allowed access into the courtrooms. During the Reporting Period, CCHR observed that there were no updated public hearing notices posted outside the courtrooms, even though members of the public were never prevented from attending the hearings. The Court of Appeal’s Deputy Presidents⁴⁵ recognized that there was a lack of public notice posting in relation to the Court’s schedule, and informed CCHR that they would take action in order to improve the public’s access to hearings related information to the public.

2.2.2. Right to be present at trial and to legal representation

Sources in Cambodian and International Law	
<p>ICCPR Article 14(3)(d)</p>	<p>“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.”</p>

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. Article 47 of Law on Juvenile Justice states that the cross-examination and pronouncement of judgment of juvenile case shall be conducted in closed court.

⁴⁴ HRC CCPR, *Van Meurs v. The Netherlands*, Communication No. 215/1986, UN Doc. CCPR/C/39/D/215/1986, 1990, para. 6.2, <http://bit.ly/2DaKGNr>.

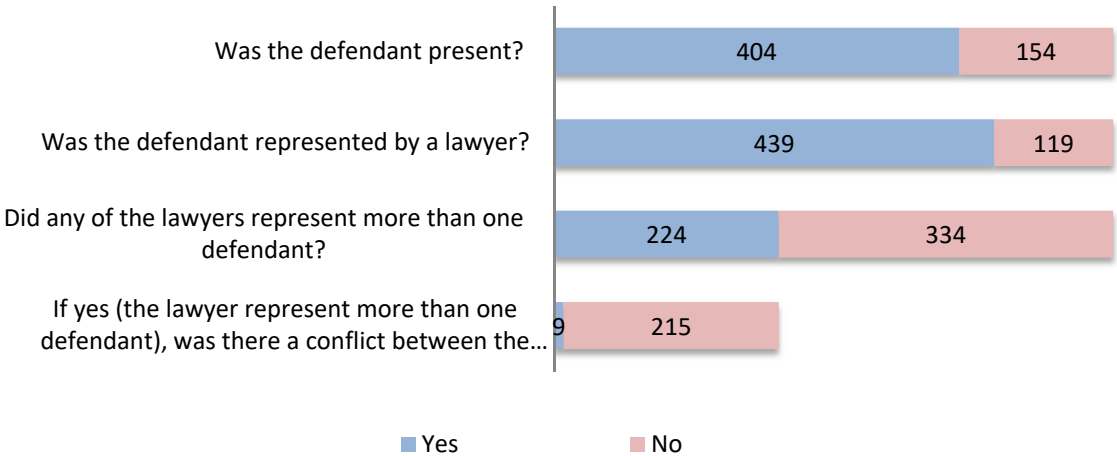
⁴⁵ On 5 April 2018, CCHR’s Fair Trial Monitoring Project team met with the Deputy Presidents of the Court of Appeal H.E. Plang Samnang, H.E. Nhong Thul, as well as with the Deputy General Secretary, Ms. Sreng Soyeth, in order to discuss the findings contained in the present report.

Constitution Article 38	“Every citizen shall enjoy the right to defense through judicial recourse.”
CCPC Article 143	“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.”
CCPC Article 300	“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.”
CCPC Article 301	“The assistance of a lawyer is compulsory if (i) the case involves a felony; or (ii) the accused is a minor.”
CCPC Article 389	“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.”
Law on Prison Article 62	“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)
Law on Juvenile Justice Article 6	“Every minor suspected or accused of having committed an offence shall has the following basic procedural rights: [...] [t]he right to be assisted by a lawyer [...]”
Law on Juvenile Justice Article 50	“The minor shall be assisted by a lawyer during trial [...]”
Law on Juvenile Justice Article 51	<p>“At commencement of trial, the court shall advise the minor in a language that the minor can understand of the following rights:</p> <ul style="list-style-type: none"> • The rights at trial as stipulated in article 6 (procedural right of minor) of this law • The right to be present at trial • The right to be protected by the court from hostile or inappropriate cross-examination • The right to ask for recusal of the trial judge • The right to have the last word in the trial • The right to appeal.

Being charged with an offense can be a daunting experience and legal procedures can be complex and confusing. It is therefore vital that individuals have the opportunity to retain legal representation.

Furthermore, if the accused cannot afford his or her own counsel, the relevant authorities should provide a lawyer free of charge, if the interests of justice so require.⁴⁶ 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. In Cambodia, it is compulsory for a person to be legally represented if he/she is accused of a felony offense or if he/she is a juvenile. While it is not mandatory to be legally represented if the accused committed a misdemeanor offense (unless he/she is a juvenile), individuals still have the option, if they so wish, to retain a lawyer. In such cases, the burden to retain a lawyer does not rest with the court. In addition, trials must be held in the presence in the Accused,⁴⁷ as it permits the accused to hear and challenge the case against him/her, and to present a defense. Regarding juveniles, the hearing should take place in the presence of “legal or other appropriate assistance” and – unless found not to be in the best interests of the child – his/her parents or legal guardians.⁴⁸ The right to be present in person is applicable to appeal proceedings, if they involve questions of both fact and law,⁴⁹ which is the case in Cambodia. While trials *in absentia* are not impermissible under international human rights law, they may be permitted only in exceptional circumstances and when it is in the interests of proper administration of justice. Cogent justification must be provided for them.⁵⁰ Further, the accused must have unequivocally waived his/her right to appear at trial.⁵¹

Figure 8: The right to be present at trial and to legal representation⁵²



The Figure above shows that 154 of the 558 defendants (28%) were not present during the hearing and that 119 (21%) were not represented by a lawyer. Among the 119 defendants not represented by a lawyer, 6 had been charged with felony (in 4 cases the trial followed an appeal filed by a civil party), and the remaining 113 defendants had been charged with misdemeanors. In 40% of the cases where

⁴⁶ ICCPR, Article 14(3)(d).

⁴⁷ ICCPR, Article 14(3)(d).

⁴⁸ CRC, Article 40(2)(b)(iii).

⁴⁹ UN HRC, *Karttunen v. Finland*, Communication 387/1989, UN Doc CCPR/C/46/D/387/1989, 1992, para. 7.3, <http://bit.ly/2Dm8cUr>.

⁵⁰ UN HRC, *Mbenge v. Zaire*, Communication 016/1977, UN Doc CCPR/C/18/D/16/1977, 1983, para. 14.1, <http://bit.ly/2muzOje>.

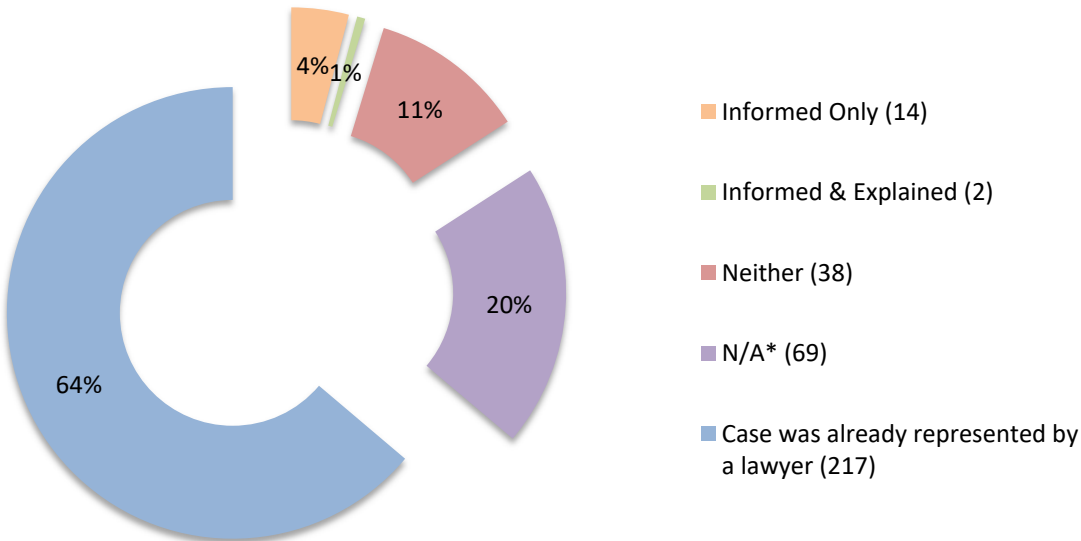
⁵¹ UN HRC, General Comment 32, 2007, para. 36, <http://bit.ly/1zOqr0M>.

⁵² This data is based on the total number of defendants (558 individuals) involved in the 340 cases monitored.

the defendants had legal representation, a lawyer represented more than one accused. Only in 4% of these cases was there were a conflict of interest. While these numbers are low, in light of the fundamental character of the right to be tried in one’s presence and to have a lawyer, there is still cause for concern. The Court of Appeal’s Deputy Presidents⁵³ noted that in most cases, the accused’s absence during hearings was due to the lack of transportation from the detention centre to the Court, which falls under the responsibility of the prison authorities.

Figure 9: Explanation of rights

Did the judge inform (I) and explain (E) to the accused his/her right to legal representation or self-defense?



* Absence of defendant.

The fact that in 64% of the 340 cases monitored by CCHR the defendants had legal representation shows that individuals’ right to access to a lawyer has mostly been protected. Only in a few cases - 38 out of 340 cases or 11 % - did the judges fail inform and explain to the accused his/her right to legal representation or self-defense.

In cases where defendants were not present at trial, the absence of the defendant was often due to logistical issues as well as communication problems between the judges and the correctional centers or 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, there were many occasions where transportation of defendants did not occur because either the Court sent information to the wrong correctional center, or because correctional centers fail to keep the Court updated about the transfer of detained persons between correctional centers. These logistical problems could be easily addressed by not only the creation of

⁵³ On 5 April 2018, CCHR’s Fair Trial Monitoring Project team met with the Deputy Presidents of the Court of Appeal H.E. Plang Samnang, H.E. Nhoung Thul, as well as with the Deputy General Secretary, Ms. Sreng Soyeth, in order to discuss the findings contained in the present report.

another Court of Appeal, but also by improving the record keeping and communication between the Court and correctional centers.

2.2.3. Respect for the presumption of innocence

Sources in Cambodian and International Law	
ICCPR Article 14(2)	“Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.”
Constitution Article 38	“The accused shall be considered innocent until the court has judged finally on the case.”
Law on Juvenile Justice Article 5	“All persons performing any function concerning minor shall ensure the observance of the following principles: [...] presumed innocent until proven guilty by the court.”

The presumption of innocence is a fundamentally and universally recognized fair trial right which applies throughout the period of the criminal investigation and trial proceedings, up to and including the end of the final appeal.⁵⁴ It means that one is presumed innocent until proven guilty by law and through a final ruling. The principle that the burden of proof lies with the prosecuting body, not the accused, stems from the presumption of innocence. Even if an Accused says nothing and presents no evidence, he/she must be acquitted if the Prosecution fails to present evidence reaching the requisite burden of proof for a conviction; in other words, it is not for the accused to present evidence to prove that he or she is innocent.

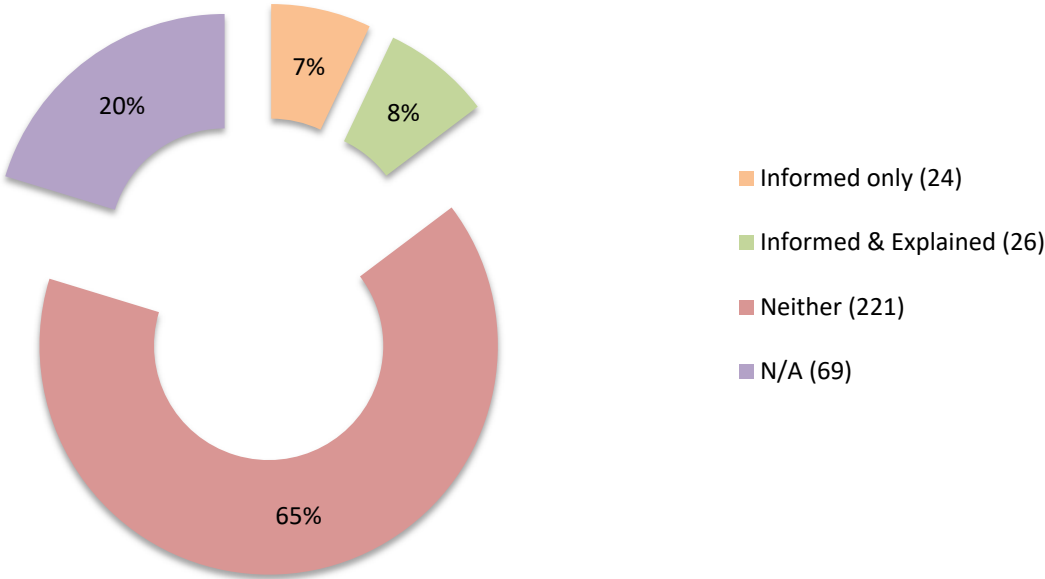
More specifically, the presumption of innocence requires that:

- i. The court or tribunal must not predetermine the case before it;
 - ii. Guilt beyond reasonable doubt must be proved by the Prosecution;
 - iii. The treatment of the accused should not be such as to indicate he/she is guilty;
 - iv. The media should avoid news coverage that undermines the presumption of innocence;
- Public authorities should also refrain from making public statements that would undermine the presumption.⁵⁵

⁵⁴ Office of the United Nations High Commissioner for Human Rights (“OHCHR”), *The Right to a Fair Trial (Part I)*, Chapter 6, p. 219, <http://bit.ly/1jp0Xxn>.
⁵⁵ UN HRC, General Comment 32, 2007, para. 30, <http://bit.ly/1zOqr0M>; ECtHR, *Barberá, Messegué and Jabardo v. Spain*, 1998, para. 77, <http://bit.ly/2D6kTpS>.

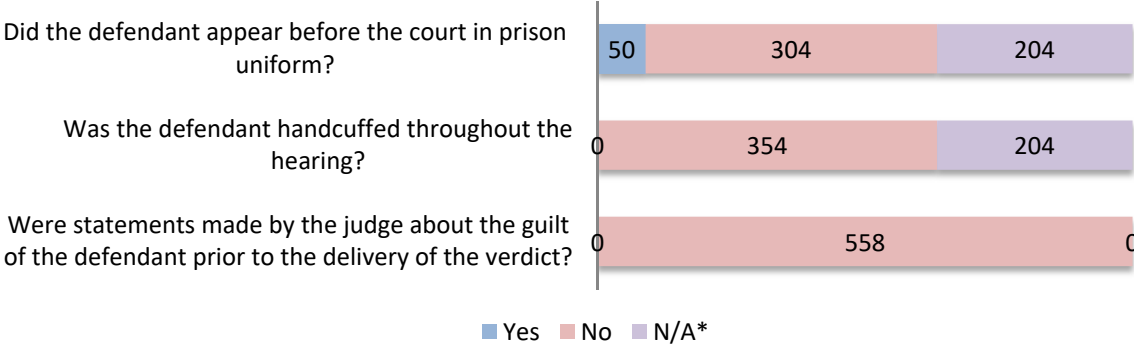
Figure 10: The right to remain silent

Did the judge inform (I) and explain (E) to the accused his/ her right to remain silent?



However, regarding the right to remain silent, the data compiled shows that in the vast majority of cases (65%), the Appeal judges failed to inform and explain the right to remain silent to the accused. This practice, which is intrinsically linked to the presumption of innocence, needs to be addressed as a matter of urgency, as it lies at the core of the fair trial rights. The Court of Appeal’s Deputy Presidents, when meeting with CCHR, undertook to meet with the judges and remind them of the importance of ensuring full respect for the presumption of innocence.⁵⁶

Figure 11: The presumption of innocence⁵⁷



* The Defendant was either absent or s/he was not imprisoned.

⁵⁶ On 5 April 2018, CCHR’s Fair Trial Monitoring Project team met with the Deputy Presidents of the Court of Appeal H.E. Plang Samnang, H.E. Nhoung Thul, as well as with the Deputy General Secretary, Ms. Sreng Soyeth, in order to discuss the findings contained in the present report.

⁵⁷ This data is based on the total number of defendants (558 individuals) involved in the 340 cases monitored.

When an accused person attends trial in a prison uniform,⁵⁸ the presumption of innocence is undermined. This is particularly the case when the uniform makes no distinction between remand and convicted prisoners. When remand prisoners attend court in prison uniform, they are presented in the same way as prisoners who may have already been convicted. 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 prison uniform in which defendants appear in court falls within the responsibility of the General Department of Prison.

International best practices in criminal justice indicate that defendants should be able to wear their own clothing when appearing in court. The United Nations Standard Minimum Rules for the Treatment of Prisoners ("The Nelson Mandela Rules"),⁵⁹ adopted by the UN General Assembly in 2015 and which represent internationally recognized best practices for the treatment of prisoner, states that "an untried prisoner shall be allowed to wear his or her own clothing if it is clean and suitable. If he or she wears prison dress, it shall be different from that supplied to convicted prisoners." In the Extraordinary Chambers in the Courts of Cambodia ("ECCC"), defendants are permitted to wear their own clothes at all stages of the criminal process until there is a final conviction. Therefore, defendants should be allowed to appear in Court with their own clothing. At the very least, the prison uniform which they wear must be different from that of convicted prisoners. As a result of CCHR's advocacy, change has been slowly taking place, with more and more prisoners being appearing in a uniform distinct from that of convicted prisoners. Further, in a handful of cases, defendants were able to appear before the Courts in their own clothing.⁶⁰

However, cases remain where the defendants still appear in the same uniform as prisoners serving their sentence, therefore undermining their presumption of innocence. While the efforts made are encouraging, it is essential that the practice of allowing defendants to wear their own clothes while appearing in Court is generalized. To ensure consistency, the authorities should issue clear guidelines highlighting that defendants held in pre-trial detention or those whose trial has started but for whom a final judgment has not been issued must be allowed to appear in Court wearing civilian clothes.

The Figure above shows that 50 defendants still appeared in court wearing prison uniform during their hearings. Such a practice undermines the presumption of innocence. However, none were handcuffed. CCHR is however encouraged by the statement of the Court of Appeal's Deputy Presidents⁶¹ that they would discuss the issue with the Ministry of Interior as well as with the correctional centres in order to identify possibilities to allow defendants to wear their civil clothing during hearings.

⁵⁸ This referred to the convicted person's blue uniform, which Ministry of Interior issued the Prakas that the blue uniform is for the convicted person whose conviction was final. See CCHR's Fair Trial Rights Newsletter, Prisoners Uniform and Presumption of Innocence, June 2017, <http://bit.ly/2BWjul3>.

⁵⁹ UN General Assembly, *United Nations Standard Minimum Rules for the Treatment of Prisoners*, Resolution 70/175, Annex, 17 December 2015, <http://bit.ly/2tBwwLQ>.

⁶⁰ On 18 January 2018, a defendant charged with drug trafficking and sentenced to 5 years of imprisonment by the Takeo Court of first instance was transported to the Court of Appeal for hearing his appeal against the decision civilian clothes. CNRP former president, Kem Sokha, also appeared in Court wearing his own clothing on 1 February 2018.

⁶¹ On 5 April 2018, CCHR's Fair Trial Monitoring Project team met with the Deputy Presidents of the Court of Appeal H.E. Plang Samnang, H.E. Nhoung Thul, as well as with the Deputy General Secretary, Ms. Sreng Soyeth, in order to discuss the findings contained in the present report.

2.2.4. Right not to be compelled to confess guilt (protection against self-incrimination)

Sources in Cambodian and International Law	
UDHR Article 5	“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”
ICCPR Article 14(3)(g)	“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.”
Constitution Article 38	“The law prohibits all physical abuse of any individual. The law protects the life, honor and dignity of citizens [...]”
CCPC Article 145	“[...] A charged person can be interrogated only in the presence of his lawyer. However, if the lawyer was properly summoned but does not show up on the specified date and time, the investigating judge can question the charged person without the presence of his lawyer. The absence of the lawyer shall be noted in the written record of the charged person’s interrogation [...]”
CCPC Article 321	“[...] A confession shall be considered by the court in the same manner as other evidence. Declaration given under physical or mental duress shall have no evidentiary value [...]”
Law on Juvenile Justice Article 5	“All persons performing any function concerning minors shall ensure the observance of the following principles: [...] Shall prohibit torture, corporal punishment, or other physical or mental treatments which is cruel, inhumane, or degrading to minors [...]”
Law on Juvenile Justice Article 6	“Every minor suspected or accused of having committed an offence shall have the following basic procedural rights: [...] The right not to be forced to give testimony against him/herself [...]”

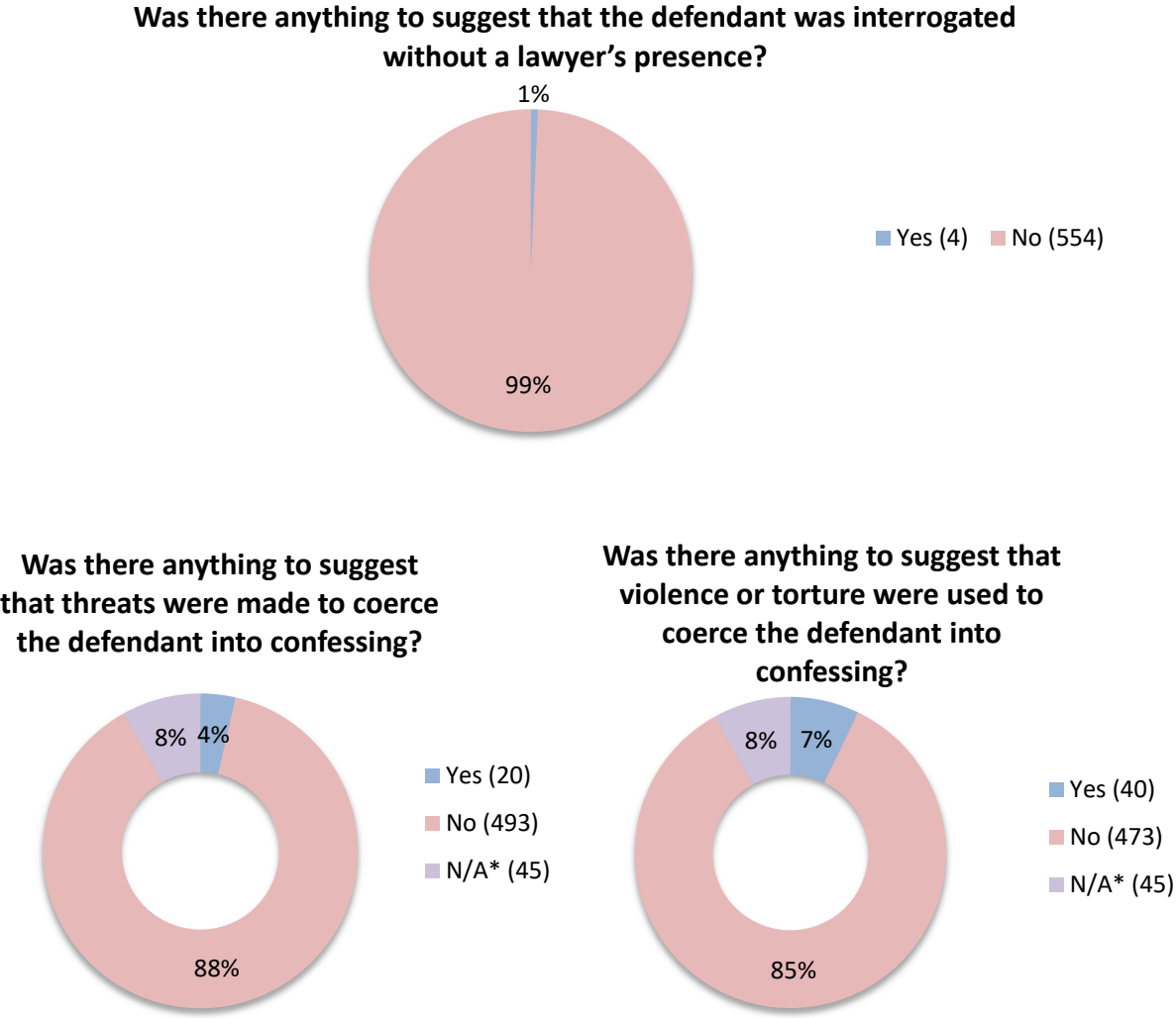
Article 14(3)(g) of the ICCPR guarantees the right “not to be compelled to testify against himself or to confess guilt”.⁶² This right is twofold: first, the suspect or accused must not be compelled or forced to provide evidence against himself/herself. When a suspect or accused gives a confession, it must be done in the absence of any direct or indirect, physical or psychological coercion.⁶³ In other words, the suspect/accused enjoys the unfettered right not to provide evidence that could be used against

⁶² See also CRC, Article 40(2)(b)(iv).

⁶³ UN Human Rights Committee, General Comment 32, 2007, para. 41, <http://bit.ly/1zOqr0M>; See also: HRC CCPR, *Deolall v Guyana*, Communication 912/2000, UN Doc CCPR/C/82/D/912/2000, 2004, para. 5.1 <http://bit.ly/2FwT3jV>; HRC CCPR, *Singarasa v. Sri Lanka*, Communication 1033/2001, UN Doc CCPR/C/81/D/1033/200, 2004, para. 7.4, <http://bit.ly/2EzddIS>; HRC CCPR, *Khuseynova and Butaeva v. Tajikistan*, Communications 1263/2004 and 1264/2004, UN Doc CCPR/C/94/D/1263–1264/2004, 2008, para. 8.3, <http://bit.ly/2mInroL>.

him/her.⁶⁴ Should a person refuse to testify against himself/herself, or to confess guilt, the circumstances in which judges draw any negative inference from this silence are restricted.⁶⁵ In the case of a juvenile, the law is more general: he/she must not be compelled to “give testimony”.⁶⁶ This right is also guaranteed under all Articles of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in particular Article 15,⁶⁷ as the right not to be compelled to confess guilt encompasses the absolute prohibition against torture and cruel, inhuman, or degrading treatment or punishment.

Figure 12: The right not to be compelled to confess guilt⁶⁸



* Neither the defendant nor his/her lawyer was present, there was therefore no one to raise the issue.

⁶⁴ ICCPR, Article 14(3)(g); see also CRC, Article 40(2)(b)(iv).
⁶⁵ ECHR, *Condron v. the United Kingdom*, 2000, para. 56, <http://bit.ly/2mwfyo9>; ECHR, *Beckles v. the United Kingdom* 2002, para. 58, <http://bit.ly/2mlfgsv>.
⁶⁶ Article 40(2)(b)(iv) CRC.
⁶⁷ Article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: “Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.” <http://bit.ly/2z2NhXT>
⁶⁸ This data is based on the total number of defendants (558 individuals) involved in the 340 cases monitored.

During the Reporting Period, it was noted that only 4 of the 558 defendants insinuated that they had been interrogated without their lawyer being present. Even though the numbers are low in proportion, 20 individuals alleged that they were threatened into giving a confession. In addition, 40 individuals, some of whom also alleged that threats were made against them, further stated that violence or torture was used on them in order to obtain a confession to the alleged crimes during the investigations carried out by the judicial police.

While the number of cases in which there were indications of coercion or torture during interrogations, either psychological or physical, are small in number, it is nevertheless a matter of serious concern. In the majority of cases where the defendant or defense lawyer raised concerns about the confession, the judges still upheld the guilty verdict. The Court of Appeal must investigate these claims thoroughly. If any claim of coercion is substantiated after an investigation, judges are under a legal obligation to rule the subsequent confessional evidence inadmissible if there are reasonable grounds to believe that it was obtained in a coercive manner. While this is an issue that should be dealt with during the investigation stage of proceedings, appeal 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.

2.2.5. Right to present one’s defense (evidentiary rights)

Sources in Cambodian and International Law	
<p>ICCPR Article 14(3)(e)</p>	<p>“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.”</p>
<p>CCPC Article 153</p>	<p>“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.”</p>
<p>CCPC Article 154</p>	<p>“Before the interview, each witness shall swear in accordance with their religion or beliefs that he/she only speaks the truth. The formality of the oath shall be defined in the annex of this Code.”</p>
<p>CCPC Article 298</p>	<p>“At their expenses, the accused and civil party may summons witnesses who have not been summoned by the Prosecutor.”</p>
<p>CCPC Article 321</p>	<p>“Unless otherwise required by a law, any evidence in criminal cases is freely admissible. The court shall have a free choice to determine the value of the evidence submitted to the court on the ground of its true belief. The decision of the court shall be based only on the evidence which it has in the file or which has been presented at the hearing. A confession shall be submitted to the court for consideration in the same manner as other evidence. Answers given under the physical or mental duress shall have no evidentiary value.</p>

	Communications between the accused person and his/her lawyers is not admissible as evidence.”
CCPC Article 324	“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 summoned 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.”
CCPC Article 326	“[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.”
CCPC Article 328	“Before answering the questions, each witness shall swear according to their religion or believe that he/she shall only speak the truth.”
CCPC Article 394	“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.”
Law on Juvenile Justice Article 6	“Every minor suspected or accused of having committed an offence shall have the following basic procedural rights: [...] The right to present evidence. The right to request to call and pose question to witnesses [...]”

All the 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.⁶⁹ It is equally important that each party is given the opportunity to cross-examine witnesses and to challenge evidence that he/she does not accept. While the provision of evidence *via* a written statement (that is, not during a court hearing) is not contrary to the rights of the accused, it is only compliant with human rights law if the defendant had the right to challenge and question the witness when that witness made the statement, or at a later stage of the proceedings before the trial itself.⁷⁰ Finally, pursuant to human rights law, when a suspect or accused gives a confession, it must be done in the absence of any direct or indirect, physical or psychological coercion.⁷¹ If the individual alleges a violation of his/her rights, the burden of proof is on the party that

⁶⁹ CCPC, Article 334.

⁷⁰ See eg. ECtHR, *Mirilashvili v. Russia*, 2008, para. 163, <http://bit.ly/2Fsxn8u>; ECtHR, *Asch v. Austria*, 1991, para. 27, <http://bit.ly/2ARSDb5>; ECtHR, *Isgrò v Italy*, 1991, para 34, <http://bit.ly/2Fv1FYo>; ECtHR, *Kostovski v. the Netherlands*, 1989 para. 41, <http://bit.ly/2D3ndhf>.

⁷¹ UN HRC, General Comment 32, 2007, para. 41, <http://bit.ly/1zOqr0M>; See also: UN HRC, *Deolall v. Guyana*, Communication 912/2000, UN Doc CCPR/C/82/D/912/2000, 2004, para. 5.1, <http://bit.ly/2FwT3jV>; UN HRC, *Singarasa v. Sri Lanka*, Communication 1033/2001, UN Doc CCPR/C/81/D/1033/200, 2004, para. 7.4, <http://bit.ly/2EzddIS>; UN HRC, *Khuseynova and Butaeva v. Tajikistan*, Communications 1263/2004 and 1264/2004, UN Doc CCPR/ C/94/D/1263–1264/2004, 2008, para. 8.3, <http://bit.ly/2mlnroL>.

took the statement to demonstrate that it was not done under duress, and not on the defendant to show that it was.⁷² Evidence obtained in violation of the right must not be admissible at trial.⁷³

It is encouraging to note from the data collected, that in all 340 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 among the small number of cases in which witnesses were present (12 cases out of 340), witnesses were present in the courtroom before they were questioned in 8 out of the 12 cases, which can lead to their testimony being influenced through hearing that of others. A better practice would be for witnesses to leave the courtroom and not return until they are called to testify.

In addition, the Court of Appeal must ensure that the evidence being relied upon is of sufficient probative value (reliability and authenticity), and that all parties have the opportunity to challenge the evidence. The data collected during the trial monitoring activities reveals that the quality of evidence presented is of great concern. Most of the evidence presented during the trials that were monitored were either 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. CCHR's trial monitoring revealed there is no such trend of examining this type of evidence at the Court of Appeal.

2.2.6. Right to a reasoned judgment

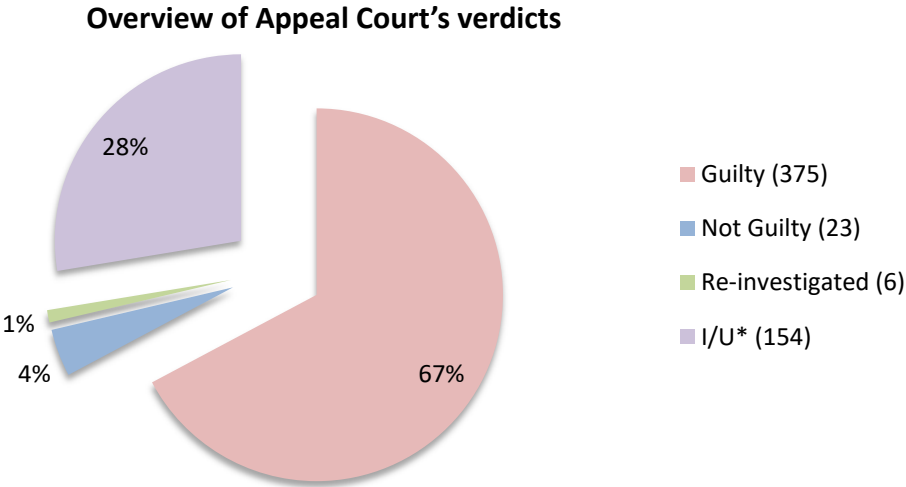
The right to a reasoned judgment is inherent to the right to a fair trial, and is included in the right to a public judgment. According to international standards, a convicted person is entitled to have, within reasonable time, access to written judgments, duly reasoned, for all instances of appeal, in order to enjoy the effective exercise of the right to have conviction and sentence reviewed by a higher tribunal according to law.⁷⁴ Within the Cambodian context, this is necessary since the accused and Prosecution have the possibility to appeal an appeal judgment to the Supreme Court.

⁷² UN HRC, General Comment 32, 2007, para. 41, <http://bit.ly/1zOqr0M>; See also: UN HRC CCPR, *Singarasa v. Sri Lanka*, Communication 1033/2001, UN Doc CCPR/C/81/D/1033/200, 2004, para. 7.4, <http://bit.ly/2EzddIS>; HRC CCPR, *Khuseynova and Butaeva v. Tajikistan*, Communications 1263/2004 and 1264/2004, UN Doc CCPR/C/94/D/1263–1264/2004, 2008, para. 8.3, <http://bit.ly/2mInroL>.

⁷³ UN HRC, General Comment 32, 2007, paras 6, 41, <http://bit.ly/1zOqr0M>; UN HRC, General Comment 29, 2001, paras 7, 15, <http://bit.ly/2D55A00>.

⁷⁴ UN HRC, *V. Francis v. Jamaica*, Communication No. 320/1988, in UN doc. CCPR/C/47/D/320/1988, (vol. II) 1993, p. 66, para. 12.2, <http://bit.ly/1gfuZQw>.

Figure 13: Overview of Court of Appeal's verdicts⁷⁵



* CCHR's monitoring team was not present at the time the verdict was delivered.

In 67% of the cases, the defendants were found guilty. CCHR's Monitor also noticed that in a significant number of cases, the Court of Appeal upheld the decisions of the Courts of First Instances. This, taken together with the lack of reading the reasoned decision, creates cause for concern as to whether the accused's fair trial rights were respected.

In nearly all the cases, the judges failed to justify their ruling. They failed to state the provisions of the law and the evidence which they relied upon in their verdict. Instead, the judges only read and announced the ruling.

2.2.7. Trials involving juveniles

Sources in Cambodian and International Law	
ICCPR Article 14(1)	ICCPR, Article 14(1): "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."
CRC Article 40(2)(b)(vii)	"States Parties shall, in particular, ensure that [...] [a child has] his or her privacy fully respected at all stages of the proceedings."
CRC Article 40(4)	"A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training program 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."

⁷⁵ This data is based on the total number of defendants (558 individuals) involved in the 340 cases monitored.

Constitution Article 31	“The Kingdom of Cambodia recognizes and respects human rights as stipulated in [...] the covenants and conventions related to [...] children’s rights.”
Constitution Article 48	“The State shall protect the rights of children as stipulated in the Convention on Children.”
CCPC Article 100	“When a detained person is a minor, the judicial police officer shall use all means to notify the parents, legal representatives or any person who is responsible for that minor.”
CCPC Article 212	“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.”
Penal Code Article 39	“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.”
Penal Code Article 40	“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.”
Law on Juvenile Justice Article 5	“All persons performing any function concerning a minor shall ensure the observance of the following principles: Consider primarily on actions concerning the best interest of minors; in particular, to ensure the minors’ right to life and maximum survival and development [...] Shall be given an opportunity to express their views freely, and their views shall be given weight according to their age, physical development, intelligence, and cognitive development toward their action; Shall address the child in a friendly manner ⁷⁶ ; Shall ensure that the arrest, detention or imprisonment of a minor is used only as a measure of last resort and for the shortest period of time [...]”
Law on Juvenile Justice Article 6	<p>“Every minor suspected or accused of having committed an offence shall has the following basic procedural rights:</p> <ul style="list-style-type: none"> • the right to refuse to answer questions with or without the presence of a lawyer • the right not to be forced to give testimony against him/herself • the right to privacy • the right to have medical care and treatment

⁷⁶ Law on Juvenile Justice, Art. 4 (7).

	<ul style="list-style-type: none"> • the right to be informed of the charge • the right to be informed of the arrest to designated representative • the right to be assisted by a lawyer and to be assigned pro bono lawyer in accordance with the condition stipulated in Law on the Status of Lawyers from the earliest possible time of procedure • the right to have designated representative participate in the case, unless it is contrary to the best interest of the minor • the right to be assisted by pro bono interpreter, if necessary the right to present evidence • the right to request to call and pose question to witnesses • the right to request bail • the right to ask for revision of the court supervision • the right to contact his/her embassy, consulate if a minor is a foreigner • Other rights which stipulated in other legal instruments that are currently in force.”
Law on Juvenile Justice Article 39	“Pre-trial detention is a measure of last resort [...]”
Law on Juvenile Justice Article 47	“The cross-examination and pronouncement of judgment shall be conducted in closed court [...]”
Law on Juvenile Justice Article 48	“[...] Under special circumstances, the minor’s lawyer, social agent or prosecutor may request the court to place the minor behind the screen or use other alternate means of providing testimony.”
Law on Juvenile Justice Article 49	“If the court finds that the minor is below the age of 14 years at the time of commission of the offence, the court shall immediately acquit the minor and immediately release him/her to the custody of designated representative even if there is an appeal made by the prosecutor [...]”
Law on Juvenile Justice Article 54	“Judgment shall be pronounced after the cross examination or at the next trial. In principle, the judgment of the court shall be pronounced in closed court, and in the presence of the minor, designated representative, support person, lawyer, social agent and relevant parties. The judgment may be pronounced without the presence of the minor if it is detrimental to the best interest of the minor.”
Law on Juvenile Justice Article 57	“[...] For the best interest of the minor, while awaiting trial, the Court of Appeal or the Supreme Court shall consider the release of the minor. In the case where the trial is adjourned, the Court of Appeal or Supreme Court shall consider releasing the minor.”

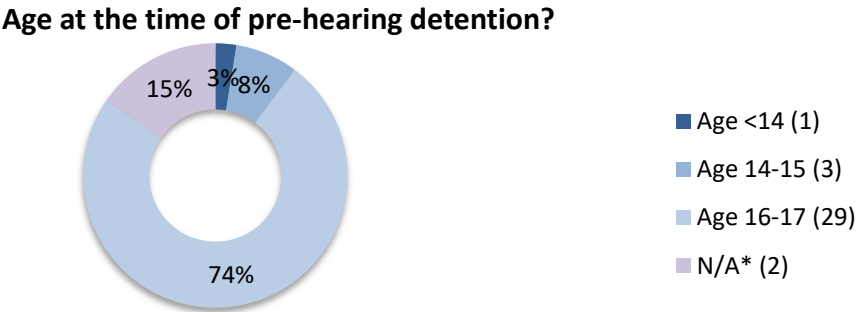
According to the Convention on the Rights of the Child, which defines a child as any individual below 18,⁷⁷ State Parties shall seek to promote the establishment of laws, procedures, authorities, and institutions specifically applicable to children accused of, or recognized as having, infringed the penal law, and in particular:

- i. The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law; and,
- ii. Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.⁷⁸ In other words, international human rights law promotes the use of non-judicial proceedings in cases where a child is alleged, accused or recognized as having breached the criminal law, when appropriate and desirable and particularly in the case of minor offences such as shoplifting or other property offenses.⁷⁹

Further, a variety of dispositions, such as care, guidance and supervision orders; counseling; probation; foster care; education and vocational training programs 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.⁸⁰

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 to additional protections giving due consideration to their age, maturity, and intellectual development. The ICCPR and the Convention on the Rights of the Child (“CRC”), which entered into force in Cambodia in 1992, set out specific provisions for the treatment of juveniles in criminal justice proceedings. They are supported by a number of international rules and guidelines. As stated above a number of legal provisions in Cambodian law further provide differential treatment provisions for juveniles in a number of important areas. The Law on Juvenile Justice was adopted in 2016 to safeguard the rights and best interests of minors who have committed criminal offences.

Figure 14(a): Pre-trial detention of juveniles⁸¹



*The juvenile defendant was not imprisoned.

⁷⁷ CRC, Article 1: “For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.”

⁷⁸ CRC, Article 40 (3).

⁷⁹ UN Committee on the Rights of the Child, General comment No. 10, 2007, para. 24, 25, <http://bit.ly/1fbEoKP>. The Committee on the Rights of the Child is the official body created by Article 43 of the CRC, to examine the progress made by state parties regarding the CRC, and to make suggestions and recommendations on the CRC (Article 45 (d)).

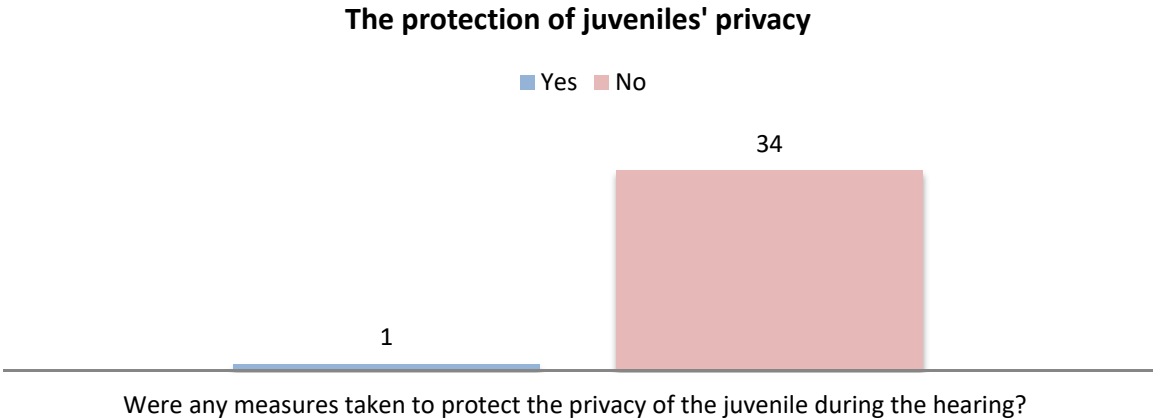
⁸⁰ CRC, Article 40 (4).

⁸¹ This data based on the total number of juvenile defendants (35 individuals) involved in the 19 cases monitored.

During the Reporting Period, out of the 558 defendants involved in the cases that were monitored, 35 were juveniles at the time of the offense and all but two were held in pre-trial detention. 29 individuals were between the age 16 and 17, 3 were between the age of 14 and 15. Further, two cases related to children who were below 14 years of age at the time of the alleged offenses; one had been acquitted and set free in first instance; the second one was held in detention following the decision of the Court of First Instance. The Court of Appeal had to wait until it received official proof that the defendant was under 14 years of age at the time of the alleged offence, before it could acquit and release him.

The best interests of the child must be the primary consideration when ordering or imposing penalties upon juveniles found to have infringed criminal law.⁸² Imprisonment of juveniles is to be considered as a measure of last resort and should be employed only in exceptional cases.⁸³ Cambodian law also provides for alternative measures to custodial sentences.⁸⁴ Thus, the figures above give rise to serious concern and are at great odds with both international and domestic law, as pre-trial detention of juvenile appears to be the norm rather than a measure of last resort. The Court of Appeal did not make use of the alternative sentencing options identified in Article 40 of the Penal Code, and in the Law on Juvenile Justice in Article 28 and Chapter 10 on Diversion, such as committing the minor to a social service agency or to a qualified private organization or a specialized hospital or institution. The Court of Appeal also did not act in compliance with Article 5 of the Law on Juvenile Justice, which requires any person in a public function concerning a minor to act in the best interests of the minor, and particularly their right to development, and which states that arrest or detention of minors should only be used as a measure of last resort.

Figure 14(b): The protection of juveniles' privacy⁸⁵



Under human rights law, a juvenile has a right to have his/her privacy respected at all stages of the proceedings.⁸⁶ This includes from the initial contact with law enforcement until the final decision or, if sentenced, the release from supervision, custody or deprivation of liberty.⁸⁷ The underlying rationale

⁸² CRC, Article 3(1); *see also*, Committee on the Rights of the Child, General Comment No. 10, Children’s rights in juvenile justice, para. 10 and 71, <http://bit.ly/1fbEoKP>.
⁸³ CRC, Article 37(b).
⁸⁴ Criminal Code, Art. 40.
⁸⁵ This data is based on the total number of juvenile defendants (35 individuals) involved in the 19 cases monitored.
⁸⁶ CRC, Article 40(2)(vii).
⁸⁷ CRC General Comment 10, para. 64.

is to avoid the harm caused by undue publicity or libel. Therefore, no information should be publicized regarding the identification of the child offender.⁸⁸ Juvenile victims' or defendants' privacy may further be protected via placing the minor behind screens or using other alternate means of providing testimony. The use of tools such as video conferencing system, or closed hearing should be considered.

No measure was taken to respect the juvenile's privacy in 97% of the monitored cases involving juveniles, which contravenes international human rights. All trials were open to the public. There was only one instance where the Court conducted the hearing in closed court, but it was only because of social morality, as the juvenile was charged with rape.

The question of the juvenile's right to privacy during criminal trial was extensively discussed with the Court of Appeal's Deputy Presidents,⁸⁹ who undertook to review the existing practices related not only to juveniles' privacy, but also to that of victims and witnesses, in order to be compliant with both national and international standards.

⁸⁸ CRC General Comment 10, para. 64.

⁸⁹ On 5 April 2018, CCHR's Fair Trial Monitoring Project team met with the Deputy Presidents of the Court of Appeal H.E. Plang Samnang, H.E. Nhoung Thul, as well as with the Deputy General Secretary, Ms. Sreng Soyeth, in order to discuss the findings contained in the present report.

3. Evolution of Fair Trial Rights Protection Between 2014 & 2017

This section outlines key trends in terms of adherence to international fair trial rights standards by the Court of Appeal. It presents a comparison between the data collected during the reporting period of the present report (1 November 2016 to 31 October 2017, thereafter “2016-2017”) with data collected through daily monitoring of trials heard at the Court of Appeal between 1 July 2014 and 30 June 2015 (“2014-2015”).⁹⁰ CCHR’s Fair Trial Rights monitoring Project was temporarily suspended between 1 July 2015 and 31 October 2016 due to a lack of funding. As a result, no data is available for this period.

The 2014-2015 report is based on 128 monitored cases, of which 46 were felonies, 77, misdemeanors, and five, petty offenses. CCHR concluded that the Court of Appeal respected the following rights:

- the presumption of innocence,
- the right to understand the nature of the charge,
- the right to legal representation and to be present at the trial,
- the right to have adequate time and facilities to prepare a defense,
- the prohibition against double jeopardy,
- the prohibition against retroactivity, and,
- the right to a public judgment.

On the other side, CCHR found that the following were at risk over 2014-2015:

- the right to be given an explanation of one’s fair trial rights, including the right to legal representation or to self-defense, and the right to remain silent,
- the right to a reasoned judgment,
- the independence, impartiality and professionalism of the judges,
- the right not to be compelled to confess guilt, and,
- the rights of juveniles.

While the changes could be partly explained by the fact that CCHR monitored twice as many trials in 2016-2017 than in 2014-2015, a comparison still allows certain trends to be identified, which must be taken into account by the authorities to take actions in order to improve the overall respect for fair trial rights.

In particular, when comparing the findings between the 2014-2015 and 2016-2017 reports, a number of key trends can be identified:

- Respect for the right to understand the nature and cause of the charges significantly improved, reaching almost 100% in 2016-2017, from 82% in 2014-2015.
- Key fair trial rights were consistently respected and protected throughout the two reporting periods: the protection against double jeopardy, the non-retroactivity of the law, and the right to a public judgment.
- Even though respect for the rights of juveniles, and particularly the taking of measure(s) to

⁹⁰ The 2014-2015 Annual Report, covering the period of 1 July 2014 to 30 June 2015, has not been published, but it can be provided upon request.

protect their privacy, slightly improved, going from 100% of cases where no measure was taken whatsoever to 97%, the disregard for juveniles' right is one of the greatest area of concern in terms of fair trial rights.

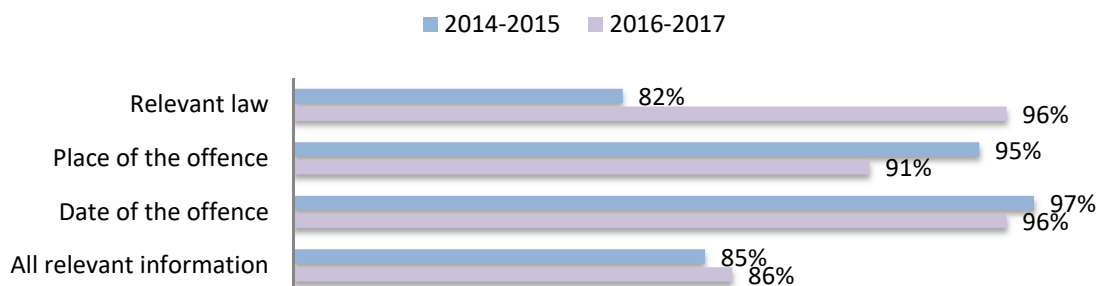
- The protection of a number of key rights deteriorated over the two years period, although the difference between 2014-2015 and 2016-2017 is relatively small (around a 5 % points difference). In particular, the right to have adequate time and facilities to prepare one's defense, the right to be present at trial and to have legal representation and the protection against self-incrimination saw a slight degradation.
- An analysis of the respect for the presumption of innocence leads to a mixed review: while the appearance of defendants in prison uniforms increased from 4 to 9 %, none of them were handcuffed, and the judges also never made statements against the guilt of the defendants during both reporting periods. However, in both reporting periods, the judge's failure to inform and explain their right to remain silent to the defendants remained stable, it still represents the existence of a practice violating fair trial rights in the majority of the cases (in 3.5 out of 5 cases).
- The right to a reasoned judgment, one of the most fundamental fair trial right, is still significantly endangered before the Court of appeal, which consistently fails to provide the legal and factual basis as well as the reasoning followed for its rulings, thereby creating a risk that decisions taken are arbitrary.

3.1. Noticeable Increases in Respect for Some Key Fair Trial Rights, But Significant Efforts Still Needed

3.1.1. The right to understand the nature and cause of the charges is better protected

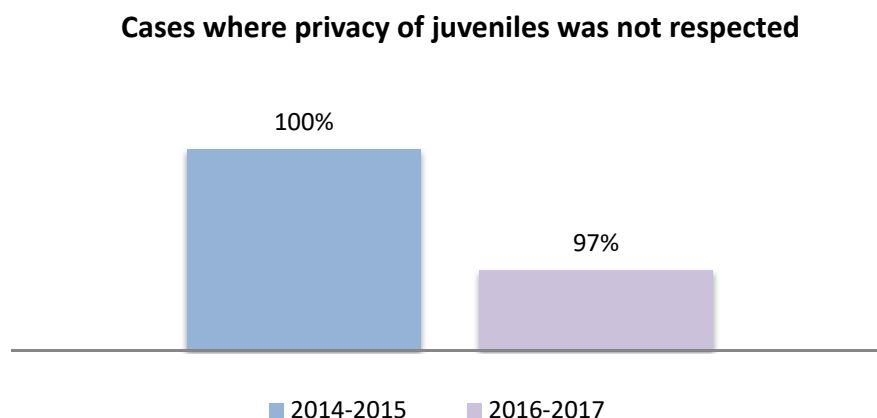
Respect for the right to understand the nature and cause of the charges improved between 2014 and 2017. The judges stated the relevant law in 96% of the cases in 2016-2017, while it was the case only in 82% of the cases monitored in 2014-2015. Overall, the judges stated all relevant charges against all defendants in 86% in 2016-2017, versus in 85% of cases monitored in 2014-2015. There is therefore a positive and encouraging trend, which CCHR strongly hopes will continue, as this constitutes one of the key elements of fair trial rights. The provision of information related to the place of the offence must be given particular attention however, since there was a slight decrease in the number of cases where it was provided.

Evolution of Information Provided to the Defendants



3.1.2. The protection of the privacy to which juveniles are entitled, while slightly improving, remains a serious concern

There was a very slight, yet worth noting, improvement in terms of respecting juveniles' privacy. While in 2015 no measures were taken to protect the privacy of juveniles in all the cases monitored, in 2017 such measures were taken in 3% of the cases.



Nonetheless, as mentioned above, this remains an extremely worrisome trend, as the protection of juvenile's privacy is one of the most important fair trial right for juveniles. Urgent measures must be taken however, in order to ensure that respect for juveniles' privacy is the norm and not the exception, as detailed in the recommendations below. Measures which could significantly improve respect for this right could easily be taken, at minimal cost, for instance by preventing members of the public from accessing the court hearing when a trial related to someone who was a juvenile at the time of the alleged crime(s), it is essential that concrete steps are taken to remedy this violation.

3.1.3. The protection against double jeopardy and against the retroactive application of the law, as well as the right to a public judgment are continuously respected

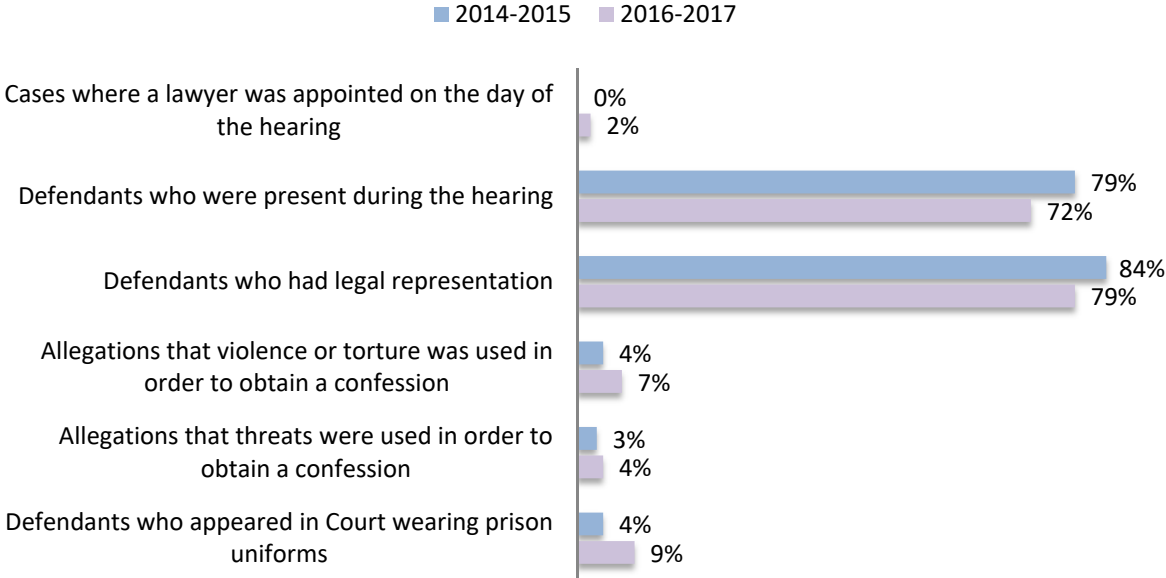
A comparison of CCHR's findings between 2014-2015 and 2016-2017 regarding the protection against double jeopardy, against the retroactive application of criminal law, and the right to a public judgment were consistently respected by the Court of Appeal. In particular, in all cases monitored under both reporting periods, there was no violation of the protection against retroactive law, and all judgments were rendered in public. Only one defendant's case violated the protection against double jeopardy, out of 558 defendants in the cases monitored by CCHR in 2016-2017.

3.2. Less Respect for Some Key Fair Trial Rights

The results of CCHR's monitoring shows small – but worrisome – decreases in the Court of Appeal's respect for and protection for the defendants' right to have adequate time and facilities to prepare their defense, their right to be present and to legal representation, as well as their right not to be compelled to testify guilty. Additionally, the number of cases in which the Appeal Judges upheld the first instance judgement despite the defendant or his/her defense lawyer having argued that the

confession had been obtained under coercive circumstances or following the physical violence, has risen. Further, the use of prison uniform for defendants who have not yet been convicted – and therefore must benefit from the presumption of innocence, has also slightly increased.

Rights less respected in 2016-2017



3.2.1. The right to adequate time and facilities to prepare one’s defense saw a slight decrease

The right to adequate time and facilities to prepare a defense was slightly less respected by the court of Appeal in 2016-2017 than in 2014-2015. While no defendant had a lawyer assigned to them last minute, on the day of the appeal hearing, in 2014-2015, there was a rise to 2% of defendants being in such situation in 2016-2017, which constitutes a worrisome trend.

3.2.2. The right to be present at trial and to legal representation is still largely respected, despite a small drop between 2014-2015 and 2016-2017

There has been a deterioration in terms of the Court of Appeal’s adherence to the right to be present at trial and to legal representation. In 2014-2015 defendants were present in 79% of cases, while in 2016-2017 this dropped to 72%. Similarly, while in 2014-2015, 84% of the defendants in the cases monitored were represented by a lawyer, in 2016-2017 this was the case only for 79% of the defendants.

While the difference is still minor, it could represent a negative trend which must immediately be reversed.

3.2.3. Allegations that threats, violence or torture were used against the defendant in order to obtain a confession have increased between 2014-2015 and 2016-2017

Compliance with the right not to be compelled to confess guilt (protection against self-incrimination) saw a small but extremely worrisome increase. Cases where the defendant alleged that threats were made to coerce him/her into confessing to the alleged crime went from 3% of all cases in 2014-2015 to 4% of the monitored cases in 2016-2017. Allegations that violence or torture was used to coerce the defendant into confessing to the alleged crime went from 4% in 2014-2015 to 7% in 2016-2017.

The protection against self-incrimination is one of the most important fair trial rights and is a cornerstone of any properly functioning judicial system. It is of the utmost importance for this trend to be reversed thanks to the use of concrete steps to ensure that any confession is given with free and informed consent, without any form of coercion.

3.2.4. The use of prison uniforms, which detrimentally affects the presumption of innocence, saw a small increase

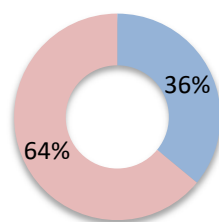
CCHR regretted to notice an increase in the number of cases where the defendants appeared in Court wearing prison uniforms, which puts respect for the presumption of innocence at risk. While the overall proportion remains small - less than 10 % of all monitored cases - the fact that the number of cases rose from 4% to 9% creates cause for concern. However, under both reporting periods, none of them were handcuffed.

3.3. The Right to Remain Silent and the Right to a Reasoned Judgment Continue to be Endangered

It is with deep concern that CCHR observed that both in 2014-2015 and 2016-2017, the defendants were not informed of their right to remain silent in the vast majority of the cases (64% of cases in 2014-2015, and 65% of cases in 2016-2017), which significantly contravenes the presumption of innocence.

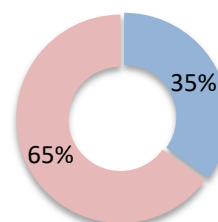
**Right to remain silent
2014-2015**

■ Defendant was informed
■ Defendant was not informed



**Right to remain silent
2016-2017**

■ Defendant was informed
■ Defendant was not informed



A similar trend can be seen insofar as the Court of Appeal's respect for the defendants' right to a reasoned judgment is concerned, which puts this right significantly at risk. In 2014-2015, the judges failed to refer to the relevant law when rendering their verdict 80% of the time, and failed to refer to evidence 73% of the time. In 2016-2017, this trend continued and increased significantly, with the judges failing to justify their ruling in almost all the cases, and instead, only read and announced the ruling.

3.4. Conclusion on Key Trends Between 2014-2015 and 2016-2017

The priority is therefore for the Court of Appeal to ensure that the right of juveniles to the protection of their privacy is fully respected and protected, and ensures that, when it renders a judgment, full reasons for the ruling are provided. It must also ensure that all elements to the presumption of innocence are fully respected, and particularly makes sure that all defendants are being informed about their right to remain silent.

It is also important for the Court of Appeal to ensure that the rights to have adequate time and facilities to prepare one's defense, to be present at trial and to have legal representation, as well as the protection against self-incrimination do not deteriorate any further. Finally, all relevant stakeholders must maintain their efforts in ensuring that the rights which have been constantly protected continue to be.

4. Conclusion and Recommendations

The data collected during the course of the Project, while showing that a number of key fair trial rights are being protected before the Court of Appeal, also highlights the need for reform in a number of areas, in order to achieve a stronger rule of law. While the Court of Appeal is generally adhering to the procedures that are meant to ensure fair trial rights, such as the protection against double-jeopardy or retroactivity of the law, and the right to have a public judgment, the concerns lie more in the substantive issues.

In particular, a few key findings must be highlighted:

- None of the 340 hearings monitored by CCHR from November 2016 to October 2017 had been publicly announced through a notice on the information board;
- More than one out of four defendants was not present during the hearing (28%);
- 21% of the defendants were not represented by a lawyer;
- In about one out of ten cases, the judges failed to inform and explain the Defendant about his/her right to defend himself/herself, and of his/her right to be represented by a lawyer;
- The judge failed to inform and explain the defendant about his right to remain silent in more than three out of five cases (65%);
- 50 Defendants appeared before the Court of Appeal in prison uniform (blue clothing), in violation of their presumption of innocence;
- 40 individuals alleged that they gave a confession after violence or torture was used against them;
- In virtually all the cases, the judges failed to cite the legal provisions and the evidence upon which they relied to reach their judgement, and only read the actual ruling. This also prevented any assessment as to whether the burden of proof beyond reasonable doubt was met, and gives rise to the suspicion that the verdicts may be arbitrary;
- A guilty verdict was upheld for three out of five defendants (67%);
- Out of 558 defendants, the Court of Appeal ordered re-investigations in only 6 cases;
- All but two juveniles who were tried during CCHR's monitoring were held in pre-trial detention;
- Out of the 35 juvenile trials monitored by CCHR, measures to respect and protect juvenile's privacy were taken only in one case;
- In general, no specific measures were put into place to protect the rights of juvenile, despite Cambodia being a party to the Convention on the Rights of the Child. Concrete steps need to be taken in order to put into place a special juvenile justice system, and to adapt the existing system to protect the privacy of juveniles.

Overall, most of the issues highlighted in this Report can be addressed through simple, low-cost and quickly implemented measures. For example, improved coordination regarding the transportation of defendants from correctional centers to their hearing, asking witnesses to leave the hearing before they make their statements, and requiring that judges explain their rights to defendants. Others will easily be improved through training of the judges and lawyers regarding fair trial rights' implementation. As importantly, the capacity of the Court of Appeal should be enhanced to enable it to resolve cases that are backlogged, 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.⁹¹ By taking immediate measures to address these concerns, the Court of Appeal could set a precedent, serve as an example to the Courts of First Instances and as such, positively impact the overall quality of the administration of justice in Cambodia and significantly contribute to the strengthening of the rule of law.

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 below.

4.1. General Recommendations

- The Ministry of Justice should organize regular trainings on the practical implementation of fair trial rights for the judges of the Court of Appeal, following the concept of fair trial rights based on national and international standards.
- The Court of Appeal should follow the best practices of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”).
- A standard form should be developed and implemented for use in all courts. The form 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;
 - The fair trial rights to which the defendant is entitled, as outlined on page 4 of this report. In particular, his or her right to be presumed innocent until a final and non-appealable judgment is rendered, and the fact that the burden of proof is on the Prosecutor.
- The judges should ask the defendant directly whether he or she understands the charges and his or her rights. Failure to read out the above information at the beginning of a trial should constitute grounds to appeal a conviction.

4.2. Recommendations Regarding the Right to a Public Hearing

- The Court of Appeal and the Ministry of Justice should ensure that daily schedules of all hearings are posted on information boards outside the court room at least 24 hours prior to the hearing, and continue to guarantee public access to courtrooms in all but exceptional cases, which would include that of juveniles. When such information is published on the information board, the name of juveniles should not be spelled out, but instead they should be referred to by their initials, in order to protect their privacy.

⁹¹ Khy Sovuthy, “Government to Establish New Appeal Court by 2018”, The Cambodia Daily, Feb 18, 2016, available at: <http://bit.ly/2DNI05I>.

4.3. Recommendations Regarding the Right to be Present at Trial and to Have Legal Representation

- The Court of Appeal and the General Department of Prisons should consult and coordinate with each other in order to address any logistical and communication issues as soon as possible regarding the locations of defendants, and in particular:
 - The General Department of Prisons must ensure that information on the transfer of detained persons is regularly sent to Prosecutors;
 - The Court of Appeal must ensure that information regarding date and time of the appeal hearings are sent to the correct correctional center in which the defendant is detained.
- The Judges of the Court of Appeal should postpone any hearing if the defendant is not present, even if he or she is represented by a lawyer, unless he or she has unequivocally and formally waived his or her right to be present.
- In case several defendants are represented by the same lawyer, the judges of the Court of Appeal shall ensure that there is no conflict of interest and that the lawyer can provide an effective defense to all the defendants he or she represents.
- The Judges of the Court of Appeal should inform and explain the defendant about his or her right to be represented by a lawyer of his or her choice, and ensure that any self-represented defendant has made an informed choice not to seek legal representation.

4.4. Recommendations Regarding the Presumption of Innocence

- The Ministry of Justice and The Ministry of Interior shall issue and disseminate clear guidelines highlighting that defendants held in pre-trial detention or those whose trial has started but for whom a final judgement has not been issued, must be allowed to appear in Court wearing civilian clothes.
- The Judges of the Court of Appeal shall communicate with the relevant prison authorities in order to ensure that no defendant appears in prison uniform, as this violates the presumption of innocence.
- The Judges of the Court of Appeal must unequivocally inform the defendant of his or her right to be presumed innocent until a final judgment is rendered; of the fact that the burden of proof is on the prosecutors; and that the defendant has the right to remain silent without such silence being used against him or her.
- The Ministry of Interior should follow the international best practices implemented by the ECCC, which allow defendants to wear their own clothing to court at all stages of the criminal process until their conviction becomes final.

4.5. Recommendations Regarding the Protection against Self-Incrimination

- The Judges of the Court of Appeal shall remind the defendant of his or her right not to provide evidence that could be used against him or her.

- The Judges of the Court of Appeal shall ensure that any confession or statement of guilt was given freely, in the absence of any direct or indirect, physical or psychological coercion.
- If the defendant alleges that a confession or statement of guilt was obtained under coercion, the Judges of the Court of Appeal must recall that the burden of proof that the statement was not made under duress rests upon the party who took the statement, and not the defendant. The Judges shall take all necessary steps to assess whether there are reasons to believe that the statement of guilt was obtained under duress.
- In the event that there is reasonable ground to believe that a confession was obtained under coercion or duress, the Judges of the Court of Appeal shall not admit it into evidence.
- When accepting into evidence a confession or statement of guilt which the defendant alleged was not given freely, the Judges of the Court of Appeal must provide detailed reasons for its decision to do so.

4.6. Recommendations Regarding Evidentiary Rights

- The Judges of the Court of Appeal shall inform the defendants of their rights to present evidence in the same conditions as those presented against them.
- The Judges of the Court of Appeal should order witnesses to leave the courtroom and not return until they are called to testify as a way to ensure witnesses are not influenced by other evidence and testimony presented during the trial.
- The Judges of the Court of Appeal must carefully assess whether the evidence presented before them establish beyond any reasonable doubt that the defendant is guilty. If there is an interpretation of the evidence which is consistent with the innocence of the defendant, he or she must be acquitted.

4.7. Recommendations Regarding the Right to a Reasoned Judgment

- The Judges of the Court of Appeal should inform and explain to the defendant the reasons behind their verdict. In particular, they must cite the relevant articles of the law, and list the key evidence on which they rely for their ruling.

4.8. Recommendations to Protect the Rights of Juveniles in the Criminal System

- The Judges of the Court of Appeal should strictly apply the provisions of the Law on Juvenile Justice in order to protect the best interests of the accused juvenile, and in particular Article 47, which require that the trial process and the judgment be conducted in a closed hearing.
- Judges and prosecutors should undergo specific training concerning issues relating to juvenile justice and this training should be implemented jointly by the MoJ and the BAKC.
- The Court of Appeal should make use of the video conference system currently available at the Court and ensure staffs are trained accordingly. The MoJ and the MoSVY should implement a diversion scheme; through 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.

- Sentencing options for juveniles must be widened. The MoJ, supported by the MoSVY, 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, or where imprisonment is required for reasons of public protection.
- The Ministry of Justice shall review the existing legislation, including the laws related to the functioning of the courts, in order to ensure their compliance with international standards on juvenile justice system, including, but not limited to the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"),⁹² the UNICEF guidance for legislative reform on juvenile justice,⁹³ the UNICEF implementation handbook for the convention on the rights of the child⁹⁴ and the UNICEF law reform and implementation of the convention on the rights of the child report.⁹⁵

⁹² Available at <http://www.ohchr.org/Documents/ProfessionalInterest/beijingrules.pdf>.

⁹³ Available at http://www.unicef.org/policyanalysis/files/Juvenile_justice_16052011_final.pdf.

⁹⁴ Especially page 107, available at http://www.unicef.org/publications/index_43110.html.

⁹⁵ Especially page 87, available at http://www.unicef-irc.org/publications/pdf/law_reform_crc_imp.pdf.

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Database

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6. Appendices

Appendix I: Appeal Hearing Monitoring Checklist

A. General Trial Information

1. OVERVIEW				
1(a) Trial 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) <input type="checkbox"/> Civil Party Reason for appeal: <input type="checkbox"/> I/U Date of Appeal:			
1(d) Judge:	1 st 2 nd 3 rd			
1(e) Prosecutor:				
1(f) Clerk:				
1(g) Lawyer:				
1(h) Number of Accused	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	Imprisonment: D1: D2: D3: D4: D5	Fine: D1: D2: D3: D4: D5	Compensation: D1: D2: D3: D4: D5	Date of Verdict <input type="checkbox"/> I/U
1(k) Which court of first instance is the party appealing from?				
1(l) Which prison was the accused detained?	<input type="checkbox"/> N/A <input type="checkbox"/> I/U			

TRIAL 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 <input type="checkbox"/> No
2(b) Were members of the public or media prevented from entering or dismissed from the courtroom?	<input type="checkbox"/> Yes <input type="checkbox"/> No Reason:

3. RIGHT TO UNDERSTAND THE NATURE OF THE CHARGE	
3(a) Did the judge state all relevant charges against all accused?	<input type="checkbox"/> State all <input type="checkbox"/> State some <input type="checkbox"/> Non
3(b) Did the judge state the relevant law?	<input type="checkbox"/> Yes <input type="checkbox"/> No
3(c) Did the judge state the date of the alleged crime?	<input type="checkbox"/> Yes <input type="checkbox"/> No
3 (d) Did the judge state the place of the alleged crime?	<input type="checkbox"/> Yes <input type="checkbox"/> No
3(e) Did the judge state the parties involved?	<input type="checkbox"/> Yes <input type="checkbox"/> No
3(f) If required, was an interpreter provided?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
3(g) If required, were provisions made for those with disabilities	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
If yes, what disability was provided for?	<input type="checkbox"/> Hearing <input type="checkbox"/> Sight <input type="checkbox"/> Other Comment:

4. EXPLANATION OF RIGHTS N/A <input type="checkbox"/>	
4(a) Did the judge inform (I) and explain (E) to the accused their right to legal representation or to self-defense?	<input type="checkbox"/> I only <input type="checkbox"/> I and E <input type="checkbox"/> Neither I nor E <input type="checkbox"/> Lawyer Represented
4(b) Did the judge inform (I) and explain (E) to the accused their right not to answer or answer?	<input type="checkbox"/> I only <input type="checkbox"/> I and E <input type="checkbox"/> Neither I nor E

5. RIGHT TO CALL AND EXAMINE WITNESSES
--

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

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

6. PRESENTATION OF EVIDENCE:

<p>6.1: PROSECUTION <input type="checkbox"/> N/A</p>	
<p>6.1(a) Confession evidence</p>	<p>Where was confession made?</p> <p><input type="checkbox"/> Police <input type="checkbox"/> Prosecutor <input type="checkbox"/> Investigating J</p> <p><input type="checkbox"/> Other:</p> <p><input type="checkbox"/> N/A</p> <p>Any other evidence to corroborate confession?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>If Yes, please give detail:</p>
<p>6.1(b) Documentary evidence</p>	<p>Summary of Contents:</p> <p><input type="checkbox"/> N/A</p> <p>Reason (if known) that evidence is read and witness not present:</p> <p><input type="checkbox"/> N/A <input type="checkbox"/> I/U</p> <p>Were there any Submissions re-reading out evidence rather than calling witness made by any party?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>If Yes, which party?</p> <p><input type="checkbox"/> Defendant <input type="checkbox"/> Civil Party <input type="checkbox"/> Other:</p> <p>Detail:</p> <p>Does any party disagree with content?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p>

	<p>If Yes, who? <input type="checkbox"/> Defense <input type="checkbox"/> Civil Party <input type="checkbox"/> Other: Detail:</p>
6.1(c) Live witness evidence	<p>Summary of Evidence: <input type="checkbox"/> N/A</p> <p>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</p> <p>If there were any challenges, which party made the objection; <input type="checkbox"/> Defense <input type="checkbox"/> Civil Party <input type="checkbox"/> Other: Detail:</p>
6.1(d) Expert evidence	<p>Type: <input type="checkbox"/> forensic <input type="checkbox"/> medical <input type="checkbox"/> other: <input type="checkbox"/> N/A</p> <p>Witness present or statement/report read out? <input type="checkbox"/> Present <input type="checkbox"/> Absent <input type="checkbox"/> N/A If absent, giving reason: <input type="checkbox"/> I/U</p> <p>Other parties agree with expert evidence? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>If No, who and why? <input type="checkbox"/> Defendant <input type="checkbox"/> Civil Party <input type="checkbox"/> Other: Detail:</p> <p>If read out and witness not present, submissions re-reading out evidence rather than calling witness 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"/> Defendant <input type="checkbox"/> Civil Party <input type="checkbox"/> Other: Detail:</p>

6.2 DEFENSE	<input type="checkbox"/> N/A <input type="checkbox"/> Absent
6.2(a) Confession evidence	<p>Was the confession retracted at any stage? Give details. <input type="checkbox"/> Police <input type="checkbox"/> Prosecutor <input type="checkbox"/> Investigating J <input type="checkbox"/> Trial Judge <input type="checkbox"/> N/A Detail:</p> <p>Challenge to confession evidence? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>If Yes, which party? <input type="checkbox"/> Prosecutor <input type="checkbox"/> Civil Party <input type="checkbox"/> Other: Detail basis of any challenge:</p>

	<p>Response/ ruling to any challenge and reasons given by the judge:</p> <p><input type="checkbox"/> N/A</p>
6.2(b) Documentary evidence	<p>Summary of Contents:</p> <p><input type="checkbox"/> N/A</p>
	<p>Reason (if known) that evidence is read and witness not present:</p> <p><input type="checkbox"/> N/A <input type="checkbox"/> I/U</p>
	<p>Submissions re-reading out evidence rather than calling witness made by any party?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>If Yes, which party</p> <p><input type="checkbox"/> Prosecutor <input type="checkbox"/> Civil Party <input type="checkbox"/> Other:</p> <p>Detail:</p>
	<p>Does any party disagree with content?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>If yes, which party?</p> <p><input type="checkbox"/> Prosecutor <input type="checkbox"/> Civil Party <input type="checkbox"/> Other:</p> <p>Detail:</p>
6.2(c) Live witness evidence	<p>Summary of Evidence:</p> <p><input type="checkbox"/> N/A</p>
	<p>Challenges to the evidence by any other party (describe nature of challenge and detail which party)</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>If there is any which party that make the objection;</p> <p><input type="checkbox"/> Prosecutor <input type="checkbox"/> Civil Party <input type="checkbox"/> Other:</p> <p>Detail:</p>
6.2(d) Expert evidence	<p>Type: <input type="checkbox"/> Forensic <input type="checkbox"/> Medical</p> <p><input type="checkbox"/> Other: <input type="checkbox"/> N/A</p>
	<p>Witness present or statement read out?</p> <p><input type="checkbox"/> Present <input type="checkbox"/> Absent</p> <p>If absent, reason given:</p> <p><input type="checkbox"/> I/U</p>
	<p>Other parties agree with expert evidence?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>If No, who and why?</p> <p><input type="checkbox"/> Prosecutor <input type="checkbox"/> Civil Party <input type="checkbox"/> Other:</p> <p>Detail:</p>
	<p>If read out and witness not present, submissions re-reading out evidence rather than calling witness made by any party?</p>

	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A If Yes, which party? <input type="checkbox"/> Prosecutor <input type="checkbox"/> Civil Party <input type="checkbox"/> Other: Give detail:
6.2(e) Defense put forward (eg. Alibi, self-defense etc.)	Summary: <input type="checkbox"/> N/A

6.3 CIVIL PARTIES	<input type="checkbox"/> N/A <input type="checkbox"/> Absent
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6.3(a) Documentary evidence	Summary of Contents: <input type="checkbox"/> N/A
	Reason (if known) that evidence was read and witness not present: <input type="checkbox"/> N/A <input type="checkbox"/> I/U
	Submissions re-reading out evidence rather than calling 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"/> 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 If Yes, which party? <input type="checkbox"/> Prosecutor <input type="checkbox"/> Defense <input type="checkbox"/> Other: Detail:
	6.3(b) Live witness evidence
Summary of Evidence: <input type="checkbox"/> N/A	
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 is any which party that make the objection; <input type="checkbox"/> Prosecutor <input type="checkbox"/> Defense <input type="checkbox"/> Other: Detail:	
6.3(c) Expert evidence	Type: <input type="checkbox"/> Forensic <input type="checkbox"/> Medical <input type="checkbox"/> Other: <input type="checkbox"/> N/A
	Witness present or statement read out? <input type="checkbox"/> Present <input type="checkbox"/> Absent 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"/> Defendant <input type="checkbox"/> Other: Detail:
	If read out and witness not present, submissions re-reading out evidence rather than calling witness 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"/> Defendant <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 there anything said during the hearing or did anything happen to suggest that any party was not given the opportunity to present evidence?	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, which party? <input type="checkbox"/> Prosecutor <input type="checkbox"/> Defendant <input type="checkbox"/> Civil Party Comment: If yes, was a formal application made for the evident to be admitted? <input type="checkbox"/> Yes <input type="checkbox"/> No
7 (b) Was there anything to suggest that any party was not given the opportunity to question witnesses?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A If yes, which party? <input type="checkbox"/> Prosecutor <input type="checkbox"/> Defendant <input type="checkbox"/> Civil Party Comment: If yes, was a formal application made at any stage during the hearing to question the witness? <input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

7(c) Was there anything to suggest that any party did not have an opportunity to view the case file prior to the hearing?	<p>If yes, which party did not have access to the case file prior to the hearing?</p> <p><input type="checkbox"/> Prosecutor <input type="checkbox"/> Defendant (if self-represented) <input type="checkbox"/> Defense Counsel <input type="checkbox"/> Civil Party</p> <p>Comment: [Please provide details as to why it is suggested that the relevant party did not have access to the case-file?]</p>
7(d) Was the defendant or defense counsel denied the opportunity to have the last word?	<p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p><input type="checkbox"/> Defendant <input type="checkbox"/> Defense Counsel</p> <p>If no, comment:</p>

8. INDEPENDENCE, IMPARTIALITY AND CONDUCT OF THE JUDGE PARTIES INVOLVED

8(a) Did the judge behave in an intimidating manner towards a party?	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If yes, please explain:</p>
8(b) Did the judge make discriminatory comments about any party?	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If yes, was the discriminatory comment based on the party's:</p> <p><input type="checkbox"/> Race <input type="checkbox"/> Gender <input type="checkbox"/> Religion <input type="checkbox"/> Other</p> <p>Please explain the nature of the comment:</p>
8(c) Did any party leave the court room during the trial?	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If yes, which party?</p> <p><input type="checkbox"/> Judge <input type="checkbox"/> Prosecutor <input type="checkbox"/> Lawyer</p> <p>Please explain reason:</p> <p><input type="checkbox"/> I/U</p>
8(d) Did any party answer a mobile telephone during the trial?	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If yes, which party:</p> <p><input type="checkbox"/> Judge <input type="checkbox"/> Prosecutor <input type="checkbox"/> Lawyer</p> <p>How did they respond?</p> <p><input type="checkbox"/> Respond briefly and hang up <input type="checkbox"/> conduct a conversation</p> <p>If yes, was the ring tone:</p> <p><input type="checkbox"/> Audible <input type="checkbox"/> On silent</p>

9. DELIBERATION

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

10 ASSESSMENT OF EVIDENCE

10(a) Did the evidence presented substantiate the necessary elements of the offence?		
Element of offence:	Relevant evidence:	
10(b) Summaries of closing arguments:		
Prosecution	Defense	Civil Party

11. VERDICT	
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 judge 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 for verdict :	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U
11(f) Were the lawyers representing the parties presented?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/> I/U
11(e) 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:

B. 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 accused)	<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(b) 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

6(b) Elements of offence to be proven in order to secure a conviction:					
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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 offence:	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"/> 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
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			
If Yes, Summary of defense application and any proposed conditions of judicial supervision;					
Summary of Prosecutor's comments:					

Summary of CP comments:	
Judges' decision and reasons:	

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"/> 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(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"/> 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

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

Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
16(a) Was there anything to suggest that the lawyer of the defendant was assigned on the day of the appeal? 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
16(b) Was the issue of adequate time and facilities for	<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

preparation raised by the defense? If yes, please explain:					
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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? If yes, was there a conflict between the interests of two or more of the defendant 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 <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 trial?	<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?	<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:					
18 (d) Was there anything to suggest that the judge drew an inference of guilt from the silence of the defendant? 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

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	<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

defendant had been charged?					
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? Amount:	<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
22(c) Was the defendant ordered to pay compensation? Amount:	<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
22(d) Was there any other alternative sentence? 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

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-TRIAL DETENTION					
Juvenile Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
24(a) Age at the time of pre-trial 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

25. TRIAL <input type="checkbox"/> N/A <input type="checkbox"/> Absent					
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	<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

as a lawyer or parent?					
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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

Appendix II: Trial Monitors Code of Conduct

Preparation and prerequisites

General Duties

Confidentiality

- The monitoring project respects full confidentiality with respect to the release of non-public information.
- Monitors must have a comprehensive understanding of the confidentiality principles in relation to trial monitoring with respect to information obtained at court, as well as operational and organizational information relevant to CCHR.

Prior to Implementation of the Trial Monitoring Project

Preliminary assessments

Trial Monitors must have a thorough understanding of the following prior to court attendance as a Monitor:

- The judicial mechanisms in Cambodia;
- Court hierarchy and corresponding jurisdictions;
- Level of cooperation and/or involvement that is expected from a) Judge; b) Prosecutor C) Defense Counsel and e) Government.

Notification

- The decisions as to who will receive formal and/or informal notification of the Trial Monitoring must be made prior to monitoring the trials and be approved by the Project Coordinator in line with the project objectives;
- If the CCHR notifies the Court of the trial monitoring it must be in accordance with general practices;
- Monitors must record who has been informed and/or consulted prior to, and/or during, the trial. This includes the details and form of the notification;
- Whether a Memorandum of Understanding (“MOU”) has been signed between CCHR and the Ministry of Justice.

Prior to Each trial to be monitored

Preliminary Assessments

The following information is collected prior to each trial, or, where unable to do so, it is noted and the research is conducted after or during the trial:

- Whether there are relevant reports on similar trials in Cambodia;
- Which binding international laws and treaties, if any, pertain to the case;
- What are the domestic laws, substantive and procedural, relevant to the case;
- The relevant Constitutional provisions.

Notification

- Trial Monitors must document in detail any dialogue with a) government; b) Defense Counsel; c) Prosecutor; d) Judge; e) Court Clerk or f) any other relevant party.

Access

- The Trial Monitors must register with the court prior to monitoring and, if a request for documents or access was made, Trial Monitors must keep copies of all official documentation.

During the Trial

General

- Arrive in court ahead of time to allow sufficient time to gain access to the court, locate the courtroom, and find a seat. This should be described in the Report form.
- Monitors must be prepared and able to clearly articulate the legal basis, purposes, and objectives of the program to all court officials and legal actors.

Identification

- Carry the monitor-identification badge at all times, and produce it if requested by court officials.
- If there are concerns about access, carry acknowledgement for local officials of trial monitoring project.

Conduct in court

- Monitors must display professionalism at all times.
- Must possess a high standard of legal knowledge, including international human rights law.
- Monitors must decide where to sit, attempting to secure an appearance of impartiality and to facilitate observation of the trial. The observer should choose to sit in a prominent,

neutral location in the courtroom. Maintain polite and composed demeanor with all court officials and parties to a case.

- Wear appropriate clothing.
- Arrive promptly at court.
- Maintain a respectful approach during all interactions with court officials and actors.
- Visibly make extensive notes during hearings based on the CCHR checklist, irrespective of whether the trial is being recorded.
- Monitors must be familiar with and fully understand the checklist and guidelines for trial monitoring.
- Ensure the safety and confidentiality of notes.
- Get a neutral party to give introduction to court (only if staying the entire time) to increase visibility.

Impartiality and non-interference

- Occupy a convenient seat in a courtroom that allows you to observe, hear and follow all aspects of a hearing.
- Do not sit next to either the defense or prosecution.
- Never ask legal actors their opinions on a case or offer advice.
- Avoid interfering during the course of a hearing.
- Never interrupt a trial proceeding or speak with legal actors or participants during the trial.
- Never intervene in a trial or attempt to influence the outcome of trial proceedings in any way.
- At no time express any bias or preference in relation to the parties in a case.
- Do not express any views on the course of a trial either inside or outside a courtroom. When asked specific questions, respond by explaining the role of the monitor and the code of impartiality.
- Trial Monitors should make no public statements.

Where possible, Trial Monitors should take note of related newspaper articles referring to the trial and be aware of practical observations for future trial monitors.